## 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.

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### 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.

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### 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. The Department of Public Works (DPW) has been notified by NStar that there is an outstanding invoice for electricity usage. The unpaid bill represents power usage at a traffic signal control box at 665 Washington St. that was installed by Barletta Heavy Division as part of the Beacon Street reconstruction project. For whatever reason, Barletta, who was responsible only for the installation of the control box, was mistakenly listed as the owner of the account for billing purposes by NStar. The owner should have been the Town. It has been verified that the Town is responsible for payment of the outstanding invoice in the amount of $440.15, which represents the actual electricity usage since 2008. All invoices received since August, 2010 have been paid correctly by the Town.

The Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 19, 2010, on the motion offered by the Advisory Committee.

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### ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Warrant Article 1 would "*see if the Town will, in accordance with General Laws, Chapter 44, Section 64, authorize the payment of one or more of the bills of the previous*

*years, which may be legally unenforceable due to the insufficiency of the appropriations therefor, and appropriate from available funds, a sum or sums of money therefore, or act on anything relative thereto.*"

The State law referenced in the Warrant Article[1] prohibits the Town from paying unpaid bills for goods purchased by it or services rendered to it until and unless Town Meeting has approved the specific appropriation. Therefore, it is customary for every Town Meeting to consider a warrant article to consider and, if appropriate, approve the payment for any goods or services received by the Town the purchase of which was not approved by a prior appropriation. Upon Town Meeting's approval, the Town may then pay for such goods or services.

DISCUSSION

In September of this year, the Town's Department of Public Works (the "DPW") learned of an unpaid electric bill from NSTAR. The bill reflects electricity usage since 2008 for a traffic signal control box located at 665 Washington Street (in front of the Fire Station located near Washington Square).

By way of background, a Canton, Massachusetts-based company called Barletta Companies was a contractor for the Beacon Street Traffic Safety Improvements Project that commenced in 2005. As part of this project, the DPW installed a series of traffic signal control boxes that alert motorists that fire, police or other similar vehicles would be approaching. For some reason, the bill for electricity usage for that traffic signal control box was sent to Barletta's attention, instead of to the DPW. The situation has since been remedied.

The unpaid bill in question reflects energy usage from the date of installation through the date (August 2010) the error was identified and addressed less past due charges, credit for a payment made, and certain other agreed-to discounts. Thus, the total of the unpaid bill is $440.15. The DPW now seeks Town Meeting's approval to pay this charge.

As an aside, the Advisory Committee expressed its appreciation to the DPW for both quickly uncovering this situation and also for auditing the remaining traffic installations to make sure NSTAR charges are now being billed correctly.

RECOMMENDATION

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[1] The statute (Massachusetts General Laws ch. 44, §64) provides in relevant part:

> *Any town … having unpaid bills of previous fiscal years which may be legally unenforceable due to the insufficiency of an appropriation in the year in which such bills were incurred may … at an annual meeting by a four[-]fifths vote, or at a special meeting by a nine[-]tenths vote, of the voters present and voting at a meeting duly called … appropriate money to pay such bills….*

The Advisory Committee agrees with the DPW that the obligation is owed by the Town and ought to be paid. Accordingly, by a vote of 16 in favor and none opposed, the Advisory Committee recommends FAVORABLE ACTION on the following motion:

VOTED: To authorize the payment of the following unpaid bill of a previous fiscal year from the FY2011 Department of Public Works budget:

| | |
|---|---|
| NStar | $440.15 |

***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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SELECTMEN'S RECOMMENDATION

There are no Collective Bargaining agreements for Town Meeting authorization at this time. As a result, the Board recommends NO ACTION, by a vote of 5-0 taken on October 26, 2010.

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ADVISORY COMMITTEE'S RECOMMENDATION

Article 2 would ask Town Meeting to raise and appropriate funds for collective bargaining agreements. As there are no agreements at this time, the Advisory Committee, by a vote of 21-0-0, unanimously recommends NO ACTION.

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## ARTICLE 3

### THIRD ARTICLE

To see if the Town will:

A) Appropriate additional funds to the various accounts in the fiscal year 2011 budget or transfer funds between said accounts;

B) Appropriate $530,000, or any other sum, to be expended under the direction of the Building Commission, with the approval of the Board of Selectmen and School Committee, for the expansion of classroom capacity in various schools.

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

or act on anything relative thereto.

### PETITIONER'S ARTICLE DESCRIPTION

This article is inserted in the Warrant for any Town Meeting when budget amendments for the current fiscal year are required. For FY2011, the warrant article is necessary to balance the budget based on final State Aid figures, re-allocate funds, and make an appropriation for additional classroom capacity.

### SELECTMEN'S RECOMMENDATION

Article 3 proposes amendments to the FY11 budget in order to address two positive developments:

1. the final State budget contained higher revenue-sharing allocations for Brookline than assumed in the budget approved by Town Meeting in May;
2. based on the enrollment allocation of employees into GIC plans, there is a projected surplus in health insurance accounts.

**STATE AID**

Because the Governor proposed level-funding local aid at the same the legislative leadership was warning municipalities to prepare for significant cuts, the Town took a hybrid approach in terms of using the Governor's local aid proposal: the budget approved by Town Meeting assumed level-funding of Ch. 70 Aid (what the Governor proposed),

but a 10% cut in Unrestricted General Government Aid (UGGA) (in recognition of the legislative leadership's warning). The state budget signed into law by the Governor on June 30 reduced funding for both Ch. 70 and UGGA for Brookline by 4%. The cut in Ch. 70 on the Cherry Sheet, however, was actually 5.8%: the State used ARRA (Federal "stimulus") funds to augment the appropriation so that no community had a cut of greater than 4%. (Those monies, $134,902 for Brookline, were to be a direct grant to the Schools and, therefore, not accounted for on the Cherry Sheet.) In terms of Cherry Sheet aid, there was $190,736 more than assumed in the FY11 budget as approved by Town Meeting, as shown in the table below:

| | | | Versus Fin Plan | |
|---|---|---|---|---|
| | FY11 Fin Plan | FY11 Orig State Budget | $ VAR | % VAR |
| **Receipts** | | | | |
| Ch. 70 * | 7,323,679 | 6,895,830 | (427,849) | -5.8% |
| UGGA | 4,754,713 | 5,370,029 | 615,316 | 12.9% |
| Quinn | 62,345 | 62,345 | 0 | 0.0% |
| Vets Benefits | 77,195 | 77,195 | 0 | 0.0% |
| Exemptions | 41,905 | 41,905 | 0 | 0.0% |
| Charter School Reimb. | 14,867 | 19,568 | 4,701 | 31.6% |
| **Total Aid** | **12,274,704** | **12,466,872** | **192,168** | **1.6%** |
| **Charges** | | | | |
| County | 638,171 | 638,171 | 0 | 0.0% |
| Retired Empl. Health Ins. | 3,295 | 3,295 | 0 | 0.0% |
| Air Pollution Dist. | 22,073 | 22,046 | (27) | -0.1% |
| MAPC | 16,576 | 16,551 | (25) | -0.2% |
| RMV Surcharge | 283,120 | 283,120 | 0 | 0.0% |
| MBTA | 4,480,479 | 4,480,479 | 0 | 0.0% |
| SPED | 60,590 | 61,616 | 1,026 | 1.7% |
| Charter School Sending Tuition | 50,599 | 51,057 | 458 | 0.9% |
| **Total Charges** | **5,554,903** | **5,556,335** | **1,432** | **0.0%** |
| **Net Local Aid** | **6,719,801** | **6,910,537** | **190,736** | **2.8%** |

On August 10, President Obama signed the "Jobs Bill", which provided $26B to states and school districts, $10B of which was for the Education Jobs Fund and $16B was the six-month extension of FMAP (Medicaid) funding. For Massachusetts, the Education Jobs Fund yields $204M. On August 25, the Governor announced his intention to allocate those monies to K-12 school districts in conjunction with the state's Chapter 70 school funding formula. Specifically:

- $54.6 million was used to replace a portion of the FY11 ARRA allocations previously used to supplement the FY11 Chapter 70 program. Each district's ARRA reduction was offset by a dollar-for-dollar allocation of Education Jobs

funds. (The ARRA funds freed up by this change wsa reserved for other services in the State budget outside of the K-12 area.)

- $143.6 million was used to offset the previously announced 4% cut in most districts' Chapter 70 aid and to fully fund the minimum aid provision of the Chapter 70 formula at $25 per pupil. This meant that every operating district realized a minimum increase of $25 per pupil over FY10 levels, based on the combined amounts of state Chapter 70 aid, federal ARRA grants, and federal Education Jobs grants.

For Brookline, this plan resulted in $586,149 ($37,020 from ARRA and $549,129 from Jobs) going directly to the Schools in the form of grants. These funds were not anticipated in the budget approved by Town Meeting. In addition, they do not require appropriation by Town Meeting.

When the School's share of the additional Cherry Sheet aid (50% of the $190,736 shown on page 3-2, or $95,368) is added, the result is $681,517 of funding for the Schools that was not accounted for in the FY11 budget as approved by Town Meeting. Of this amount, just the $190,736 needs Town Meeting approval. The Schools have stated that these monies will go toward reducing their reliance upon one-time revenue in their FY11 budget, thereby preserving much-needed budget capacity in FY12.

For the Town's share of the additional Cherry Sheet aid (50% of $190,736, or $95,368), the Board is proposing the following allocations:

- $5,000 to the Reserve Fund – when Town Meeting approved the amendment to increase Selectmen stipends, the Reserve Fund was chosen as the funding source (i.e., that appropriation was reduced). In order to bring the fund up to the level called for in the Town's financial policies (1% of prior year net revenue), the $5,000 reduction should be restored.

- $18,500 to the Liability/Catastrophe Fund – the Council on Aging (COA) budget recommended to, and adopted by, Town Meeting differed from the Financial Plan by $18,500. During the budget review process, that amount was added to fund a part-time position. The Liability / Catastrophe Fund was reduced by the same amount to balance the budget. In order to bring the fund up to the level called for in the Town's financial policies (1% of prior year net revenue), the $18,500 reduction should be restored.

- $71,868 to the Stabilization Fund – the Town's financial policies call for a Stabilization Fund equivalent to 3% of prior year net revenue. The Town reached this level in the mid-2000's and has not had to appropriate monies into the fund since FY07 because of investment earnings. However, with investment income declining in concert with the country's economic condition, the fund has now fallen below the 3% threshold. Therefore, it is recommended that these monies be appropriated into the fund.

**HEALTH INSURANCE ENROLLMENT**

When the budget was being developed, information from the GIC indicated that some plans would experience rate increases higher than the projections used by the consultant during GIC negotiations, and some would experience rate increases lower than projected. At that time, the fear was that more employees would end up enrolling in the plans with the higher increases, leaving the group health budget underfunded. In order to avoid that situation, the FY11 budget included a one-time Group Health Enrollment Allocation Reserve to serve as a buffer.

The actual enrollment count and plan allocation results in a very favorable outcome for the Town: approximately 25 fewer enrollees than before the move to the GIC and a much greater level of enrollment in HMO's versus PPO's and the Indemnity plan than anticipated. For the non-Medicare plans, the budget assumed a 10% migration into the Indemnity plan and the rest into PPO's. The actual numbers show just 4% into the Indemnity plan, 25% into HMO's, and the balance (71%) into PPO's. The combination of these two factors results in not only the ability to re-allocate the $400,000 reserve, but also to reduce the health insurance appropriation by $1 million.

In addition to positively impacting the FY11 budget, this experience benefits the FY12 budget outlook by more than $1 million, as the FY11 surplus reduces the base going forward. However, it is critically important that the surplus be used for one-time items in FY11; if not, that positive budgetary impact in FY12 is reduced. Simply building the entire surplus into the budget base in another area of the budget (e.g., salaries, expanded service levels) leaves the Town and School budgets in no better a situation for what stands to be a difficult FY12 budget.

**RECOMMENDED ALLOCATION OF HEALTH INSURANCE SURPLUS**

After working closely with the Schools, the Board is recommending the following allocation of the $1 million health insurance budget surplus and the $400,000 reserve:

- Re-appropriate the School's share of the $1 million surplus ($530,000) as a Special Appropriation (i.e., CIP account) for Classroom Capacity, which requires a vote of Town Meeting. As Town Meeting is aware, the Schools continue to face enrollment pressures, resulting in a scarcity of classroom space. In both FY08 and FY10, Town Meeting authorized $400,000 to increase the number of classrooms district-wide. Those funds have been spent down over the past couple years in an effort to create the 24 new classrooms required to house the increased enrollment. Additional work is required to create more classroom spaces for the next few school years and these funds will be necessary to complete the work.

- Transfer the Town's share of the $1 million surplus ($470,000) to the OPEB Trust Fund, which requires just a vote of the Board of Selectmen. This is identical to the action the Board took last Spring when it moved surplus health insurance funds ($400,000) to OPEB's.

- Transfer the $400,000 Allocation Reserve to the OPEB Trust Fund, which also requires just a vote of the Board of Selectmen. This, too, is identical to the action the Board took last Spring when it moved surplus health insurance funds ($400,000) to OPEB's.

**SUMMARY**

The table below summarizes the actions recommended for Town Meeting approval, as detailed above:

| | |
|---|---|
| Schools * | $95,368 |
| Group Health | ($530,000) |
| Reserve Fund | $5,000 |
| Stabilization Fund | $71,868 |
| Liability/Catastrophe Fund | $18,500 |
| Classroom Capacity (CIP) | $530,000 |
| | |
| Net Change | $190,736 |

* Exclusive of the $586,149 in grants that go directly to the Schools w/o appropriation.

As of the writing of these Combined Reports, the Board has not taken the necessary votes to move the $470,000 and $400,000 to the OPEB Trust Fund because of the uncertainty Questions 1 (elimination of sales tax on alcohol) and 3 (reduction in sales tax to 3%) have caused about State revenues. If they were to pass on November 2, more than $1 billion of state revenue would be lost in FY11, which could very well trigger mid-year cuts to Local Aid. Therefore, it makes sense to hold onto this $870,000 of budget capacity in case the questions were to pass and the Town's Local Aid was cut. If the questions fail to pass, the Board will vote to move these funds at the November 9 meeting.

We believe the recommended approach detailed above is a prudent one that uses available funds in FY11 for documented needs while at the same time benefiting the FY12 budget situation. The enrollment experience in FY11 has put the Town in a position where both short-term and long-term needs can be met if handled appropriately. Therefore, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 12, 2010, on the vote offered by the Advisory Committee.

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Article 3 is submitted in order to correct a number of budget issues which have arisen since Town Meeting met in the Spring of 2010 and passed Brookline's FY11 budget.

Brookline's Annual Town Meeting (in May of 2010) passed the Town's FY 2011 budget *before* the state's FY 2011 budget had been approved by the Legislature and the Governor. Accordingly, the Town's FY 2011 budget by necessity reflected various assumptions about what and the final state budget would provide. Additionally, when Town Meeting met last Spring, the migration of Town employees from Blue Cross/Blue Shield (the Town's former health care provider) to the state Group Insurance Commission (GIC) had not been completed. Therefore, Town Meeting passed a budget that was based on the then-current assumptions as to plan selections Town employees

would make and also the number of Town employees who would obtain their coverage from the GIC.

Now that the state budget has passed and the benefit selections have occurred, Article 3 would reallocate certain monies and funds to reflect experience (rather than the Town's assumptions) as to both of these areas.

Federal and state budgets and monies:
The final Massachusetts state budget included $190,736 more in "Cherry Sheet" Aid than was anticipated in the Town's budget passed by Town Meeting last Spring. Consistent with the so-called "*Town-School Partnership*," the Town Administrator's Office now recommends that this additional aid be split 50/50 between the Schools' and the Town's budgets ($95,368 to each). The Schools will also receive an additional $586,149 above what was included in their current FY 2011 budget as a result of American Recovery and Reinvestment Act of 2009 (ARRA) one-time "stimulus" monies and the recently-enacted Federal jobs bill funding. The Schools thus will receive an additional $681,517 above what was included in the budget Town Meeting passed in May. As required by federal law, the ARRA and the jobs bill, these monies will flow directly from the state to the Schools (and therefore no Advisory Committee or Town Meeting approvals are required).

Article 3 proposes that the Town's share of the additional Cherry Sheet Aid be allocated as follows:

- $5,000 to the Reserve Fund,
- $18,500 to the Liability Fund, and
- 71,868 to the Stabilization Fund.

Employee health insurance costs:
Another factor forming the basis for the proposed budget amendments relates to the cost of providing health insurance coverage for the Town's employees. The Town has experienced favorable (from a budget point-of-view) benefits from the recent shift to the GIC from Town-sponsored insurance coverage. Health insurance costs are somewhat lower than the FY 2011 budget envisioned. More of the Town's employees selected lower cost plans than was originally forecast. Additionally, programs to pay employees to switch to a spouse's or partner's coverage have proven more successful than forecast.

The FY 2011 budget set aside $400,000 in a reserve fund to protect the Town and Schools against a greater percentage of employees than anticipated enrolling in those plans that realized double-digit premium increases. The Town's FY 2011 budget as passed last Spring assumes that 10% of employees would enroll in indemnity plans and 90% would enroll in Preferred Provider Organizations (PPOs). Following significant efforts to make sure our employees understood the pros and cons of various options available to them, only 4% of enrollees selected indemnity plans while 71% of them selected a PPO (with the remaining 25% opting for an Healthcare Maintenance Organization (or HMO)). Bargained-for programs to reward employees to select a

spouse's or partner's coverage also provided very successful. Therefore, the $400,000 reserve fund can now be reallocated and, because of the unanticipated enrollment patterns, the Town and Schools can reduce their combined health care budget by $1 million in the current fiscal year.

The Town Administrator's Office proposes that the reallocated healthcare dollars be used in a way that does not make the FY 2012 budget more difficult than it is expected to be (such as, by using these savings to fund operating expenses in this fiscal year). Therefore, it recommends that the $400,000 reserve fund be reallocated to the OPEB Trust Fund. Further, the Town Administrator's Office recommends that the Town's share of the $1 million cost savings ($470,000) be similarly reallocated to the OPEB Trust Fund. This attention to our OPEB liability is in keeping with a recent Town Meeting resolution.

Finally, it is recommended that the School's share of the healthcare premium savings ($530,000) be allocated to the Schools' needs outside of its base budget—specifically to fund a classroom capacity CIP account. For the past several years enrollment at the lower grades has increased. This trend continues. These funds will help the School Department address pressing space needs.

DISCUSSION:
Mr. Cronin explained that when the Town's budget proposal was designed, his office made use of the most up-to-date budget numbers available at that time. However, the state's final budget process yielded some surprises. As a result, the Town actually received more money from the state than was anticipated when the Town's budget passed. When coupled with monies received from ARRA and the federal jobs bill, the net result is that Brookline has received additional funds above what was anticipated in May 2010 and those fund now need to be reflected in the budget amendments.

The Advisory Committee concurs with the budget changes laid out in Article 3 with one change (described below).

It should be noted that some of the transfers and fund reallocations which the are not contingent upon Town Meeting approval. Specifically, the transfer of funds into the OPEB Trust Fund can be done solely with approval from the Board of Selectmen. Also, Town Meeting is not required to approve the allocation of the grant funding which the Schools will receive. Nonetheless, the Advisory Committee urges Town Meeting to go "on record" as encouraging the Board of Selectmen to use these monies to address the OPEB gap and the School Committee to use their funds to reduce their reliance upon one-time monies in FY11.

Town Meeting may be interested to know that the $18,500 transfer to the Liability Fund discussed previously represents the budgeted cost of the Council on Aging Outreach Worker, which the Advisory Committee amended and Town Meeting subsequently approved in the FY 2011 budget.

It is also interesting to note that the proposed deposit into the Stabilization Fund would be the first since 2007 and is necessary to bring the fund's balance up to the minimum called

for in the Town's financial policies. Since 2007 the interest on earned on the fund's balance has been sufficient, but as a result of decreased interest rates a deposit is necessary this year. The current balance of the fund is approximately $5.8 million.

RECOMMENDATION:
At the time of the Advisory Committee's discussion of Article 3 the results of Question 3 (the statewide referendum to cut the state's sales tax to 3%) were unknown. There was concern on the Committee that if the referendum were to pass (and further assuming that the Legislature would actually follow the voters' action), significant revisiting of the current budget will likely be needed. Without implying that we are taking an issue on a matter before the voters, the Committee thought it prudent to make the OPEB transfers contingent upon the proposal not passing.

Accordingly, the Advisory Committee by a vote of 18-0 with no abstentions on the following motion. The Committee also voted, by a vote of 18-0 with no abstentions, to urge the board of Selectmen to transfer the $870,000 to the OPEB Trust Fund, as outlined above, pending the results of November 2nd's State election on which two tax cutting ballot questions will appear.

VOTED: That the Town:

1. Amend the FY2011 budget as shown below and in the attached Amended Tables I and II:

| ITEM # | ORIGINAL BUDGET | PROPOSED CHANGE | AMENDED BUDGET |
|---|---|---|---|
| 22. Schools | $71,947,765 | $ 95,368 | $72,043,133 |
| 23. Employee Benefits | $40,603,902 | ($530,000) | $40,073,902 |
| 24. Reserve Fund | $ 1,851,956 | $ 5,000 | $ 1,856,956 |
| 25. Stabilization Fund | $ 0 | $ 71,868 | $ 71,868 |
| 26. Liability/Catastrophe Fund | $ 437,000 | $ 18,500 | $ 455,500 |

2. Raise and appropriate $530,000, to be expended under the direction of the Building Commission, with the approval of the Board of Selectmen and School Committee, for the expansion of classroom capacity in various schools.

**XXX**

**FY11 AMENDED BUDGET - TABLE 1**

| | | FY08 ACTUAL | FY09 ACTUAL | FY10 BUDGET | FY11 ORIG. BUDGET | PROPOSED AMENDMENTS | FY11 AMENDED BUDGET | $$ CHANGE FROM FY10 | % CHANGE FROM FY10 |
|---|---|---|---|---|---|---|---|---|---|
| | **REVENUES** | | | | | | | | |
| | Property Taxes | 133,849,950 | 146,542,184 | 152,681,998 | 157,583,115 | | 157,583,115 | 4,901,118 | 3.2% |
| | Local Receipts | 24,524,074 | 22,455,149 | 20,357,125 | 19,868,475 | | 19,868,475 | (488,650) | -2.4% |
| | State Aid | 18,946,277 | 17,962,793 | 16,536,492 | 13,604,374 | 192,168 | 13,796,542 | (2,739,950) | -16.6% |
| | Free Cash | 3,814,792 | 5,954,963 | 7,053,295 | 4,590,079 | | 4,590,079 | (2,463,216) | -34.9% |
| | Overlay Surplus | 850,000 | 0 | 1,505,000 | 0 | | 0 | (1,505,000) | -100.0% |
| | Other Available Funds | 7,753,612 | 5,986,333 | 5,915,039 | 5,059,259 | | 5,059,259 | (855,780) | -14.5% |
| | **TOTAL REVENUE** | **189,738,706** | **198,901,422** | **204,048,949** | **200,705,302** | **192,168** | **200,897,470** | **(3,151,479)** | **-1.5%** |
| | **EXPENDITURES** | | | | | | | | |
| | **DEPARTMENTAL EXPENDITURES** | | | | | | | | |
| | 1 . Selectmen | 622,009 | 635,977 | 600,160 | 608,603 | | 608,603 | 8,442 | 1.4% |
| | 2 . Human Resources | 478,335 | 457,626 | 512,008 | 500,174 | | 500,174 | (11,834) | -2.3% |
| | 3 . Information Technology | 1,362,103 | 1,386,089 | 1,412,632 | 1,392,304 | | 1,392,304 | (20,328) | -1.4% |
| | 4 . Finance Department | 2,934,091 | 3,368,994 | 2,957,457 | 2,929,901 | 0 | 2,929,901 | (27,556) | -0.9% |
| | 5 . Legal Services | 772,840 | 749,476 | 748,648 | 756,296 | | 756,296 | 7,648 | 1.0% |
| | 6 . Advisory Committee | 21,940 | 17,938 | 19,615 | 19,783 | | 19,783 | 168 | 0.9% |
| | 7 . Town Clerk | 525,170 | 604,410 | 481,257 | 600,183 | | 600,183 | 118,926 | 24.7% |
| | 8 . Planning and Community Development | 644,375 | 593,156 | 628,455 | 652,684 | | 652,684 | 24,229 | 3.9% |
| | 9 . Police | 13,636,806 | 14,680,249 | 14,397,219 | 14,695,688 | | 14,695,688 | 298,469 | 2.1% |
| | 10 . Fire | 12,125,596 | 12,280,892 | 12,129,414 | 12,265,426 | | 12,265,426 | 136,013 | 1.1% |
| | 11 . Building | 6,542,701 | 6,965,035 | 6,986,848 | 6,849,744 | | 6,849,744 | (137,104) | -2.0% |
| (1) | 12 . Public Works | 13,178,799 | 13,896,651 | 12,859,891 | 12,772,571 | 0 | 12,772,571 | (87,319) | -0.7% |
| | *a. Administration* | *868,055* | *920,805* | *910,739* | *752,354* | | *752,354* | *(158,385)* | *-17.4%* |
| | *b. Engineering/Transportation* | *849,680* | *929,115* | *904,252* | *945,657* | | *945,657* | *41,405* | *4.6%* |
| | *c. Highway* | *4,723,284* | *4,710,556* | *4,766,446* | *4,895,043* | | *4,895,043* | *128,597* | *2.7%* |
| | *d. Sanitation* | *2,870,421* | *2,593,323* | *2,817,840* | *2,813,173* | | *2,813,173* | *(4,667)* | *-0.2%* |
| | *e. Parks and Open Space* | *2,694,138* | *3,119,380* | *3,092,487* | *2,954,050* | | *2,954,050* | *(138,436)* | *-4.5%* |
| | *f. Snow and Ice* | *1,173,221* | *1,623,472* | *368,127* | *412,294* | | *412,294* | *44,167* | *12.0%* |
| | 13 . Library | 3,398,242 | 3,489,100 | 3,461,307 | 3,469,227 | | 3,469,227 | 7,921 | 0.2% |
| | 14 . Health | 1,024,069 | 1,088,050 | 1,099,574 | 1,085,950 | | 1,085,950 | (13,623) | -1.2% |
| | 15 . Veterans' Services | 203,829 | 241,303 | 241,409 | 242,733 | | 242,733 | 1,324 | 0.5% |
| | 16 . Council on Aging | 746,900 | 767,625 | 759,236 | 780,187 | | 780,187 | 20,952 | 2.8% |
| | 17 . Human Relations | 143,236 | 151,702 | 101,870 | 101,870 | | 101,870 | 0 | 0.0% |
| | 18 . Recreation | 992,864 | 912,909 | 970,754 | 938,533 | | 938,533 | (32,221) | -3.3% |
| (2) | 19 . Energy Reserve | 0 | 0 | 0 | 0 | | 0 | 0 | - |
| (2) | 20 . Personnel Services Reserve | 750,000 | 750,000 | 909,674 | 750,000 | | 750,000 | (159,674) | -17.6% |
| (2) | 21 . Collective Bargaining - Town | 1,600,000 | 3,042,804 | 75,000 | 475,000 | | 475,000 | 400,000 | 533.3% |
| | *Subtotal Town* | *59,353,905* | *62,287,183* | *61,277,427* | *61,886,857* | *0* | *61,886,857* | *609,430* | *1.0%* |
| | 22 . *Schools* | *62,924,864* | *68,000,450* | *68,823,845* | *71,947,765* | *95,368* | *72,043,133* | *3,219,288* | *4.7%* |
| | **TOTAL DEPARTMENTAL EXPENDITURES** | **122,278,769** | **130,287,633** | **130,101,272** | **133,834,622** | **95,368** | **133,929,990** | **3,828,718** | **2.9%** |
| | **NON-DEPARTMENTAL EXPENDITURES** | | | | | | | | |
| (1) | 23 . Employee Benefits | 34,564,193 | 36,103,405 | 41,064,320 | 40,603,902 | (530,000) | 40,073,902 | (990,418) | -2.4% |
| (3) | *a. Pensions* | *11,256,221* | *11,686,639* | *13,258,716* | *13,999,954* | | *13,999,954* | *741,238* | *5.6%* |
| | *b. Group Health* | *19,855,771* | *20,860,382* | *24,073,604* | *21,227,416* | *(530,000)* | *20,697,416* | *(3,376,188)* | *-14.0%* |
| | *c. Group Health Enrollment Allocation Reserve* | *0* | *0* | *0* | *400,000* | | *400,000* | *400,000* | *-* |
| (3) | *d. Retiree Group Health Trust Fund (OPEB's)* | *0* | *0* | *250,000* | *1,142,531* | | *1,142,531* | *892,531* | *357.0%* |
| | *d. Employee Assistance Program (EAP)* | *24,968* | *25,282* | *28,000* | *28,000* | | *28,000* | *0* | *0.0%* |
| | *f. Group Life* | *151,643* | *150,971* | *162,000* | *130,000* | | *130,000* | *(32,000)* | *-19.8%* |
| | *g. Disability Insurance* | *12,813* | *13,460* | *16,000* | *16,000* | | *16,000* | *0* | *0.0%* |
| (3) | *h. Worker's Compensation* | *1,600,000* | *1,550,000* | *1,350,000* | *1,350,000* | | *1,350,000* | *0* | *0.0%* |
| (3) | *i. Public Safety IOD Medical Expenses* | *250,000* | *300,000* | *300,000* | *325,000* | | *325,000* | *25,000* | *8.3%* |
| (3) | *j. Unemployment Compensation* | *166,000* | *166,000* | *166,000* | *400,000* | | *400,000* | *234,000* | *141.0%* |
| | *k. Medical Disabilities* | *15,718* | *9,963* | *30,000* | *30,000* | | *30,000* | *0* | *0.0%* |
| | *l. Medicare Coverage* | *1,231,059* | *1,340,708* | *1,430,000* | *1,555,000* | | *1,555,000* | *125,000* | *8.7%* |
| (2) | 24 . Reserve Fund | 774,834 | 1,297,947 | 1,834,186 | 1,851,956 | 5,000 | 1,856,956 | 22,769 | 1.2% |

| | | FY08 ACTUAL | FY09 ACTUAL | FY10 BUDGET | FY11 ORIG. BUDGET | PROPOSED AMENDMENTS | FY11 AMENDED BUDGET | $$ CHANGE FROM FY10 | % CHANGE FROM FY10 |
|---|---|---|---|---|---|---|---|---|---|
| | 25 Stabilization Fund | 0 | 0 | 0 | 0 | 71,868 | 71,868 | 71,868 | - |
| | 26 . Liability/Catastrophe Fund | 254,629 | 297,476 | 1,443,397 | 437,000 | 18,500 | 455,500 | (987,897) | -68.4% |
| | 27 . General Insurance | 276,146 | 279,490 | 286,198 | 290,000 | | 290,000 | 3,802 | 1.3% |
| | 28 . Audit/Professional Services | 99,433 | 86,765 | 138,987 | 138,987 | | 138,987 | 0 | 0.0% |
| | 29 . Contingency Fund | 11,806 | 13,905 | 15,000 | 15,000 | | 15,000 | 0 | 0.0% |
| | 30 . Out-of-State Travel | 1,979 | 1,076 | 3,000 | 3,000 | | 3,000 | 0 | 0.0% |
| | 31 . Printing of Warrants & Reports | 14,487 | 17,143 | 20,000 | 20,000 | | 20,000 | 0 | 0.0% |
| | 32 . MMA Dues | 10,959 | 11,178 | 11,820 | 12,116 | | 12,116 | 296 | 2.5% |
| | *Subtotal General* | *669,439* | *707,033* | *3,752,588* | *2,768,059* | *95,368* | *2,863,427* | *(889,162)* | *-23.7%* |
| (1) | 33 . Borrowing | 13,824,443 | 12,173,327 | 12,572,215 | 9,594,781 | 0 | 9,594,781 | (2,977,434) | -23.7% |
| | *a. Funded Debt - Principal* | *9,432,797* | *8,247,516* | *8,536,243* | *7,264,649* | | *7,264,649* | *(1,271,594)* | *-14.9%* |
| | *b. Funded Debt - Interest* | *4,354,324* | *3,884,000* | *3,686,572* | *2,176,113* | | *2,176,113* | *(1,510,459)* | *-41.0%* |
| | *c. Bond Anticipation Notes* | *0* | *0* | *289,400* | *94,019* | | *94,019* | *(195,381)* | *-67.5%* |
| | *d. Abatement Interest and Refunds* | *37,322* | *41,811* | *60,000* | *60,000* | | *60,000* | *0* | *0.0%* |
| | **TOTAL NON-DEPARTMENTAL EXPENDITURES** | **49,058,075** | **48,983,765** | **57,389,123** | **52,966,741** | **(434,632)** | **52,532,109** | **(4,857,014)** | **-8.5%** |
| | **TOTAL GENERAL APPROPRIATIONS** | **171,336,844** | **179,271,398** | **187,490,396** | **186,801,364** | **(339,264)** | **186,462,100** | **(1,028,296)** | **-0.5%** |
| | **SPECIAL APPROPRIATIONS** | | | | | | | | |
| | 34 . Technology Applications (revenue financed) | | | | 250,000 | | 250,000 | 250,000 | |
| | 35 . Fire Rescue / Special Operations Truck (revenue financed) | | | | 150,000 | | 150,000 | 150,000 | |
| | 36 . Main Library Front Entrance (revenue financed) | | | | 50,000 | | 50,000 | 50,000 | |
| | 37 . Street Rehabilitation (revenue financed) | | | | 1,740,000 | | 1,740,000 | 1,740,000 | |
| | 38 . Traffic Calming Studies and Improvements (revenue financed) | | | | 100,000 | | 100,000 | 100,000 | |
| | 39 . Sidewalk Repair/Reconstruction (revenue financed) | | | | 262,000 | | 262,000 | 262,000 | |
| | 40 . Bicycle Access Improvements (revenue financed) | | | | 25,000 | | 25,000 | 25,000 | |
| | 41 . Path Reconstruction (revenue financed) | | | | 120,000 | | 120,000 | 120,000 | |
| | 42 . Parking Meter System Replacement (revenue financed) | | | | 1,400,000 | | 1,400,000 | 1,400,000 | |
| | 43 Streetlight Repair / Replacement (revenue financed) | | | | 50,000 | | 50,000 | 50,000 | |
| | 44 Newton St. Steel Guardrail Replacement (revenue financed) | | | | 35,000 | | 35,000 | 35,000 | |
| | 45 . Lincoln School/Kennard House Parking Area Repair (revenue financed) | | | | 250,000 | | 250,000 | 250,000 | |
| | 46 . Playground Equipment, Fields, Fencing (revenue financed) | | | | 270,000 | | 270,000 | 270,000 | |
| | 47 . Town/School Grounds Rehab (revenue financed) | | | | 130,000 | | 130,000 | 130,000 | |
| | 48 . Tree Removal and Replacement (revenue financed) | | | | 155,000 | | 155,000 | 155,000 | |
| | 49 . School Furniture Upgrades (revenue financed) | | | | 25,000 | | 25,000 | 25,000 | |
| | 50 . Town/School Asbestos Removal (revenue financed) | | | | 55,000 | | 55,000 | 55,000 | |
| | 51 . Town/School ADA Renovations (revenue financed) | | | | 55,000 | | 55,000 | 55,000 | |
| | 52 Town/School Building Security / Life Safety (revenue financed) | | | | 100,000 | | 100,000 | 100,000 | |
| | 53 . Town/School Energy Conservation Projects (revenue financed) | | | | 100,000 | | 100,000 | 100,000 | |
| | 54 . Town/School Roof Repair / Replacement (revenue financed) | | | | 300,000 | | 300,000 | 300,000 | |
| | 55 . Old Lincoln Surface Structural Repairs (revenue financed) | | | | 100,000 | | 100,000 | 100,000 | |
| | 56 . Town Hall / Main Library Garage Repair & Driveway Improvements ($850,000 = revenue financed, $950,000 = bond) | | | | 1,800,000 | | 1,800,000 | 1,800,000 | |
| | 57 . Walnut Hills Cemetery (special revenue fund) | | | | 200,000 | | 200,000 | 200,000 | |
| | 58 . Classroom Capacity (revenue financed) | | | | | 530,000 | 530,000 | 530,000 | |
| (4) | **TOTAL SPECIAL APPROPRIATIONS** | **5,928,000** | **8,575,748** | **9,260,572** | **6,572,000** | **530,000** | **7,102,000** | **(2,158,572)** | **-23.3%** |
| | **TOTAL APPROPRIATED EXPENDITURES** | **177,264,844** | **187,847,146** | **196,750,968** | **193,373,364** | **190,736** | **193,564,100** | **(3,186,868)** | **-1.6%** |
| | **NON-APPROPRIATED EXPENDITURES** | | | | | | | | |
| | Cherry Sheet Offsets | 120,749 | 122,866 | 103,079 | 102,036 | | 102,036 | (1,043) | -1.0% |
| | State & County Charges | 5,410,405 | 5,493,891 | 5,550,741 | 5,554,903 | 1,432 | 5,556,335 | 5,594 | 0.1% |
| | Overlay | 1,858,148 | 1,535,026 | 1,619,162 | 1,650,000 | | 1,650,000 | 30,838 | 1.9% |
| | Deficits-Judgments-Tax Titles | 0 | 0 | 25,000 | 25,000 | | 25,000 | 0 | 0.0% |
| | **TOTAL NON-APPROPRIATED EXPEND.** | **7,389,302** | **7,151,783** | **7,297,982** | **7,331,939** | **1,432** | **7,333,371** | **35,389** | **0.5%** |
| | **TOTAL EXPENDITURES** | **184,654,147** | **194,998,929** | **204,048,949** | **200,705,303** | **192,168** | **200,897,471** | **(3,151,478)** | **-1.5%** |
| | **SURPLUS/(DEFICIT)** | **5,084,559** | **3,902,492** | **0** | **0** | **0** | **0** | | |

(1) Breakdown provided for informational purposes.

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

| | | FY08 ACTUAL | FY09 ACTUAL | FY10 BUDGET | FY11 ORIG. BUDGET | PROPOSED AMENDMENTS | FY11 AMENDED BUDGET | $$ CHANGE FROM FY10 | % CHANGE FROM FY10 |
|---|---|---|---|---|---|---|---|---|---|

(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).

**FY11 AMENDED BUDGET - TABLE 2**

| Department/Board/Commission | Personnel Services | Purchase of Services | Supplies | Other Charges/ Expenses | Utilities | Capital Outlay | Inter-Govt'al | Snow & Ice | Debt Service | Personnel Benefits | Agency Total |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Board of Selectmen (Town Administrator) | 586,940 | 7,463 | 4,500 | 6,400 | | 3,300 | | | | | 608,603 |
| Human Resources Department (Human Resources Director) | 260,172 | 213,227 | 8,500 | 15,900 | | 2,375 | | | | | 500,174 |
| Information Technology Department (Chief Information Officer) | 872,366 | 454,284 | 22,336 | 27,550 | | 15,769 | | | | | 1,392,304 |
| Finance Department (Director of Finance) | 1,908,687 | 947,381 | 38,752 | 17,783 | 1,571 | 15,727 | | | | | 2,929,901 |
| Legal Services (Town Counsel) | 519,564 | 126,067 | 2,200 | 104,700 | | 3,765 | | | | | 756,296 |
| Advisory Committee (Chair, Advisory Committee) | 17,415 | 36 | 1,275 | 570 | | 487 | | | | | 19,783 |
| Town Clerk (Town Clerk) | 506,861 | 74,173 | 13,750 | 1,400 | | 4,000 | | | | | 600,183 |
| Planning and Community Department (Plan. & Com. Dev. Dir.) | 614,396 | 16,817 | 9,432 | 4,513 | | 7,525 | | | | | 652,684 |
| Police Department (Police Chief) | 13,265,255 | 342,895 | 210,060 | 59,500 | 365,700 | 452,278 | | | | | 14,695,688 |
| Fire Department (Fire Chief) | 11,610,661 | 121,925 | 132,500 | 25,125 | 241,048 | 134,167 | | | | | 12,265,426 |
| Public Buildings Department (Building Commissioner) | 1,921,958 | 1,863,993 | 123,770 | 5,800 | 2,878,735 | 55,487 | | | | | 6,849,744 |
| Public Works Department (Commissioner of Public Works) | 6,952,545 | 2,965,227 | 691,372 | 35,150 | 1,040,151 | 655,833 | 20,000 | 412,294 | | | 12,772,571 |
| Public Library Department (Library Board of Trustees) | 2,452,242 | 141,702 | 514,992 | 4,502 | 303,688 | 52,101 | | | | | 3,469,227 |
| Health Department (Health Director) | 755,726 | 262,408 | 15,500 | 4,120 | 43,197 | 5,000 | | | | | 1,085,950 |
| Veterans' Services (Veterans' Services Director) | 122,440 | 2,718 | 650 | 116,200 | | 725 | | | | | 242,733 |
| Council on Aging (Council on Aging Director) | 619,131 | 57,632 | 18,825 | 2,900 | 72,799 | 8,900 | | | | | 780,187 |
| Human Relations/Youth Resources (Human Relations Dir.) | 96,017 | 1,807 | 2,800 | 450 | | 796 | | | | | 101,870 |
| Recreation Department (Recreation Director) | 654,186 | 85,287 | 40,703 | 2,400 | 124,576 | 31,380 | | | | | 938,533 |
| School Department (School Committee) | | | | | | | | | | | 72,043,133 |
| **Total Departmental Budgets** | **43,736,563** | **7,685,041** | **1,851,918** | **434,963** | **5,071,465** | **1,449,614** | **20,000** | **412,294** | | | **132,704,993** |
| | | | | | | | | | | | |
| **DEBT SERVICE** | | | | | | | | | | | |
| Debt Service (Director of Finance) | | | | | | | | | 9,594,781 | | 9,594,781 |
| **Total Debt Service:** | | | | | | | | | **9,594,781** | | **9,594,781** |
| | | | | | | | | | | | |
| **EMPLOYEE BENEFITS** | | | | | | | | | | | |
| Contributory Pensions Contribution (Director of Finance) | | | | | | | | | | 13,784,954 | 13,784,954 |
| Non-Contributory Pensions Contribution (Director of Finance) | | | | | | | | | | 215,000 | 215,000 |
| Group Health Insurance (Human Resources Director) | | | | | | | | | | 20,697,416 | 20,697,416 |
| Group Health Enrollment Allocation Reserve (Human Resources Director) | | | | | | | | | | 400,000 | 400,000 |
| Retiree Group Health Insurance - OPEB's (Director of Finance) | | | | | | | | | | 1,142,531 | 1,142,531 |
| Employee Assistance Program (Human Resources Director) | | | | | | | | | | 28,000 | 28,000 |
| Group Life Insurance (Human Resources Director) | | | | | | | | | | 130,000 | 130,000 |
| 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) | | | | | | | | | | 325,000 | 325,000 |
| Unemployment Insurance (Human Resources Director) | | | | | | | | | | 400,000 | 400,000 |
| Ch. 41, Sec. 100B Medical Benefits (Town Counsel) | | | | | | | | | | 30,000 | 30,000 |
| Medicare Payroll Tax (Director of Finance) | | | | | | | | | | 1,555,000 | 1,555,000 |
| **Total Employee Benefits:** | | | | | | | | | | **40,073,902** | **40,073,902** |
| | | | | | | | | | | | |
| **GENERAL / UNCLASSIFIED** | | | | | | | | | | | |
| Reserve Fund (*) (Chair, Advisory Committee) | | | | 1,856,956 | | | | | | | 1,856,956 |
| Liability/Catastrophe Fund (Director of Finance) | | | | 455,500 | | | | | | | 455,500 |
| Stabilization Fund (Director of Finance) | | | | 71,868 | | | | | | | 71,868 |
| General Insurance (Town Administrator) | | 290,000 | | | | | | | | | 290,000 |
| 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) | | | | 12,116 | | | | | | | 12,116 |
| Town Salary Reserve (*) (Director of Finance) | 475,000 | | | | | | | | | | 475,000 |
| Personnel Services Reserve (*) (Director of Finance) | 750,000 | | | | | | | | | | 750,000 |
| **Total General / Unclassified:** | **1,225,000** | **441,987** | **10,000** | **2,411,440** | | | | | | | **4,088,427** |
| **TOTAL APPROPRIATIONS** | **44,961,563** | **8,127,028** | **1,861,918** | **2,846,403** | **5,071,465** | **1,449,614** | **20,000** | **412,294** | **9,594,781** | **40,073,902** | **186,462,100** |

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

## ARTICLE 4

FOURTH ARTICLE

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

AN ACT AMENDING CHAPTER 270 OF THE ACTS OF 1985, AS AMENDED BY CHAPTER 322 OF THE ACTS OF 1990 AND CHAPTER 427 OF THE ACTS OF 1991

Be it enacted, etc., as follows:

Notwithstanding the provisions of any general or special law or general by-law to the contrary, Chapter 270 of the Acts of 1985, as amended, is hereby further amended by striking out Sections 2(b), 2(c) and 2(i) and inserting in place thereof the following:

Section 2(b). recruitment, appointment and re-appointment of all department heads whose appointment on the effective date of this act is the responsibility of the Board of Selectmen, except town counsel and chief of police, and approval of the appointment of all other town employees, except employees of the library, employees of the town clerk's office, employees of the school department, and civil service employees who are subject to chapter 31 of the General Laws. With respect to the position of chief of police, the town administrator shall recommend for appointment a single candidate whom the board of selectmen shall either appoint or reject until one is appointed.

Section 2(c). supervision, written evaluation and training of all department heads appointed by or recommended for appointment by the town administrator.

Section 2(i). authority to remove for just cause any department head appointed by the town administrator.

This act shall take effect upon its passage.

or act on anything relative thereto.

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## PETITIONER'S ARTICLE DESCRIPTION

**Committee on Town Organization & Structure's Majority Report**

In 1985, upon the recommendation of the Committee on Town Organization & Structure (CTO&S), Town Meeting voted to seek home rule legislation significantly strengthening the role of the chief administrator of the Town. Commonly known as the Brookline Town Administrator legislation, it was passed into law as Chapter 270 of the Acts of 1985. Since that time, only a few relatively minor amendments have been made to the original act. Attached is a copy of the 1985 Act and the 1990 and 1991 amendments.

Given the 25 years that had passed since the enactment of the Town Administrator Act, CTO&S felt that a review of its effectiveness was in order and embarked on a comprehensive study of the legislation and the current duties and responsibilities of the Town Administrator.

That two year study was recently completed and included more than 20 public meetings, a public hearing, and a great deal of valuable input from the Board of Selectmen, Town Administrator, members of board and commissions, department heads, town officials in other communities, and interested citizens.

Overall, the Town Administrator legislation has worked well and has enabled the Town Administrator to provide strong, focused and integrated administrative leadership for the town. The Administrator's responsibilities in formulating the annual financial plan, recommending the capital improvement program, and recommending collective bargaining proposals, have been discharged with results that have been of great benefit to the community. An issue of concern felt by some members of CTO&S was what appeared to be a disconnect between the Town Administrator being the chief administrative official in the town, somewhat akin to a Chief Operating Officer in the private sector, and the lack of appointment authority entrusted to the position. Given that the Administrator is held accountable for the day to day performance of the Town management team and the delivery of services they provide, it seems only logical that the ultimate authority for the appointment of that team should be vested in him or her.

This article is designed to correct this concern and potential disconnect and further strengthen the Town Administrator's position by giving the incumbent the authority to select, appoint, and dismiss if necessary, the management team that reports to the Administrator and which manages all of those functions for which he/she is responsible and held accountable to the Board of Selectmen. This would further strengthen the role of the Board of Selectmen as the chief policy officers of the town, eliminating one aspect of their administrative duties, the day to day oversight and evaluation of town department heads. Interestingly, virtually all of the Selectmen that we interviewed stated that they did not have adequate insight into the day to day activities of the department heads to effectively and objectively evaluate their performance. The change in hiring and firing authority from the Board of Selectmen to the Town Administrator embodied in this article would be exactly parallel to the relationship that currently exists in the School Department between the Superintendent of Schools and the School management team (Principals, Department Heads, etc.), with the School Committee serving as the Policy Board. Most larger communities in Massachusetts have moved to this system of town governance. In Brookline, the following top level department heads that report directly to the Town Administrator and whose appointment currently resides with the Board of Selectmen would, under this amendment to the Town Administrator Act, be appointed by the Town Administrator:

Chief of Fire
Commissioner of Public Works
Director of Finance

Chief Information Officer
Director of Planning & Community Development
Building Commissioner
Director of Public Health & Human Services
Human Resources Director
Director of Recreation
Director of Human Relations – Youth Resources
Director of Council on Aging
Veterans Services Director

The appointment of Town Counsel would remain with the Board of Selectmen, because, in the opinion of CTO&S, that position acts largely as counsel to the Board, not as a Department Head in the same manner as the others listed above. CTO&S, after much discussion and citizen input, became convinced that the Selectmen also have a special relationship with the Chief of Police. They exercise elected civilian control over that one Department and Chief that have unique powers over citizens of the Town and act as a civilian review board when considering appeals under the citizen complaint policy. For that reason CTO&S felt that the Chief should continue to be appointed by the Board of Selectmen on recommendation of the Town Administrator. The issue of parity with the Fire Chief also was discussed. The unique powers of the Police Department are not paralleled within the Fire Department and in interview, the Fire Chief stated that he had no objection to breaking parity in this particular regard and that he understood the clear differences in powers between the two Departments that might lead to this distinction in appointing authority. Thus, CTO&S felt that the management concerns outweighed any concerns about parity and we left the appointment of the Fire Chief with the Town Administrator.

Other exemptions contained in the article are the Town Librarian and employees of the Library (because of their relationship to the Library Trustees), the Town Clerk (an elected position) and employees of that office, all employees of the School Department (because of their separate and distinct relationship to the School Committee and Superintendent of Schools). In addition, no civil service employees will be affected by this article. They now comprise 451 out of a total of 730 non-school positions and include police, fire and public works personnel, as well as clerical and custodial employees. Currently, no department heads are under civil service.

The processing of all other town employees' appointments would be handled by the department heads and the Director of Human Resources, with the approval of the Town Administrator. Inasmuch as there are several new pre-employment screening programs that must be adhered to and which have proved valuable in the past, a coordinated, consistent approach across department lines will be assured if the Town Administrator has the authority to approve these appointments.

ATTACHMENTS:

1. Ch. 270 of the Acts of 1985

Chapter 270. AN ACT ESTABLISHING THE POSITION OF TOWN ADMINISTRATOR IN THE TOWN OF BROOKLINE.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any provision of any general or special law to the contrary, there shall be a town administrator, hereinafter called the administrator, in the town of Brookline, who shall be appointed by the board of selectmen for a three year term. During the term of appointment, the administrator may only be removed after notice stating the reason for such removal and a public hearing, by a vote of at least three selectmen.

SECTION 2. The administrator shall be the chief administrative officer of the town. Without limiting the foregoing, the administrator shall perform and discharge the following functions and duties:

(a) daily administration of the town;

(b) recruitment and recommendations for appointment by the board of selectmen of all department heads, except the librarian, school personnel, treasurer/collector, town clerk, and any department head whose appointment is otherwise provided for by statute;

(c) supervision, written evaluation and training of all department heads except personnel in the school department;

(d) coordination of intra- and inter-governmental affairs;

(e) acting as the administrative spokesperson for the town;

(f) formulation of the annual financial plan, including detailed projections of all revenues and expenditures;

(g) recommendations with respect to departmental and non-departmental expenditures, the capital improvement plan submitted by the planning board, the financial impact of warrant articles, and guidelines for collective bargaining;

(h) approval of payment and expense warrants upon the treasury of the town, under section fifty-six of chapter forty-one of the General Laws;

(i) recommendations for the removal for just cause, by the board of selectmen, of any department head appointed by the selectmen;

(j) recommendations concerning collective bargaining proposals for the town, exclusive of the school department;

(k) performance of such other duties and responsibilities as are delegated to the administrator by the board of selectmen.

SECTION 3. The administrator shall not be responsible for matters which are the responsibility of the school committee.

SECTION 4. The board of selectmen shall implement the administrative organization set forth herein and may delegate any additional administrative function, or any civil service appointment, removal or discharge authority or responsibility to the administrator or, upon the recommendation of the administrator, a department head.

SECTION 5. The town may, through its by-laws, delegate any licensing authority, except the licensing of innholders, lodging houses, common victuallers, food vendors, secondhand motor vehicles, open air parking, liquor sales and theaters and entertainment.

SECTION 6. The administrator shall be subject to the authority and direction of the board of selectmen. He shall render reports to the board of selectmen on a regular basis, including in such reports a summary of current activities, a list of both current and long-range issues and objectives and programs in response thereto, and suggestions concerning the goals and objectives of the community.

SECTION 7. This act shall take effect upon its passage.

Approved September 18, 1985.

2. Ch. 322 of the Acts of 1990

**Chapter 322.** **AN ACT RELATIVE TO THE APPOINTMENT OF DEPARTMENT HEADS IN THE TOWN OF BROOKLINE.**

*Be it enacted, etc., as follows:*

**SECTION 1.** Section 2 of chapter 270 of the acts of 1985 is hereby amended by striking out clause *(b)* and inserting in place thereof the following clause:-

*(b)* recruitment and recommendations for appointment by the board of selectmen of all department heads, except the librarian, the superintendent of schools, the treasurer/collector, the town clerk, and any other department head who is elected or who is appointed by another elected board or commission, provided that in the case of the director of recreation any recommendation must be approved by the park and recreation commission, that in the case of the director of the council on aging any recommendation must be approved by the council on aging and that in the case of the rent control board director any recommendation must be approved by the rent control board.

**SECTION 2.** Chapter 13 of the acts of 1963 is hereby amended by striking out section 4.

**SECTION 3.** This act shall take effect upon its passage.

Approved December 17, 1990.

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3. Ch. 427 of the Acts of 1991

**Chapter 427.** **AN ACT RELATIVE TO THE APPOINTMENT OF DEPARTMENT HEADS IN THE TOWN OF BROOKLINE.**

*Be it enacted, etc., as follows:*

**SECTION 1.** Clause (*b*) of section 2 of chapter 270 of the acts of 1985 is hereby amended by inserting after the word "statute", in line 4, the words:- , and in making such recommendations the administrator may in his discretion recommend for appointment as department head single candidates whom the board of selectmen shall either appoint or reject until one is appointed.

**SECTION 2.** Said section 2 of said chapter 270 is hereby further amended by striking out clause (*k*) and inserting in place thereof the following two clauses:-

(*k*) submission to the board of selectmen and to town meeting of plans to reorganize, consolidate or abolish departments, commissions, boards or offices under his direction and supervision, or to establish new departments, commissions, boards and offices, or both, subject to enactment of home rule legislation if otherwise legally required; and

(*l*) performance of such other duties and responsibilities as are delegated to the administrator by the board of selectmen.

Approved December 29, 1991.

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**Committee on Town Organization & Structure's Minority Report**
**(Michael Robbins & Martin Rosenthal)**

*Ben Franklin*, when asked in 1787, "Well, Doctor, what have we got-a Republic or a Monarchy?" replied, *"A Republic, if you can keep it."*[1]

Motivated by cherished values of both republican and democratic government, we respectfully dissent from the proposal to greatly increase the power of the Town Administrator in the appointments of department heads, thereby lessening the power and leadership of the selectmen. We do so not from any disapproval of our recently retired Town Administrator, who served Brookline so well; but his successor, whom we greet with much enthusiasm, is less familiar to all of us, and -- with all due respect -- his newness exemplifies some, albeit not all, of our concerns.

We also note that the apparently strong field of successor candidates belies one of the arguments we heard for the proposed change, that without it we'd have a harder time finding an adequate replacement. In fact, without this proposed change, Brookline is obviously considered a prime administrative post, not just because of its excellent compensation and benefits, but also for its wonderful professional and volunteer infrastructure -- including its passionate, engaged, supportive, and yes, frequently outspoken citizenry.

Indeed, and ironically, we believe the majority's proposal would diminish the influence of Brookline's citizenry, and consequently their active participation, in our governance -- a major reason we have prospered as a Town. Further the proposed change seems a significant step closer to a city form of government, with its inevitable tendency towards an all-powerful City Hall that's often controlled by a small insider clique.

We two, of very different political stripes and affiliations, are strong advocates of citizen participation, especially our Town Meeting form of governance, which we believe would be endangered by the proposed change. We already see very low turnout at town elections, maybe the best stimulus for interest and participation in government, often due to a feeling that "my vote doesn't count." The majority's proposal would exacerbate that feeling.

Largely because of similar regard for Brookline's active citizenry, and similar fears, since at least 1942,[2] Brookline has repeatedly rejected a *Town Manager*, instead always making less revolutionary changes. In 1942, we created an Executive Secretary ("E/S") -- instead of a recommendation by the Public Administration Service of Chicago urging a then-popular Town Manager government. Again in the late '50's, a "blue ribbon" Moderator's Committee, "The Committee Appointed To Study The Question Of The

[1] From the notes of Dr. James McHenry, MD delegate Constitutional Convention, included in The Records of the Federal Convention of 1787, ed. Max Farrand, vol. 3, appendix A, p. 85 (1911, reprinted 1934).
[2] The source of the historical summary which follows is mostly, July 22, 2001, Town Online, "Richard Leary on the evolution of a government," by Larry Ruttman, "Brookline then and now."

Town Manager Form of Government," rejected such a change, recommending -- and Town Meeting in 1959 then voting -- to substantially broaden the E/S's powers.

For two decades, those powers increased, further encroaching on the prerogatives of the selectmen, culminating in 1985 with another look at a Town Manager system; but after a report by this Committee, the Town Meeting chose more finely tuned change, giving our E/S a new title, "Town Administrator," with more management powers, later augmented in 1990, but always refusing to drastically limit the ultimate control of the Selectmen.

Our current Town by-law for the Selectmen, is §3.1.2, "*General Authority, The Selectmen shall exercise general supervision over all matters affecting the general and financial interest and welfare of the town*." The ultimate responsibility should be theirs, not an appointed Administrator. We concede that both the risks -- like the asserted benefits -- of the majority's proposal are intangible and immeasurable. Yet we are convinced that the risks outweigh the benefits from vesting hiring/firing authority in the selectmen, who are more accountable to, and in touch with, not only the citizens --but also, and equally importantly, to the 240 TMM's, who would lose both influence and incentives to get involved.

Nor do we think the *School Superintendent* model from the statewide Education Reform Law is persuasive for the plethora of *non-school* departments, whose ambits and constituencies are broader and more varied than the schools, whose mission and community values are relatively clear-cut. For departments like Public Works, Planning, Park & Rec, HRYR, etc., the missions involve weighing various -- occasionally competing -- community priorities and values. Those department heads must be responsive to democratically elected officials who best know and reflect those values.

We have no illusions that selectmen are either perfect or flawless, any more than appointed administrators. But the selectmen are at least accountable to the people. \We do not consider "politics" to be "bad" or a "dirty word"; the political process is a great American asset. What's "bad" is *bad* politics or bad leadership of any kind, at any level, whether by elected or by appointed officials. We are convinced that the majority's proposal would diminish the power of not only the selectmen, but also (derivatively) the 240 TMM's, and consequently the citizens. It's a "good" thing for department heads to care what the selectmen -- and TMM's -- think about choices and operations. The majority's proposal would inevitably diminish that concern among "our"-- i.e. the citizens' -- high-level employees.

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## SELECTMEN'S RECOMMENDATION

Article 4 is a proposal of the Committee on Town Organization and Structure (CTO&S) to amend the enabling act that established the Town Administrator position. Passed by the Legislature at the request of the Town in 1985, the Brookline Town Administrator Act formally established the position of Town Administrator, reorganized certain functions and defined the respective roles of the Town Administrator and the Board of

Selectmen. Since that time, modest amendments were passed in 1990 and 1991. This article seeks to update the Act by expanding the Town Administrator's administrative authority, ensuring a more effective balance between the policy authority of the Board of Selectmen and the authority of the Town Administrator as the Town's chief administrative officer. The proposal has no effect whatsoever on the authority of Town Meeting, the legislative branch of town government.

It is well accepted that the position of Town Administrator has been a great success for Brookline. As local government has grown more complex and costly, the presence of a full-time, professionally qualified administrator has proven to be very beneficial. This article seeks to build upon this success by accomplishing three objectives. First, as originally proposed by CTO&S, it would expand the Town Administrator's authority for appointment of department heads, with the exception of the position of Town Counsel, Chief of Police and department heads under the jurisdiction of elected boards (e.g. the Superintendent of Schools and the Library Director). The Board of Selectmen has voted to also exclude the Fire Chief position. Second, it would establish the companion authority to remove the applicable department heads for just cause. Third, it would clarify that the Town Administrator has authority to approve the hiring of all subordinate employees, except employees of the library, employees of the town clerk's office, employees of the school department and civil service employees subject to state law (police officers and firefighters).

In practice, the proposed changes are not substantially different from the authority the Town Administrator position currently exercises. Within the current framework, the Town Administrator has authority to recruit and recommend to the Board of Selectmen the appointment of a single candidate. Similarly, the Town Administrator recommends to the Board of Selectmen removal for just cause or non-renewal of department heads who are not performing acceptably. The proposed change would vest that ultimate authority in the Town Administrator. In addition, the Town Administrator, through his/her office as well as the Human Resources department, currently exercises review over a department head's employment of departmental staff. The proposed change would vest with the Town Administrator the ultimate authority to approve these employment decisions. This is critical given the evolving nature of the Town's workforce and the expansion of laws related to non-discrimination and ethics.

Opponents of the proposed changes under Article 4 argue that the fundamental authority of the Board of Selectmen as the Town's chief elected board will be diminished. It is further suggested that the productive discourse between department heads and the Board of Selectmen, or between department heads and citizens, will be compromised. We respectfully disagree. The fact of the matter is that the Board of Selectmen is a part-time body whose members are focused on the larger policy issues of the Town. The Town Administrator is a full-time professional employee, especially fitted by education and experience, to administer the complex functioning of municipal government. In its policymaking role, the Board of Selectmen has pledged to adopt a policy that will define the responsibility for members to participate with the Town Administrator in the appointment and termination process. The incumbent Town Administrator has committed to continue the practice of engaging the Board of Selectmen in employment decisions

through preliminary screening committees and frequent updates. Department heads will continue to be responsive to the Board and the citizens. Finally, the Board of Selectmen will continue to exercise ultimate management authority over the Town through the appointment or removal of the Town Administrator. The Town Administrator, however, has the legal obligation under the Town Administrator Act for the "daily administration of the town" and for the "supervision … of department heads," and his authority should be commensurate with the responsibility.

The CTO&S proposal excluded the Chief of Police position from the appointing authority of the Town Administrator, but not the Fire Chief. At a meeting on October 26, the Board determined that the Fire Chief position was comparable to the Chief of Police in scope and responsibility and voted to exclude the Fire Chief position from the Town Administrator's appointing authority. This decision is also consistent with the Board's support of Article 5 which designates the Board of Selectmen as civilian police and fire commissioners.

The Board recommends FAVORABLE ACTION, by a vote of 4-1 taken on October 26, 2010, on the following motion:

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

AN ACT AMENDING CHAPTER 270 OF THE ACTS OF 1985, AS AMENDED BY CHAPTER 322 OF THE ACTS OF 1990 AND CHAPTER 427 OF THE ACTS OF 1991

Be it enacted, etc., as follows:

Notwithstanding the provisions of any general or special law or general by-law to the contrary, Chapter 270 of the Acts of 1985, as amended, is hereby further amended by striking out Sections 2(b), 2(c) and 2(i) and inserting in place thereof the following:

> Section 2(b). recruitment, appointment and re-appointment of all department heads whose appointment on the effective date of this act is the responsibility of the Board of Selectmen, except town counsel, ~~and~~the chief of police and the fire chief, and approval of the appointment of all other town employees, except employees of the library, employees of the town clerk's office, employees of the school department, and civil service employees who are subject to chapter 31 of the General Laws. With respect to the positions of chief of police and fire chief, the town administrator shall recommend for appointment a single candidate whom the board of selectmen shall either appoint or reject until one is appointed.
>
> Section 2(c). supervision, written evaluation and training of all department heads appointed by or recommended for appointment by the town administrator.

Section 2(i). authority to remove for just cause any department head for whom the town administrator has appointment authority under Section 2(b)~~appointed by the town administrator~~.

This act shall take effect upon its passage.

**ROLL CALL VOTE:**

| Favorable Action | No Action |
|---|---|
| DeWitt | Goldstein |
| Daly | |
| Mermell | |
| Benka | |

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Warrant Article 4 seeks Town Meeting's approval to file a "home rule" petition with the State legislature to further amend (for the third time) the so-called "Town Administrator Act."[3]

There are three alternatives (and potentially a fourth) available to Town Meeting with regard to the Town Administrator Act, as follows:

1. Town Meeting could reject all of the proposals to amend the Town Administrator Act; if so, the current Town Administrator Act, as amended to date (see Attachment A), will remain as is.

2. Town Meeting could instead approve the original proposal from the Committee on Town Organization & Structure (or "CTO&S") (see Attachment B), as discussed below, and seek the legislature's approval for the changes offered thereby.

[3] The full name of the enactment as passed in 1985 is "*An Act Establishing the Position of Town Administrator in the Town of Brookline*" (Chapter 270 of the Acts of 1985).

The 1985 legislation was amended in 1990 by Chapter 322 of the Acts of 1990 to give the Town Administrator the right to recruit and recommend the appointment of certain Town officials. The following year, the Town sought and obtained further changes (Chapter 427 of the Acts of 1991) to rationalize the process by which department head candidates are vetted and approved by the Board of Selectmen and also to give the Town Administrator the right to submit to the Board of Selectmen and Town Meeting plans to reorganize, consolidate, or abolish Town departments, commissions, boards and the like.

3. The Advisory Committee itself proposes a "watered-down" version of the CTO&S proposal (see Attachment C) that would make only one substantive change; as mentioned in footnote 5, below, the change the Advisory Committee recommends could possibly be instituted immediately (although not irrevocably) and without seeking Town Meeting's or the legislature's consent were the Board of Selectmen to adopt by policy its substantive provisions.

4. Finally, the Advisory Committee, at the time this report was written, understood that the Board of Selectmen may propose a separate proposal that would both address substantive issues mentioned in this report and also "clean up" some long-standing typos and the like in the existing legislation.

We refer Town Meeting to the comprehensive summary CTO&S prepared to accompany its original Warrant Article and provided in the Warrant Article Explanations sent out to all Town Meeting Members in September. The CTO&S report reflects the positions reached on proposal to enhance the Town Administrator's powers by the five members of CTO&S who urged that Town Meeting support those changes, together with the report filed by the two members of CTO&S who believed that it would be best not to amend the Town Administrator Act.

As mentioned, the Advisory Committee amends the CTO&S proposal. Nonetheless, we think a summary of both the original CTO&S proposal and the Advisory Committee proposal is warranted.

*The CTO&S Proposal; Pros and Cons*.
The CTO&S is proposing changes to the Town Administrator Act to clarify who has responsibility for various administrative matters; there was, however, no urgent or compelling crisis noted motivating this proposal.[4] Through approximately 25 meetings and hearings over two or three years, CTO&S sought the views of and opinion from various town boards and committees, considered how other communities describe the Town Administrator function, spoke with management consultants about the structural issues raised, and met with various department heads.

CTO&S's Warrant Article 4 (see Attachment A) would, were it enacted by the State legislature:

1. give the Town Administrator the power to appoint and reappoint -- and not just *recommend* the hiring or re-appointment of -- all department heads other than Town counsel and the chief of police;

[4] While the timing of this proposal is roughly coincident with the recent retirement of long-time Town Administrator Kelliher and his replacement with new Town Administrator Mel Kleckner, the proposal had been in the works for a while and the matter has been under consideration since long before Mr. Kelliher announced his retirement.

2. provide the Town Administrator with the right of approval of the hiring of all other Town employees, except for employees subject to State civil service laws and Library, School Dept. and Town Clerk's office employees;

3. eliminate certain procedural requirements relating to the hiring of the Directors of Recreation and the Parks and Recreation departments;

4. eliminate references to and requirements regarding the director of the long-since abolished rent control board;

5. clarify the statute's requirements relating to the way in which candidates are vetted and approved by the Board of Selectmen;

6. provide the Town Administrator with clear powers to supervise, provide written evaluation of, and be ultimately responsible for the training of all department heads (except as to department heads of the Library, School Dept. and Town Clerk's office); and

7. allow the Town Administrator to him- or herself remove – *and not just recommend that the Board of Selectmen remove* – for "just cause" any department head for which the Town Administrator would have the (enhanced) power to appoint.

Currently, the Town Administrator has responsibility to propose department head appointees, but s/he does not have, at least per the current Town Administrator Act, final (that is, *de jure*) say over their hiring or dismissal or the right to veto other staff hiring within a department (although it is, rare, if not unprecedented, for the Board of Selectmen to nix the Town Administrator's recommendation if a candidate is brought before them for final vetting).

DISCUSSION:
An *ad hoc* subcommittee of the Advisory Committee met twice to consider the CTO&S proposal. At a two-hour long initial meeting, many members of the public, three members of CTO&S, and the chairman of the Board of Selectmen shared their views of the benefits, drawbacks, and consequences of the original (CTO&S) proposal. Various witnesses tried to reference an alleged prior instance where a department head implied s/he had the backing of a majority of the Board of Selectmen -- and was, by implication, politically untouchable -- and thus changes to the enactment were required to prevent that from happening again (assuming it actually in fact happened or happened as the popular lore might suggest).

A week later, the subcommittee met again after voting to terminate public comment on the proposal so it could itself discuss the comments expressed to date with a view toward making a recommendation on the proposal. One of the subcommittee members proposed an alternative amended proposal which the Subcommittee and then the entire Advisory

Committee voted to recommend. (The final Advisory Committee alternate is as attached as Attachment B.)

*Arguments in favor of the CTO&S proposal*.
CTO&S feels that it is now appropriate for Brookline to adopt the systems in place now in some local towns (such as, Needham, Lexington, Danvers, and Winchester). The proposal would ensure that a Town Administrator and his/her senior staff are aligned on matters of policy, operating styles, managerial approach, and the like.[5]

The Advisory Committee also heard the following points favoring the proposal:

- Enhancing the Town Administrator's authority provides *both* responsibility and accountability by making him or her fully accountable for the success of the Town's senior staff;

- Greater powers and autonomy might, in the future, be helpful to continue to attract strong candidates for Town Administrator openings;[6]

- Currently, the Superintendant of Schools and Library Director has similar powers and the proposal would seek to have the Town Administrator's powers mirror those other officials;

- Similar approaches have proven non-controversial in other local towns;

- Screening committees and a robust recruitment process will continue to allow for input from the community and the Board of Selectmen who have committed to adopt vigorous standards to ensure public accountability;

- The proposal's provisions as to the hiring of subordinates in departments will bring consistency, heightened quality of public service and increased professionalism, as well as alignment with Selectmen and Town goals;

- Appointing and evaluation authority will bring improved professional development and a better, more effective and responsive Town government with fewer political "*end-arounds*" where department heads are not performing well;

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[5] Concerns that a senior administrative officer, responsible as he or she is for the overall success of his or her organization, are not confined to the municipal context. Bill Parcells, then the coach and general manager of the New England Patriots, famously expressed his displeasure with the team owner's drafting of a particular college player despite the coach's doubts about that player's future success in pro football by quipping "*If they want you to cook the dinner…, they ought to let you shop for … the groceries*."

[6] Although it was clearly stated to the recent applicants that while a proposal to enhance the Town Administrator's powers could be brought before Town Meeting, it was also noted by the relevant search committee that the proposal, as then being formulated by CTO&S, might not pass or might be substantially altered.

- The Town Administrator serves at the pleasure of the Board of Selectmen so that the changes do not serve to abrogate the Selectmen's powers.

- The Selectmen are part-time officers and cannot possibly have the day-to-day knowledge necessary for department head oversight that the Town Administrator would most certainly have; and

- Even if the proposal were to pass, only a handful of department heads could even be subject to removal.

*Arguments against the CTO&S proposal.*
Not surprisingly, the Advisory Committee also heard and also otherwise discussed various points opposing the original proposal.

- There seemed to be a consensus that there was no pressing problem -- or perhaps even any specific pending challenge – fixed by the proposal, and that Warrant Article 4, as proposed by CTO&S, was essentially a solution in search of a problem;

- The Board of Selectmen, not the Town Administrator, are the people's elected representatives, are the group to set the Town's values and standards, and the changes would remove them structurally from the many processes;

- The proposal would move Brookline closer to a city form of government, with less citizen say in many areas;

- Department heads will be more responsive to the Town Administrator than the Board of Selectmen, and therefore less responsive to the public and Town Meeting Members, and that insulating Department Heads from "politics" is not always a good thing for Brookline;

- Department heads have been "eased out" in the past and that might happen again, so there is no inherent inadequacy in our current structure;

- The current structure allows for all appointments to come from the Town Administrator, and allows for the Town Administrator to recommend dismissal; only when the Town Administrator and Selectmen disagree will the Town Administrator's wishes not be executed; and

- The recruitment and screening criteria/process is not codified in the proposed statute; besides, it is informal and there are no assurances that the process will be fulsome or effective in the future.

One Subcommittee member, speaking as one of the majority who would have ideally recommended voting against the entire proposal and keeping the Town Administrator Act as it is now, offered a compromise of sorts. The Subcommittee thereupon voted to recommend its own proposal (see Attachment C) to the entire Advisory Committee.

After discussing the CTO&S proposal, the Advisory Committee voted to amended the motion under Warrant Article 4. Specifically, the amended proposal as ultimately approved by the Advisory Committee would keep the current legislation as is except for:

1) deleting the reference to the now-abolished rent control board in section 2(b) of the existing legislation;

2) adding a new subsection 2(c) providing the "*approval of the appointment of all other town employees, except employees of the library, employees of the town clerk's office, employees of the school department, and civil service employees who are subject to chapter thirty-one of the General Laws*" as new power for the Town Administrator; and

3) relettering all subsequent subsections of section 2 after the new subsection 2(c).

The first and third items are essentially "house keeping" measures. As for deleting the reference to the rent-control board, the agency was abolished over a decade ago. Item 2 would confer a new authority in our Town Administrator. Specifically, it would allow the Town Administrator to, in essence, exercise veto power over a department head's proposed staff hire (with exceptions) should the Administrator feel that it was in the best interest of the organization. Many members felt it was important for the Town Administrator to have a say in overall hiring, others felt there might be hazard in subverting department heads in the event of managerial disputes.[7]

While there was a significant minority within the Advisory Committee who felt that neither the original or the amended proposal merited recommendation and also several members who felt that the original CTO&S proposal deserved the Advisory Committee's recommendation, there was eventually consensus that an amended Warrant Article 4 should be recommended to Town Meeting.

RECOMMENDATION:
Accordingly, by a vote of 20 in favor and 4 opposed (with no members abstaining), the Advisory Committee recommends FAVORABLE ACTION on the substitute Warrant Article 4 offered by the Advisory Committee, as follows:

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

[7] Several members did note, however, that the safeguard proposed by new subsection (c) could be instituted immediately without the need for any home rule legislation were the Board of Selectmen to, on their own, institute an internal control requiring the Town Administrator to him- or herself sign off on any new hires – with one member even wondering why Town Meeting would ask the legislature for permission to institute what was essentially an internal control. The theoretical risk is, of course, such a policy could change without Town Meeting's consent.

AN ACT AMENDING CHAPTER 270 OF THE ACTS OF 1985, AS AMENDED BY CHAPTER 322 OF THE ACTS OF 1990 AND CHAPTER 427 OF THE ACTS OF 1991

Be it enacted, etc., as follows:

Notwithstanding the provisions of any general or special law or general by-law to the contrary, Chapter 270 of the Acts of 1985, as amended, is hereby further amended by amending Section 2(b) as follows:

> Strike the comma and add the word "and" after the phrase "park and recreation commission" and strike all language following the phrase "council on aging" and prior to the phrase "and in making such recommendations", said language referring to the rent control board.

and further amending Section 2 by inserting a new section denoted as Section 2(c) immediately following existing Sections 2(a) and 2(b) as amended above, and retaining all subsequent existing subsections of Section 2, appropriately renumbered, as follows:

> Section 2(c). approval of the appointment of all other town employees, except employees of the library, employees of the town clerk's office, employees of the school department, and civil service employees who are subject to chapter thirty-one of the General Laws

This act shall take effect upon its passage.

Attachments:

Attachment A -- the current Town Administrator Act (as amended to date)

Attachment B -- the changes the original CTO&S proposal would make to the current Town Administrator Act (as amended to date)

Attachment C -- the changes Warrant Article 4, as amended by the Advisory Committee, would make to the current Town Administrator Act (as amended to date)

***XXX***

**Attachment A**

(the current Town Administrator Act, as amended to date)

**AN ACT ESTABLISHING THE POSITION OF TOWN ADMINISTRATOR IN THE TOWN OF BROOKLINE (Chapter 270 of the Acts of 1985, as amended)**

SECTION 1.
Notwithstanding any provision of any general or special law to the contrary, there shall be a Town Administrator, hereinafter called the Administrator, in the Town of Brookline, who shall be appointed by the Board of Selectmen for a three year term. During the term of appointment, the Administrator may only be removed after notice stating the reason for such removal and a public hearing, by a vote of at least three Selectmen.

SECTION 2.
The Administrator shall be the Chief Administrative Officer of the Town. Without limiting the foregoing, the Administrator shall perform and discharge the following functions and duties:

(a) daily administration of the Town;

(b) recruitment and recommendations for appointment by the Board of Selectmen of all department heads, except the Librarian, the Superintendent of Schools, the Treasurer/Collector, the Town Clerk, and any other department head who is elected or who is appointed by another elected board or commission, provided that in the case of the Director of Recreation any recommendation must be approved by the Park and Recreation Commission, that in the case of the Director of the Council on Aging any recommendation must be approved by the council on aging and that in the case of the Rent Control Board director any recommendation must be approved by the Rent Control Board, and in making such recommendations the Administrator may in his discretion recommend for appointment as department head single candidates whom the Board of Selectmen shall either appoint or reject until one is appointed;

(c) supervision, written evaluation and training of all department heads except Personnel in the School Department;

(d) coordination of intra -and intergovernmental affairs;

(e) acting as the administrative spokesperson for the Town;

(f) formulation of the annual financial plan, including detailed projections of all revenues and expenditures;

(g) recommendations with respect to departmental and non-departmental expenditures, the Capital Improvement Plan submitted by the Planning Board, the financial impact of warrant articles, and guidelines for collective bargaining;

(h) approval of payment and expense warrants upon the treasury of the Town, under section fifty-six of chapter forty-one of the General Laws;

**Attachment A**

(the current Town Administrator Act, as amended to date)

(i) recommendations for the removal for just cause, by the Board of Selectmen, of any department head appointed by the Selectmen;

(j) recommendations concerning collective bargaining proposals for the Town, exclusive of the School Department;

(k) submission to the Board of Selectmen and to town meeting of plans to reorganize, consolidate or abolish departments, commissions, boards or offices under his direction and supervision, or to establish new departments, commissions, boards and offices, or both, subject to enactment of home rule legislation if otherwise legally required; and

(l) performance of such other duties and responsibilities as are delegated to the administrator by the Board of Selectmen.

SECTION 3.
The administrator shall not be responsible for matters which are the responsibility of the School Committee.

SECTION 4.
The board of selectmen shall implement the administrative organization set forth herein and may delegate any additional administrative function, or any civil service appointment, removal or discharge authority or responsibility to the administrator or, upon the recommendation of the administrator, a department head.

SECTION 5.
The Town may, through its by-laws, delegate any licensing authority, except the licensing of innholders, lodging houses, common victuallers, food vendors, secondhand motor vehicles, open air parking, liquor sales and theaters and entertainment.

SECTION 6.
The Administrator shall be subject to the authority and direction of the Board of Selectmen. He shall render reports to the Board of Selectmen on a regular basis, including in such reports a summary of current activities, a list of both current and long-range issues and objectives and programs in response thereto, and suggestions concerning the goals and objectives of the community.

SECTION 7.
This act shall take effect upon its passage.

**Attachment B**

(the changes the original CTO&S proposal would make to the current Town Administrator Act)

**AN ACT ESTABLISHING THE POSITION OF TOWN ADMINISTRATOR IN THE TOWN OF BROOKLINE**

**Chapter 270 of the Acts of 1985, as amended)**

SECTION 1.
Notwithstanding any provision of any general or special law to the contrary, there shall be a Town Administrator, hereinafter called the Administrator, in the Town of Brookline, who shall be appointed by the Board of Selectmen for a three year term. During the term of appointment, the Administrator may only be removed after notice stating the reason for such removal and a public hearing, by a vote of at least three Selectmen.

SECTION 2.
The Administrator shall be the Chief Administrative Officer of the Town. Without limiting the foregoing, the Administrator shall perform and discharge the following functions and duties:

(a) daily administration of the Town;

(b) recruitment, appointment and ~~recommendations for~~ re-appointment of all department heads whose appointment on the effective date of this act is the responsibility of ~~by~~ the Board of Selectmen ~~of all department heads~~, except town counsel and chief of police, and approval of the appointment of all other town employees, except employees of the library, employees of the town clerk's office, employees of the school department, and civil service employees who are subject to chapter 31 of the General Laws. With respect to the position of chief of police, the town administrator shall recommend for appointment a single candidate whom the board of selectmen shall either appoint or reject until one is appointed~~except the Librarian, the Superintendent of Schools, the Treasurer/Collector, the Town Clerk, and any other department head who is elected or who is appointed by another elected board or commission, provided that in the case of the Director of Recreation any recommendation must be approved by the Park and Recreation Commission, that in the case of the Director of the Council on Aging any recommendation must be approved by the council on aging and that in the case of the Rent Control Board director any recommendation must be approved by the Rent Control Board, and in making such recommendations the Administrator may in his discretion recommend for appointment as department head single candidates whom the Board of Selectmen shall either appoint or reject until one is appointed~~;

(c) supervision, written evaluation and training of all department heads appointed by or recommended for appointment by the town administrator ~~except Personnel in the School Department~~;

(d) coordination of intra -and intergovernmental affairs;

**Attachment B**

(the changes the original CTO&S proposal would make to the current Town Administrator Act)

(e) acting as the administrative spokesperson for the Town;

(f) formulation of the annual financial plan, including detailed projections of all revenues and expenditures;

(g) recommendations with respect to departmental and non-departmental expenditures, the Capital Improvement Plan submitted by the Planning Board, the financial impact of warrant articles, and guidelines for collective bargaining;

(h) approval of payment and expense warrants upon the treasury of the Town, under section fifty-six of chapter forty-one of the General Laws;

(i) authority to remove~~recommendations for the removal~~ for just cause any department head for whom the Administrator has appointment authority under Section 2(b) ~~by the Board of Selectmen, of any department head appointed by the Selectmen~~;

(j) recommendations concerning collective bargaining proposals for the Town, exclusive of the School Department;

(k) submission to the Board of Selectmen and to town meeting of plans to reorganize, consolidate or abolish departments, commissions, boards or offices under his direction and supervision, or to establish new departments, commissions, boards and offices, or both, subject to enactment of home rule legislation if otherwise legally required; and

(l) performance of such other duties and responsibilities as are delegated to the administrator by the Board of Selectmen.

SECTION 3.
The administrator shall not be responsible for matters which are the responsibility of the School Committee.

SECTION 4.
The board of selectmen shall implement the administrative organization set forth herein and may delegate any additional administrative function, or any civil service appointment, removal or discharge authority or responsibility to the administrator or, upon the recommendation of the administrator, a department head.

**Attachment B**

(the changes the original CTO&S proposal would make
to the current Town Administrator Act)

SECTION 5.
The Town may, through its by-laws, delegate any licensing authority, except the licensing of innholders, lodging houses, common victuallers, food vendors, secondhand motor vehicles, open air parking, liquor sales and theaters and entertainment.

SECTION 6.
The Administrator shall be subject to the authority and direction of the Board of Selectmen. He shall render reports to the Board of Selectmen on a regular basis, including in such reports a summary of current activities, a list of both current and long-range issues and objectives and programs in response thereto, and suggestions concerning the goals and objectives of the community.

SECTION 7.
This act shall take effect upon its passage.

**Attachment C**

(the changes Warrant Article 4, as amended by the Advisory Committee, would make to the current Town Administrator Act)

**AN ACT ESTABLISHING THE POSITION OF TOWN ADMINISTRATOR IN THE TOWN OF BROOKLINE**
**(Chapter 270 of the Acts of 1985, as amended)**

SECTION 1.
Notwithstanding any provision of any general or special law to the contrary, there shall be a Town Administrator, hereinafter called the Administrator, in the Town of Brookline, who shall be appointed by the Board of Selectmen for a three year term. During the term of appointment, the Administrator may only be removed after notice stating the reason for such removal and a public hearing, by a vote of at least three Selectmen.

SECTION 2.
The Administrator shall be the Chief Administrative Officer of the Town. Without limiting the foregoing, the Administrator shall perform and discharge the following functions and duties:

(a) daily administration of the Town;

(b) recruitment and recommendations for appointment by the Board of Selectmen of all department heads, except the Librarian, the Superintendent of Schools, the Treasurer/Collector, the Town Clerk, and any other department head who is elected or who is appointed by another elected board or commission, provided that in the case of the Director of Recreation any recommendation must be approved by the Park and Recreation Commission~~,~~ and that in the case of the director of the council on aging any recommendation must be approved by the council on aging~~ and that in the case of the Rent Control Board director any recommendation must be approved by the Rent Control Board~~, and in making such recommendations the Administrator may in his discretion recommend for appointment as department head single candidates whom the Board of Selectmen shall either appoint or reject until one is appointed;

(c) approval of the appointment of all other town employees, except employees of the library, employees of the town clerk's office, employees of the school department, and civil service employees who are subject to chapter thirty-one of the General Laws;

(d~~c~~) supervision, written evaluation and training of all department heads except personnel in the school department;

(e~~d~~) coordination of intra- and inter-governmental affairs;

(f~~e~~) acting as the administrative spokesperson for the town;

**Attachment C**

(the changes Warrant Article 4, as amended by
the Advisory Committee, would make to the
current Town Administrator Act)

(g~~f~~) formulation of the annual financial plan, including detailed projections of all revenues and expenditures;

(h~~g~~) recommendations with respect to departmental and non-departmental expenditures, the capital improvement plan submitted by the planning board, the financial impact of warrant articles, and guidelines for collective bargaining;

(i~~h~~) approval of payment and expense warrants upon the treasury of the town, under section fifty-six of chapter forty-one of the General Laws;

(j~~i~~) recommendations for the removal for just cause, by the board of selectmen, of any department head appointed by the selectmen;

(k~~j~~) recommendations concerning collective bargaining proposals for the town, exclusive of the school department;

(l~~k~~) submission to the board of selectmen and to town meeting of plans to reorganize, consolidate or abolish departments, commissions, boards or offices under his direction and supervision, or to establish new departments, commissions, boards and offices, or both, subject to enactment of home rule legislation if otherwise legally required; and

(m~~l~~) performance of such other duties and responsibilities as are delegated to the administrator by the board of selectmen.

SECTION 3.
The administrator shall not be responsible for matters which are the responsibility of the school committee.

SECTION 4.
The board of selectmen shall implement the administrative organization set forth herein and may delegate any additional administrative function, or any civil service appointment, removal or discharge authority or responsibility to the administrator or, upon the recommendation of the administrator, a department head.

**Attachment C**

(the changes Warrant Article 4, as amended by
the Advisory Committee, would make to the
current Town Administrator Act)

SECTION 5.
The town may, through its by-laws, delegate any licensing authority, except the licensing of innholders, lodging houses, common victuallers, food vendors, secondhand motor vehicles, open air parking, liquor sales and theaters and entertainment.

SECTION 6.
The administrator shall be subject to the authority and direction of the board of selectmen. He shall render reports to the Board of Selectmen on a regular basis, including in such reports a summary of current activities, a list of both current and long-range issues and objectives and programs in response thereto, and suggestions concerning the goals and objectives of the community.

SECTION 7.
This act shall take effect upon its passage.

## ARTICLE 4

### CTO&S' SUPPLEMENTAL RECOMMENDATION

The Committee on Town Organization and Structure (CTO&S) met on Monday, November 1 to finalize its recommendation for Town Meeting. The Committee voted 5-0 to concur with the vote offered by the Board of Selectmen included in the Combined Reports. CTO&S did not meet to review the final amendment approved by the Board of Selectmen included in their vote below.

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### BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

After the Combined Reports were finalized, it was determined that the wording in the language voted by the Selectmen that was susceptible of the interpretation that a single candidate would be recommended to fill both the Police Chief and Fire Chief positions. Therefore, the Board recommends FAVORABLE ACTION, by a vote of 4-1 taken on November 9, 2010, on the motion found on pages 4-9 and 4-10 of the Combined Reports, as amended by adding the words "each of" after the words "With respect to" in the last sentence of section 2 (b).

**ROLL CALL VOTE:**

| Favorable Action | No Action |
|---|---|
| DeWitt | Goldstein |
| Daly | |
| Mermell | |
| Benka | |

## ARTICLE 5

FIFTH ARTICLE

To see if the Town will amend the By-Laws of the Town of Brookline by amending our current By-Law for "*Board Of Selectmen, §3.1.2, General Authority*, The Selectmen shall exercise general supervision over all matters affecting the general and financial interest and welfare of the town"

by adding immediately afterwards the following new provision:

> *§ 3.1.2.A, Police and Fire Commissioners: In accordance with and to implement the Selectmen's responsibilities under applicable laws, the Selectmen shall bear the titles "Police Commissioners" and "Fire Commissioners" when exercising their responsibilities relating to the town's Police Department and Fire Department, respectively. The Selectmen's responsibilities and authority are not enhanced, diminished, or altered in any fashion from those that exist under applicable Laws by virtue of bearing such titles, nor shall the Board be involved in the day-to-day administration, operations or management of the Police and Fire Departments.*

, or act on anything relative thereto.

### PETITIONER'S ARTICLE DESCRIPTION

This article is submitted by a 7-0 vote of CTOS after 2010's Annual Town Meeting ("ATM") acceded to CTOS' request to study that ATM's (petition) article 10.[1] CTOS' revised wording is consistent with the intent of the principal petitioner, but substitutes some recent Town Counsel language for the original language of article 10. The current proposal also adds its last clause to highlight the intent -- consistent with both our traditions and art. 10's earlier intent -- that the selectmen not be involved in day-to-day administration, operations, or management.

Ultimately this proposal, like art. 10's, is based upon three main prongs:

- a title can matter in a paramilitary organization, analogous to "Commander-in-Chief";
- Brookline's long traditions of both civilian control and these particular titles; and
- the legal underpinnings of selectmen's broad responsibilities vis-à-vis both Departments.

[1] For the A/T/M's Combined Reports of Selectmen & Advisory Committee with Supplemental Reports, see http://www.brooklinema.gov/index.php?option=com_docman&task=doc_download&gid=3300&Itemid=654.

As to the latter, for Police, see *G.L.c. 41, §97*, adopted by the 1921 Town Meeting, the so-called "Weak Chief Law" (as opposed to §97A, "Strong Chief"), which reads (*emphasis added*):

> In towns which accept this section ... there shall be *a police department established under the direction of the Selectmen, who shall appoint a chief of police* and such other police officers as they deem necessary, and fix their compensation ... and the Selectmen may remove such chief or other officers for cause ... . *The Selectmen may make suitable regulations governing the police department and the officers* thereof. The chief of police shall be in immediate control of all town property used by the department, and of the police officers, who shall obey his orders.[2]

For the Fire Department, a 1973 Home Rule Law abolished the office of Fire Commissioner, and transferred to the selectmen "all [of its] powers & duties ... , making them "for all purposes whatsoever the lawful successor to the fire commissioner in relation to the direction and control of the fire department," with the language similar to §97. But, the title was not codified.

CTOS had discussed art. 10 on several occasions last spring, then voting (6-1) to recommend referring it for further study, based partly on desire to debate it at the same T/M as CTOS' own warrant article then planned for this Fall's TM -- to amend the Town Administrator law. CTOS had three summer meetings discussing the issues raised in the 2010 Annual Town Meeting about article 10. Ultimately -- and unanimously -- CTOS agrees that the thrust of this article merely codifies but does not change either any longstanding Brookline practices, or any legal responsibilities of the selectmen.

CTOS discussed, and ultimately rejected, two ideas that were suggested in relation to art. 10, (1) attempting to define, specify, and/or enumerate *the selectmen's authority*, and/or (2) considering either no *titles* or some alternatives. The former was felt to be both a formula for later disputes and virtually impossible to articulate for future boards of selectmen with any degree of specificity while remaining consistent with the current, broad authority under the foregoing laws. As for the titles, CTOS felt that (1) titles are at worst harmless, but might be helpful to emphasize -- to the community, the departments, and the selectmen -- the selectmen's weighty responsibility over public safety; and (2) there is no need to try for a consensus as to any new titles untested by decades of usage -- and (3) our traditional although unwritten one, "Commissioner", was (a) the best and easiest vehicle to resolve this matter and (b) not problematic.

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[2] See also, *Chief of Police v. Westford*, 365 Mass. 526, 530-31 (1974) ("... [T]he primary control of the police department is in the chief of police under §97A and in the Selectmen under §97. ... [T]he Legislature [] has given towns the alternatives of a 'strong' chief, a 'weak' chief, or no chief at all. ...")

## SELECTMEN'S RECOMMENDATION

Article 5 would amend the Town By-Laws: "BOARD OF SELECTMEN, §3.1.2, General Authority", to confer the "official" titles of Police Commissioner and Fire Commissioner on each member of the Board of Selectmen. The Board supports the intention of the petitioner, the Committee on Town Organization and Structure (CTO&S), to make clear that the Selectmen are the ultimate civilian authority over the Police and Fire Departments. The proposal to formalize the title of "Commissioners" upon the Board of Selectman will reinforce this important concept.

The Board of Selectmen's authority relative to the Police Department is within the realm of policy and administration pursuant to the 'weak chief statute' G.L.c. 41 s. 97 and also under the general statutory framework that defines the Board of Selectmen as the Town's chief executive body. The Board's authority is exercised primarily through:

- Promulgation of policies and regulations
- Approval of appointments and promotions including the chief
- Authority to dismiss with cause
- Adjudication of disciplinary actions under Civil Service
- Adjudication of appeals under the Citizen Complaint Policy

Recent experiences with the review of the Citizen Complaint Policy and the Video Surveillance Cameras underscore the crucial functions of the Board in setting policy for public safety.

During consideration of this proposal, the Board expressed concern that the term "police commissioner" might imply a law enforcement capability that is not consistent with the Board's civilian oversight authority. Unqualified inclusion in the by-laws might give rise to confusion about police powers that could be misinterpreted to be vested in the Board. In Cambridge, Boston and other jurisdictions for example, the Police Commissioner is a professional department head with direct control over police operations. As a result, the Board voted to insert the word "civilian" in the titles in order to clarify the scope of this responsibility, and to approve the CTO&S proposal that makes clear that this article does not modify the Board's existing authority and that the Board is not involved in the day-to-day supervision of the Town's public safety departments.

This article is linked to the CTO&S proposal under Article 4 that expands the administrative authority of the Town Administrator. Consistent with the Board of Selectmen's authority to exercise civilian control of the Police and Fire departments under Article 5, the Board would retain authority to appoint and remove the position of Chief of Police and Fire Chief under that proposal.

The Selectmen recommend FAVORABLE ACTION, by a vote of 4-0-1 taken on October 12, 2010, on the following motion:

VOTED: That the Town amend the By-Laws of the Town of Brookline by amending our current By-Law for "*Board Of Selectmen, §3.1.2, General Authority*, The Selectmen shall exercise general supervision over all matters affecting the general and financial interest and welfare of the town" by adding immediately afterwards the following new provision:

> *§ 3.1.2.A, Police and Fire Commissioners: In accordance with and to implement the Selectmen's responsibilities under applicable laws, the Selectmen shall bear the titles "civilian Police Commissioners" and "civilian Fire Commissioners" when exercising their responsibilities relating to the town's Police Department and Fire Department, respectively. The Selectmen's responsibilities and authority are not enhanced, diminished, or altered in any fashion from those that exist under applicable Laws by virtue of bearing such titles, nor shall the Board be involved in the day-to-day administration, operations or management of the Police and Fire Departments.*

**ROLL CALL VOTE:**

| Favorable Action | Abstain |
|---|---|
| Daly | DeWitt |
| Mermell | |
| Benka | |
| Goldstein | |

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Article 5 seeks to bestow the titles of Police and Fire Commissioners on the Board of Selectmen, codifying a longtime Brookline tradition in our by-laws. Town Meeting considered a similar proposal at the Spring 2010 Annual Town Meeting (Article 10).

In the spring, Town Meeting voted to refer this proposal to the Committee on Town Organization and Structure (CTO&S) for further consideration. A few issues surfaced during the deliberations at the spring Town Meeting:

1. CTO&S preferred that the commissioner designation be considered at the same time as a forthcoming Town Administrator proposal,
2. Selectmen expressed concerns about potential liability in codifying the titles, and
3. Specific roles and responsibilities should be enumerated to provide clarity about expectations.

As requested, CTO&S reviewed and modified the commissioner proposal and resubmitted it for consideration at this Town Meeting as Article 5. The article was

endorsed unanimously by CTO&S.

Article 5 amends §3.1.2 of our By-Laws, which enumerates the responsibilities of the Selectmen, by clarifying their role as Police and Fire Commissioners. The Selectmen's responsibilities in these areas were granted and defined in two different state statutes. Though the titles are not codified in our by-laws, their use has been a longtime tradition and practice.

MGL 41 Section 97 is the enabling act for our Police Department and Police Chief. This statute grants authority to the Selectmen to hire and fire the Police Chief and other officers, set compensation for them, and make "suitable regulations" to govern the department. Brookline accepted Section 97 at the 1921 Annual Town Meeting.

Acts 1973 Chapter 534 is a home rule petition abolishing the office of Brookline Fire Commissioner and transferring all powers and duties to the Selectmen. The statute makes the Selectmen the lawful successor to the Fire Commissioner in all regards, including issuing of rules, regulations, and orders for the department. The law also designates the Selectmen as the appointing authority for the Fire Chief, giving them authorization to hire, fire, and set compensation.

The petitioner of the original proposal was inspired during his work on the Citizen Complaint Review Committee, where he learned the roles were not formalized in our by-laws. He believes it is important for three reasons: for the Selectmen to view themselves in these roles; for residents to view the Selectmen as having authority over these functions; and for the departments to see the Selectmen in these roles. This amendment to our by-laws will formalize the titles, affirming the Selectmen are the elected civilian authority over the public safety functions in Brookline.

<u>DISCUSSION</u>:
Article 5 seeks to bestow Fire and Police Commissioner titles on the Selectmen without any changes to their roles and responsibilities in these functions, which are governed by state law. At the request of Town Meeting, CTO&S reviewed the proposal, taking into consideration the feedback from deliberations in the spring.

*Addressing the issues identified in the spring*. In addressing the issue of role specificity, CTO&S decided to keep the role specifications very broad, preferring not to specify details. Since final authority over the departments rests with the Selectmen, listing specific responsibilities could unduly limit their authority. However, to maintain clarity over the separation between the commissioner function and the public safety departments, the proposed by-law does specify what the Selectmen cannot do. The departments felt it important to clarify that the Selectmen are never to be involved in day-to-day operations, administration, and management.

The last sentence of the by-law, added at the request of the Selectmen, has the additional intent of alleviating liability concerns. The by-law clearly states that no new responsibilities or authority are being granted to the Selectmen. The by-law simply clarifies their governing role over public safety as provided under existing state law. In

essence, it is a housekeeping measure tying our by-laws to the existing statutes for clarity's sake.

CTO&S's primary concern in the spring was the desire to have this article considered jointly with their Town Administrator proposal, which is Article 4 in the current warrant. If Article 4 is adopted as submitted on the warrant, the Fire Chief would become a position appointed by the Town Administrator. Transferring the appointing authority under Article 4 would mean "the buck stops" with the Town Administrator. An important question arises as to the value or accuracy of labeling the Selectmen as Fire Commissioners in this scenario. CTO&S sees no linkage between the commissioner designation and the appointing authority proposed in Article 4. They see the two as separate issues—in either scenario the Selectmen maintain their authority over Fire Department policy. Bestowing the Fire Commissioner title may actually clarify the continued policy and oversight roles of the Selectmen with regards to the Fire Department if Article 4 is approved.

Having addressed the three primary concerns, and finding merit in clarifying the responsibilities of the Selectmen in our by-laws, CTO&S unanimously supports the article as submitted.

Chiefs Skerry and O'Leary both indicated they have always treated the BOS as commissioners. The language of the current article addresses a concern they had with the proposal in the spring, because it clarifies the separation of day-to-day operations and BOS responsibilities.

A majority of the Advisory Committee supports the article as amended by the Selectmen, believing it aligns our by-laws with the statutes under which Brookline governs its public safety departments, codifying titles that have been a longtime tradition. There was broad agreement from the Advisory Committee, CTO&S, and members of the public who expressed their views: the Police and Fire Chiefs should be under elected civilian authority, the Police and Fire Chiefs have always treated the Selectmen as commissioners, every Selectman has believed himself/herself to be a commissioner, and the relationship between the Chiefs and the Selectmen should be put in our by-laws. This has been a longtime Brookline tradition and practice.

The majority sees value in codifying our current practice to provide role clarity for Selectmen and the public safety departments, eliminating any ambiguity that may exist. They also felt that it is important for the public to understand that the Selectmen have ultimate authority over our public safety functions.

*Additional concerns raised*. While a majority of the Advisory Committee supports the article, a significant minority felt a number of issues remained:

1. Liability: Although the new by-law would not add responsibilities or authority to the Selectmen that would be subject to new liabilities, some felt that codifying the titles might encourage the inclusion of the Selectmen in any lawsuit, frivolous or not.

2. Title confusion: A commissioner is often a full-time staff member dedicated to a specific department. For example Brookline has a Building Commissioner and a Commissioner or Public Works. The same is true in cities such as Boston and New York, where Police Commissioners are clearly linked directly to their departments rather than a clearly civilian position at arms length.
3. Overstepping bounds: Despite language in the by-law to the contrary, it is possible that future Selectmen may be encouraged to cross the line in terms of interference with day to day operations of the departments if they are granted these titles. Incorporating the title changes may muddy the water in terms of who does what.
4. If it ain't broke: Things work well today with the ambiguity of these functions. If the by-law truly doesn't change anything, we should not enact it.

RECOMMENDATION:
By a split vote of 10 in favor and 9 opposed with 2 abstentions, the Advisory Committee recommends FAVORABLE ACTION on the vote offered by the Selectmen.

***XXX***

## ARTICLE 5

## CTO&S' SUPPLEMENTAL RECOMMENDATION

Following referral by prior Town Meeting to Committee on Town Organization and Structure (CTO&S), the Committee reviewed the article and voted unanimously to recommend conferring titles of Commissioner(s) on the Board of Selectmen. Regarding the addition proposed by the Board of Selectmen, CTO&S voted 5-0 to recommend the addition of the word "civilian" to the titling.

ARTICLE 5

**Amendment offered by Martin Rosenthal, TMM-Prec. *9*** [1]

Motion to amend the Selectmen's motion by *deleting* each of the words *"civilian"* in the third line of the proposed new provision. (Combined Report, p. 5-4)

**EXPLANATION**

This restores CTOS's 7-0 voted article (p. 5-1, Combined Report), revising the spring article (then # 10) referred to CTOS for study. Art. 10's lead petitioner, now offering this motion, accepted every change by CTOS, including the new first sentence from Town Counsel. Then, at the Oct. 12 selectmen's meeting, after four selectmen stated support for CTOS's language, selectman DeWitt proposed inserting the word "*civilian*" before both "Police Commissioner" and "Fire Commissioner" (hereinafter, *"P/C" & "F/C"*). No vote was then taken, but two weeks later the original four supporters agreed to amend the article in that way. Selectman DeWitt – still not supportive – abstained. Presumably she will explain her thinking to Town Meeting, but the Combined Reports (p. 5-3) captures the essence of what she's said at various public meetings, along with her reluctance to have these titles at all:

> ... P/C might imply a law enforcement capability that is not consistent with the Board's civilian oversight authority ...[and cause] confusion about police powers that could be misinterpreted to be vested in the Board. In … other jurisdictions[,] for example, the P/C is a professional department head with direct control over police operations. ... [T]he Board voted to insert ... "civilian"... to clarify the scope of this responsibility ...

Selectman DeWitt's additional word ("*civilian*") is ill-advised, because it is:

1. at a minimum, redundant, unhelpful, and superfluous;
2. awkward, cumbersome, and inelegant, and thus *less likely to be used*; and
3. at worst, confusing &/or excessive *emphasis on limits* of the selectmen's authority.

#1. CTOS (unanimously) added – after last May's proposal – language from selectman Benka, emphasizing the seemingly obvious: "*The Selectmen's responsibilities and authority are not enhanced, diminished, or altered in any fashion from those that exist under applicable Laws by virtue of bearing such titles, nor shall the Board be involved in the day-to-day administration, operations or management of the Police and Fire Departments.*"

#2. Under the Constitution Presidents are "*Commanders in Chief*"*;* and, also, the Mass. Constitution says Governors are *"commander in chief ... of the military forces of the state."* NEITHER saw a need to belabor the obvious and dilute the titles with the word

[1] MRR is CTOS' Art. 5 speaker, but not on this motion, and was absent when CTOS adopted DeWitt's amendment.

"*civilian*." If they had, would the titles have the same visceral, psychological, symbolic impact?

#3. The DeWitt amendment suggests a mystery, "*who is/are the REAL Commissioner(s)?*" And, it over-emphasizes (beyond Art. 5's last sentence) the *limits* of civilian control. The selectmen's authority is now very expansive, like it or not. G.L.c. 41, §97 (the "Weak Chief Law"), adopted by a 1921 Town Meeting, says: "In towns which accept this section ... there shall be *a* police department established *under the direction of the Selectmen*, who shall appoint a chief of police and such other police officers as they deem necessary... and ... may remove such chief or other officers for cause ... [and] *may make suitable regulations governing* the police department ... [emphasis added]." Similarly for FIRE, our 1973 Home Rule Law abolished the then-office of F/C and "transferred ... to the selectmen all [of its] powers and duties ... [making them] *for all purposes whatsoever the lawful successor to the F/C* in relation to the direction and control of the fire department"– but the F/C title then was not explicitly codified by the Town.

As for the need for our traditional, indeed for any *title*, once again, these are "*paramilitary*" departments; see the 1987 *Report on Police/Community Relations*, "§VI, *Disciplinary Process,*" beginning: "Because all police departments are *paramilitary* in tone and structure ... ." See also *Police Dept. v. Tolland*, 67 Mass. App. Ct. 1107 (Unpublished, 2006): "the head of a *paramilitary* organization ... is dependent on adherence to the commands of superior officers."

Will formalizing these titles change anything -- or be confusing or outlandish? Brookline now has about 72 [civilian] "Commissioners," e.g., Preservation, Arts, etc. None are called "*civilian* Commissioners." None are confused to be employees of their departments. Also, recall the famous opening line of David Turner's 1997 memorandum casting a cloud of (formalistic) confusion on these traditional titles and motivating this article: "*Sometime before the memory of man remembereth* the Selectmen … *acquired the additional title of Police Commissioners*."[2] Similarly, these titles – unadorned/unqualified – are common in towns.[3]

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[2] Former Chief Simard, current Chief O'Leary, and all Fire Chiefs have often used these titles. See, e.g., the former's *General Order #85-5*, creating the Internal Affairs process, beginning "The Selectmen, in their capacity as the P/Cs ... have established the position of Internal Affairs/Staff Inspection Officer ... ."; and "Selectmen enjoy power of the badge," Likewise, see 5/27/04 *Brookline TAB* ("...'P/C'... [is] a title reserved for ... the Selectmen. In most communities, the chief of police answers to the P/C; in Brookline's case, that's all five Selectmen. ")

[3] See, 5/6/03, *MassCops-Mass. Law Enforcement Network* ("Selectmen serve as P/Cs by virtue of their office."); and, besides innumerable media references, many towns have *codified* -- and *simple*, P/C titles, *e.g.*, www.**DOVER**ma.org/town-government/town-offices/board-of-selectmen/: "Town Code: ... Selectmen shall be P/C's... .";www.townhall.**WESTWOOD.**ma.us/index.cfm?pk=download&id=22330&pid=15253 ("As P/Cs, Selectmen make final decisions on law enforcement policies.. ."; **WALPOLE**, Charter: "§3-2 ... (2) "selectmen have all the powers and duties of P/Cs, F/Cs, ..."; www.**HINGHAM-**ma.gov/selectmen/index.html: "Selectmen ... [*inter alia*] act as P/Cs ...."; www.town.**FREETOWN**.ma.us/dept/?DeptID=SELECTMEN: "Selectmen... serve as ... P/Cs ..."; www.**NANTUCKET-**ma.gov/Pages/NantucketMA_BOS/index: "Selectmen serve as ... F/C's & P/Cs."

## ARTICLE 6

SIXTH ARTICLE

To see if the Town will amend the Zoning By-Law as follows:

I. Section 1.00.1, Purpose and Scope, by inserting the following language after welfare: "consistent with the intent and the recommendations of the Brookline Comprehensive Plan 2005-2015 or any successor Comprehensive Plan;" or act on anything relative thereto.

The amended Article would read:

The Purpose of this Bylaw is declared to be the promotion of the public health, safety, convenience, and welfare consistent with the intent and the recommendations of the Brookline Comprehensive Plan 2005-2015 or any successor Comprehensive Plan; by:

II. § 9.05, Conditions for Approval of Special Permit, by adding a new 9.05.1.f:

f. The requested Special Permit is consistent with the goals, policies and strategies of the Brookline Comprehensive Plan 2005-2015 or any successor Comprehensive Plan;"

or act on anything relative thereto.

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PETITIONER'S ARTICLE DESCRIPTION

In 2000 the Board of Selectmen appointed the Town Comprehensive Plan Committee composed of 21 representatives of Town boards, commissions, advisory bodies, committees and members of the public to update the previous plan. The Comprehensive Plan 2005-2015 (the "Plan") is the product of more than two years' work and an investment of more than $300,000, about half of which was offset by federal funds.

In adopting the Plan in December 2004, the Board of Selectmen (the "Board") wrote that it "accepts and supports the Comprehensive Plan as presented to it…including the visions, goals policies and strategies contained within." The Board also wrote that it "…expects that the Comprehensive Plan will be used to guide planning, development, and capital investment in the Town for the next ten years***, including the drafting of amendments to the Town Zoning Bylaw***." (Emphasis added.) The Board "Resolved, that the Department of Planning and Community Development should commence development of an Action Plan for implementation of the Comprehensive Plan…" Finally, the Board strongly recommended "the Planning Board adopt" [the Plan] and it did so in January 2005.

Along with the Town's official Master Plan under Massachusetts General Laws chapter 41, section 81D, the Plan serves as the roadmap for the Town's future. The intent of these amendments is to begin to make the Zoning By-Law consistent with the Plan and to stimulate fulfillment of the Plan's visions, goals, policies and strategies so that Brookline's future is well reasoned and meets our needs.

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**PLANNING BOARD REPORT AND RECOMMENDATION**

This article is being submitted by Citizen Petition and proposes to add a provision to the Brookline Zoning By-Law in two different places to explicitly require consistency with the Brookline Comprehensive Plan, in the Purpose and Scope section (Sec. 1.00.1), and in a new subsection (9.05.1.f), under Conditions for Approval of Special Permit.

The Comprehensive Plan was completed in 2005 as a land use policy guide for the Town. It incorporates the work of a number of other Town documents, and provides an overall framework for looking at how the Town should develop in the next ten years. However, it is a set of goals and objectives, not a physical plan, and unlike the Zoning By-Law, it is not a legal document. Although it was approved by the Planning Board, it was not approved by Town Meeting, as is the Zoning By-Law. In addition, although the Comprehensive Plan tried as much as possible to resolve conflicting goals of various stakeholders in the Town, this was not always possible, and the Comprehensive Plan has not been directly compared with the Zoning By-Law to determine and evaluate whether there are any inconsistencies. Lastly, since this amendment would require consistency with future Comprehensive Plans and the content of these are unknown at this time, it would seem prudent not to tie the Zoning By-Law to a future plan.

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

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SELECTMEN'S RECOMMENDATION

Article 6 is a petitioned article that would add direct references to the Brookline Comprehensive Plan in both the Purpose and Scope and the Special Permit Criteria sections of the Zoning By-Law. This proposal was in response to the petitioner's highly positive view of the Brookline Comprehensive Plan and a feeling that it should have some weight in the zoning review of proposed developments.

This proposed amendment raised a number of questions about the relationship of the Comprehensive Plan, which is at its heart a policy guide, and the Zoning By-Law, which is a law. The Planning Board and other Town boards and commissions already use the Comprehensive Plan as a guide in their decision making. However, mandating consistency with the Comprehensive Plan would raise many questions. These include whether the Comprehensive Plan, which has many recommendations in it, might limit the Board of Appeal's ability to review development proposals to the letter of the Zoning By-Law and how to resolve parts of the Comprehensive Plan that may not provide clear

guidance or that might be inconsistent. In addition, the proposed article would raise the question of the role of Town Meeting in crafting the Zoning By-Law: zoning changes require a 2/3 vote of Town Meeting but the Comprehensive Plan is not subject to that requirement. The petitioner has stated that she does not intend to move this article at Town Meeting. For these reasons, the Selectmen unanimously recommend NO ACTION, by a vote of 5-0 taken on October 12, 2010, on Article 6.

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## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Under the provisions of chapter 41, section 81d of the General Laws, the Town periodically produces a Comprehensive Plan, setting forth a vision and goals for its future development. The current Plan covering the years 2005 to 2025 was developed over a two-year period (2003 to 2005) by a Selectman-appointed committee consisting of 21 members of various official town bodies and representatives of the general public at a cost of around $300,000. Article 6 would amend the Zoning By-Law by incorporating the current, and future, Comprehensive Plans into the Zoning By-Law in two ways: inserting an objective of consistency with the Comprehensive Plan to Section 1.00.1 which states the Purpose and Scope of the Zoning By-Law; and adding a new Section 9.05.1.f which would add consistency with the Comprehensive Plan as a condition of approving Special Permits. According to the explanation provided with the article, the Principle Petitioner wished to ensure that the Zoning By-law is consistent with the Plan and sought to stimulate fulfillment of the Plan's vision, goals, policies and strategies so that "Brookline's future is well reasoned and meets our needs."

DISCUSSION
The Planning Board has considered Article 6 and voted unanimously for NO ACTION, observing that the Comprehensive Plan is a set of goals and objectives, not a physical plan nor a legal document, that its stated goals were sometimes in conflict with each other and may be inconsistent with existing portions of the Zoning By-Law, that although approved by the Planning Board, it had never been approved by Town Meeting, and that the Article would moreover require consistency with as yet unwritten future Comprehensive Plans, thereby tying the Zoning By-Law to unspecified future provisions.

At a public hearing on this Article, the Planning Director added that the Plan's recommendations were sometimes ambiguous or contradictory and thus would fail to provide clear guidance on Zoning amendments. Members of the public pointed out in opposition that incorporating the Plan into the Zoning By-Law and then using it to justify zoning changes could lead to unforeseen and unintended results: right now, a Plan goal of promoting development in South Brookline is being used to support redevelopment of Hancock Village, an application never mentioned nor endorsed at public hearings at which this Plan goal was formulated.

Advisory Committee members also noted that the Comprehensive Plan is the product of the executive branch of town government (the Selectmen) whereas enacting the Zoning By-Law is the exclusive domain of the legislative branch (Town Meeting), and that it would be a breach of separation of powers and a violation of appropriate legislative procedure to require Zoning By-Law consistency with the current and all future Comprehensive Plans, documents created independently of the legislative process.

RECOMMENDATION

The Advisory Committee believes that it would be inappropriate to incorporate the Comprehensive Plan into the provisions of the Zoning By-Law, and moreover observes that the goals and objectives of the Plan can still be used to formulate proposed zoning amendments, and can be invoked during Town Meeting debate by proponents or opponents of any such proposed amendments. We have also learned the Petitioner no longer wishes to seek Town Meeting approval of Article 6. Accordingly, the Advisory Committee, by a vote of 18-0-3 recommends NO ACTION on Article 6.

***XXX***

ARTICLE 7

SEVENTH ARTICLE

To see if the Town will amend Section 4.09 of the Zoning By-Law as follows:

1. By amending Section 1: Purpose as follows:

   1. Purpose

   The purpose of this section is to allow the adequate development of wireless telecommunications services and at the same time regulate the design and location of wireless telecommunications facilities to ensure that demand is fulfilled in a manner which preserves the safety, character, appearance, property values, natural resources, and historic sites of the Town. The intent of the Town of Brookline is to exercise the full rights that §704(a) of the Federal Telecommunications Act of 1996, 47 U.S.C. s 332(c) et. seq. confers to localities in regulating the siting of antennas. The standards herein are intended to achieve the following goals: encourage location of antennas on existing commercial buildings and structures rather than on residential ones or new towers, mitigate any adverse visual **and audio** effects through proper design, location and screening, encourage co-location where it will minimize visual and other impacts, and prohibit new towers in districts where they may be incompatible with existing residential uses. Monopoles may be approved in non-residential districts by special permit, only if no other alternative is possible.

2. By amending Section 2. Scope: as follows:

   2. Scope

   This §4.09 shall apply to all wireless telecommunication antennas and towers and related equipment, fixtures and enclosures, including **Distributed Antenna Systems located on public utility poles and** any modifications to any of the ~~**proceeding**~~ **preceding**, but shall not apply to dish or television antennas which receive and do not transmit; amateur ham radio antennas; citizens band radio antennas; fire, police, ambulance and other safety communication antennas; antennas utilized by the Town for its communications systems; and to antennas to be located on Town-owned property ~~**or public utility poles**~~, except that paragraph 4., subparagraph c. of this section shall apply.

3. By amending Section 4.09.4.(c) as follows:

   c. All wireless telecommunications antennas, towers, and related equipment, fixtures, and enclosures to be located on Town-owned property ~~**or public utility poles**~~ shall be exempt from the procedures in subparagraph a. above, and shall require approval from the Board of Selectmen, after an advisory report from the Planning Board and a public hearing. Long term telecommunication leases are

subject to G.L.c.30B and must be approved by Town Meeting. The submittal requirements and approval standards of this section shall serve to guide the Planning Board in its recommendation to the Selectmen.

4. By amending Section 4.09.5(a) as follows:

a. The applicant shall submit to the Building Commissioner the plans and details for the proposed wireless telecommunications antennas, towers and related equipment, fixtures and enclosures. The application shall include: sketches, pictures and photos to illustrate information on the proposed antenna and mount and exterior equipment, fixture and enclose, including: dimensions, appearance (color and finish), location on building facade or roof (setbacks if applicable), height above building roof when mounted, inventory of other antennas on building, including which antennas have not been used for over one year. Additionally, information shall be submitted on proposed method to camouflage or screen antenna and enclosure from view (screen dimensions, color and style), visibility from ground or upper floor levels of nearby residences within a radius of 500 feet, and method to make it blend in with the style of the building. **Information on expected noise impacts on surrounding areas shall be provided.** The Planning Board, at its discretion, may require a balloon test **and/or model** to better evaluate visual impacts or any other information that it deems helpful.

5. By amending Section 4.09.7(a).1. as follows:

1) The following design standards shall apply to all approvals and special permits for wireless telecommunications antennas and related equipment, fixtures and enclosures. They shall be as unobtrusive as possible when viewed from the street and from upper floors of nearby residences. Every effort should be made to have them blend in with the style and color of the building they are located upon and with the surrounding environment and not negatively impact property values or environmentally sensitive areas, such as wetlands or historic sites. Where necessary, screening shall be provided to minimize visible impacts. Items for evaluation during the approval process include color, finish, size, location on building facade or roof, camouflaging, and screening. Greater setback from the edge of a building may be required, if it helps to minimize visual impacts and improves over-all aesthetics. **Noise impacts shall be minimized on surrounding areas through the use of best commercially available technology and noise dampers whenever possible.**

or act on anything relative thereto.

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PETITIONER'S ARTICLE DESCRIPTION

This proposed amendment would level the playing field for wireless facilities in the Town, whether they are wireless antenna systems or the newer Distributed Antenna

Systems (DAS,) by requiring that all such facilities not located on Town-owned property undergo the same zoning review.

Five years ago, Town Meeting amended the Town's Zoning Bylaw with respect to wireless communications facilities to expedite the development of a Distributed Antenna System for south Brookline. At the time, amending the Zoning Bylaw was a way of encouraging development of what was then a less common solution to providing cellular service in areas without tall buildings, without the use of towers or monopoles.

The south Brookline DAS system has since been completed. However, by making it easier to develop DAS systems than to develop traditional wireless antennas, the earlier amendment had the unforeseen side effect of encouraging DAS systems Town-wide. This effect is caused by the fact that, as currently written, the Zoning Bylaw requires more review of wireless antennas than of DAS systems on public utility poles. In addition, in the past two years, DAS systems have become much more common. There are now two active efforts to develop Town-wide DAS systems.

While DAS systems are not necessarily bad for the Town, there is no reason why the Zoning Bylaw should provide them with preferential treatment Town-wide over wireless antennas. DAS systems have visual and audio impacts on neighbors that could be minimized and/or mitigated as part of a zoning review process, much as the Town minimizes the impacts of wireless antennas through the zoning review process. This zoning amendment would provide the Town with ways of achieving these goals.

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**PLANNING BOARD REPORT AND RECOMMENDATION**

This article is being submitted by the Planning and Community Development Department and adds a requirement for Planning Board approval of Distributed Antenna Systems (DAS) on public utility poles and consideration of noise impacts to Section 4.09, Wireless Telecommunications Services. Currently, a proposal for wireless antenna and equipment on a public utility pole must be approved by the Board of Selectmen, after an advisory report from the Planning Board, and the holding of a public hearing. With this amendment, Planning Board approval would be required under the design review process outlined in Sec. 7.03, paragraph 2. This process requires publication of the public meeting in a local newspaper, notice to abutters, Town Meeting members and neighborhood associations in the applicable precincts. Additionally, the submittal requirements would require information on possible noise impacts, and the Planning Board could add conditions requiring that noise impacts be minimized through use of best available technology and noise dampeners, where possible.

This amendment was submitted in response to a couple of proposals for Town-wide DAS systems. While there was general support for a DAS system for south Brookline as an alternative to conventional wireless facilities, there is no apparent need to offer preferential treatment to DAS Town-wide. DAS systems offer an alternative to conventional wireless systems but also have some negative externalities, such as noisy air conditioning units that may be located close to residents' homes. This warrant article is not intended to prohibit such facilities but to allow a system for reviewing and placing

reasonable conditions on DAS systems. In effect, it will level the playing field between conventional wireless facilities and DAS systems.

The Planning Board sees no reason for a Town-wide preferential treatment of DAS systems. Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Article 7.

## SELECTMEN'S RECOMMENDATION

Article 7 was proposed by the Department of Planning and Community Development in response to changing technologies for personal communications. It would explicitly incorporate so-called Distributed Antenna Systems (DAS) into the wireless communications section of the Zoning By-Law. It would also allow the zoning review process to seek information on, and seek limitations on, the audio impacts of DAS systems, which often include noisy hardware.

The existing section has served the Town well in reviewing traditional wireless facilities. It has generally exempted DAS systems from zoning review by exempting facilities on Town-owned or public utility poles. This exemption was added to the by-law intentionally in 2005 in order to allow the DAS to be constructed in South Brookline as a preferred alternative to monopole facilities in that part of town. The South Brookline DAS is complete and currently has two carriers utilizing its infrastructure. That system went through a review process with the Board of Selectmen and is considered a successful public planning solution to the issue of wireless coverage in South Brookline.

Since that time, however, there have been two active proposals for town-wide DAS systems. While these systems are not necessarily bad, they do not accomplish the same public purpose as the South Brookline system. They are more analogous to the traditional wireless systems that are currently permitted through the Zoning By-Law. In addition, the DAS technology, being closer to the ground and consisting of more nodes, has a possibility of intruding on individual residents' quality of life.

The Board of Selectmen agrees that these DAS should be reviewed just like any other wireless facility. While the Town does not have the authority to deny service to a provider, it does have the ability to seek reasonable changes to all wireless systems, including efforts to reduce noise and visual intrusions of the facilities to Town residents. Therefore, the Board unanimously recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 12, 2010, on the following motion:

VOTED: That the Town amend Section 4.09 of the Zoning By-Law as follows:

1. By amending Section 1: Purpose as follows:
    1. Purpose

The purpose of this section is to allow the adequate development of wireless telecommunications services and at the same time regulate the design and location of wireless telecommunications facilities to ensure that demand is fulfilled in a manner which preserves the safety, character, appearance, property values, natural resources, and historic sites of the Town. The intent of the Town of Brookline is to exercise the full rights that §704(a) of the Federal Telecommunications Act of 1996, 47 U.S.C. s 332(c) et. seq. confers to localities in regulating the siting of antennas. The standards herein are intended to achieve the following goals: encourage location of antennas on existing commercial buildings and structures rather than on residential ones or new towers, mitigate any adverse visual **and audio** effects through proper design, location and screening, encourage co-location where it will minimize visual and other impacts, and prohibit new towers in districts where they may be incompatible with existing residential uses. Monopoles may be approved in non-residential districts by special permit, only if no other alternative is possible.

2. By amending Section 2. Scope: as follows:

2. Scope

This §4.09 shall apply to all wireless telecommunication antennas and towers and related equipment, fixtures and enclosures, including **Distributed Antenna Systems located on public utility poles and** any modifications to any of the ~~**proceeding**~~ **preceding**, but shall not apply to dish or television antennas which receive and do not transmit; amateur ham radio antennas; citizens band radio antennas; fire, police, ambulance and other safety communication antennas; antennas utilized by the Town for its communications systems; and to antennas to be located on Town-owned property ~~**or public utility poles**~~, except that paragraph 4., subparagraph c. of this section shall apply.

3. By amending Section 4.09.4.(c) as follows:

c. All wireless telecommunications antennas, towers, and related equipment, fixtures, and enclosures to be located on Town-owned property ~~**or public utility poles**~~ shall be exempt from the procedures in subparagraph a. above, and shall require approval from the Board of Selectmen, after an advisory report from the Planning Board and a public hearing. Long term telecommunication leases are subject to G.L.c.30B and must be approved by Town Meeting. The submittal requirements and approval standards of this section shall serve to guide the Planning Board in its recommendation to the Selectmen.

4. By amending Section 4.09.5(a) as follows:

a. The applicant shall submit to the Building Commissioner the plans and details for the proposed wireless telecommunications antennas, towers and related equipment, fixtures and enclosures. The application shall include: sketches, pictures and photos to illustrate information on the proposed antenna and mount

and exterior equipment, fixture and enclose, including: dimensions, appearance (color and finish), location on building facade or roof (setbacks if applicable), height above building roof when mounted, inventory of other antennas on building, including which antennas have not been used for over one year. Additionally, information shall be submitted on proposed method to camouflage or screen antenna and enclosure from view (screen dimensions, color and style), visibility from ground or upper floor levels of nearby residences within a radius of 500 feet, and method to make it blend in with the style of the building. **Information on expected noise impacts on surrounding areas shall be provided.** The Planning Board, at its discretion, may require a balloon test **and/or model** to better evaluate visual impacts or any other information that it deems helpful.

5. By amending Section 4.09.7(a).1. as follows:

1) The following design standards shall apply to all approvals and special permits for wireless telecommunications antennas and related equipment, fixtures and enclosures. They shall be as unobtrusive as possible when viewed from the street and from upper floors of nearby residences. Every effort should be made to have them blend in with the style and color of the building they are located upon and with the surrounding environment and not negatively impact property values or environmentally sensitive areas, such as wetlands or historic sites. Where necessary, screening shall be provided to minimize visible impacts. Items for evaluation during the approval process include color, finish, size, location on building facade or roof, camouflaging, and screening. Greater setback from the edge of a building may be required, if it helps to minimize visual impacts and improves over-all aesthetics. **Noise impacts shall be minimized on surrounding areas through the use of best commercially available technology and noise dampers whenever possible.**

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## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
This article is being submitted by the Planning and Community Development Department and adds a requirement for Planning Board approval of cellular Distributed Antenna Systems (DAS) mounted on public utility poles and consideration of noise impacts to Section 4.09 of the Brookline zoning bylaw, Wireless Telecommunications Services.

Section 704 of the federal Telecommunications Act of 1996 added a provision to the Communications Act of 1934 at 47 U.S.C. §332(c) dealing with the authority of local zoning authorities to approve the placement of wireless personal communications service (PCS) cell sites and antennas. In general, the legislation preserves most local zoning authority in this area, but preempts municipal authority in several important respects:

47 U.S.C. §332(c) (7) PRESERVATION OF LOCAL ZONING AUTHORITY

`(A) GENERAL AUTHORITY- Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) LIMITATIONS-

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

Thus, the Brookline zoning bylaw must defer to the Federal Communications Commission (FCC) with respect to any "environmental effects of radio frequency emissions" but is not precluded from imposing other zoning-related restrictions and requirements upon such placements so long as these do not operate to "unreasonably discriminate among providers of functionally equivalent services" or "prohibit or have the effect of prohibiting the provision of personal wireless services."

When cellular telephone service was first introduced in the 1980s, radio equipment and associated antenna systems placed at individual "cell sites" were typically situated on roofs of commercial buildings, in church steeples, or on stand-alone structures (towers or monopoles) deployed for this purpose. The introduction of digital "personal communications service" ("PCS") in the mid-1990s was based upon a network design in which the handsets and cell site transmitters operated at considerably lower power levels than had been used for the first generation of cellular telephone service. The lower power levels required a major increase in the number of cell sites due to the shortened distances over which the radio signals would propagate. This, in turn, allowed for much greater "reuse" of the same frequencies across non-adjacent cells, significantly increasing the overall capacity of wireless networks. Today, there are approximately 200,000 PCS cell sites nationwide.

A relatively recent development in cell site technology is the "Distributed Antenna System" ("DAS"). A DAS "is a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure. DAS antenna elevations are generally at or below the clutter level and node installations are compact." See attached description. Individual DAS elements are typically installed on utility poles, connected by fiber optic or other

telecommunications transmission media to common transmit/receive radio equipment for the cell site.

DISCUSSION

Warrant Article 7 is being submitted by the Planning and Community Development Department. As the Petitioner's Explanation for Warrant Article 7 recounts, in 2005, "Town Meeting amended the Town's zoning bylaw with respect to wireless communications facilities to expedite the development of a Distributed Antenna System for south Brookline. At the time, amending the zoning bylaw was a way of encouraging development of what was then a less common solution to providing cellular service in areas without tall buildings, without the use of towers or monopoles." Specifically, the 2005 amendment provided for minimal review of wireless antennas and antenna elements located on utility poles, and thus expedited the deployment of a DAS in south Brookline.

The effect of that amendment, however, was to make it much easier for wireless service providers to deploy a DAS than a conventional cellular antenna to the extent that utility poles, rather than the placement of new structures, were used for the DAS elements. Subsequent experience with the existing South Brookline DAS has revealed several environmental issues not related to electromagnetic emissions. DAS is particularly well-suited to low-density areas such as South Brookline where there are no tall buildings and where, absent the ability to utilize utility poles, towers or monopoles would otherwise need to be constructed. However, the individual DAS antenna elements tend to be situated in residential neighborhoods often in close proximity to individual residences. The electronic equipment used by a DAS requires controlled temperatures, and the associated air conditioning equipment has proven to be a source of continuous noise. DAS may be less suited to more densely populated areas with buildings or other structures sufficiently tall to support conventional cellular antennas. However, because the approval process for a DAS, under existing zoning, may be easier to obtain, the choice of one technology over the other may be inappropriately distorted by the disparate treatment.

The principal amendments to the zoning bylaw being proposed by Article 7 involve two revisions: (1) The *inclusion* of placements on utility poles within the scope of the bylaw requiring zoning approvals, and (2) the specific *inclusion* of audio (noise) impacts as an issue to be addressed as part of the approval process. The mechanical noise emanating from air conditioning or similar equipment is *not* electromagnetic radiation, and thus falls squarely within the scope of the Town's zoning authority.

RECOMMENDATION

The Advisory Committee by a unanimous vote of 21-0 recommends FAVORABLE ACTION on the language of Article 7 as recommended by the Selectmen.

***XXX***

## ARTICLE 8

EIGHTH ARTICLE

To see if the Town will amend Section 7.00.1.c. of the Zoning By-Law as follows:

c. No sign or other advertising device attached to a building shall project above the roof or parapet line nor more than 12 inches out from the wall to which it is attached. However, **a projecting sign constructed of wood, a composite of wood and plastic, metal, glass or another substantial material, or** a vertical banner sign, composed of pliable fabric or similar material, may project more than 12 inches perpendicular to the wall to which it is attached subject to the approval of the Planning Board. **Projecting and banner signs shall not be internally illuminated and shall maintain an 8' minimum clearance above the ground. The Planning Board may limit the number of projecting or banner signs on the facade of a building. In calculating the number of square feet of permitted signage, both sides of a projecting sign shall be included.**

or act on anything relating thereto.

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PETITIONER'S ARTICLE DESCRIPTION

This amendment is being submitted by the Planning Board, because of several advantages in allowing projecting signs as one of the options for identifying commercial uses. Projecting signs are an attractive way to identify shops for pedestrians who cannot see a flat façade sign until they are directly in front of it. Many cities and towns across the country encourage projecting signs, especially in historic districts. At Fall 2003 Town Meeting, an amendment allowing projecting banner signs made of fabric was approved. Originally, this amendment was going to include projecting signs of non-pliable materials, however, it was decided to take an incremental approach and start first with allowing banners.

The attached proposed language for a zoning amendment would allow projecting signs constructed of wood, a composite of wood and plastic, metal, glass or another substantial material, subject to the sign and façade review and approval process of the Brookline Planning Board. The proposed amendment builds upon the existing language that allows fabric banners to project from buildings. Projecting signs would have a more restrictive sign area size allowance than freestanding signs, would have to maintain an 8' clearance above the ground, and could not be internally illuminated. The Planning Board would have the discretion to regulate how many projecting signs, if any, could be installed on a building façade. Other existing requirements in Section 7 of the Zoning Bylaw would apply as well. If the language were to be adopted, additional details regarding design and placement of projecting signs could be added to the Planning Board Sign and Façade Guidelines.

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## PLANNING BOARD REPORT AND RECOMMENDATION

This article is being submitted by the Planning Board, with support from the Sign By-Law Committee, and would allow the Planning Board to approve projecting signs made of substantial materials, in addition to the currently allowed fabric banner signs. Projecting banner signs were approved by Town Meeting in Fall of 2003, by amendment to Article 7, Signs, Illumination, and Regulated Façade Alterations. More permanent projecting signs, made out of metal, wood, glass, or a composite material was initially contemplated as part of the amendment, but subsequently not included, in order to provide time to evaluate the results of allowing banner signs. Banner signs have not proved problematic and are only a tiny proportion of commercial façade sign applications. Where they have been approved, they add interest and vitality to the streetscape. The number of banners on a façade is subject to Planning Board approval, and the Planning Board on a number of occasions has limited the number of requested banners on the basis of either the length of the façade or the architectural features of the building. Several stores on Harvard Street in Brookline Village have installed approved banner signs, as well as a health club at 1285 Beacon Street in Coolidge Corner. Additional safeguards are the dimensional requirements for signage in both the Zoning By-Law and the Building Code. For instance, the Zoning By-law does not allow a sign to be more than 25 feet above the ground and limits the overall square footage of signage in proportion to the size of the building; the Building Code requires all signage to be at least eight feet off the ground, setback two feet from the curb, and submittal of structural engineering information to ensure safety of the sign installation.

In these challenging economic times, it is unlikely that there will be a plethora of applications for non-fabric projecting signs, because they are usually more expensive to manufacture and install, than façade signs. However, as the economy improves, this amendment will provide an additional option for business owners to consider for identification of their businesses. Many communities across the country, especially in historic districts, allow projecting signs and find them an attractive, and sometimes quite creative, way to identify a commercial entity, especially for pedestrians who may not be able to see a flat façade sign, until immediately in front of a store.

The Planning Board, however, believes there should be a maximum size for projecting signs in the Zoning By-Law itself, not just in the sign and façade guidelines. Although the Planning Board must approve the design of each sign, and often does not allow the maximum amount of signage on a building (2 s.f. of sign area for every 1 linear foot of building frontage), explicitly stating a maximum in the By-Law will better serve to guide business owners and sign makers. The Planning Department has reviewed size limits for projecting signs in several communities, including Boston, Cambridge, Portland (Oregon), Providence and Santa Barbara. Some have design review but no size limits, others allow sign sizes ranging between 13 s.f to 60 s.f. Since freestanding signs, which are already allowed in Article 7, have a maximum of 20 s.f. for each face, the Planning Board would recommend deletion of the last sentence of the proposed amendment, which reads “In calculating the number of square feet of permitted signage, both sides of a projecting sign shall be included.” and substituting more consistent language for

measuring the sign area and a maximum size limit, as follows: "No projecting sign shall be larger than 12 square feet in area per face." If the Planning Board finds that a larger sign is more appropriate, because of a building's size or its architectural features, there is an existing provision in Art.7, Sec.7.00.1.d, allowing a sign 25% larger than the stated maximum. The Planning Board would recommend that, at least initially, projecting signs not be greater than 12 s.f. per face, which is one square foot less than Cambridge's requirement. An exception can be made if a building meets the criteria under Sec.7.00.1.d, and a larger sign (by 25%) is appropriate. Lastly, at the request of the Building Commissioner the Planning Board recommends adding the word "non-combustible" in front of "projecting sign" as this is a requirement of the building code and will alert business owners to this requirement.

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

To see if the Town will amend Section 7.00.1.c. of the Zoning By-Law as follows:

c. No sign or other advertising device attached to a building shall project above the roof or parapet line nor more than 12 inches out from the wall to which it is attached. However, **a *non-combustible* projecting sign constructed of wood, a composite of wood and plastic, metal, glass or another substantial material, or** a vertical banner sign, composed of pliable fabric or similar material, may project more than 12 inches perpendicular to the wall to which it is attached subject to the approval of the Planning Board. **Projecting and banner signs shall not be internally illuminated and shall maintain an 8' minimum clearance above the ground. The Planning Board may limit the number of projecting or banner signs on the facade of a building. ~~In calculating the number of square feet of permitted signage, both sides of a projecting sign shall be included.~~ *No projecting or banner sign shall be larger than 12 square feet in area per face.***

or act on anything relating thereto.

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SELECTMEN'S RECOMMENDATION

Article 8, submitted by the Planning Board with the support of the Selectmen's Sign Committee, would allow so-called projecting or blade signs for commercial businesses, subject to overall size limitations and the same design review and as other signs in Town. This article was submitted as a way of permitting businesses to gain some visibility to pedestrians on the sidewalk as an alternative to items such as sandwich boards.

Projecting signs have not been allowed in the Town for over 30 years. They were originally restricted as part of an overall effort to improve the quality of signage in the Town and reduce visual clutter. The Town's Zoning By-Law has extensive regulations on

signage, including a limit of two square feet of signage for each foot of frontage in a building. In addition, the Planning Board conducts detailed design review of proposed signs, which often reduces the size of signage further. The Zoning By-Law does allow the Planning Board to exceed the two square foot per one foot limit by 25% under very limited circumstances related to the proportions of the building, but the Planning Board rarely uses that authority. The Planning Board review process is streamlined and yet quite successful at allowing appropriate and attractive signage for businesses while preventing unsightly signage.

Projecting signs can be quite attractive and add to the visual quality of a business district. As part of the review of this warrant article, the Department of Planning & Community Development provided examples of attractive signage in other communities, as well as information about the size limitations imposed by those communities. The Planning Board suggested an overall cap of 12 square feet for each projecting sign, which would be included as part of the overall square footage permitted for a building. The Planning Board also recommended changing how the size of the sign was calculated, and making sure that the sign was either make of inflammable material or, in the case of materials like wood, treated so as not to burn.

Some questions were asked about whether the 12 square foot size limitation was too lenient. However, it appears that other business districts, such as the ones in Portsmouth, NH and Cambridge, MA, have higher limits without negative visual impacts. Some questions were also asked about whether signs would have structural issues. The Building Commissioner has assured the Board that building code would require signs to be safe. The Board of Selectmen believes that projecting signage, with Planning Board review as part of an overall sign package for a property, will be a benefit to the Town. For this reason, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 12, 2010, on the motion offered by the Advisory Committee, which incorporates the Planning Board amendments.

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## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Article 8 has been submitted by the Planning Board, which has voted unanimously to recommend Favorable Action with amendments.

The Article would allow the Planning Board to approve projecting signs made of substantial materials, such as metal, wood, glass, or a composite material, in addition to the currently allowed fabric banner signs. Article 12 at the fall 2003 Town Meeting amended Article 7 of the Zoning By-Law (Signs, Illumination, and Regulated Façade Alterations) to allow the Planning Board to approve projecting banner signs. Allowing more permanent projecting signs of substantial materials was initially contemplated as part of that 2003 amendment, but subsequently was not included in order to provide time to evaluate the results of allowing banner signs.

Few businesses have attempted to install banner signs since 2003. Several stores on Harvard Street in Brookline Village have installed approved banner signs, as has a health club at 1285 Beacon Street in Coolidge Corner.

The number of banners on a façade is subject to Planning Board approval, and the Planning Board on a number of occasions has limited the number of requested banners on the basis of either the length of the façade or the architectural features of the building. Additional safeguards are the dimensional requirements for signage in both the Zoning By-Law and the Building Code. For instance, the Zoning By-law does not allow a sign to be more than 25 feet above the ground and limits the overall square footage of signage in proportion to the size of the building; the Building Code requires all signage to be at least eight feet off the ground, a setback of two feet from the curb, and submittal of structural engineering information to ensure safety of the sign installation.

DISCUSSION

Allowing the Planning Board to approve projecting signs of substantial materials offers several potential benefits to commercial establishments in Brookline. Signs may be highly visible to passersby, especially pedestrians, and may call greater attention to Brookline businesses. Projecting signs often have a distinctive design, and thus may help a business to establish a clear and memorable identity. At a time when Brookline is attempting to maintain vibrant commercial areas, promote commercial development, and expand the commercial real estate tax base, allowing businesses to install projecting signs may contribute to the Town's overall efforts to assist its commercial areas. Relatively few businesses are likely to install projecting signs, because such signs are expensive to design and manufacture, but more may take advantage of this option as the economy improves.

Projecting signs are also likely to be more attractive than sandwich boards placed on the sidewalks outside businesses. Some businesses have used such sandwich boards, provoking concern about the extent to which they clutter and obstruct sidewalks.

Although some have objected to projecting signs on the grounds that they are unattractive and clutter streetscapes, the current prevailing sentiment is that projecting and/or hanging signs can be attractive and add vitality to commercial areas. It is often better to have a mix of distinctive projecting signs than a set of uniform signs on each building façade. The commercial districts of, for example, Harvard Square, Newburyport, and Charles Street on Beacon Hill are more interesting and attractive because they feature many unique and creative signs.

Two concerns have been raised regarding Article 8. One is whether projecting signs might fall and cause injuries. The signs would have to satisfy the Building Code, so such risks are minimal. Another is the fear that signs might be unattractive. The Planning Board would, however, continue to exercise design review over all proposed signs.

The Planning Board voted to amend Article 8. Its report explains that the amendment to Article 8 reflects the Planning Board's belief that there should be a maximum size for

projecting signs in the Zoning By-Law itself, not just in the sign and façade guidelines. Although the Planning Board must approve the design of each sign, and often does not allow the maximum amount of signage on a building (2 square feet of sign area for every 1 linear foot of building frontage), explicitly stating a maximum in the Zoning By-Law will better serve to guide business owners and sign makers. The Planning and Community Department has reviewed size limits for projecting signs in several communities, including Boston, Cambridge, Portland (Oregon), Providence, and Santa Barbara. Some have design review but no size limits; others allow sign sizes ranging between 13 square feet to 60 square feet. Since freestanding signs, which are already allowed in Article 7, have a maximum of 20 square feet for each face, the Planning Board has recommended deletion of the last sentence of Article 8, which reads, "In calculating the number of square feet of permitted signage, both sides of a projecting sign shall be included", and substituting more consistent language for measuring the sign area and a maximum size limit, as follows: "No projecting sign shall be larger than 12 square feet in area per face." If the Planning Board finds that a larger sign is more appropriate, because of a building's size or architectural features, there is an existing provision in Article 7, Section 7.00.1.d of the Zoning By-Law, allowing a sign 25% larger than the stated maximum of 12 square feet per face, which is one square foot less than Cambridge's requirement. Lastly, at the request of the Building Commissioner the Planning Board has recommended adding the word "non-combustible" in front of "projecting sign" as this is a requirement of the building code and will alert business owners to this requirement.

RECOMMENDATION

The Advisory Committee agreed with the Planning Board's recommended amendments. It accordingly voted to recommend favorable action on Article 8 as amended by the Planning Board.

By a vote of 23–1–0, the Advisory Committee recommends FAVORABLE ACTION on the following motion, which includes the changes the Planning Board is recommending to Article 8:

VOTED: That the Town amend Section 7.00.1.c. of the Zoning By-Law as follows:

c. No sign or other advertising device attached to a building shall project above the roof or parapet line nor more than 12 inches out from the wall to which it is attached. However, **a *non-combustible* projecting sign constructed of wood, a composite of wood and plastic, metal, glass or another substantial material, or** a vertical banner sign, composed of pliable fabric or similar material, may project more than 12 inches perpendicular to the wall to which it is attached subject to the approval of the Planning Board. **Projecting and banner signs shall not be internally illuminated and shall maintain an 8' minimum clearance above the ground. The Planning Board may limit the number of projecting or banner signs on the facade of a building. ~~In~~**

~~**calculating the number of square feet of permitted signage, both sides of a projecting sign shall be included.**~~ ***No projecting or banner sign shall be larger than 12 square feet in area per face.***

***XXX***

ARTICLE 9

NINTH ARTICLE

To see if the Town will amend the Zoning By-law and Map by incorporating the attached Map into the Zoning Map, and to amend the Zoning By-law as follows:

1. Add a new definition 2. under Section 2.07 – "G" DEFINITIONS:
   "**2. GROUND-MOUNTED SOLAR PHOTOVOLTAIC INSTALLATION, LARGE OR SMALL – A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted, unless it is located on the roof of a water reservoir or similar structure that is not designed for human occupancy. Such an installation is considered large-scale if it has a minimum nameplate capacity of at least 250 kW DC; all installations with a minimum nameplate capacity less than 250 kW DC are considered small-scale."**

2. Add a new definition 2. under Section 2.15 – "0" DEFINITIONS, and renumber the section accordingly:
   "**2. ON-SITE SOLAR PHOTOVOLTAIC INSTALLATION – A solar photovoltaic installation that is constructed at a location where other uses of the underlying property occur."**

3. Add a new definition 1. Under Section 2.18 – "R" DEFINITIONS, and renumber the section accordingly:
   "**1. RATED NAMEPLATE CAPACITY – The maximum rated output of electric power production of the Photovoltaic system in Direct Current (DC)."**

4. Add a new overlay district under Section 3.01.4 – Overlay Districts:
   "**b. Solar Overlay District**."

5. Amend Table 4.07 to add a new "**Use #40D. Ground Solar Photovoltaic Installation**," as follows:

| Principal Uses | Residence | | | | | Business | | | Ind. |
|---|---|---|---|---|---|---|---|---|---|
| | S | SC | T | F | M | L | G | O | I |
| 40D. Ground Solar Photovoltaic Installation, Large or Small<br><br>*Permitted in the Renewable Energy Overlay District under site plan review. See **Section 5.06.4.g** for use regulations. | No | No | No | No | No | No | No | No | No |

6. Add a new Section 5.06.4.h under *Special District Regulations*:

"*h. Renewable Energy Overlay District (SOL)*

1) The Town is interested in being designated a Green Community by the Commonwealth of Massachusetts. The Town is also committed to decreasing its carbon footprint by encouraging the development of alternative energy supplies. For these reasons, the Town has surveyed potential sites for a renewable energy facility and created this overlay district.

2) Notwithstanding any other portion of the Zoning Bylaw, including **Section 4.07 – Table of Uses**, the location of renewable energy generation facilities in the form of ground-mounted solar photovoltaic arrays shall be permitted by-right in this district. While both large- and small-scale solar photovoltaic facilities are allowed, large-scale solar photovoltaic facilities are encouraged.

3) **Compliance with Laws, By-laws and Regulations:** The construction and operation of all solar photovoltaic installations, large or small, shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the State Building Code.

4) No ground-based solar photovoltaic installation shall be constructed, installed or modified as provided in this section without first obtaining a building permit.

5) **Site Plan Review:** Such facilities shall be subject to site plan review by the Planning Board to ensure that the facility is adequately set back from neighboring properties, reasonably shielded from view, and that utility connections are adequately screened. Such site plan review shall be conducted in accordance with the design review process outlined in **Section 7.03, paragraph 2,** of the Zoning Bylaw with the exception that such site plan review is not discretionary and any conditions attached cannot render a Large Scale Solar Facility (of at least 250 kW DC) infeasible. All plans and maps submitted for site plan review shall be prepared, stamped, and signed by a Professional Engineer licensed to practice in Massachusetts. Pursuant to the site plan review process, the project proponent shall provide to the Planning Board the following documents:

a. A site plan showing:
   i. Property lines and physical features, including roads, for the project site;
   ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
   iii. Blueprints or drawings of the solar photovoltaic installation signed by a Professional Engineer licensed to practice in the Commonwealth of

Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;

iv. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;

v. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;

vi. Name, address, and contact information for proposed system installer;

vii. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;

viii. The name, contact information and signature of any agents representing the project proponent; and

b. Documentation of actual or prospective access and control of the project site;

c. An operation and maintenance plan;

d. Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose);

e. Proof of liability insurance; and

f. Description of financial surety that satisfies subparagraph **13.c** of this section.

6) **Site Control:** The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation.

7) **Operation & Maintenance Plan:** The project proponent shall submit a plan for the operation and maintenance of the ground-mounted solar photovoltaic installation, which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation.

8) **Utility Notification:** No ground-mounted solar photovoltaic installation shall be constructed until evidence has been given to the Planning Board that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar photovoltaic installation owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

9) **Dimension and Density Requirements**

a. Setbacks: For ground-mounted solar photovoltaic installations, all setbacks from lots lines shall be at least 25 feet. As part of Site Plan Review, the

Planning Board may require larger setbacks if appropriate for screening, provided, however, that such larger setbacks shall not have the effect of rendering a Large Scale Solar Facility (of at least 250 kW DC) infeasible.

b. Appurtenant Structures: All appurtenant structures to ground-mounted solar photovoltaic installations shall be subject to reasonable regulations concerning the bulk and height of structures, lot area, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

10) **Design Standards**

a. Lighting: Lighting of ground-mounted solar photovoltaic installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar photovoltaic installation shall be directed downward and away from residential structures and shall incorporate full cut-off fixtures to reduce light pollution.

b. Signage: Signs on ground-mounted solar photovoltaic installations shall comply with the regulations of Article 7. A sign consistent with these regulations shall be required to identify the owner and provide a 24-hour emergency contact phone number. Solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic installation.

c. Utility Connections: Reasonable efforts, as determined by the Building Commissioner, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider, however, they shall be screened from view.

11) **Safety and Environmental Standards**

a. Emergency Services: The large scale solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

b. Land Clearing, Soil Erosion and Habitat Impacts: Clearing of natural vegetation shall be limited to what is necessary for the construction,

operation and maintenance of the ground-mounted solar photovoltaic installation, or otherwise prescribed by applicable laws, regulations, and bylaws.

12) **Monitoring and Maintenance**

a. Solar Photovoltaic Installation Conditions: The ground-mounted solar photovoltaic installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level applicable to the local Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), unless accepted as a public way.

b. Modifications: All material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require approval by the Planning Board.

13) **Abandonment or Decommissioning**

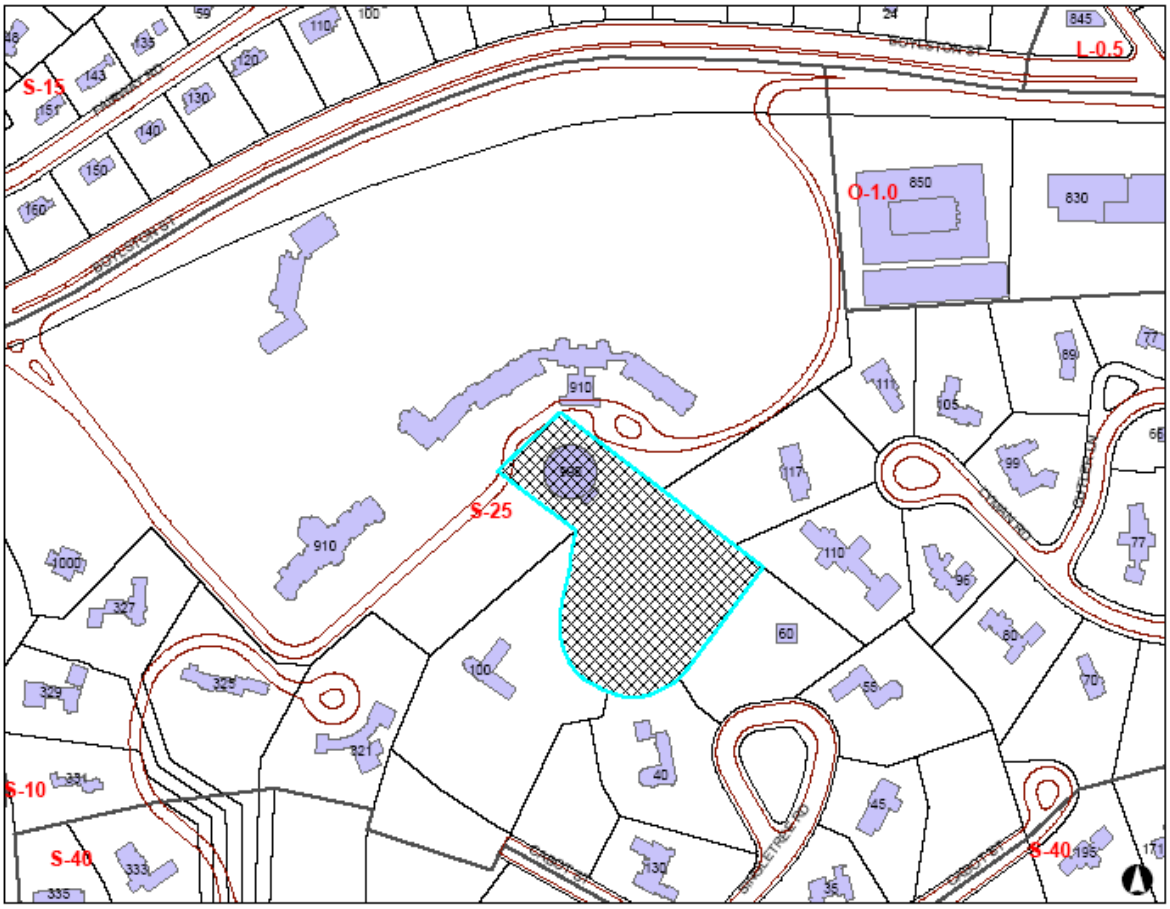
a. Removal Requirements: Any ground-mounted solar photovoltaic installation that has reached the end of its useful life or has been abandoned consistent with sub-paragraph 13.b of this section shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Building Commissioner by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning of the installation shall consist of:

   i. Physical removal of all large-scale ground-mounted solar photovoltaic installations, structures, equipment security barriers and transmission lines from the site.
   ii. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
   iii. Stabilization or re-vegetation of the site as necessary to minimize erosion. The Building Commissioner may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

b. Abandonment: Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar photovoltaic installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board. If the owner or operator of the ground-mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town may enter the property and physically remove the installation.

c. Financial Surety: Proponents of ground-mounted solar photovoltaic projects shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Building Commissioner, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. Such surety will not be required for municipally- or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation."

## Renewable Energy Overlay District (SOL)




SOL Zoning District

Atlas 127, Parcel 437-04-01

or act on anything relative thereto.

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PETITIONER'S ARTICLE DESCRIPTION

This article is being submitted by the Department of Planning & Community Development in order to meet one of the five criteria to qualify as a "Green Community" under the Green Communities Act (GCA) and qualify it for state grants under GCA programs. It would create a new Special District under Section 5.06 of the Zoning Bylaw that would allow ground-mounted solar panels to be located on the site of the Department of Public Works' Singletree Hill Reservoir site in Chestnut Hill.

In order to qualify as a Green Community, the Town needs to meet five criteria:

1. 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,
2. 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,
3. 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,
4. Purchase only fuel-efficient vehicles for municipal use whenever such vehicles are commercially available and practicable, and
5. 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.

The Town received a grant from the state last year to develop a strategy for meeting these criteria. It has made significant progress on criteria #2-5. This warrant article would allow the Town to meet criterion #1, which can be met by allowing a ground-mounted solar energy array facility of at least 250 MW, requiring at least one acre. This proposed overlay district is over 2 acres in size and should provide adequate space for a facility that is sited in a sensitive way and is feasible.

This site is an attractive one to explore for solar energy use. It is the highest point in the Town. Part of the site is located on the top of an old structure, where it is flat and receives significant sunlight. That location is far enough off the ground that it would not be visible from neighboring areas. Any utility connections for such a facility would be located either on the Route Nine side of the site or underground. If the Town were to construct a solar array on this site it would help offset Town reliance on oil and gas, potentially saving the Town money on energy, and also help reduce the Town's carbon footprint.

It is important to note that this zone change would not obligate the Town to actually locate a facility on the site. Since it is a Town-owned site, that decision would ultimately rest with the Town. There would be significant Town control over whether such a facility was ultimately constructed. For example, if a renewable energy facility required a capital outlay, it would have to be placed on the Capital Improvement Program (CIP) and require

a vote of Town Meeting. If a state or federal grant were received for such a facility, accepting the grant would be subject to a vote of the Board of Selectmen.

This site is currently designated as part of the Town's water supply system. This zoning change would not affect that designation.

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**PLANNING BOARD REPORT AND RECOMMENDATION**

This article is being submitted by the Planning and Community Development Department and will create a new overlay zoning district to allow large-scale ground-based solar panels on the town-owned Singletree Hill Reservoir, located off of Boylston Street behind the Chestnut Hill Benevolent Association.

The site is currently used for both an above-ground water tower and an underground water tank. Under this overlay, should the town wish to pursue establishing a solar facility on this site, plans and details for the facility would be submitted to the Planning Board for site plan review to ensure adequate information has been provided and that the facility will comply with safety and design standards.

This site is appropriate for solar panels due to its heightened elevation above other properties and open exposure. The elevation allows for excellent solar exposure while naturally screening any solar facilities from neighboring properties. In addition, the water storage facilities on site need to be routinely cleared of vegetation. The installation of solar panels would assist in keeping that area clear of obstructions. Finally, the proposed zoning also requires a buffer of 25 feet from all lot lines which will further alleviate any impacts on abutting properties.

The Planning Board is supportive of the town's effort to encourage the establishment of renewable energy generating facilities. This property is extremely appropriate for a solar facility because of its elevation and limited visibility, and the proposed zoning would allow for the town to consider establishing such a facility on the site. This zoning amendment may move the town closer towards establishing Green Community status under the state Green Communities Act, but more importantly, it supports the town's efforts to encourage energy alternatives.

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

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SELECTMEN'S RECOMMENDATION

Article 9, submitted by the Department of Planning and Community Development, would create a new zoning overlay district for solar energy generation at the Singletree Hill Reservoir behind the Chestnut Hill Benevolent Society off of Boylston Street (Rt. 9). This SOL overlay would allow the construction of a solar energy generation facility of up to 250 kW subject to design review by the Planning Board. The article would not require

the Town to move forward with an actual solar energy facility at that site, but it would allow one to be constructed if further analysis were to show that such a facility was in the best interest of the Town.

The Town has been actively seeking designation as a Green Community by the State. This SOL district should allow the Town to meet two of the five criteria for Green Community designation -- one that requires a location where a 250 kW solar facility could be constructed, and a second to create an expedited permitting process for this facility. The State has raised some questions about whether this site has enough usable space for a 250 kW facility, but the data collected to date by the Town and members of the Selectmen's Climate Action Committee suggest that it has more than enough space. It has two large cleared areas, totaling over an acre in size.

If this article is successful, the Town plans to move forward with designation as a Green Community, which would allow it to access state grant funds. A total of $8.1 million was given out in the past year, with a minimum grant award of $125,000, and the funding source for these grant funds (the Regional Greenhouse Gas Initiative) seems secure going forward. The next step on this site would be to hire a firm to conduct a thorough analysis of the site, both in terms of engineering and cost, to determine if a solar facility is feasible. If one is, the Town would then have to decide whether such a facility makes sense. In the likely event that creation of a facility involves leasing the land to a third party, such a lease would come back to Town Meeting for a vote.

Some members of the Board of Selectmen raised the question as to whether neighbors to the site were informed of the proposed zoning change. The Department of Planning and Community Development sent out notices to all neighbors about the Planning Board hearing, and also informed them that other hearings would be held. Since there would be a 25 foot buffer around the edges of the facility, it seems quite likely that such a facility would have little impact on abutters. In any case, no abutters have contacted the Department or the Board to date, and, if such a facility were to move forward, there would be additional opportunities for neighbors to weigh in on a proposal. Due to the site's high elevation and isolated location, it is quite screened from view.

The Board of Selectmen is quite pleased that the Town has been able to identify a site that appears to meet the requirements of the Green Communities Act and is also controlled by the Town. Therefore, the Board unanimously recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 12, 2010, on the following motion:

VOTED: That the Town amend the Zoning By-law and Map by incorporating the attached Map into the Zoning Map, and to amend the Zoning By-law as follows:

1. Add a new definition 2. under Section 2.07 – "G" DEFINITIONS:

   **"2. GROUND-MOUNTED SOLAR PHOTOVOLTAIC INSTALLATION, LARGE OR SMALL – A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted, unless it is located on the roof of a water reservoir or similar structure that is not designed for human occupancy. Such an installation is**

**considered large-scale if it has a minimum nameplate capacity of at least 250 kW DC; all installations with a minimum nameplate capacity less than 250 kW DC are considered small-scale."**

2. Add a new definition 2. under Section 2.15 – "0" DEFINITIONS, and renumber the section accordingly:
   "**2. ON-SITE SOLAR PHOTOVOLTAIC INSTALLATION – A solar photovoltaic installation that is constructed at a location where other uses of the underlying property occur."**

3. Add a new definition 1. Under Section 2.18 – "R" DEFINITIONS, and renumber the section accordingly:
   **"1. RATED NAMEPLATE CAPACITY – The maximum rated output of electric power production of the Photovoltaic system in Direct Current (DC)."**

4. Add a new overlay district under Section 3.01.4 – Overlay Districts:
   "**b. Solar Overlay District**."

5. Amend Table 4.07 to add a new "**Use #40D. Ground Solar Photovoltaic Installation**," as follows:

| Principal Uses | Residence | | | | | Business | | | Ind. |
|---|---|---|---|---|---|---|---|---|---|
| | S | SC | T | F | M | L | G | O | I |
| 40D. Ground Solar Photovoltaic Installation, Large or Small<br><br>*Permitted in the Renewable Energy Overlay District under site plan review. See **Section 5.06.4.g** for use regulations. | No | No | No | No | No | No | No | No | No |

6. Add a new Section 5.06.4.h under *Special District Regulations*:

   *"h. Renewable Energy Overlay District (SOL)*

   1) The Town is interested in being designated a Green Community by the Commonwealth of Massachusetts. The Town is also committed to decreasing its carbon footprint by encouraging the development of alternative energy supplies. For these reasons, the Town has surveyed potential sites for a renewable energy facility and created this overlay district.

   2) Notwithstanding any other portion of the Zoning Bylaw, including **Section 4.07 – Table of Uses**, the location of renewable energy generation facilities in the form of ground-mounted solar photovoltaic arrays shall be permitted by-right in this district. While both large- and small-scale solar photovoltaic facilities are allowed, large-scale solar photovoltaic facilities are encouraged.

3) **Compliance with Laws, By-laws and Regulations:** The construction and operation of all solar photovoltaic installations, large or small, shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the State Building Code.

4) No ground-based solar photovoltaic installation shall be constructed, installed or modified as provided in this section without first obtaining a building permit.

5) **Site Plan Review:** Such facilities shall be subject to site plan review by the Planning Board to ensure that the facility is adequately set back from neighboring properties, reasonably shielded from view, and that utility connections are adequately screened. Such site plan review shall be conducted in accordance with the design review process outlined in **Section 7.03, paragraph 2,** of the Zoning Bylaw with the exception that such site plan review is not discretionary and any conditions attached cannot render a Large Scale Solar Facility (of at least 250 kW DC) infeasible. All plans and maps submitted for site plan review shall be prepared, stamped, and signed by a Professional Engineer licensed to practice in Massachusetts. Pursuant to the site plan review process, the project proponent shall provide to the Planning Board the following documents:

a. A site plan showing:
   i. Property lines and physical features, including roads, for the project site;
   ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
   iii. Blueprints or drawings of the solar photovoltaic installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;
   iv. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
   v. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;
   vi. Name, address, and contact information for proposed system installer;
   vii. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
   viii. The name, contact information and signature of any agents representing the project proponent; and

b. Documentation of actual or prospective access and control of the project site;

c. An operation and maintenance plan;

d. Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose);

e. Proof of liability insurance; and

f. Description of financial surety that satisfies subparagraph **13.c** of this section.

6) **Site Control:** The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation.

7) **Operation & Maintenance Plan:** The project proponent shall submit a plan for the operation and maintenance of the ground-mounted solar photovoltaic installation, which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation.

8) **Utility Notification:** No ground-mounted solar photovoltaic installation shall be constructed until evidence has been given to the Planning Board that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar photovoltaic installation owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

9) **Dimension and Density Requirements**

a. Setbacks: For ground-mounted solar photovoltaic installations, all setbacks from lots lines shall be at least 25 feet. As part of Site Plan Review, the Planning Board may require larger setbacks if appropriate for screening, provided, however, that such larger setbacks shall not have the effect of rendering a Large Scale Solar Facility (of at least 250 kW DC) infeasible.

b. Appurtenant Structures: All appurtenant structures to ground-mounted solar photovoltaic installations shall be subject to reasonable regulations concerning the bulk and height of structures, lot area, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

10) **Design Standards**

a. Lighting: Lighting of ground-mounted solar photovoltaic installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar photovoltaic installation shall be directed downward and away from residential structures and shall incorporate full cut-off fixtures to reduce light pollution.

b. Signage: Signs on ground-mounted solar photovoltaic installations shall comply with the regulations of Article 7. A sign consistent with these regulations shall be required to identify the owner and provide a 24-hour emergency contact phone number. Solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic installation.

c. Utility Connections: Reasonable efforts, as determined by the Building Commissioner, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider, however, they shall be screened from view.

11) **Safety and Environmental Standards**

a. Emergency Services: The large scale solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

b. Land Clearing, Soil Erosion and Habitat Impacts: Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the ground-mounted solar photovoltaic installation, or otherwise prescribed by applicable laws, regulations, and bylaws.

12) **Monitoring and Maintenance**

a. Solar Photovoltaic Installation Conditions: The ground-mounted solar photovoltaic installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level applicable to the local Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), unless accepted as a public way.

b. Modifications: All material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require approval by the Planning Board.

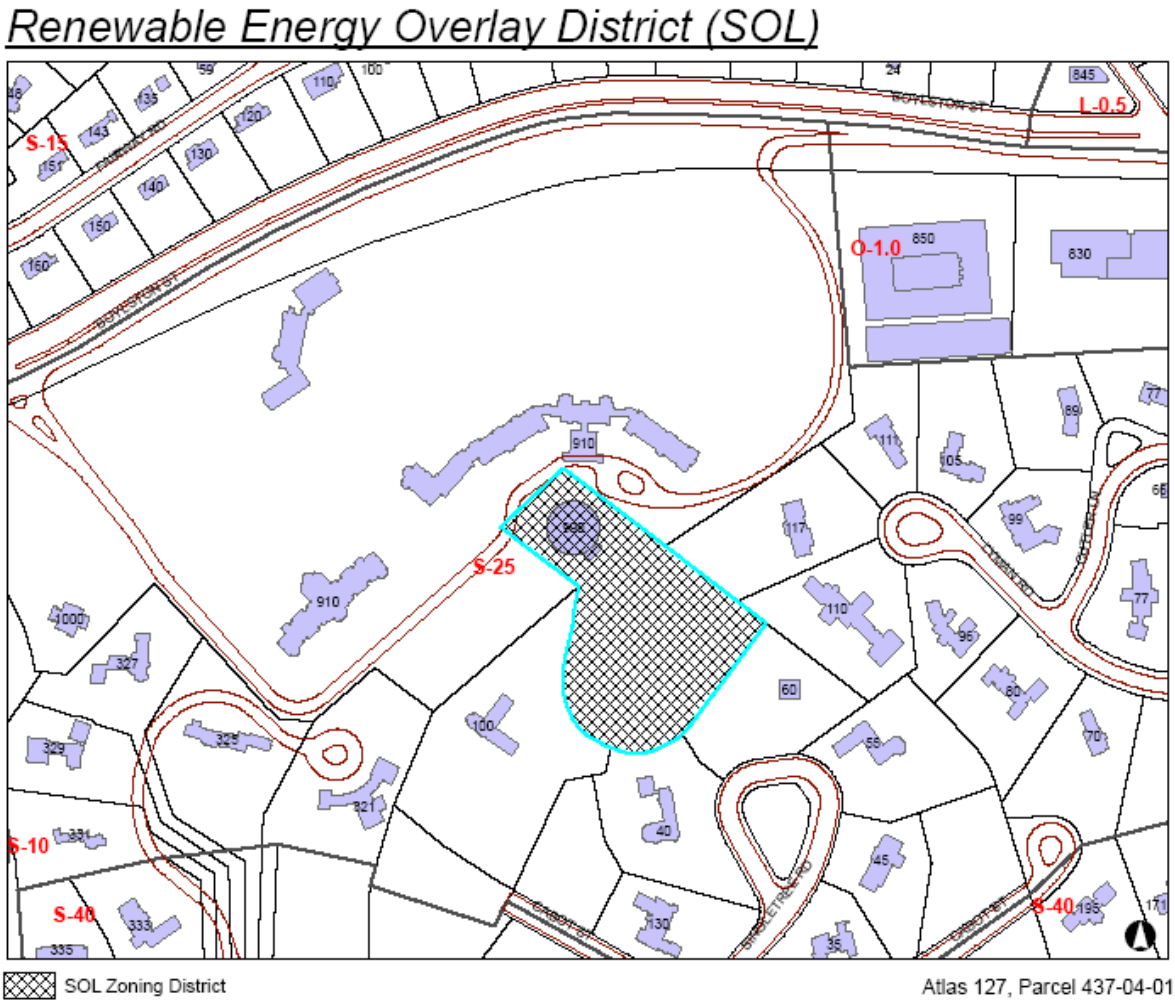
13) **Abandonment or Decommissioning**

a. Removal Requirements: Any ground-mounted solar photovoltaic installation that has reached the end of its useful life or has been abandoned consistent with sub-paragraph 13.b of this section shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Building Commissioner by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning of the installation shall consist of:

   i. Physical removal of all large-scale ground-mounted solar photovoltaic installations, structures, equipment security barriers and transmission lines from the site.
   ii. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
   iii. Stabilization or re-vegetation of the site as necessary to minimize erosion. The Building Commissioner may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

b. Abandonment: Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar photovoltaic installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board. If the owner or operator of the ground-mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town may enter the property and physically remove the installation.

c. Financial Surety: Proponents of ground-mounted solar photovoltaic projects shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Building Commissioner, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. Such surety will not be required for municipally- or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation."

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## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

This article is being submitted by the Planning and Community Development Department and will create a new overlay zoning district to allow large-scale ground-based solar panels on the town-owned Singletree Hill Reservoir, located off of Boylston Street behind the Chestnut Hill Benevolent Association. The site is off Route 9 under the Chestnut Hill Benevolent Association. It is currently used for both an above-ground water tower and an underground water tank. It is shielded from abutters and mostly not visible.

Under this overlay, should the town wish to pursue establishing a solar facility on this site, plans and details for the facility would be submitted to the Planning Board for site

plan review to ensure adequate information has been provided and that the facility will comply with safety and design standards. The proposed zoning also requires a buffer of 25 feet from all lot lines which will further alleviate any impacts on abutting properties. The part of the site which could be used for solar panels would be approximately an acre which, using panels currently available, could general enough electricity to power 10-15 homes.

Note that this article does not commit the Town to undertake a solar panel project. If any town funds are to be used for this purpose, those funds would need to be appropriated by Town Meeting

Discussion

This article is part of the effort to have Brookline designated a Massachusetts Green Community and satisfies 2 of the 5 standards needed to obtain the designation. Town Meeting's recent adoption of the Stretch Building Code was part of the same effort.

With the Green Community designation comes eligibility for certain state funds and grants funded by Regional Greenhouse Gas Initiative auction funds. In July, 2010, the Mass. Department of Energy Resources Green Communities Division awarded grants totaling $8.1 million to 35 cities and towns for municipal renewable energy and energy efficiency projects. The Green Community designation would allow Brookline to compete for this money.

The Green Community components that this article addresses are (1) the community needs to allow a renewable energy development by right in its zoning and (2) there needs to be an expedited review process for such a project. Given the nature of Brookline's location and that Brookline is almost fully developed, the options are limited. Solar seemed to be the only feasible option. A number of sites were considered including Allandale Farm but after study, the Singletree Reservoir seemed to be the most feasible site. The site is remote which will minimize impact on abutters and on a hilltop to maximize exposure to the sun. This site has the added advantage in that it is town owned and thus even if a solar installation is allowed by right, the town is in complete control over the development.

The Department of Public Works is also supportive of this proposal and if developed, will help DPW maintain the site which needs to be occasionally cleared of vegetation anyway. The installation of solar panels would assist in keeping that area clear of obstructions.

Jeff Levine, Director of Planning and Community Development Department stated that the Department notified all abutters and abutters of abutters of this zoning change and the Planning Board hearing.

Mr. Levine stated that the town would only proceed if the economics make sense. He indicated that based on current technology, the cost of deploying the large-scale ground-based solar panels on the Singletree Hill Reservoir is estimated at approximately $2-million. With today's technology, construction of the solar panels would only be possible through grants, rebates or other kinds of incentives.

Climate Change Action Brookline has been a strong advocate for this article.

A sizable minority of the Advisory Committee voted to recommend No Action. Among the reasons stated were:

(1) There is no evidence that the use of this parcel for placement of large-scale ground-based solar panels is economically feasible, and no such evidence was offered by the Petitioner or by other supporters of the Article.

(2) The panels would produce 250 KW (kilowatts) of electricity at maximum – i.e., at midday on a bright sunny day around the summer solstice. The average production, taken over the entire year and 24-hour day, would be considerably less. Output sufficient to power 10-15 homes would represent, at current electricity rates, somewhere around $20,000-$25,000 worth of electricity annually. At a capital investment cost in the range of $2-million, even using the unrealistic assumptions of zero operating costs and zero interest rates, that would suggest a 100-year payback – and even that would require a 100-year life for the solar panels, which is similarly unrealistic. In view of these financial realities, it seems highly likely that a more valuable use of the parcel could be identified, yet no proposals for any alternate use of the parcel were presented, and there is no indication that any have been explored. Before re-zoning for this specific purpose, alternate uses should be explored and evaluated.

(3) While it is suggested that the proposed siting of the solar panels would not be visible to the abutters, potential deforestation of those portions of the parcel necessary to accommodate the solar panels could certainly affect the abutters. Without a specific proposal, however, there is no way that this can be considered or evaluated.

(4) There are other potential alternative sites for this quantity of solar panels. For example, the roofs of Town buildings might collectively provide as much or more area with minimal impacts on abutters or on anything else. The panels could be used to provide electricity to those buildings, eliminating any need for transmission lines. Moreover, unlike the use for residential purposes where the peak demand occurs during periods when the sun is not out and no solar output is being generated, the use of solar on public buildings, where the demand for electricity arises during the daylight hours, is a far more compatible arrangement. Proponents countered that the placement of solar panels on town-owned buildings has been examined, but that this approach did not make economic sense. The Singletree Hill Reservoir project similarly makes no economic sense, but is still being pursued via the proposed overlay zoning district. The minority believes that any re-zoning of this parcel should be considered only after a specific and economically feasible proposal for its use for solar panels is forthcoming.

(5) The minority also questioned the other components of the Green Community designation most particularly the requirement for the town to decrease its energy usage by 20%. The problem here is that the town has been aggressively installing energy conservation measures for a number of years and those prior efforts do not count in determining the designation.

Proponents countered the minority arguments:

(1) A large scale solar panel installation will only proceed if it is economically feasible. If the economics of an installation do not work, it will not happen
(2) Placing solar panels on the top of town owned buildings has been looked at. It did not make economic sense for the Town Hall project. Solar panels were installed at the Health Department and only made sense after rebates, grants and private fund raising.
(3) The portion of the site that would be used for solar panels already needs to be periodically cleared of vegetation given that it sits on top of the underground water tank. There would be little or no additional deforestation should a such a development occur.
(4) Zoning represents the hopes and vision of a community. Zoning is written to express the kinds of development (or lack thereof) the community wants to encourage and is not usually done with specific projects in mind. While there certainly is precedent for project based zoning in Brookline, that is not the norm.
(5) Zoning this site for solar panels does not prevent its use for other purposes should a more desirable use be found. However, given the presence of the above and below ground water uses, alternative uses of the site are severely limited.
(6) The Town needs to set forth a credible plan to reduce energy usage by 20% which town officials stated that they believe they can do. The Town then has 5 years to actually realize the energy savings. During the 5 year realization period, the town will retain the Green Community designation (and eligibility for the grants) even if the savings do not ultimately reach the 20% goal.

RECOMMENDATION

A large majority of the Advisory Committee believes the positives of this article outweigh the negatives. The Green Community designation brings with it eligibility for state funded grants from a designated source (regional carbon emissions auctions) which could be used for projects which will not only decrease our energy usage and carbon emissions but also save operating costs in the future.

The Advisory Committee by a 15-7-1 vote recommends FAVORABLE ACTION on the vote offered by the Board of Selectmen.

***XXX***

ARTICLE 10

TENTH ARTICLE

To see if the Town will amend the Zoning By-Law establishing new residential parking requirements by:

1). Replacing the "residential" column of the TABLE OF OFF-STREET PARKING SPACE REQUIREMENTS, Section 6.02, and reformatting the table, into two tables as follows:

| RESIDENTIAL | | | | | |
|---|---|---|---|---|---|
| Single-Family Detached | Single-Family Attached (Townhomes) and Two/Three-Family | Multi-Family Studio/1 bdrm | Multi-Family 2 bdrms | Multi-Family 3 bdrms | Hotel** |
| Parking Spaces Per Dwelling Unit | | | | | |
| ~~2/2.3~~ **2** | ~~2/2.3~~ **1.3** | ~~2~~ **.8** | ~~2~~ **1.2** | ~~2.3~~ **1.4** | ~~1~~ **.5** |

**For use 8A. Limited Service Hotel in the G-1.75 (LSH) Limited Service Hotel District, the minimum number of spaces for each dwelling unit shall be 0.5 and no additional spaces shall be required for floor areas used for eating, drinking, dancing, meeting halls or similar purposes.

| | | PUBLIC ASSEMBLY** | INSTITUTION | RETAIL & OFFICE | | | INDUSTRIAL | WAREHOUSE & OTHER |
|---|---|---|---|---|---|---|---|---|
| | | (Number of seats requiring one space) | | General | | Medical & Dental | | |
| | | | | Ground Floor | Other | | | |
| | | | (Number of square feet of gross floor area requiring one space) | | | | | |
| ZONING DISTRICT DEFINED BY MAXIMUM FLOOR AREA RATIO | 0.15<br>0.20<br>0.25<br>0.30<br>0.35<br>0.40 | 3 | 350 | 200* | 400* | 200* | 800* | 1200* |
| | 0.50 | 4 | 450 | 200 | 400 | 200 | 800 | 1200 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | 0.75<br>1.00 | | | | | | | |
| | 1.50<br>1.75<br>2.00<br>2.50 | 5 | 550 | 350 | 600 | 250 | 800* | 1200 |

*Applicable to nonconforming uses.

**For use 8A. Limited Service Hotel in the G-1.75 (LSH) Limited Service Hotel District, the minimum number of spaces for each dwelling unit shall be 0.5 and no additional spaces shall be required for floor areas used for eating, drinking, dancing, meeting halls or similar purposes.

~~**The greater requirement shall be provided for each dwelling unit containing more than two bedrooms and for each attached single-family dwelling containing two or more bedrooms. Bedrooms shall include any habitable room containing at least 100 square feet of area which could be converted to a bedroom other than a bathroom, kitchen, or living room.~~

**§6.02, paragraphs 2.** through **7.** contain additional requirements by type of use.

2) Amend 6.01 2.a. As follows:

> 2.a. In SC, T, F, M, L, or G Districts, when a structure is converted for one or more additional dwelling units and the conversion results in an increased parking requirement, parking requirements for the entire structure shall be provided in accordance with the requirements in 6.02 and 6.05. However, the Board of Appeals by special permit under Article IX may waive not more than one-half the minimum number of parking spaces required under 6.02 and 6.05.

3) Removing 6.02 2.e. as follows and re-lettering all the remaining subparagraphs:

> ~~2.e. For a dwelling unit which is occupied by three or more unrelated persons (including lodgers), the parking requirement for the dwelling unit shall be twice that indicated in the Table of Off-Street Parking Space Requirements in 6.02.~~

4) Amend 6.02 2.f. As follows:

> 2.~~e~~f. For residential uses in M, L, and G districts, where the number of required parking spaces exceeds 20 spaces, ~~ten percent~~ 5 percent of all required parking spaces shall be designated and marked for use by visitors ~~and trades people~~. For mixed-use properties ~~the number of visitor spaces shall be based on the parking requirement for the residential use only~~ with at least 10% of the total gross floor area used for commercial purposes, this requirement shall be waived.

5) Amending Use number 22 in the TABLE OF USE REGULATIONS, Section 4.07, As follows:

| Principal Uses | Residence | | | | | Business | | | Ind. |
|---|---|---|---|---|---|---|---|---|---|
| | S | SC | T | F | M | L | G | O | I |
| 22. Residential parking garage or parking area, whether as the sole use of a lot or as a secondary use, solely for the storage of cars of residents of other lots located within 1,400 feet.<br>*By right for five or fewer spaces **as a secondary use on pre-existing parking areas. When a new secondary use parking area is created on a lot with residential structures, up to 2 spaces per dwelling unit on residential lots <10,000 sq. ft., and up to 3 spaces per dwelling unit on residential lots >10,000 sq. ft. are permitted by right, as long as the total number of parking spaces on the lot does not exceed these limits. When a new parking area is created as a sole use or secondary use to a non-residential structure, up to five spaces shall be permitted by special permit.**<br>** **For existing paved areas, by right for five or fewer spaces, or 20% of the total number of on-site parking spaces, whichever is greater.** | No* | No* | SP* | SP* | SP** | Yes | Yes | Yes | Yes |

6) Amending Use number 54, and Use number 55, in the TABLE OF USE REGULATIONS, Section 4.07, as follows:

| Accessory Uses | Residence | | | | | Business | | | Ind. |
|---|---|---|---|---|---|---|---|---|---|
| | S | SC | T | F | M | L | G | O | I |
| 54. An accessory private garage or parking area for noncommercial motor vehicles **belonging to occupants or users of the lot,** with **no**~~t~~ more than: two spaces per dwelling unit on that lot, except that there may be three spaces for a single-family dwelling on a 10,000 sq. ft. or larger lot; four spaces for a permitted nonresidential use. | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| 55. Other private garage* or parking for more non-commercial motor vehicles belonging to occupants or users of the lot than permitted in Use 54. | SP | SP | ~~SP~~ **No** | ~~SP~~ **No** | ~~SP~~ **No** | Yes | Yes | Yes | Yes |

or act on anything relative thereto.

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PETITIONER'S ARTICLE DESCRIPTION

This article seeks to lower the minimum number of off-street parking spaces required for new residential development. Residential parking requirements are applied whenever new dwelling units are created, including new construction or conversions of an existing building.

It is the ultimate goal of this article to set residential parking requirements that reflect, support and protect Brookline's patterns of land use, travel behavior and vehicle ownership. The need to correct our current residential parking requirements became

apparent after detailed analysis revealed that 1) our current multi-family residential parking requirements are too high, requiring more parking than residents need; and 2) requiring too much parking brings with it serious negative consequences.

This article also includes proposed amendments for: Use #22, which governs the by-right amount of parking a property owner can provide for off-site residents, and Uses #54 and 55 which govern accessory parking. These proposed changes are necessary to make all components of our Zoning By-law related to residential parking consistent with the new proposed parking requirements, and to allow for easier shared parking arrangements where large parking lots exist.

**Selectmen's Parking Committee:**

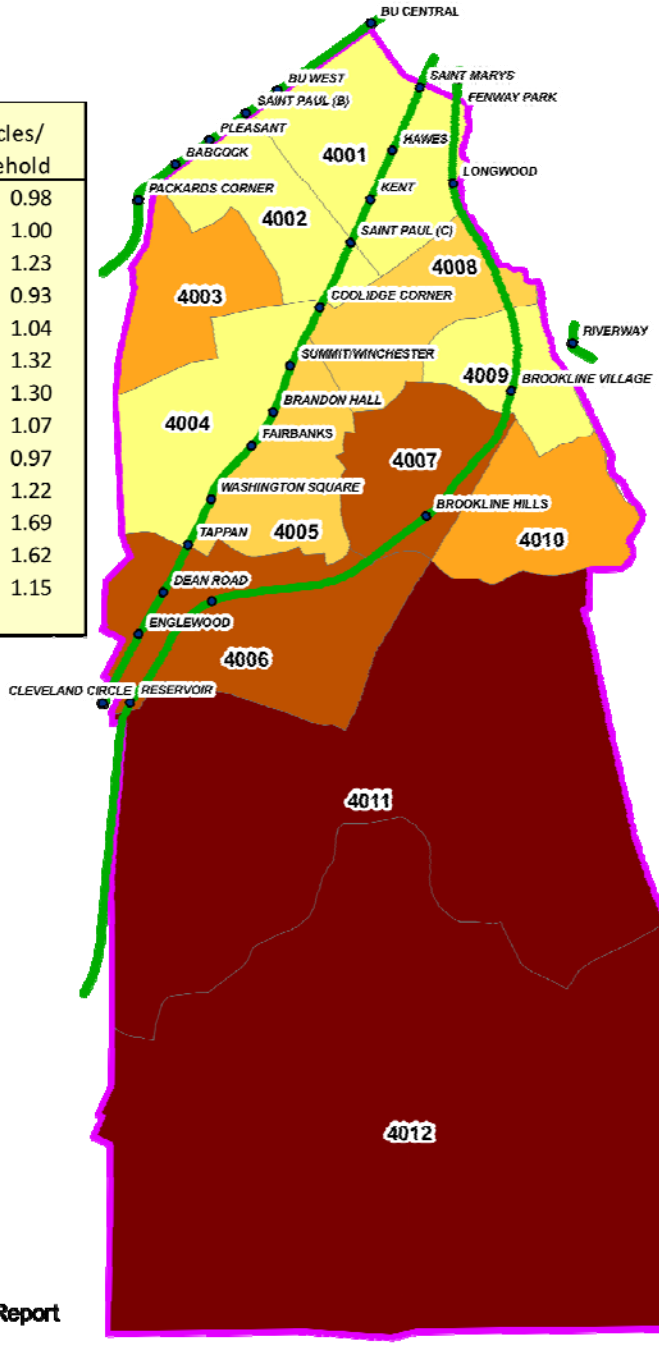
The Selectmen's Parking Committee was convened in August, 2008 and charged with conducting a comprehensive review of policies and regulations related to parking in Brookline. The Regulatory Sub-Committee, of which the petitioner was a member, sought to investigate whether or not the off-street parking requirements in Brookline's Zoning By-law where appropriately matched to existing conditions and whether or not they supported or harmed our ability to achieve other Town-wide policy goals.

The Selectmen's Parking Committee met over a period of 18 months publishing their Final Report in August 2010. The report includes a recommendation to lower multi-family residential parking requirements (pg. 26), based on extensive research done by Committee members and Planning staff. The Committee's report and presentation of all of the research findings are available at the Planning Department's Parking Committee downloads page. A few key findings are:

- Average town wide vehicle ownership is 1.15 per household.
- Excluding Chestnut Hill and South Brookline, the average vehicle ownership is 1.08 per household.
- Multi-Family areas (including 2 and 3 family homes) have vehicle ownership values ranging from .56 to 1.41 per household.
- Only 4-person+ households living in census tract 4011 (Chestnut Hill) average 2 or more vehicles per household.
- 20% of Brookline households own no car. Values range from 3% in South Brookline to 34% in census tract 4004 (Driscoll School).
- Field surveys reveal an average 25% vacancy in multi-family parking lots.
- These same counts correspond to an average of .98 vehicles per dwelling unit.
- 45% of Brookline's working population who commute does so without a car.
- A significant proportion (in many cases greater than 50%) of an average household's other (non-commute) daily travel is achieved without a car.

# Vehicles Owned per Household Analysis

| Census Tract | Area | Vehicles/ Household |
|---|---|---|
| 4001 | St. Mary's | 0.98 |
| 4002 | Coolidge Corner | 1.00 |
| 4003 | Devotion (CC/JFK) | 1.23 |
| 4004 | Corey Hill | 0.93 |
| 4005 | Washington Square | 1.04 |
| 4006 | Fisher Hill | 1.32 |
| 4007 | Cypress/Washington | 1.30 |
| 4008 | Brookline Village (North) | 1.07 |
| 4009 | Brookline Village (South) | 0.97 |
| 4010 | High Street Hill/The Point | 1.22 |
| 4011 | Chestnut Hill | 1.69 |
| 4012 | South Brookline | 1.62 |
| | Town Average | 1.15 |




MBTA Green Line

Town Boundary

**Vehicles Per Household**

- Under 1
- 1. - 1.1
- 1.1 - 1.25
- 1.25 - 1.4
- Over 1.4

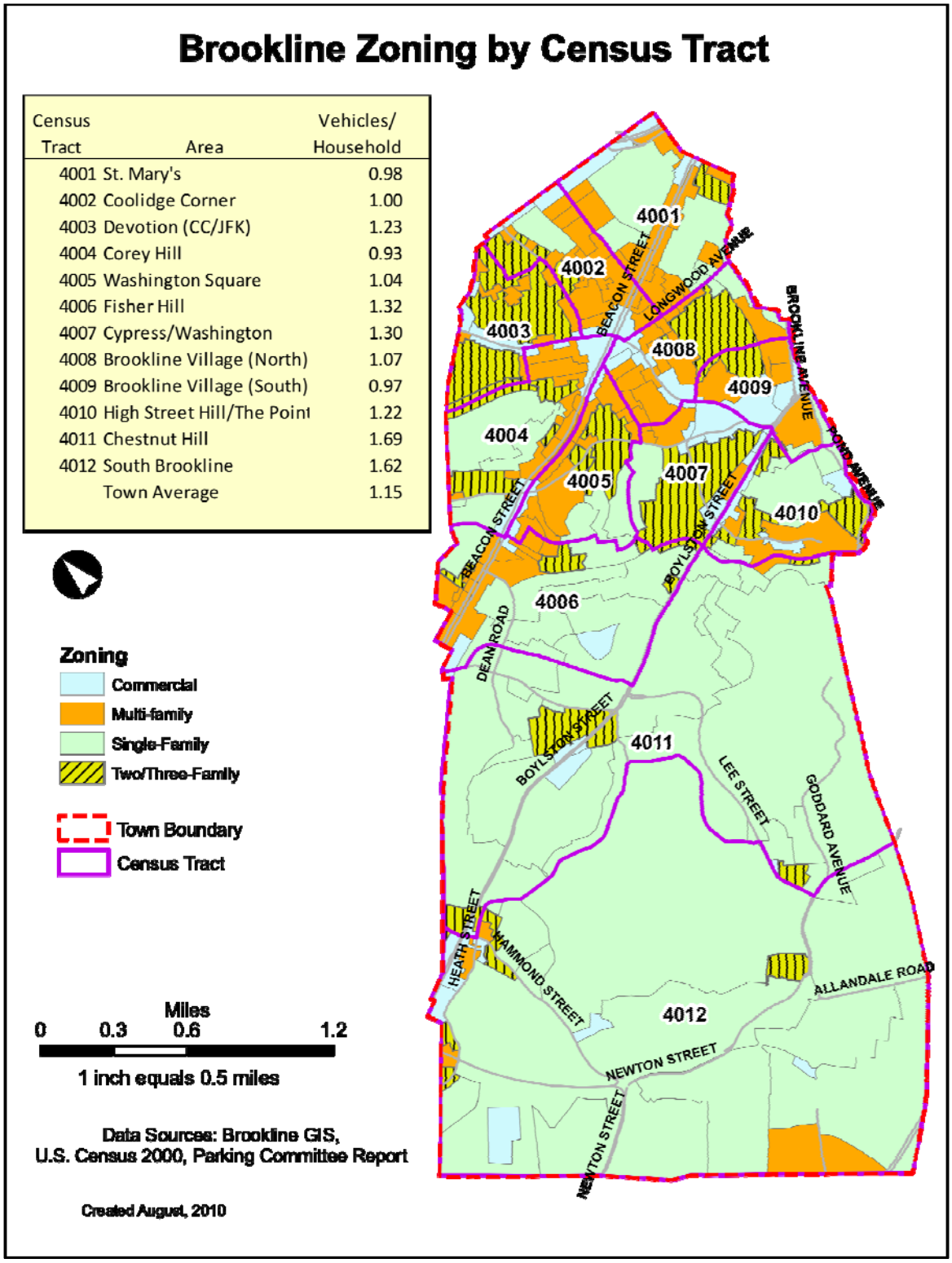
Miles

0 0.3 0.6 1.2

1 inch equals 0.5 miles

Data Sources: Brookline GIS, U.S. Census 2000, Parking Committee Report

Created August, 2010




| Census Tract | Area | Vehicles/ Household |
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| 4012 | South Brookline | 1.62 |
| | Town Average | 1.15 |

As the above statistics and maps illustrate, Brookline's multi-family residential population, living primarily in North Brookline near transit, are enjoying the benefits of living close to desirable destinations and take advantage of having access to a variety of possible travel modes. The ability to live comfortably with fewer private automobiles provides significant savings, helping to offset the high cost of housing in Brookline. The

average cost of owning and operating a vehicle is approximately $7,000 - $8,000 which can translate into an additional $100,000 + in mortgage purchase price. 3,000 Brookline residents are members of Zipcar, reflecting their desire to reduce the burden of car ownership.

**Where Did the Proposed Rates Come From?**

The proposed rates derive principally from Brookline-specific vehicle ownership data. The 2000 Census was the primary source, with additional reasonableness checks in the form of field survey data, MassGIS Registry of Motor Vehicle geocoded data, examples of parking utilization at existing Brookline buildings, Institute of Transportation Engineers data and data on recently built housing projects in the Boston region. When considering the application of a fractional parking requirement, like 1.3 spaces per unit, it helps to remember that we are working with averages and to visualize a group of households, with every third one owning two vehicles and the other two owning one each. When calculating the required parking for a number of units, a remaining value of .5 or more would be rounded up to 1.

**2 parking spaces** per dwelling unit for **single-family** dwellings exceeds the average vehicle per household values of 1.87, 1.89 and 1.97 for Census Block groups encompassing areas which are exclusively single-family homes. (4011-1 and 4011-2 in South Brookline and 4006-3 on Fisher Hill.)

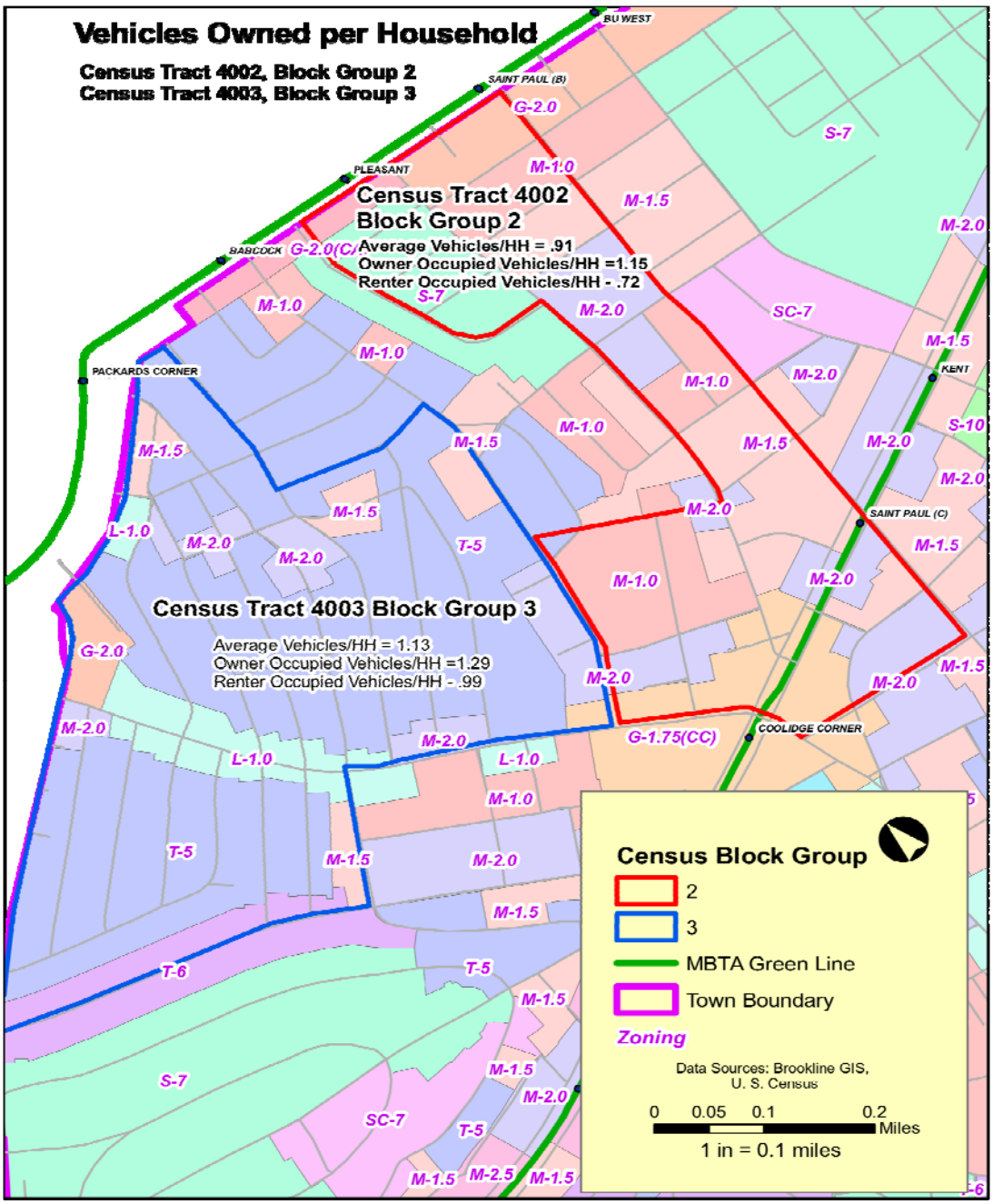
**0.8 parking spaces** per **multi-family studio and one bedroom** dwelling units exceeds the average vehicle ownership value of 0.73 per household in Census Tract 4004 Block Group 1 and 0.79 in Census Tract 4001 Block Group 2. These Block Groups are useful examples because they contain a significant % of studio and 1-bedroom units (48% and 51% respectively). It's important to note that the remaining 50% or so of the units in these Block Groups have 2 or more bedrooms and are contributing to the average. Therefore, the 0.8 rate contains a significant cushion.

**1.2 parking spaces** per **multi-family two bedroom** dwelling units is higher than known multi-family parking utilization data from existing buildings throughout Brookline. As can be seen on the Census Block Group map below, Census Tract 4002, Block Group 2 which is almost entirely multi-family housing, the average owner- occupied household vehicle ownership value is 1.15. By referencing the owner-occupied average, (which is on average 56% higher than the renter vehicle ownership per household value), we are setting the requirement rate to exceed existing conditions.

**1.4 parking spaces** per **multi-family three bedroom** dwelling units exceeds known vehicle ownership per household values of 1.31 and 1.39 in Census Block groups that have both an average unit size close to 3 and a high % of multi-family housing units. Census Tract 4007 Block Group 3's average dwelling unit size is 2.85 bedrooms and 39% of the dwellings are 3 bedroom units. It's important to note that 26% of the units in this Block Group have 4 or more bedrooms, and only 60% of the dwellings in the Census Tract as a whole are multi-family. Therefore the average number of vehicles per household value of 1.39 as applied to multi-family units represents a significant over estimate. Similarly, Census Tract 4010, Block Group 1, with a vehicle ownership per household of 1.31 has an average unit size of 2.85 bedrooms with 38% of the units being

3-bedroom units. 23% of the dwellings in this Block Group are 4+ bedrooms in size and multi-family dwellings comprise 62% of the households in this tract as a whole.

**1.3 parking spaces** per unit for **two and three family** dwellings realizes the goal of *requiring* just one space for each individual unit, and yet, when combined a two family building will be required to provide 3 spaces, a three family 4 spaces. By overlaying Census Block Group geography (the smallest gradation possible) over our current zoning and land use data, it was possible for some areas to isolate vehicle ownership statistics for a particular housing type (such as two-family T-5 or multi-family M zones). This allowed verification of a direct correlation between the proposed requirements and known vehicle ownership values, as in the case of Census Tract 4003 block group 3 illustrated below, which is primarily an area zoned for two-family residential. The average auto ownership in this Block Group is 1.29 vehicles per household for owner-occupied homes.



**Resetting the Parking Footprint with Lower Minimums, An Example: 70 Sewall:**
Even though parking represents a significant expense, standard municipal planning codes and developer's pro forma rarely question parking rules of thumb that are often applied uniformly to suburban and transit rich urban settings alike. It is our responsibility to define parking expectations as "lower than suburban parking requirements". This makes our need and desire for context-sensitive parking clear to developers.

Parking is often a major point of contention as new development projects are reviewed. A recently approved multi-family housing project, 70 Sewall, perfectly illustrates the need to lower our multi-family parking requirements. Had they been lower, the starting point at which the parking debate began on this project would have been lower.

70 Sewall is a historically significant Queen Anne Victorian house, designed by a famous architect, Julius Schweinfurth. The Town's Planning staff encouraged the developer to seek a development solution that would retain the existing historically significant structure. The resulting 7-unit proposal called for moving the house forward on the lot and building a very large addition on the rear, the footprint of which (approx. 3,500 sq. ft.) was determined by the amount of space required for 13 marginally adequate parking spaces (already a slight decrease from current parking requirements, achieving a 1.9 space per unit ratio). The project proponent stated that he wanted to stay as close to the parking requirements as possible.

As a result, the addition was so large that there was at one pinch point, only 36" of setback in the rear, with many close abutters. There were literally only 3' to 5' of side yard setback and most of the larger trees on the site would be lost. From the beginning of design review, it was noted by the Design Advisory Team that with less parking the units could still be generously sized and more reasonable set backs achieved. The Planning Board stated clearly that they would support a special permit for less parking. Statistics were cited supporting the workability of less parking, and yet the developer was reluctant to seek a change. It was not until the Planning Board was on the verge of denying the application, (which would have resulted in the demolition of the historic house, replacing it with a much less interesting "box") that the project proponents agreed to less parking and therefore a smaller building footprint. The resulting parking ratio is 1.43 parking spaces per unit, and many feel the project could still have been greatly improved through additional reduction. The building has 5 3-bedroom units and 2 2-bedroom units.

**History of Parking Requirements in Brookline**
Brookline must have been one of the first communities in the country to adopt an off-street parking requirement. Our 1922 Zoning By-Law required multi-family residential properties to provide 1 off-street parking space for every unit, "In order to lessen congestion in the streets". In 1962 a parking requirement of 1 for single-family districts and 0.8 to 1.2 for multi-family areas was adopted. A 1977 change raised the rates to 2 for single-family and 1.0 to 1.3 (the higher rate applying to areas with 0.5 – 1.0 FAR) spaces per dwelling for multi-family.

A big change was made in 1987 when the parking requirements were raised to 1.6/1.8 per dwelling unit in 0.5 – 1.0 FAR areas, and 1.5/1.7 in 1.5 – 2.5 FAR areas. The higher

value applies when the unit has more than 2 bedrooms. Separate provision of visitor spaces (10%) was also added at this time. A residential mail-back parking survey was performed by the Planning Department prior to the proposed change. The survey results reported that the overall mean vehicle to household ratio was 1.1. Studio and 1-bedroom households reported a value of 0.9 vehicles per household, two bedroom units, 1.3 vehicles per household and three bedroom units, 1.6. The total respondent sample size was 731, (only 83 of those being 3 bedroom units). Despite these findings the Planning Department recommended higher rates to "account for future growth, the need for visitor parking and the increased parking demand generated by larger units".

**2000 Parking Requirement Increase:**

Fall 2000 Town Meeting voted to raise residential parking requirements again. All dwelling units are now required to have a minimum of 2, and sometimes 2.3 off-street parking spaces. Having ten years worth of experience enforcing the new higher requirements has given staff, volunteer boards, citizens and Town Meeting Members a significant record of experience with in which to assess the impacts of this change.

Brookline Parking Requirements: Past, Present and Proposed

| Land Use | 1922 | 1962 | 1977 | 1987 | 2000 | Proposed |
|---|---|---|---|---|---|---|
| Single-Family Residential (S) | N/A | 1 | 2 | 2 | 2 | 2 |
| Two & Three Family (T) (F) | 1 | 1.0 - 1.2 | 1.3 | 1.6/1.8* | 2/2.3* | 1.3 |
| Multi-Family Studio & 1 brm | 1 | 0.8 - 1.0 | 1.0 - 1.2 | 1.5/1.7* | 2 | 0.8 |
| Multi-Family Two Bedroom + | 1 | 0.8 - 1.0 | 1.0 - 1.2 | 1.5/1.7* | 2/2.3* | 1.2/1.4* |

*The higher rate applies to

d.u. with more than 2 bedrms

Despite opposition from the Selectmen, Advisory Committee and Planning Board, Town Meeting passed the warrant article. The rationale for this change was based on several fundamental assumptions, which were: 1) That there was a shortage of overnight residential parking especially in the denser, multi-family housing areas of Brookline, 2) That new housing developments were being built with an insufficient amount of parking (current parking rates were therefore too low) and that occupants of those buildings were arriving with additional vehicles that needed to be parked off-site, thereby competing with current residents in a tight rental parking market and driving up price and reducing availability. And 3) That by increasing the parking requirement for new buildings adequate on-site parking would be provided and any additional excess parking would be added to the rental parking market, thus easing the shortage and relieving the upward pressure on prices.

Secondarily to these primary arguments, proponents cited 1) increasing auto ownership statistics, and 2) a loss of overnight parking spaces due to new development replacing existing surface parking lots.

Research done by the Parking Committee did not confirm the assumptions cited by the proponents of the 2000 rate increase. Instead, we found that:

1) Field surveys of multi-family parking lots revealed an average 25% vacancy. Significant vacancies exist for town owned overnight rental parking. (No shortage of parking).

2) The increase in rental parking rates is consistent with cost of living increases over time. (Increased demand from additional vehicles brought by occupants of buildings with deficient parking is not necessarily driving prices up). Property owners continue to advertise existing and new parking areas for rent to off-site residents, indicating a surplus in parking supply.

3) Many new buildings with excess parking do not allow off-site residents to rent and may not be located near enough to potential renters of that parking. (Excess parking in new buildings would not alleviate perceived parking shortage).

4) Total Vehicle ownership has in fact declined slightly town-wide between 1998 and 2008. Registry of Motor Vehicles town-wide total: 1998 = 33,330, 2008 = 32,897. (Vehicle ownership has not increased while Zipcar usage has).

**Consistent Vehicle Ownership in Brookline Over Time:**

There has actually been a remarkable consistency in the average number of vehicles per household owned in Brookline. The 1990 Census revealed an average of 1.14 vehicles per household in Brookline. The historical record of special permit change requests at Dexter Park reveal a consistent history of parking utilization at that building ranging from 0.9 (a request was made in 1977 to reduce their parking requirement from 1.2 spaces per unit to 0.9) to today's 0.7 spaces per unit. As noted earlier, the survey in 1987 found a mean value of 1.1 vehicles per multi-family dwelling unit. The recent parking utilization study done as part of the preliminary site analysis at Hancock Village revealed a parking demand of 1.1 per dwelling unit. If anything, this data suggests that today's vehicle per household ownership rate has remained relatively consistent over the last 20 years.

**Examples of Existing Buildings:**

It's always helpful when considering abstract concepts like numerical parking requirements, to look at a few real world examples. To that end, we'll consider some existing buildings, representing a range of building types, locations and eras to get a sense of their functionality and the potential impacts of various parking requirements.

| Existing Building | Yr. Built | Unit Mix | Existing Parking Spaces | Used Parking Spaces | Current Parking Required | Proposed Parking Required | Parking Notes |
|---|---|---|---|---|---|---|---|
| 30 Dean Road Condo | 1984 | 2-bd: 11<br>3-bd: 3<br>Total: 14 | 19<br>(1.4 sp/ unit) | 18<br>(1.3 sp/ per unit) | 29<br>(2.1 sp/ unit) | 17<br>(1.2 sp/ unit) | Building has extra available parking. Building integrates well w/surrounding streetscape. |
| 125/135 Pleasant (Amory House) Condo | 1975 | studio: 2<br>1-bd: 62<br>2-bd: 62<br>3-bd: 1<br>4-bd: 2<br>Total: 129 | 140<br>(1.1 sp/ unit) | 132<br>(1.0 sp/ unit) | 259<br>(2.0 sp/ unit) | 130<br>(1.0 sp/ unit) | Majority of parking is underground. Off-site residents are not allowed to rent here. |
| 175 Freeman (Dexter Park) Apts. | 1968 | 1-bd: 76<br>2-bd: 262<br>3-bd: 71<br>Total: 409 | 396<br>(0.97 sp/ unit) | 315<br>(0.77 sp/ unit) | 839<br>(2.05 sp/ unit) | 475<br>(1.16 sp/ unit) | Special Permit recently sought to rent 35 spaces to off-site residents; 28 were granted. |
| Hancock Village Apts. | 1946 | 1-bd: 246<br>2-bd: 255<br>3-bd: 229<br>Total: 730 | 1022<br>(1.4 sp/ unit) | 803<br>(1.1 sp/ unit) | 1,529<br>(2.09 sp/ unit) | 949<br>(1.3 sp/ unit) | Open Green Space a key feature of existing site. Transportation amenities include bus stop, shuttle bus and Zipcars. |

Note: The number of used parking spaces is from owners, property managers.

As can be seen from these existing building examples, a variety of multi-family housing types, built in different eras and locations all function comfortably, (most have an excess of parking available), at rates that match the proposed parking requirements in this article. Currently required amounts of parking would significantly over build on-site parking for each of these examples.

**How will Lower Parking Requirements Affect Development?**

Brookline's Zoning By-law regulates the size of a building or buildings allowed on a piece of property through one principal mechanism, the Floor Area Ratio (FAR). This ratio is the result of dividing the square footage of usable built floor area by the square footage of the lot. For an M 1.5 zone, (which stands for Multi-Family with a FAR of 1.5), a 10,000 sq. ft. lot, would equate to a maximum allowable building of 15,000 sq. ft. 15,000/10,000 = 1.5.

Residential developers base their project pro forma on the assumption that they will be able to build to the maximum allowable FAR because it represents the valuable space being sold for $400 – 600 per square foot. This fact does not change if the required amount of parking rises or falls. What does change are the spatial parameters within which the building must be designed. Each parking space requires approx. 330 sq. ft. not including the driveway. In addition, our Zoning By-law contains other standards to be met, such as minimum set back from the street, side yard requirements, open space requirements etc.

By requiring an excessive level of residential off-street parking we are creating an inherent conflict between these three elements: the allowable FAR, the setback requirements, and the space necessary for the required parking. What's left is a physically improbable puzzle to be solved, which is especially problematic in the case of our multi-family and two- and three- family neighborhoods. Here, lots are small, homes are close together and the basic structural fabric of the neighborhood is one of small, walkable blocks that assure easy access to parks, shops, transit, etc.

Because these conflicting requirements are in our zoning ordinance, the Planning Board and Zoning Board of Appeals often find themselves in the position of granting Special Permits allowing violations of our ordinance's basic protections, such as side yard requirements, rear yard set backs and minimum open space mandates, in order to accommodate a building that allows the permissible FAR and achieves the high-level parking requirement. What gets sacrificed are some of the fundamental protections our Zoning By-law is meant to uphold.

In fact, the higher parking requirements create pressure to demolish existing structures and build over-sized buildings in order to both accommodate the high parking count and recoup the additional cost of providing that parking. These tortured design responses lead to disruptive structures that either dedicate the first floor to excess parking, (thereby adding an extra floor to the building) or force the building of expensive underground parking garages with massive concrete retaining walls and ramps that are an eye sore and pedestrian hazard.

Lowering our parking requirements will improve the quality of the development that does occur, allowing for more neighborhood-compatible building, with less bulk, less loss of open space, fewer negative impacts to the streetscape and pedestrian experience, while still providing for adequate on-site parking.

**What's Wrong with Too Much Parking?**

Requiring excessive amounts of multi-family residential parking has unintended negative impacts for our economy, urban fabric and community livability. What may seem like "free" parking is of course not free at all: its cost is instead passed onto residents and property owners. The new buyer or renovating property owner has little choice but to purchase the excess parking, whether or not they need it.

The negative externalities of excessive residential parking requirements are borne by the entire community, both motorist and non-motorist alike. By requiring excessive levels of off-street residential parking we:

- **Waste Money, Resources and Opportunities**: Requiring developers to build parking instead of investing in other higher value amenities, which could add greater benefit to the community.

- **Decrease Housing Diversity:** High parking requirements encourage large, luxury units and discourage smaller, more affordable housing. The cost of extra parking must be recouped in the selling price of the unit, and the diversity of housing types available is decreased.

- **Degrade Building Design**: Accommodating excess parking has lead to poorly designed buildings, with the parking being the primary focus. Buildings often have excess bulk, height and pavement, with the first floor of the building and most of the remaining lot being consumed by parking.

- **Threaten Historic Structures**: Existing historic structures are more likely to be demolished because our high parking requirements make conversion or expansion impossible within spatial limitations.

- **Lose Green and Open Space:** Excess parking often requires the sacrifice of our limited front, side and/or rear yard space, necessitating special permit waivers of our own zoning protections.

- **Increase Impervious Surfaces**: Paved surfaces increase the amount of polluted run-off and storm-water flows, adding to flood dangers and pollution threats.

- **Incentivize Auto Use to the Exclusion of Alternatives:** Mandated provision of extra parking spaces acts as an incentive to additional car ownership and use, shifting individuals who would otherwise choose to use alternative transportation modes and reduce car ownership.

- **Increase Traffic Congestion**: Extra parking brings additional traffic to our already over-burdened roadway infrastructure, increasing delay, frustration, pollution and anxiety.

- **Degrade our Neighborhood Streetscapes**: Over-sized buildings, large garage frontages, additional curb-cuts and driveways, surface parking lots, underground garage ramps and loss of street trees disrupt the existing rhythm of our neighborhood streetscapes. As the pedestrian experience deteriorates, more will choose to drive, thereby increasing the degradation of the walker's and bicyclist's experience and increasing traffic congestion.

- **Negate Location-Efficient Savings**: Many choose to live in Brookline precisely because of the good transit access and close proximity available. While housing costs are high, these are somewhat off set by the ability for households to save on transportation costs. Requiring excess parking negates this advantage by adding the cost of excess parking to new housing.

Brookline's historic streetcar suburb development pattern affords its residents the choice of non-automobile dependent accessibility, making Brookline a highly desirable place to live. Requiring excessive amounts of multi-family residential parking has unintended negative impacts on our community's viability. It is in our best interest to more closely align our community's current transportation choices and parking policies by setting our parking requirements to match known vehicle ownership and use patterns.

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**MOTION TO BE OFFERED BY THE PETITIONER**
**Linda Olson Pehlke, TMM-Prec. 2**
(shaded areas reflect change from original article)

To see if the Town will amend the Zoning By-Law establishing new residential parking requirements by:

1). Replacing the "residential" column of the TABLE OF OFF-STREET PARKING SPACE REQUIREMENTS, Section 6.02, and reformatting the table, into two tables as follows:

| RESIDENTIAL | | | | | |
|---|---|---|---|---|---|
| Single-Family Detached | Single-Family Attached (Townhomes) and Two/Three-Family | Multi-Family Studio/1 bdrm** | Multi-Family 2 bdrms** | Multi-Family 3 bdrms** | Hotel*** |
| Parking Spaces Per Dwelling Unit | | | | | |
| ~~2/2.3~~ **2** | ~~2/2.3~~ **1.3*** | ~~2~~ **1*** | ~~2~~ **1.2*** | ~~2.3~~ **1.4*** | ~~1~~ **.5*** |

*Residential uses on lots beyond 0.5 miles from an MBTA Green Line T stop shall be required to provide 2 spaces per dwelling unit, or 2.3 spaces per dwelling unit with 3 or more bedrooms. Hotels on lots beyond 0.5 miles from an MBTA Green Line T stop shall be required to provide 1 space per hotel room.
**Bedrooms shall include any habitable room containing at least 100 square feet of area which could be converted to a bedroom other than a bathroom, kitchen, or living room.
***For use 8A. Limited Service Hotel in the G-1.75 (LSH) Limited Service Hotel District, the minimum number of spaces for each dwelling unit shall be 0.5 and no additional spaces shall be required for floor areas used for eating, drinking, dancing, meeting halls or similar purposes.

| | | PUBLIC ASSEMBLY** | INSTITUTION | RETAIL & OFFICE | | | INDUSTRIAL | WAREHOUSE & OTHER |
|---|---|---|---|---|---|---|---|---|
| | | (Number of seats requiring one space) | | General | | Medical & Dental | | |
| | | | | Ground Floor | Other | | | |
| | | | (Number of square feet of gross floor area requiring one space) | | | | | |
| ZONING DISTRICT DEFINED BY MAXIMUM FLOOR AREA RATIO | 0.15<br>0.20<br>0.25<br>0.30<br>0.35<br>0.40 | 3 | 350 | 200* | 400* | 200* | 800* | 1200* |
| | 0.50<br>0.75<br>1.00 | 4 | 450 | 200 | 400 | 200 | 800 | 1200 |
| | 1.50<br>1.75<br>2.00<br>2.50 | 5 | 550 | 350 | 600 | 250 | 800* | 1200 |

*Applicable to nonconforming uses.

**§6.02, paragraphs 2.** through **7.** contain additional requirements by type of use.

2) Amend 6.01.2.a. As follows:

In SC, T, F, M, L, or G Districts, when a structure is converted for one or more additional dwelling units and the conversion results in an increased parking requirement, parking requirements for the entire structure shall be provided in accordance with the requirements in 6.02 and 6.05. However, the Board of Appeals by special permit under Article IX may waive not more than one-half the minimum number of parking spaces required under 6.02 and 6.05.

3) Removing 6.02 2.e. as follows and re-lettering all the remaining subparagraphs:

~~2.e. For a dwelling unit which is occupied by three or more unrelated persons (including lodgers), the parking requirement for the dwelling unit shall be twice that indicated in the Table of Off-Street Parking Space Requirements in 6.02.~~

4) Amend 6.02 2.f. As follows:

2.~~e~~f. For residential uses in M, L, and G districts, where the number of required parking spaces exceeds 20 spaces, ~~ten percent~~ 5 percent of all required parking spaces shall be designated and marked for use by visitors ~~and trades people~~. For mixed-use properties ~~the number of visitor spaces shall be based on the parking requirement for the residential use only~~ with at least 10% of the total gross floor area used for commercial purposes, this requirement shall be waived.

5) Amending Use number 22 in the TABLE OF USE REGULATIONS, Section 4.07. REMOVED.

6) Amending Use number 54, and Use number 55, in the TABLE OF USE REGULATIONS, Section 4.07. REMOVED.

or act on anything relative thereto.

Explanation of Amendments:
Several amendments have been made to the original Article 10. They are:

1) The minimum parking requirement for Studio and 1 bedroom multi-family dwelling units has been changed from 0.8 per unit to 1.0 per unit.

> *Concern was frequently expressed about having a minimum parking requirement below 1.0 per dwelling unit.*

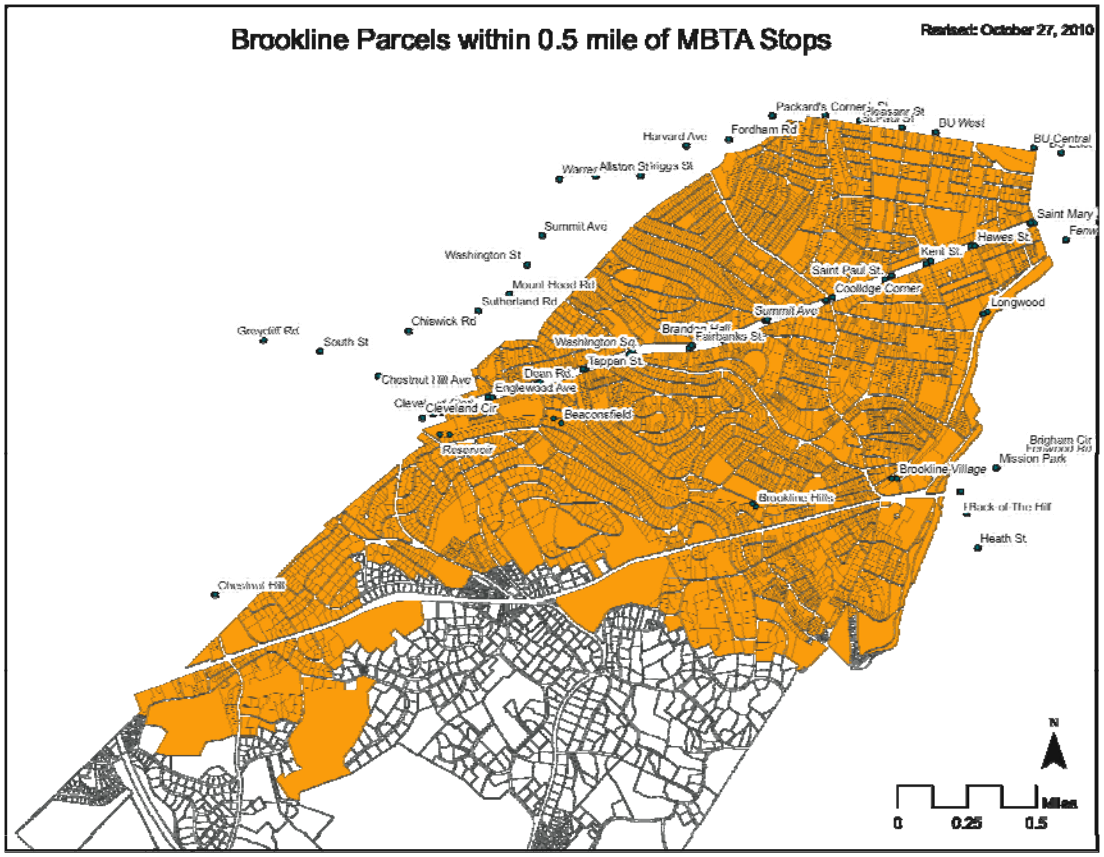
2) The footnote stating, "Bedrooms shall include any habitable room containing at least 100 square feet of area which could be converted to a bedroom other than a bathroom, kitchen, or living room." has been retained. It was removed in the original Article.

> *Planning Department staff suggested that this was an important safe guard to retain because builders sometimes rename spaces for other uses that end up being used for bedrooms. The Planning Board agreed this should be retained.*

3) The new minimum parking requirements will only apply to residential uses on lots (parcels) within 0.5 miles of an MBTA Green Line stop. If any portion of a lot (parcel) falls within the radius of 0.5 miles from an MBTA Green Line stop the new minimum parking requirements will apply.

> *See map below. Concern was raised about the Article's potential impact on the Hancock Village development proposal currently being put forth by Chestnut Hill Realty. Simply excluding the M 0.5 zone which is exclusive to the Hancock Village property was considered to be potentially problematic legally, as it treated this site in a singular manner.*
>
> *Many residents also pointed out that "one size does not fit all" when it comes to parking requirements. The petitioner agrees. Recognizing the truth of this*

*statement makes our current town-wide requirement for 2+ parking spaces per dwelling unit, regardless of size or location, particularly problematic. The Article is applicable to multi-family housing only, which is principally located within the area encompassed by the 0.5 radius from the MBTA Green Line stop area.*




4) The proposed changes to Use #22, which allows for the rental of residential parking to residents of other lots within 1400' are removed.

*The Planning Board and the Planning Department agreed with the intent of the proposed changes, which sought to encourage the shared use of existing parking resources and tie the by-right amount of accessory parking to both the size of the lot and the number of dwelling units. It was felt a more comprehensive re-working of this proposed change, in conjunction with the proposed changes to Uses #54 and #55 would be preferable.*

5) The proposed changes to Use #54 and #55, accessory parking, are removed.

*The proposed changes had the goal of linking the number of accessory parking spaces allowed to the size of the lot and number of dwelling units. These proposed amendments were also removed on the recommendation of the Planning Department and Planning Board who agreed with the intent, but thought it best to address the reformulation of Uses #22, 54 and 55 comprehensively and to concentrate on the main thrust of the Article, which is to lower the minimum multi-family parking requirement.*

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**PLANNING BOARD REPORT AND RECOMMENDATION**

This article is being submitted by Citizen Petition and proposes to: 1) amend the Table of Off-Street Parking Requirements, Sec.6.02, by significantly lowering the minimum requirements for off-street parking for any residential development, other than a detached single family dwelling; 2) amend the Table of Use Regulations, Section 4.07, Use #22 to limit the number of spaces that can be constructed on a lot, for the purpose of rental parking or otherwise, based on the number of dwelling units in the structure and the size of the lot; 3) amend the Table of Use Regulations, Section 4.07, Use #54, by no longer allowing parking spaces in an accessory garage or parking area to be rented to non-occupants or users of the lot, and 4) amend the Table of Use Regulations, Section 4.07, Use # 55 to no longer provide a special permit to allow more than three spaces per dwelling unit on a lot greater than 10,000 s.f, nor four spaces for a permitted nonresidential use, in two (T), three (F) and multi-family (M) districts, even for vehicles belonging to occupants or users of the lot.

The current parking regulations under the Table of Off-Street Parking Requirements, Section 6.02, requires 2 parking spaces per single family dwelling, 2 parking spaces per studio, 1 and 2 bedroom units in a multi-family structure, and 2.3 parking spaces for attached single families with two or more bedrooms and multi-family structures with 3 or more bedroom units. The proposed regulation would reduce those requirements for multi-family dwellings to .8 spaces per studio/1 bedroom units, 1.2 spaces for 2 bedroom units, 1.4 spaces for 3+ bedroom units. The proposed regulation would also reduce the number of parking spaces hotels are required to provide per room from 1 space to .5 spaces. The Petitioner has submitted ample data from the 2000 US Census, which provides a rational basis for the selection of these figures based on how many cars are owned per household in Brookline. The reduction in required parking spaces for multi-family dwellings would allow greater flexibility in designing new residential buildings, including reducing the mass of the structure, and therefore the visual impact on neighboring properties. The reduction in the parking requirement will also mean fewer cars on the street and a reduction in traffic.

However, the Planning Board believes that the M-0.5 zoning district, of which there is only one in Brookline at Hancock Village, should be excluded at this time from a parking reduction. South Brookline is not well-served by public transportation and must rely more heavily on automobile travel. There is currently a discussion of future development of Hancock Village based on the owner's proposal to add more than 450 units to the development. As this discussion unfolds, it makes sense to retain the current parking requirements for this multi-family zone. If a rezoning for the Hancock Village site is ultimately proposed, it can address parking at that time. The rest of South Brookline consists of single family dwellings, for which the parking requirement is not changing.

There are two other revisions the Planning Board would recommend for the Table of Parking Requirements: 1) the heading under Multi/Family for Studio/1 bedroom should be changed to limit the size of a Studio to no more than 500 s.f.; and 2) a proposal to

delete a footnote also deletes an important clause that states that any room over 100 square feet should be considered a bedroom. That clause should be retained.

The amendments to the Table of Uses, Section 4.07, would further limit the number of parking spaces that can be constructed on residential properties in T, F and M residential districts. The amendments are intended to discourage construction of new or additional parking facilities to serve dwellings not on the same lot, whether for rental or otherwise. The amendment would also limit the provision of parking in excess of what is required for the structure, as the special permit option to do so would be eliminated. The proposed wording of the amendment to Use #22 explicitly applies to pre-existing parking areas and is therefore problematic. It would likely be struck down by the Attorney General as treating two comparable parking lots differently, in a way that is not consistent with how grandfathering works in this state. A comparable situation arose when Town Meeting approved changes to the Zoning Bylaw in the fall of 2002 that allowed additional Floor Area Ratios, but only for homes in existence as of the date of the Bylaw approval. The Attorney General struck down that clause and the Bylaw was ultimately amended to say that the additional Floor Area Ratio was available to any home 10 years after it was constructed, therefore treating all comparable homes the same. Related to the amendments to Use # 54, the Planning Board believes clarification of the phrase "users of the lot" is needed because it is not clear whether this is meant to exclude or include off-site residents from renting a space on a lot.

The Planning Board is sympathetic to the goal of the amendments to uses #22, #54 and #55; however, even with the changes suggested by the petitioner, the Board finds these sections need more analysis and reconfiguring to make them less complicated and more easily understandable.

Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Article 10, with the following revisions to amend the Table of Dimensional Requirements as described above, and eliminate the changes to the Table of Uses, Section 4.07, Uses #22, #54 and #55, until further evaluation:

**ARTICLE 10**

To see if the Town will amend the Zoning By-Law establishing new residential parking requirements by:

1). Replacing the "residential" column of the TABLE OF OFF-STREET PARKING SPACE REQUIREMENTS, Section 6.02, and reformatting the table, into two tables as follows:

| RESIDENTIAL | | | | | |
|---|---|---|---|---|---|
| Single-Family Detached+ | Single-Family Attached (Townhomes) and Two/Three-Family+ | Multi-Family Studio (>500 s.f)/ 1 bdrm+* | Multi-Family 2 bdrms+* | Multi-Family 3 bdrms+* | Hotel** |
| **Parking Spaces Per Dwelling Unit+*** | | | | | |
| ~~2/2.3~~ **2** | ~~2/2.3~~ **1.3** | ~~2~~ **.8** | ~~2~~ **1.2** | ~~2.3~~ **1.4** | ~~1~~ **.5** |

***+The parking requirement for M-0.5 districts is excluded from the above parking table and shall be 2 spaces for single families , attached single-families, and dwelling units in multi-families, except 2.3 spaces for each attached single-family containing two or more bedrooms, and 2.3 spaces for a multi-family dwelling unit containing 3 or more bedrooms.***

****Bedrooms shall include any habitable room containing at least 100 square feet of area which could be converted to a bedroom other than a bathroom, kitchen, or living room.***

**For use 8A. Limited Service Hotel in the G-1.75 (LSH) Limited Service Hotel District, the minimum number of spaces for each dwelling unit shall be 0.5 and no additional spaces shall be required for floor areas used for eating, drinking, dancing, meeting halls or similar purposes.

| | | PUBLIC ASSEMBLY** | INSTITUTION | RETAIL & OFFICE | | | INDUSTRIAL | WAREHOUSE & OTHER |
|---|---|---|---|---|---|---|---|---|
| | | (Number of seats requiring one space) | | General | | Medical & Dental | | |
| | | | | Ground Floor | Other | | | |
| | | | (Number of square feet of gross floor area requiring one space) | | | | | |
| ZONING DISTRICT DEFINED BY MAXIMUM FLOOR AREA RATIO | 0.15<br>0.20<br>0.25<br>0.30<br>0.35<br>0.40 | 3 | 350 | 200* | 400* | 200* | 800* | 1200* |
| | 0.50<br>0.75<br>1.00 | 4 | 450 | 200 | 400 | 200 | 800 | 1200 |
| | 1.50<br>1.75<br>2.00<br>2.50 | 5 | 550 | 350 | 600 | 250 | 800* | 1200 |

*Applicable to nonconforming uses.

**For use 8A. Limited Service Hotel in the G-1.75 (LSH) Limited Service Hotel District, the minimum number of spaces for each dwelling unit shall be 0.5 and no additional spaces shall be required for floor areas used for eating, drinking, dancing, meeting halls or similar purposes.

~~**The greater requirement shall be provided for each dwelling unit containing more than two bedrooms and for each attached single-family dwelling containing two or more bedrooms. Bedrooms shall include any habitable room containing at least 100 square feet of area which could be converted to a bedroom other than a bathroom, kitchen, or living room.~~

**§6.02, paragraphs 2.** through **7.** contain additional requirements by type of use.

2) Amend 6.01 2.a. As follows:

> 2.a. In SC, T, F, M, L, or G Districts, when a structure is converted for one or more additional dwelling units and the conversion results in an increased parking requirement, parking requirements for the entire structure shall be provided in accordance with the requirements in 6.02 and 6.05. However, the Board of Appeals by special permit under Article IX may waive not more than one-half the minimum number of parking spaces required under 6.02 and 6.05.

3) Removing 6.02 2.e. as follows and re-lettering all the remaining subparagraphs:

> ~~2.e. For a dwelling unit which is occupied by three or more unrelated persons (including lodgers), the parking requirement for the dwelling unit shall be twice that indicated in the Table of Off-Street Parking Space Requirements in 6.02.~~

4) Amend 6.02 2.f. As follows:

> 2.~~e~~f. For residential uses in M, L, and G districts, where the number of required parking spaces exceeds 20 spaces, ~~ten percent~~ 5 percent of all required parking spaces shall be designated and marked for use by visitors ~~and trades people~~. For mixed-use properties ~~the number of visitor spaces shall be based on the parking requirement for the residential use only~~ with at least 10% of the total gross floor area used for commercial purposes, this requirement shall be waived.

or act on anything relative thereto.

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## SELECTMEN'S RECOMMENDATION

Article 10 is a petitioned article that would reduce the residential parking requirements in the Town. The number of spaces required would change from a flat requirement of 2.0 spaces per unit (except for 2.3 spaces per 3+ bedroom unit in multifamily zones) to different rates for various unit sizes. The proposed regulation would reduce the requirements for multi-family dwellings to 0.8 spaces for each studio or one bedroom unit, 1.2 spaces for each two bedroom unit, and 1.4 spaces for 3+ bedroom units. The proposed regulation would also reduce the number of parking spaces hotels are required to provide per room from 1 space to 0.5 spaces. As originally submitted, it would also amend the Use Table (Section 4.07) to limit the construction of additional spaces above the minimum for rental or tenant use to finite numbers.

The petitioner has presented some federal Census data about the existing car ownership in the town. In addition, she has presented information gathered from the Selectmen's Parking Committee to support a reduction of parking requirements near transit. While her article does not explicitly tie her reductions to proximity to transit, she notes that the single-family districts in south Brookline would not have any change in parking

requirements, and that she was additionally willing to adopt the Planning Board's recommendation to remove Hancock Village from the proposed changes.

However, another member of the Parking Committee has presented an analysis that suggests that further consideration is warranted. Specifically, there appear to be some discrepancies between the Census data used by the petitioner and the excise tax data collected by the State. These differences should be reflected in any proposed parking reduction. In addition, residents have expressed concern that lowering the parking ratios to the level suggested by the petitioner may have side effects on the secondary market for parking spaces, and may even reduce the Town's leverage in negotiating with developers. Other residents and members of the Parking Committee and Planning Board have expressed support for the article as submitted, with some possible amendments to increase the ratios to numbers that more closely match the existing requirements. These parties have noted that building design is often driven by the parking requirements, resulting in inferior design; that existing parking requirements mean that people with two or more cars buy the units and therefore increase traffic on the Town's roads; and that, since these are not maximums, developers would still be free to provide more parking spaces if they so desired.

In the end, the Board of Selectmen believes that parking requirement is a complex issue with many impacts. This Article proposes a worthy goal that needs further analysis. The Board supports formation of a Selectmen's Committee that will examine the residential parking requirement and related issues specifically, and come back with a recommendation based on more analysis and discussion. Therefore, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 26, 2010, on the following motion for referral:

VOTED: To refer the subject matter of Article 10 to a Selectmen's Committee with a charge to include

- Seeking additional data on cars and parking in Brookline, including, but not limited to, a possible question on the Town Census asking for residents to report the number of cars and how they are housed in Brookline, a survey of owners and managers of multi-unit buildings to identify the number of spaces owned, rented, and vacant; and
- Reviewing and analyzing all available data to select the most consistently reliable, accurate and complete information on ownership of cars and utilization of parking, including the April, 2010, Report of the Selectmen's Committee on Parking; and
- Investigating the relationship of parking and zoning requirements to density and open space with reference to different zoning classifications both residential and commercial, in order to understand all the zoning implications and impacts as much as possible; and
- Making recommendations for changes in the zoning bylaw with regard to reduction in off-street parking requirements taking into account utilization patterns, proximity to transit and car-sharing, and the different residential patterns and densities of Brookline neighborhoods.

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## ADVISORY COMMITTEE'S RECOMMENDATION

Article 10 is a citizen's petition which would amend Brookline's bylaw to significantly reduce the amount of parking required for new residential construction. More specifically it proposes to:

1) amend the Table of Off-Street Parking Requirements, Sec.6.02, by significantly lowering the minimum requirements for off-street parking for any residential development/use, other than a detached single family dwelling;
2) amend the Table of Use Regulations, Section 4.07, Use #22 to limit the number of spaces that can be constructed on a lot, for the purpose of rental parking or otherwise, based on the number of dwelling units in the structure and the size of the lot;
3) amend the Table of Use Regulations, Section 4.07, Use #54, by no longer allowing parking spaces in an accessory garage or parking area to be rented to non-occupants or users of the lot, and
4) amend the Table of Use Regulations, Section 4.07, Use # 55 to no longer provide a special permit to allow more than three spaces per dwelling unit on a lot greater than 10,000 s.f, nor four spaces for a permitted nonresidential use, in two (T), three (F) and multi-family (M) districts, even for vehicles belonging to occupants or users of the lot.

The **current parking** minimums under Section 6.02, are:

- **2 parking spaces** per studio, 1 and 2 bedroom units in a multi-family structure, and
- **2.3 parking spaces** for attached single families with two or more bedrooms and multi-family structures with 3 or more bedroom units.

The **proposed bylaw** would reduce those requirements for multi-family dwellings to:

- **.8 parking spaces** per studio/1 bedroom units,
- **1.2 parking spaces** for 2 bedroom units,
- **1.4 parking spaces** for 3+ bedroom units.

The proposed bylaw would also reduce the number of parking spaces **hotels** are required to provide per room **from 1 space to .5 spaces**.

Parking Committee

The Selectmen appointed the Brookline Parking Committee ("BPC") in 2008 "in order to maximize the effective and efficient use of Brookline's on and off-street parking resources for the mutual benefit of local businesses residents and visitors. The committee was charged with conducting a comprehensive review of the policies and regulations related to parking (other than the year round ban on overnight on-street parking". The

committee studied many areas related to parking and the zoning requirements was just one of the areas studied With respect to zoning, the BPC recommendations were:

- Reduce the off street parking requirements for residential land uses, **particularly near transit and in areas served by car sharing organizations, provided that neighborhood concerns are taken into account**. The BPC did not recommend a specific number or ratio of parking spaces per unit (Emphasis Added.)
- The Zoning Bylaw Committee (ZBC) should consider a reduction of minimum parking requirements in M, T & F districts within proximity to rail stops and bus stop.

The Advisory Committee's Planning and Regulation Subcommittee held a public hearing on Article 10 where over 60 citizens attended. Most spoke against the article. In addition the Subcommittee received comments from more than 30 citizens by email (19 against and 11 for the article.

DISCUSSION

The current parking requirements were passed in 2000 with the intention of insuring adequate parking in the town as a whole. It was stated then, that any new units should provide adequate parking for its occupants to relieve market pressure on the limited supply of existing off site parking. It was also intended to discourage too dense development, mainly in North Brookline.

We note that these proposed minimums would not only roll back the requirements to the pre-2000 levels, but actually reduce the minimums to levels not seen since the 1970s and 1980s. See the petitioner's explanation for details.

Arguments for reducing the parking requirements

The lead Petitioner of Article 10 has presented the Article with an extensive explanation. The Petitioner has stated that she made an effort to collect substantial data on the current car utilization in Brookline from many sources including the most recent federal census, as well as information developed as part of the Selectman's Parking Committee's prior review and from field studies which demonstrated excess parking in multi-family dwellings.

It is the proponents' contention that the current parking requirements exceed actual parking utilization. That additional required parking is not only unnecessary but creates a disincentive to individuals who would live in Brookline but for whom the cost of living is higher due to the parking requirements then would apply for many individuals given the transit oriented nature of Brookline.

The petitioner noted that her data shows that current vehicle ownership is 1.15 per household. The Petitioner also noted that for many of the snout-nosed and badly designed buildings with too much bulk that have recently cropped up in North Brookline seem to be a function of the need to install the current level of parking. Reducing the parking limits would create better design and more green space, and that, in effect, the 2000 required parking increase contributed to this problem. Other supporters of Article 10 have noted that many of the badly designed buildings in the Coolidge Corner area seem to be a function of the need for current levels of parking.

In summary, the proponents believe that the proposal:

- Is based on data showing actual levels of car ownership;
- Improve the quality of development by allowing more neighborhood compatible buildings with less bulk, more open space, fewer negative impacts to the streetscape with adequate parking

Additionally, proponents of this article have noted that that given climate change, increasing energy costs and the importance of encouraging transit oriented development passing Article 10 would be a welcome modification of current zoning.

Arguments against reducing the parking limits

At both, the subcommittee's public hearing and the full Advisory Committee discussion, much of the data upon which the proposal was based has been questioned. Appendix 1 to this report contains a full analysis by Advisory Committee member Sean Lynn-Jones. An earlier version of this analysis was published as an appendix to the BPC report.

In summary, Mr. Lynn-Jones questions the accuracy of the petitioners data specifically noting that he had reviewed excise tax information and data from the RMV which demonstrated a higher rate of vehicle ownership in Brookline. He notes that there is data from the parking survey that would suggest there is even higher actual parking in Brookline than suggested by the RMV and excise tax data (i.e., 44% of the cars surveyed by the Planning Department in various parking lots and building parking facilities were cars not registered in Brookline).

Others have questioned the Petitioner's data with some noting since the 2010 federal census data will be available, making these decisions based on 10 year old data would not be wise. Further comments noted that actual observations of current parking in multi-unit dwellings were not excessive. For example, there was a discussion of Amory House where of the 140 spaces, 132 were utilized.

At the subcommittee hearing, numerous members of the public spoke about what they viewed as the inappropriate reduction of parking as it relates to the proposed Hancock Village Development. Citizens submitted photographs showing that current parking at Hancock Village is fully utilized. We note that the Planning Board's recommendation would remove Hancock Village from the effects of this zoning bylaw revision.

A number of hearing attendees who are realtors noted that one of the significant market issues in selling a condo is adequate parking. In their view, encouraging development that did not have adequate parking or generally reducing parking supply in the town would affect real estate values at least for those units.

Other commentators noted the fact that many parts of Brookline are not accessible to mass transit, and in any event, given the fact that the current transit system is a spoke and wheel system (e.g., directed downtown) given current commuting patterns residents working in the suburbs had little practical access to transit for commuting purposes.

Some attendees at the hearing, while generally opposed to the Article, thought that some modifications of parking requirements for studio units would make sense or that some

limiting of the area where parking ratios would be decreased to areas close to mass transit might be better accepted. The Petitioner noted that she did not see transit accessible zones as workable. Other commenter's noted that while the studio and 1 bedroom numbers might seem high that requirement was based on the idea that there needed to be space in these larger developments for visitors, tradesmen, etc.

RECOMMENDATION

As presented, Article 10 is a major change to the Brookline Zoning bylaw. The Advisory Committee believes this article is not ready to be passed and needs further study. The Committee is thus recommending a referral to a Moderators Committee. The reasons for this referral include:

1. This proposal significantly reduces parking requirements townwide and does not consider the BPC's recommendation to reduce parking in areas accessible to public transit and to consider neighborhood concerns.

2. Members questioned at least some of the data used as the basis to formulate this proposal. Members were especially skeptical of the stated rates of overnight parking vacancies in private buildings.

3. There is a possibility that the residents of new construction may have a higher rate of vehicle ownership than the current town-wide average. That average, whatever it is, is calculated for a population that includes elderly housing, affordable/BHA housing, residents of older apartments with little or no parking, SROs, and college dorms. New residential units are more likely to be high-end condominiums. Occupants of these units are likely to own cars at a higher rate than the current town-wide average.

4. The committee heard conflicting views on the effects of the proposal on North Brookline. While it may be difficult to bridge the philosophical differences in a revised consensus proposal, it became clear that the unintended consequences of this proposal have not been adequately studied. For example, the potential impact of reduced parking on development probably needs further discussion. Arguments have been made in cities such as Washington, DC that such reductions would stimulate development and thereby help the local construction industry recover from the recession.

5. Several committee members expressed the view that a reduction in the ratio of spaces to dwelling units might have the effect of increasing the overall number of units in the building rather than, as the petitioner suggests, resulting in smaller buildings with more green space. This obviously unintended consequence of the proposal needs to be studied and factored into any final scheme.

6. Many South Brookline residents appear to be opposed to the proposal given the suburban, car dependant development pattern plus perceptions of how changing the town wide rules at this point may affect the proposal for development at Hancock Village. The Hancock Village proposal is potentially the largest residential development proposal in the town in many years. The Planning Board's proposal to exclude Hancock Village, while politically expedient, even

further highlights the lack of study of the unintended consequences of the proposal. Is Hancock Village the only multi family zoned area which should have different parking requirements than other parts of town?

7. One explanation for the claimed underutilization of parking spaces in multi-unit buildings, if in fact this is the case, arises from the assignment of specific spaces to tenants or the deeding of specific spaces to condominium owners. When specific spaces are set aside for a specific resident's use, a vacant space is not available for use by others. All else equal, when spaces are assigned in this manner, more total spaces are required to satisfy a given level of demand than where the entirety of the parking lot is available to any tenant/condo owner in the building. A reduction in the total number of spaces may operate to make space assignments impractical, and this should be studied prior to approval of the proposed reductions.

8. The fact that many of the parking spaces set aside for overnight use in the town's municipal lots are not currently being used has been taken to imply that there is no longer a shortage in offstreet parking for town residents, but the fact that the majority of these spaces remain occupied despite that fact that they are undesirable -- not accessible before 8 PM, must be vacated by 9 AM -- actually shows that there is still a shortage of convenient offstreet parking available for residential use. Ideally, the overnight spaces in municipal lots should revert to their original purpose, servicing the commercial sector by providing evening parking for customers in the town's business districts. Caution is needed before adopting any changes to residential parking requirements that might increase, rather than lessen, the need to keep these commercial spaces available for residential use.

9. The assertion that Brookline's parking requirements are the crucial cause of unattractive building built recently needs further study. There clearly have been unattractive buildings built recently but there also have been attractive buildings built.

The Advisory Committee with a 14-4-0 vote recommends the following motion:

VOTED: to refer the subject matter of Article 10 to a Moderator's Committee with a charge to include

- Seeking additional data on cars and parking in Brookline, including, but not limited to, a possible question on the Town Census asking for residents to report the number of cars and how they are housed in Brookline, a survey of owners and managers of multi-unit buildings to identify the number of spaces owned, rented, and vacant; and
- Reviewing and analyzing all available data to select the most consistently reliable, accurate and complete information on ownership of cars and utilization of parking, including the April, 2010, Report of the Selectmen's Committee on Parking; and

- Investigating the relationship of parking and zoning requirements to density and open space with reference to different zoning classifications both residential and commercial, in order to understand all the zoning implications and impacts as much as possible; and
- Making recommendations for changes in the zoning bylaw with regard to reduction in off-street parking requirements taking into account utilization patterns, proximity to transit and car-sharing, and the different residential patterns and densities of Brookline neighborhoods.

***XXX***

APPENDIX TO ADVISORY COMMITTEE'S RECOMMENDATION

An Alternative Analysis of Available Data Related to Article 10

The petitioner argues that current parking requirements are excessive because Brookline households have, on average, only 1.15 vehicles, and the Parking Committee's survey of twenty parking areas at residential buildings found that only 75% of the spaces were occupied.

If it were true that Brookline has a low number of vehicles per household and many unused residential parking spaces, there might be a case for reducing parking requirements. A close look at the data, however, raises several questions and suggests a more cautious approach.

*Issues with the Overall Count of Vehicles and the Reported Number per Household*
There are some issues and discrepancies regarding the petitioner's calculations of the number of vehicles per household and the total number of vehicles in Brookline.

The first problem with the reported average of 1.15 vehicles per Brookline household is that multiplying 1.15 times the total number of households (25,573 or 26,388 according to the 2000 U.S. Census; 26,401 in 2008 according to the American Community Survey of the U.S. Census) yields a range of totals (29,409–30,361) that is lower than the number of vehicles in Brookline according to excise tax lists and registry data shown in the following two tables in almost any year since 1998. (The number of vehicles varies by year and according to whether one uses calendar year or fiscal year data and/or Excise Tax data from the Assessor or Excise and RMV data compiled by the Parking Committee. Note that Excise figures have been adjusted for abatements when the number of abatements is available. Also note that further research is necessary to investigate the differences in the data from different sources.)

Table 1. Brookline Motor Excise Tax Bills, 1998–2010

**BROOKLINE MVE BILLING SUMMARY**

| FISCAL YEAR | MVE BILLS ISSUED | MVE BILLS ABATED | CALENDAR YEAR | MVE BILLS ISSUED | MVE BILLS ABATED |
|---|---|---|---|---|---|
| 1998 | 38,970 | N/A | 1998 | 38,527 | N/A |
| 1999 | 37,171 | N/A | 1999 | 39,142 | N/A |
| 2000 | 39,469 | N/A | 2000 | 39,440 | N/A |
| 2001 | 40,900 | N/A | 2001 | 38,350 | N/A |
| 2002 | 35,525 | N/A | 2002 | 37,434 | N/A |
| 2003 | 37,259 | N/A | 2003 | 37,343 | N/A |
| 2004 | 36,087 | 1,796 | 2004 | 36,507 | 2,164 |
| 2005 | 36,611 | 1,704 | 2005 | 35,654 | 2,295 |
| 2006 | 36,840 | 2,581 | 2006 | 34,409 | 1,861 |
| 2007 | 32,207 | 1,943 | 2007 | 33,806 | 1,583 |
| 2008 | 33,679 | 1,299 | 2008 | 33,276 | 1,416 |
| 2009 | 33,352 | 1,626 | 2009 | 32,946 | 1,353 |
| 2010 | 33,392 | 1,687 | 2010 | 27,937 | 844 (partial yr) |

Source: Brookline Town Assessor, October 4, 2010

Table 2: Excise Bill and Registry of Motor Vehicles Data Compiled by the Parking Committee

| Calendar Year | Number of Bills | % Change Previous Yr | Cum. Change from '98 | Excise-RMV Discrepency | RMV Data | % Change Previous Yr | Cum. Change from '98 |
|---|---|---|---|---|---|---|---|
| **1998** | **38,469** | NA | NA | 5,139 | **33,330** | NA | NA |
| **1999** | **36,522** | -5.06% | -5.06% | 2,419 | **34,103** | 2.32% | 2.32% |
| **2000** | **38,994** | 6.77% | 1.36% | 4,978 | **34,016** | -0.26% | 2.06% |
| **2001** | **40,726** | 4.44% | 5.87% | 6,837 | **33,889** | -0.37% | 1.68% |
| **2002** | **35,206** | -13.55% | -8.48% | 1,169 | **34,037** | 0.44% | 2.12% |
| **2003** | **39,260** | 11.52% | 2.06% | 5,332 | **33,928** | -0.32% | 1.79% |
| **2004** | **36,869** | -6.09% | -4.16% | 3,052 | **33,817** | -0.33% | 1.46% |
| **2005** | **35,831** | -2.82% | -6.86% | 2,460 | **33,371** | -1.32% | 0.12% |
| **2006** | **33,402** | -6.78% | -13.17% | 586 | **32,816** | -1.66% | -1.54% |
| **2007** | **34,055** | 1.95% | -11.47% | 1,372 | **32,683** | -0.41% | -1.94% |
| **2008** | **34,298** | 0.71% | -10.84% | 1,401 | **32,897** | 0.65% | -1.30% |

Source: Data Compiled by the Parking Committee and posted on the website of the Planning and Community Development Department:
http://www.brooklinema.gov/index.php?option=com_docman&Itemid=947

The petitioner's estimate of 1.15 vehicles per household seems particularly implausible for the year 2000, when the U.S. Census data was collected. Brookline's Comprehensive Plan estimated that there were 1.5 vehicles per household on Brookline in 2000. See *Brookline Comprehensive Plan, 2005–2015*, p. 16, and *Brookline Comprehensive Plan, 2005–2015: Issues and Opportunities*, p. 112. (The *Issues and Opportunities* section of the Comprehensive Plan calculates that there were 1.508 vehicles per household in Brookline in 2000.)

The petitioner has pointed out that the estimate of 1.15 vehicles per household in Brookline is not the only basis for Article 10's proposed requirements for parking spaces per residential unit. She has performed much more detailed calculations of the current number of vehicles per various types of units (one-bedroom, two-bedroom, etc.) in various parts of Brookline. In principle, this fine-grained approach could yield estimates that might be useful in setting parking requirements. The problem, however, is that these more specific calculations still rely on the data that yields the overall estimate of 1.15 vehicles per household. If that estimate is too low, it is likely that some or all of the estimates for particular areas and particular types of housing are also too low.

POTENTIAL INACCURACIES IN THE 2000 CENSUS DATA

The petitioner reports that the 1.15 vehicles/household estimate comes from data gathered during the 2000 U.S. Census. The 2000 long form questionnaire asked residents, "How many automobiles, vans, and trucks of one-ton capacity or less are kept at home for use by members of your household?" There are several reasons why the data used to produce this estimate may not be accurate. First, the data may be subject to sampling error,

because the 2000 long form was sent to approximately one-sixth of households. Second, some residents may not have answered the question accurately because they were uncertain about whether their light trucks or SUVs had a one-ton capacity or if vehicles not parked at their home (i.e., in a town or private lot) should be counted. Third, residents who had not registered or insured their vehicles in Brookline may have been reluctant to reveal this information to a government agency. (Anti-census websites that try to discourage participation in the U.S. Census specifically object to the question about household vehicles. One asks: "Why do they need to know this information? It's not hard for the Administration to use this to determine whom [sic] has more cars than they need, and must be either taxed or fined for having too much." For one of many examples, see: http://zombiehero213.wordpress.com/2010/03/11/can-the-government-ask-that/ ) Even if Brookline respondents did not share the extreme anti-census views of such websites, they may have hesitated to list vehicles not registered in Brookline. (See below for a discussion of the potential number of such vehicles.)

ALTERNATIVE ESTIMATES

It is estimated that the *registered or excised* vehicle per household figure for Brookline in 2008 was approximately 1.23, using the 32,380 as the number of vehicles subject to excise tax in fiscal 2008 (33,679 – 1299 abated bills, according to the Town Assessor) and dividing by the 26,401 households estimated by the U.S. Census American Community Survey for 2006–2008. Note that there are almost certainly more vehicles that are not registered, as discussed below, and the vehicles per household figure would be higher if these vehicles were included.

Using data from the Registry of Motor vehicles, she has calculated that there are approximately 1.2 vehicles per household for a total of 31,657. The petitioner excludes 1330 heavy trucks, trailers, motorcycles, and category listed as "other" from this calculation. These vehicles may not be cars or light trucks, but in most cases they are likely to require a parking space. Adding them to the total of 31,657 yields a total of 32,987. Dividing by 26,401 households yields 1.25 vehicles per household.

In either case, the estimate exceeds 1.15 vehicles per household. More important, these estimates do not take into account vehicles not registered in Brookline.

*The need to count vehicles not registered in Brookline*

The Registry data and estimates of 1.15–1.25 cars per household may understate the number of vehicles in Brookline, because many vehicles parked in Brookline are not registered in Brookline.

The Parking Committee survey of vehicles in twenty parking areas at multifamily buildings in Brookline that the petitioner cites also found that only 56% of the vehicles observed were registered in Brookline. Thus 44% were registered elsewhere—including 7% registered in other states—and therefore would not be included in the Registry of Motor Vehicle's data on vehicles in Brookline. It is possible that some of these vehicles were leased vehicles. One out of every eleven vehicles in Brookline is a leased vehicle. It is also possible that some of these vehicles were temporarily unregistered when they were observed and that their owners plan to register them in Brookline.

If the Parking Committee survey's finding that 44% of parked vehicles observed were not registered in Brookline applies to all vehicles in Brookline, it suggests that the current total number of cars is 80% higher than the number reported by the Registry, or between 55,000 and 60,000. If we adjust the 44% figure downward by 10% on the assumption that approximately 10% of vehicles in Brookline are leased vehicles that actually appear in the excise tax lists (because leasing companies are responsible for paying taxes where the car is garaged), we could estimate 34% of the vehicles in Brookline are registered elsewhere. That would imply that the current actual number of vehicles in Brookline is 50% higher than the total reported by the Registry, or approximately 50,000. If we go further, and estimate that only 20% of the vehicles in Brookline are not registered, the current total would still be approximately 40,000—more than 1.5 per household

Whatever figure is correct, the finding that 44% of parked cars were not registered in Brookline suggests that the Excise/RMV figures do not include all cars in Brookline and that the vehicles per household figure is higher than 1.25 (my estimate of registered vehicles per household) or 1.15 (the petitioner's estimate of vehicles per household).

*Vehicle ownership per household for new construction is likely to exceed the current average rate of vehicle ownership*

The petitioner's estimate of 1.15 vehicles per household is an average for existing households in Brookline. Even if it is accurate—and there are reasons to believe that it is based on an undercount of vehicles parked in Brookline, it may not be a good basis for setting parking requirements for new construction.

The parking requirements in Article 10's amendments to the zoning by-law would apply only to future construction. Residents of new construction are likely to have more vehicles than the town-wide average. New construction tends to be more expensive—not just because it has more parking, but because there is a premium for new buildings that have modern amenities and no wear and tear. Buyers tend to be more affluent and to own more vehicles than the residents of older Brookline multi-family buildings. New construction also will not include many, if any, rooming houses/single-room occupancies, affordable senior housing units, and college dormitories—categories of housing in which the residents tend to own few cars. New residential construction will probably be condominiums, not rental units, and homeowners are more likely to own cars than renters.

*Don't Extrapolate too Much from Recent History*.

Finally, we should be cautious about making any major changes in policies on the basis of data from the past decade. Statistics from 2000–2010 have been skewed by two factors. First, the worst recession since the Great Depression made it more difficult for many families to own and operate cars, depressing vehicle ownership rates. Second, gasoline prices spiked from low levels to record highs, before leveling off at a fairly high level. Vehicle-miles driven actually fell during the late 2000s before recovering slightly. These trends may not continue, so policies—particularly parking requirements—should not be based on the assumption that vehicle ownership and use rates will decline in the coming decades.

*Issues with the Reported Occupancy Rate of 75% at Various Brookline Buildings*

The petitioner argues that parking requirements can be reduced because a June/July 2009 survey of twenty multifamily parking lots conducted by Planning and Community Development staff revealed that only 75% of the spaces were occupied at 5:00 a.m., when one would expect most residents to be at home. The results are in the report of the Parking Committee.

Before we can conclude that this survey supports Article 10, however, we need to consider some other factors and questions.

- *The adjusted occupancy rate is higher*. The Parking Committee report includes a higher estimate of the occupancy rate (802 cars in 994 spaces, or approximately 80%.) The adjusted total includes the number of cars that are listed as paying excise tax at the address of the parking lot, thereby taking into account some cars that were absent when the survey was conducted.

- *Empty spaces are not unoccupied or surplus spaces*. Even at 5:00 a.m, some residents' cars are likely to be away due to business or personal travel. At any given time, some units will be vacant. Some residents may have other residences and spend time there, particularly in the summer

- *How many spaces were actually rented or owned*? The key question is not how many spaces were vacant, but how many have been rented or purchased. Evidence from other buildings (e.g., Amory House) suggests that most parking spaces are rented or have been bought when that option is available.

- *Article 10 would reduce parking requirements by much more than 25%*. If it were true that 25% of Brookline's residential parking spaces are vacant and unnecessary, there might be a case for reducing parking requirements to 75% of their current level. Article 10, however, would reduce the parking minimums to approximately 40–60% of their current levels, depending on the number of bedrooms in the residential unit.

*Uncertainty and Parking Policy*

The previous discussion suggests that there are many uncertainties surrounding the number of cars in Brookline and the ratio of cars to available parking spaces. In light of this uncertainty, the Town should move cautiously and not make drastic changes to its parking requirements. Better data should be gathered and analyzed first.

# ARTICLE 10

## BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

At their November 9th meeting, the Board of Selectmen reviewed the motion being offered by the Petitioner (found on page 10-15 of the Combined Reports). While the Board believes that the motion being offered is a better attempt at addressing this extremely complex issue, the motion to refer is still being recommended. The Selectmen again thank the petitioner for the amount of work she put into preparing this article and believe it is a valuable analysis that will help the Committee make an ultimate determination on this issue.

By a vote of 5-0, the Board also amended their vote, found on page 10-23 of the Combined Reports, to include the **bolded** sentence at the end of the following vote:

VOTED: To refer the subject matter of Article 10 to a Selectmen's Committee with a charge to include

- Seeking additional data on cars and parking in Brookline, including, but not limited to, a possible question on the Town Census asking for residents to report the number of cars and how they are housed in Brookline, a survey of owners and managers of multi-unit buildings to identify the number of spaces owned, rented, and vacant; and
- Reviewing and analyzing all available data to select the most consistently reliable, accurate and complete information on ownership of cars and utilization of parking, including the April, 2010, Report of the Selectmen's Committee on Parking; and
- Investigating the relationship of parking and zoning requirements to density and open space with reference to different zoning classifications both residential and commercial, in order to understand all the zoning implications and impacts as much as possible; and
- Making recommendations for changes in the zoning bylaw with regard to reduction in off-street parking requirements taking into account utilization patterns, proximity to transit and car-sharing, and the different residential patterns and densities of Brookline neighborhoods.

**This Committee will make progress reports to each Annual Town Meeting until its work is concluded.**

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# *Town of Brookline*
## *Massachusetts*

**Planning Board**
Town Hall, 3rd Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2130 Fax (617) 730-2442

Mark J. Zarrillo, Chairman
Linda K. Hamlin, Clerk
Steven A. Heikin
Jerome Kampler
Steve R. Kanes
Jonathan Simpson

**ARTICLE 10**
**SUPPLEMENTAL PLANNING BOARD REPORT AND RECOMMENDATION**

At its November 11, 2010 meeting, the Planning Board voted to support Article 10, as revised by petitioner Linda Pehlke. The Board had unanimously supported the original article with revisions that eliminated changes to the use categories but retained the minimum requirements for parking, with the exception of M-0.5 zoning districts. The Board believes that the petitioner's revisions -- to make the minimums applicable only to properties within a half mile of a rapid transit stop -- makes good planning sense. This revision eliminates the article's applicability to much of South Brookline, which is poorly served by public transit. The Board also supports the revision to set the minimum requirement for multi-family studio and one-bedroom units at one parking space per unit.

The Planning Board stressed the following points in its discussion of reducing the minimum multi-family residential parking requirements in the Zoning By-Law: they are applicable only to new construction and do not establish a maximum number of parking spaces; there will be greater flexibility in designing less bulky residential buildings if less parking is required; the Floor Area Ratio of a development is not altered by these parking requirement changes; and more green space may result in the development projects. The Planning Board believes that Article 10 will result in better development, more use of public transit, and the potential for more green space on a property.

Therefore, the Planning Board strongly recommends FAVORABLE ACTION on Article 10 as revised by the Petitioner.

---

# *Town of Brookline*
## *Massachusetts*

**Department of Planning and Community Development**
Town Hall, 3rd Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2130 Fax (617) 730-2442

Greer Hardwicke
Jean Innamorati
Preservation Planners

| | |
|---|---|
| TO: | Board of Selectmen |
| FROM: | Preservation Commission Staff |
| DATE: | October 27, 2010 |
| SUBJECT: | Fall 2010 Town Meeting – Preservation Commission support of Article 10 (residential parking requirements) |

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At their meeting on October 12, 2010, the Preservation Commission voted unanimously to recommend adoption of Article 10 at the Fall 2010 Town Meeting. The Preservation Commission supports the Article proposing to reduce the amount of residential parking required in the town's Zoning By-Law.

The Preservation Commission administers the town's Demolition Delay By-Law and through it often works with developers and property owners to save historic properties. Frequently historic buildings are proposed to be added onto or incorporated into larger projects. In these cases, the Commission believes that the parking requirements often motivate a developer to include more parking than needed and, in effect, work to the detriment of the final design and the historic integrity of the original buildings and their sites.

Recently the Commission has seen a significant increase in the number of significant buildings proposed to be demolished. The Commission believes that in several of these recent cases buildings were slated for demolition because the required amount of parking made them seem unsuitable for multi-use residential development. Although the Commission understands that relief from parking requirements may be granted in some cases, having a high minimum threshold serves to discourage the retention of historically and architecturally significant buildings in densely developed neighborhoods.

The Commission recommends favorable action on Article 10 because it believes that the amendment will help to encourage the preservation of the historic fabric of Brookline's streetscape and eventually lead to more appropriate and sensitive design for new developments.

# Town of Brookline

Massachusetts

## Department of Public Works

**Engineering & Transportation Division**

**TRANSPORTATION BOARD**
MICHAEL SANDMAN, CHAIRMAN
DR. JOSH SAFER, VICE CHAIRMAN
GUSTAAF C.M. DRIESSEN, PE
BRIAN KANE
WILLIAM SCHWARTZ, AICP
PAMELA ZELNICK

October 25, 2010

Betsey Dewitt, Chairman
Brookline Board of Selectmen
333 Washington Street
Brookline, Massachusetts 02445

RE: November Town Meeting Warrant Article 10

Dear Chairman Dewitt,

Per the request of the Petitioner, the Transportation Board held a public meeting on Thursday, October 21, 2010 to discuss and vote on the issuance of a letter of recommendation regarding Warrant Article 10: A Zoning By-law Amendment seeking to Lower the Minimum Number of Off-street Parking Spaces Required for New Residential Developments. Following a public discussion the Transportation Board offers the following recommendation:

WHEREAS The Transportation Board for the Town of Brookline, under Chapter 317 of the Acts of 1974 as amended, are charged with the *"authority to adopt, alter or repeal rules and regulations not inconsistent with general law…relative to pedestrian movement, vehicular and bicycle traffic in the streets and in the town-controlled public off-street parking areas in the town, and to the movement, stopping, standing or parking of vehicles and bicycles on, and their exclusion from, all or any streets, ways, highways, roads, parkways and public off-street parking areas under the control of the town"*;

WHEREAS The Brookline Board of Selectmen convened the Brookline Parking Committee (BPC) in 2008 "in order to maximize the effective and efficient use of Brookline's on- and off-street parking resources for the mutual benefit of local businesses, residents, and visitors. This committee was charged with conducting a comprehensive review of policies and regulations related to parking (other than the year-round ban on overnight on-street parking)." Furthermore two members of The Transportation Board were members of the Committee, including Transportation Board Member William Schwartz who presided as Co-Chair;

WHEREAS the Selectmen's Parking Committee, following a study of overnight residential usage of onsite parking at 20 properties, supported "a reduction in off-street parking requirements within multi-family residential land uses, particularly near transit and in areas served by car sharing organizations, provided that neighborhood concerns are taken into account. The BPC does not recommend a specific number or ratio of parking spaces per unit";

*333 Washington Street ♦ Brookline, MA 02445-6863*
*Telephone: (617) 730-2177 Facsimile: (617) 264-6450*

WHEREAS the Transportation Board held a hearing on Article 10 at its meeting on October 21, 2010 to discuss the Warrant Article;

THEREFORE the Transportation Board, by unanimous vote, supports a reduction in residential parking requirements, particularly near transit, and encourages further analysis of data and community input on this matter. Furthermore, while not part of the final motion, the Board believes that the best way to accomplish this is through the referral of Warrant Article 10 to a Special Selectmen's Committee.

Sincerely Yours,

Michael A. Sandman
Chairman - Transportation Board

CC: Melvin Kleckner, Town Administrator
Jeffrey Levine, Director – Department of Planning & Community Development
Todd M. Kirrane, Transportation Administrator
Brookline Board of Selectmen
Brookline Advisory Committee
Town Meeting Members

ARTICLE 10

**Amendment Offered by A. Joseph Ross, TMM-Prec. 12**

Moved: to amend both the Selectmen's and the Advisory Committee's referral motions by adding the following additional bullet point:

> Exploring alternative regulatory choices, including but not limited to: downzoning, design review, and allowing reduced parking requirements by special permit to deal with parking and development issues raised by Article 10.

ARTICLE 10

**Amendment Offered by Andrew Fischer, TMM-Prec. 13**

Amend the motions to refer of **both** the Board of Selectmen and the Advisory Committee by changing the wording of the third bulleted paragraph in each motion as follows:

> • Investigating the relationship of parking and zoning requirements to density**, [insert comma]** open space **and the cost of housing** with reference to different zoning classifications**, [insert comma]** both residential and commercial, in order to understand all the zoning implications and impacts as much as possible; and

Explanation

PAX supports referral for further study, but with the amendment above, which addresses concerns of PAX members on both sides of the issue who agree that we should better understand the possible impact of reduced parking requirements on the cost of housing.

## ARTICLE 11

ELEVENTH ARTICLE

To see if the Town will amend the third paragraph of Section 2.5.2 of the Town By-Laws as follows: (**bold language** is new; ~~strike-out language~~ is deletion)

SECTION 2.5.2 COMBINED REPORTS

The Combined Reports shall include, with each recommendation of the Board of Selectmen**, the Advisory Committee, and any other Town board or committee which takes a formal vote on a recommendation**, a roll-call showing the vote of each member~~; and shall include, with each recommendation of the Advisory committee, a statement of the number of members voting for and against the recommendation~~ and the date of the vote. ~~When a minority report is presented, the Combined Reports shall identify the members supporting the minority report.~~

Or act on anything relative thereto.

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PETITIONER'S ARTICLE DESCRIPTION

This change in the by-laws would require that the Combined Reports contain a roll-call showing the votes of each member of the Advisory Committee or other Town board or committee, in addition to the roll-call vote already included by the Board of Selectmen.

One important function of the Combined Reports is to provide useful information to inform Town Meeting about each article in the Warrant. The vote of each member of the Advisory Committee or other Town board or committee provides additional information for each Town Meeting Member. For some Articles, this may prove useful.

For example, upon seeing that an Advisory Committee member voted contrary to what a Town Meeting Member may have expected, he or she may wish to contact that member to discuss the Article further. Likewise, a Town Meeting Member might choose to contact a Transportation Board member or Planning Board member to better understand which nuances in the issue weighed heavily in that member's vote.

This will not be burdensome: the recently revised Massachusetts Open Meeting Law now requires that the minutes of all public bodies require all votes to be recorded. This by-law would merely require that those votes -- already being recorded and a part of the public record -- are also included in the Combined Reports.

This proposed change in the by-laws would further improve transparency by making the roll-call vote information easier for Town Meeting Members to obtain while adding little or no burden in the process. In recent years, the Town of Brookline has progressed toward more transparency in the town government process, including the inclusion of Board of Selectmen votes and Advisory Committee vote totals in the Combined Reports, a reduction of the required number of Town Meeting Members supporting a recorded

vote, and the formation of the Brookline Recorded Vote Coalition. This change in the by-laws would further increase transparency and help Town Meeting to make the best decision possible on each Article in the Warrant.

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## SELECTMEN'S RECOMMENDATION

Article 11 is a petitioned article that would amend the Town's By-Laws to require the Advisory Committee and any other Town board or committee to take a roll-call showing the vote of each member on any formal vote related to a recommendation for Town Meeting. The Selectmen are already required to do so.

This article recycles a proposal that was rejected by Town Meeting in 2002. A majority of the Board believes that the proposed change would only politicize the Advisory Committee, a body that now is non-political and advisory in nature. If this were to happen, the Advisory Committee's role would be threatened. Town Meeting should not focus how individual Advisory Committee members vote; rather, Town Meeting should be concerned with their deliberation, thoughtful analysis, and independent recommendation to Town Meeting. While the majority understands the transparency argument, it believes that the ramifications outweigh the benefits.

As elected officials, the Selectmen's individual votes should be, and are, recorded. As can be seen throughout these Combined Reports, when the vote is anything other than 5-0, a roll call vote is presented. All Board members should be, and are, held accountable for their votes on election day every three years. There is no such reason for individual Advisory Committee members to be judged by their individual votes.

A minority of the Board believes that this is a "good government" article that continues to make town government more transparent. The minority does not believe that having the Advisory Committee's votes recorded in a roll call fashion will politicize them and threaten their role as an independent body.

Therefore, the Board recommends NO ACTION, by a vote of 3-2 taken on October 26, 2010, on Article 11.

**ROLL CALL VOTE:**

| No Action | Favorable Action |
|---|---|
| DeWitt | Mermell |
| Daly | Goldstein |
| Benka | |

---

## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
If enacted, this article will require any of Brookline's 46 Town boards and committees (or commissions) that formally vote on a recommendation regarding a Warrant Article to publish a roll-call vote with its recommendation in the Combined Reports for Town Meeting.

In practice, this article primarily affects the Advisory Committee. As a statutory requirement, the Planning Board formally and publicly renders recommendations on all zoning articles and those recommendations are currently published in the Combined Reports.

On occasion, other boards, committees or commissions may take a formal position on an article. The Advisory Committee considers those in its public hearings and deliberation and often the body issuing the opinion reports separately at Town Meeting.

The petitioner believes this article will impart a level of transparency to Town government. Several letters to the Advisory Committee also echoed the theme of transparency and accountability. These writers expressed the belief that this change would not stifle productive debate or inhibit various boards, commissions or committees. They contended that the additional information in a roll-call vote could provide valuable information to one's deliberations; that being "familiar with the background, talents and proclivities of individuals serving" may prompt a call or email to an individual to find out more about their thoughts and vote. The petitioner has noted that one cannot attend every Advisory Committee meeting and, even if one were to attend, it is unlikely that an individual could jot down a roll-call vote quickly enough given the size of the Committee.

DISCUSSION:
It was acknowledged by Committee members that this sort of information might be viewed as valuable to some Town Meeting Members and that providing such information would not be an onerous task. Rather, it may only be a modest extension of current record keeping.

The petitioner, Tom Vitolo, also suggested this would serve as a tool for Town Meeting Members to better understand the Committee's recommendations and help guide members in reaching out to Committee members with questions. One example offered was that if a Committee member, an engineer, were one of three dissenting votes on a ditch easement, it would prompt the question of "why?", since the votes of "experts" on the Advisory Committee might be "telling". He noted that this could provide a "hook" for TMM's to call the "correct" member. The petitioner allowed that some votes were straightforward and would not warrant this level of active scrutiny (Measurers of Wood and Bark), but that this would provide "additional value occasionally".

One Committee member offered to amend the language by changing the phrase "with each recommendation" to "for each recommendation". This would allow the option of a single chart showing all votes in a cross-referenced manner or as a full appendix to the reports. The petitioner was not amenable to such a change.

In considering the effect of this proposal, the Advisory Committee considered its charge and purpose, and the institutional effect of such a change. Advisory Committee members are appointed, not elected. In addition to, there are a number of At-Large members who are not Town Meeting Members. Rather, they are appointed citizens of the community who offer their time and expertise.

The Advisory Committee does not have the discrete authority of other boards or commissions, such as the Transportation Board. The Advisory Committee has no executive authority nor does it promulgate legislation or regulations. It collects and analyzes information and then reports to Town Meeting As a statutory requirement, the Committee offers recommendations regarding Warrant Articles.

A number of members expressed the view that TMMs should be persuaded by the strength of the argument rather than "which people voted which way", underscoring the belief that people should evaluate the *content* of the report. Some expressed concern that this might simply become a way to target or retaliate against Committee members based on their votes and that one's tenure on the Committee, as well as voting biases, should be isolated from such a political process. Concern was also expressed over the petitioner's use of the word "hook" and the its implications.

Town Meeting considered a very similar proposal in 2002. The consensus of Town Meeting was that Advisory Committee reports should include a vote tally to give some sense as to the closeness of a particular vote, but that it should not include a roll-call vote. An excerpt from that year's Combined Reports is as follows:

> "The Advisory Committee is an appointed body whose most important function is to provide Town Meeting Members with the information necessary to decide an issue on their own. The Committee does this by, after engaging in the fact finding and decision making process described above, (1) describing the issues in the Combined Report, (2) presenting arguments both for and against the issue and (3) then making a recommendation. In essence, the Advisory Committee's most important role is to help frame the debate.
>
> The Advisory Committee views itself as a provider of objective analysis and advice on issues, each no more important than the other. Town Meeting many times votes differently than the Committee's recommendation, but it always considers the analysis it presents. The Committee believes that the publishing of a roll call vote on every recommendation would unintentionally emphasize the recommendation of the Advisory Committee to an extent greater than its analysis.
>
> In other words, the scorecard would distract from the analysis.
> The Committee also believes that a published roll call would introduce a level of politics into the Advisory Committee that does not currently exist. Town Meeting

needs non-political, objective analysis and advice from the Advisory Committee. Its current role should be preserved."

The Advisory Committee is intended to be a body where some of the politics are extracted from the debate. People will naturally have individual biases, but Committee members tend to be fair, candid and objective in their conversations and considerations. Town Meeting members must always strike a balance between being an advocate and a trustee. As an Advisory Committee member, one must defer to their role as trustee. That means that during consideration and deliberation, a member may cast a vote, or a series of amending votes that best serve to improve the language of a Warrant Article – even if that member may not eventually support it at Town Meeting. In this regard, unless one is willing to do the work of following up and seeking clarification, a roll-call approach could easily be misleading.

Discussion revolved around the importance of content over characterizations. Most members feel that relying on a personalized scorecard risks diminishing the quality of the objective deliberative process and may in fact prove a distraction more often than adding, in the words of the petitioner, "additional value occasionally". While well intended, this change could quickly inject an element of politics precisely where, by design, it does not belong - the objective, deliberative consideration, analysis and reporting of proposed town matters by the Advisory Committee.

RECOMMENDATION

The Advisory Committee, by a vote of 13-0-4, recommends NO ACTION on Article 11.

***XXX***

ARTICLE 12

TWELFTH ARTICLE

To see if the Town will amend the General By-Laws by adding Article 7.12 as follows:

7.12 Prohibition on Transporting Children or Babies by Bicycle

Bicyclists are prohibited from carrying, transporting, babies or children of any age on bicycles, with or without the use of tandems, baskets, rear bicycle seats, carriers, or any and all attachments to transport children or babies.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Without this as a law we are encouraging "Child Endangerment." It has come to my attention by observing while driving in vehicles "Child Endangerment." The sheer negligence of adults transporting a baby or child in a basket, mounted on the handle bars of a bicycle, seated on the rear carrier of a bicycle; a tandem carrying two young children in a basket, being pulled by a bicyclist on a main street; a bicyclist driving down a one way street with a child mounted on the rear carrier of the bike. A bicyclist endangering a child on his shoulders while riding on a street. How about witnessing these things at night some weaving in and out of busy traffic. The wisdom of these adults must be that helmets are the overall safety protection for children or babies riding as passengers on a bicycle. Under State Law children riding in a motor vehicle must be seated in the rear of the motor vehicle, in a state approved baby seat. This law applies to a steel motor vehicle that weighs a ton or more built to safeguard its passengers. What law safeguards children, babies or adults riding as passengers on bikes"
HELMETS?

**MOTION TO BE OFFERED BY THE PETITIONER**
**Seymour A. Ziskend, TMM-Prec. 7**

VOTED: That the Town adopt the following resolution:

WHEREAS Child safety is of the utmost importance to our community; and

WHEREAS bicycle use has increased in recent years; and

WHEREAS vehicular child safety laws are significantly more stringent than child safety laws regarding bicycles; and

WHEREAS the Town continues to invest in our bicycling infrastructure to encourage more and safer bicycle use,

NOW THEREFORE BE IT RESOLVED, THAT
Town Meeting urges the Board of Selectmen to call upon our representatives in the General Court to review and recommend changes, if appropriate, to Massachusetts General Laws, Chapter 85, Section 11b regulating bicycle operation, safety and equipment, pending collection and review of data, with the goal of advancing the safety of children transported as passengers on bicycles, including on child seats or "baby seats", so-called, attached to the bicycle or upon a trailer or any other mechanism attached to the bicycle on roadways with vehicular traffic, and further request that our representatives report back to Town Meeting.

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## SELECTMEN'S RECOMMENDATION

Article 12 is a petitioned article that proposes an amendment to the Town's General By-laws. As proposed, the proposed by-law would prohibit the carrying or transporting of babies or children of any age while on bicycles. The petitioner made some compelling arguments regarding the danger that exists when bicyclists travel along busy streets in Brookline with their child/children. In fact, some Board members stated that they never traveled down busy streets with their child on the bike or attached to the bike out of fear of the safety of their child.

However, the regulation of traffic in town is done by the Transportation Board, via special legislation. As a result, the substance of Article 12 exceeds the authority of Town Meeting, meaning that the article, if passed, would be non-binding. Moreover, the Town's streets are used by bicyclists from neighboring communities that do not have regulations similar to those proposed in Article 12, suggesting that review on a statewide level is appropriate. Therefore, the Board does support the resolution offered by the Advisory Committee that asks our representatives in the Legislature to review and recommend appropriate changes to the state statute regulating bicycle operation (MGL Ch. 85, Sec, 11b). By a vote of 5-0 taken on October 26, 2010, the Board recommends FAVORABLE ACTION on the motion offered by the Advisory Committee.

---

## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
A citizen petition, Article 12 seeks to ban the transport of children and infants as bicycle passengers, whether by use of bike trailers, attached seats, or any other mechanism. The petitioner, Seymour Ziskend filed this article based on a perceived risk to children who are bicycle passengers.

DISCUSSION:
The petitioner believes that cyclists transporting children are ignoring the grave and sometimes unexpected risks on our roadways. He worries about the potential dangers of

adults riding bicycles in urban traffic with young children strapped into a seat, wearing just a helmet for protection. "For adults to ride through traffic and take risks, that's up to them. To do this with a child is sheer negligence." He believes that accidents involving cars and bikes with children may happen frequently and he notes the negative impact on both the driver and the injured cyclist.

There was a discussion of potentially dangerous roadways, such as Longwood Avenue in the "share the road" section. Bicyclists routinely crisscross the road, passing on both sides of cars, which can be unnerving to motorists and dangerous to bicyclists. On the other hand, there are quieter roads or trails along the Muddy River which seem ideal for taking children on bicycle rides. The article, however, does not distinguish between these circumstances, which creates a technical problem.

It was the unanimous opinion of the Brookline Bicycle Advisory Committee (BBAC), which does not support this article, that state law already adequately addresses bicycle safety. They also researched accident history within the last two years in Brookline and found no accidents relevant to this article. It was suggested that perhaps motorists are more cautious around a bicyclist with a child passenger, leading to safer driving habits.

The current article is, in fact, more restrictive than MA G.L. Ch.85 Sec 11b, which states:

> *ii) The operator shall not transport another person between the ages of one to four years, or weighing forty pounds or less, on a bicycle, except in a "baby seat", so-called, attached to the bicycle, in which such other person shall be able to sit upright; provided however, that such seat is equipped with a harness to hold such other person securely in the seat and that protection is provided against the feet or hands of such person hitting the spokes of the wheel of the bicycle; or upon or astride a seat of a tandem bicycle equipped so that the other person can comfortably reach the handlebars and pedals. The operator shall not transport any person under the age of one year on said bicycle.*
>
> *iii) Any person 16 years of age or younger operating a bicycle or being carried as a passenger on a bicycle on a public way, bicycle path or on any other public right-of-way shall wear a helmet. Said helmet shall fit the person's head, shall be secured to the person's head by straps while the bicycle is being operated, and shall meet the standards for helmets established by the United States Consumer Product Safety Commission…."*

The passage of Article 12 would require a home rule petition to the legislature.

The Advisory Committee is sympathetic to issues raised by the petitioner, and values the dialog and subsequent awareness generated by the article. The article, however, relies on anecdotal evidence, rather than on objective facts. Although the National Highway Traffic Safety Administration collects state data on some measures of traffic safety (number of accidents by type of vehicle, for instance), and the Massachusetts Department of Transportation (DOT) keeps some statistics (such as, traffic counts and crash statistics by municipality), there is a lack of detailed objective data that would enable us to know if there is, in fact, a safety issue related to children as passengers on bicycles. A member of

the BBAC confirmed that there is a lack of data and would support an effort to encourage the Commonwealth to collect such information.

The Advisory Committee recommends FAVORABLE ACTION on a vote of 14 in favor, 6 opposed, 1 abstention, on the following:

VOTED: That the Town adopt the following resolution:

WHEREAS Child safety is of the utmost importance to our community; and

WHEREAS bicycle use has increased in recent years; and

WHEREAS vehicular child safety laws are significantly more stringent than child safety laws regarding bicycles; and

WHEREAS the Town continues to invest in our bicycling infrastructure to encourage more and safer bicycle use,

NOW THEREFORE BE IT RESOLVED, THAT
Town Meeting urges the Board of Selectmen to call upon our representatives in the General Court to review and recommend changes, if appropriate, to Massachusetts General Laws, Chapter 85, Section 11b regulating bicycle operation, safety and equipment, pending collection and review of data, with the goal of advancing the safety of children transported as passengers on bicycles, including on child seats or “baby seats”, so-called, attached to the bicycle or upon a trailer or any other mechanism attached to the bicycle on roadways with vehicular traffic, and further request that our representatives report back to Town Meeting.

***XXX***

## ARTICLE 13

### THIRTEENTH ARTICLE

To see if the Town will amend the General By-Laws as follows (**bold language** is new):

> Amend Section 8.27 (Wetlands Protection Bylaw), paragraph 8.27.2.i:
>
> RESOURCE AREAS - Land under lakes, ponds, rivers or streams; any bank, marsh, wet meadow, bog or swamp bordering on any lake, pond, river or stream; land subject to flooding bordering on any lake, pond, river or stream; **isolated land subject to flooding;** isolated vegetated wetlands; riverfront areas; and vernal pools.

### PETITIONER'S ARTICLE DESCRIPTION

The Wetlands Protection By-Law, adopted by Town Meeting in 2006, extends and adapts the principles of wetlands protection established under state law in the Massachusetts Wetlands Protection Act. "Isolated land subject to flooding", or ILSF, is a type of wetland resource area protected by the Act. In the 2006 warrant article that led to the by-law, proponents defined "isolated land subject to flooding' (paragraph 8.27.e), but inadvertently excluded it from the list of Resource Areas (paragraph 8.27.i.). Inclusion of ILSF in the paragraph would have made it subject to protection under the by-law, as it is under the state Act. This warrant article would correct the omission and make the by-law more consistent with state law.

### SELECTMEN'S RECOMMENDATION

Article 13 proposes a technical amendment to the Wetlands Protection By-Law, which was originally adopted in 2006. As written in the petitioner's description, this amendment extends and adapts the principles of wetlands protection established under state law in the Massachusetts Wetlands Protection Act. As originally approved in 2006, the by-law defined "Isolated land subject to flooding" (ILSF), but excluded it from the list of Resource Areas in paragraph 8.27.i, thereby excluding it from protection under the by-law. This article corrects the omission and makes the by-law more consistent with state law.

The Board unanimously recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 5, 2010, on the vote offered by the Advisory Committee.

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## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Article 13 has been submitted by the Brookline Conservation Commission to correct an inadvertent omission in the Wetlands Protection by-law passed by Town Meeting in 2006. At that time, the warrant article proposing the by-law, while defining "isolated land subject to flooding", mistakenly excluded this category from the list of Resource Areas. If approved, Article 13 would correct the omission by including "isolated land subject to flooding" in the Resource Area section of the Town's Wetlands Protection by-law, and would make it consistent with state law.

Any regulation from the Commonwealth of Massachusetts that starts with 310 CMR is an environmental regulation and the regulation for Wetlands is 310 CMR 10.00. The definition of an Isolated Land Subject to Flooding is embodied in the regulation 310 CMR 10.57 (b) and is stated as follows:

1. Isolated Land Subject to Flooding is an isolated depression or a close basin which serves as a ponding area for run-off or high ground water which has risen above the ground surface. Such areas are likely to be locally significant to flood control and storm damage prevention. In addition, where such areas are underlain by pervious material they are likely to be significant to public or private water supply and to ground water supply. Where such areas are underlain by pervious material covered by a mat of organic peat and muck, they are also likely to be significant to the prevention of pollution. Finally, where such areas are vernal pool habitat, they are significant to the protection of wildlife habitat.

2. Isolated Land Subject to Flooding provides a temporary storage area where run-off and high ground water pond and slowly evaporate or percolate into the substrate. Filling causes lateral displacement of the ponded water onto contiguous properties, which may in turn result in damage to said properties.

3. Isolated Land Subject to Flooding, where it is underlain by pervious material, provides a point of exchange between ground and surface waters. Contaminants introduced into said area, such as septic system discharges and road salt, find easy access into ground water and neighboring wells. Where these conditions occur and a mat of organic peat or muck covers the substrate of the area, said mat serves to detain and remove contaminants which might otherwise enter the ground water and neighboring wells.

4. Isolated Land Subject to Flooding, where it is vernal pool habitat, is it an essential breading site for certain amphibians which require isolated areas that are generally flooded for at least two continuous months in the spring and/or summer and are free from fish predators. Most of these and amphibians remain near the breeding pool during the remainder of their lifecycle. Many reptiles, birds and mammals also feed here.

There are several areas in Brookline that fall into ILSF category, including a portion of the property belonging to Pine Manor College. No other scrivener's errors have been identified, and no substantive changes are being sought at this time.

RECOMMENDATION

By a vote of 22-0-1, the Advisory Committee recommends FAVORABLE ACTION on the following motion:

VOTED: That the Town amend the General By-Laws as follows (**bold language** is new):

Amend Section 8.27 (Wetlands Protection Bylaw), paragraph 8.27.2.i:

RESOURCE AREAS - Land under lakes, ponds, rivers or streams; any bank, marsh, wet meadow, bog or swamp bordering on any lake, pond, river or stream; land subject to flooding bordering on any lake, pond, river or stream; **isolated land subject to flooding;** isolated vegetated wetlands; riverfront areas; and vernal pools.

***XXX***

ARTICLE 14

FOURTEENTH ARTICLE

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

**AN ACT AUTHORIZING CERTAIN LOCAL VOTING RIGHTS FOR PERMANENT LEGAL RESIDENTS RESIDING IN BROOKLINE**

Be it enacted, etc., as follows:

Section 1. Notwithstanding the provision of section one of chapter fifty-one of the General Laws, or any other general or special law, rule or regulation to the contrary, permanent legal residents eighteen years of age or older who reside in Brookline may, upon application, have their names entered on a list of voters established by the Town Clerk for the Town of Brookline and may thereafter vote in any election for local office, including but not limited to Selectmen, School Committee, Town Meeting, and Library Trustees, as well as local ballot questions distinct to Brookline.

Section 2. The Brookline Board of Selectmen, in consultation with the Town Clerk, is authorized to formulate regulations and guidelines to implement the purpose of this act.

Section 3. For the purposes of this act, a permanent legal resident is a non-U.S. citizen with primary residence in Brookline who has been given the privilege, according to the immigration laws, of residing permanently as an immigrant with the issuance of a "green card" from the Bureau of Citizenship and Immigration Services.

Section 4. Nothing in this act shall be construed to confer upon legal resident aliens the right to run for public office, or the right to vote for any state or federal office or any state or federal ballot question.

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

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Legal permanent residents (LPRs, a.k.a. Green Card Holders, or Permanent Resident Aliens) have been and continue to be materially affected by the results of elections of Town officials, tax overrides, debt exclusions, and other vote outcomes pertaining only to life in Brookline. Because anti-immigrant sentiment has increased recently due to debates

and fears concerning *illegal* immigration, the Petitioner offers local voting rights as a way to celebrate and encourage the civic engagement of local immigrants in Brookline life. These legal, permanent residents should have an equal voice in local decisions of import to them and their families.

Some will argue that voting is a privilege of U.S. citizenship. On the contrary, while federal and state elections (including state ballot questions) *are* restricted to U.S. citizens 18 years of age and older, the U.S. constitution is mute on state-level voting rights, leaving those decisions up to individual localities. Until the 1920s, most states in the U.S. *allowed* some non-citizen local voting.

Legal Permanent Residents are working members of our community, often homeowners or business owners, who are subject to local property and other municipal taxes without concomitant representation in government. Taxation without representation is unconstitutional in the U.S. Local voting rights acknowledge LPRs' status as legal, tax-paying residents and encourage these legal immigrants to become more involved in civic life as they pursue full citizenship and the expansive rights and protections that come with it.

Some will say that granting local voting rights reduces the incentive to pursue U.S. citizenship. But there is no evidence of this. The great majority of green card holders intend to become US citizens and areas that allow local voting have not seen a reduced rate of application for naturalization. On the other hand, the cumbersome naturalization process *has* become a barrier to full citizenship. In recent years, the US Customs and Immigration Services has had a two-year backlog of naturalization applications; such delays increased after September 11, 2001 because of new security measures.

Five municipalities in the state of Maryland have extended the rights to vote for local offices to non-citizens. The city of Chicago allows non-citizen voting in school board elections; New York City had the same non-citizen rights until NY eliminated local school boards a few years ago. This November, Portland, Maine will consider the question as a ballot initiative.

In Massachusetts, the cities of Boston, Cambridge, Chelsea, Somerville, Newton and the Town of Amherst have debated and/or passed home-rule petitions to grant legal resident non-citizens the right to vote on various local questions. While the General Court has not acted, to date, on any such petitions filed, the addition of Brookline to this list only increases the likelihood that the State Legislature will finally respond to this expression of local voice in support of our legal immigrants.

**Notes and References**:
MA General Laws: Chapter 51: Section 1. Qualifications of voters
[Text of section as amended by 2008, 369, Sec. 2 effective November 5, 2008.]

Section 1. Every citizen eighteen years of age or older, not being a person under guardianship or incarcerated in a correctional facility due to a felony conviction, and not being temporarily or permanently disqualified by law because of corrupt practices in

respect to elections, who is a resident in the city or town where he claims the right to vote at the time he registers, and who has complied with the requirements of this chapter, may have his name entered on the list of voters in such city or town, and may vote therein in any such election, or except insofar as restricted in any town in which a representative town meeting form of government has been established, in any meeting held for the transaction of town affairs. Notwithstanding any special law to the contrary, every such citizen who resides within the boundaries of any district, as defined in section one A of chapter forty-one, may vote for district officers and in any district meeting thereof, and no other person may so vote. A person otherwise qualified to vote for national or state officers shall not, by reason of a change of residence within the commonwealth, be disqualified from voting for such national or state officers in the city or town from which he has removed his residence until the expiration of 6 months from such removal.

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## AMENDMENT OFFERED BY STANLEY L. SPIEGEL, TMM-PREC.2

Replace the final period of Section 1 with the following language:

, provided that the foregoing provision is approved by the registered voters of the Town of Brookline at the first regularly scheduled annual town election to be held no sooner than 90 days after the date that this act becomes law.

Explanation

This amendment is offered for three reasons: it will increase chances of the home rule petition being approved by the legislature, it will improve the stature of Town Meeting in the eyes of town voters, and most importantly, it is the right thing to do.

Unlike many issues that come before Town Meeting that require the fact-finding and thoughtful analysis that TMMs receive and develop through the Combined Reports and other sources, whether or not to extend voting privileges to non-citizens is largely a matter of personal feelings and opinion. Reasonable arguments can be made either way. The feelings and opinions of 248 Town Meeting Members are no more valid in this regard than the feelings and opinions of the voters we've been elected to represent.

For many Town Meeting agenda items -- by-law changes, special appropriations, etc. -- voters can reverse a controversial decision by employing a petition drive to place a referendum vote on the town ballot. Not so with home rule petitions, unless the petition itself provides for ultimate voter approval, something this amendment would add.

It's been argued that extending voting privileges is a matter that shouldn't be subject to voter approval, but this matter has to be decided democratically, the only question being who gets to vote on it. In a fundamental issue such as this, on which TMMs are no better qualified to decide than the general public, all Brookline voters should ultimately have a say on whether to extend voting rights to non-citizens, rather than simply having it imposed on them irrespective of their wishes.

This year, referenda on extending voting privileges to non-citizens are on the November ballots in both San Francisco and Portland, Maine. Brookline's current electorate, which will clearly be affected if Article 14 becomes law, should similarly be able to vote on this fundamental question. Town Meeting will please voters by allowing this to occur, but many voters will be disappointed, others perhaps outraged, and some may even become contemptuous of Town Meeting if they're denied this opportunity.

Finally, the legislature, which itself insisted on a voter referendum when approving a home rule petition that changed our Treasurer-Collector from an elected to an appointed position some years ago, is more likely to look with favor on this petition if it contains a requirement that town voters demonstrate their support before the proposed change takes effect. And out of respect for our constituents, TMMs should be unwilling to impose this change without letting town voters voice their approval, as this amendment requires.

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## SELECTMEN'S RECOMMENDATION

Article 14 is a Home Rule petition that would authorize legal resident aliens 18 years or older who are residents of the Town of Brookline to vote in all local town elections. The petitioner has expressed the concern that while legal resident aliens are materially affected by the results of elections of Town officials, tax overrides, debt exclusions, and other vote outcomes pertaining only to life in Brookline, they are not allowed to vote in these local elections. In addition, the petitioner believes that local voting rights are a way to encourage the civic engagement of local immigrants in Brookline life.

At its October 26th meeting, the Board voted to reconsider its vote taken on October 19th because of an amendment proposed by a member of the Advisory Committee to make Article 14 subject to a local referendum. The Board raised a number of questions on the amendment that could not be answered that night, which was the last Selectmen meeting prior to the printing of these Combined Reports. Therefore, the Board will present its recommendation in a Supplemental Report that will be made available prior to the commencement of Town Meeting.

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## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Warrant Article 14 is brought to Town Meeting by Brookline resident, Rebecca Stone on her own initiative. She is concerned about the current unfavorable political climate in the United States with respect to immigrants, and believes that Brookline residents have a more favorable perspective on immigrants. She introduced the article to convey to Brookline's immigrant population that the Town values their contributions. She became concerned about legal residents who could not vote when she campaigned on behalf of a recent local initiative. She was struck by the number of people who said that they are not

eligible to vote because they lacked citizenship in the United States. This article proposes to extend voting rights to Legal Permanent Residents or Permanent Resident Aliens (those with Green Cards) to encourage civic engagement among them. The petitioner points out that these are established residents with a stake in Brookline affairs. Many are home owners, and many send their children to Brookline schools.

The number of Green Card holders who are residents of Brookline is unknown, but people who were born abroad are well represented in Brookline. Ms. Stone estimates that the number of Green Card holders is between 100 and 3,000. After contacting several Federal offices, the Advisory Committee has not been able to verify any precise estimates. However, in 2009 according to the American Community Survey administered by the U.S. Census Bureau, 7% of Massachusetts residents were born abroad and are naturalized citizens of the United States. An additional 7.3% of Massachusetts residents were foreign born but are not citizens of the United States. For Brookline, the American Community Survey (based upon 2006 to 2008 data) estimates that 24.6% of residents are foreign born. In other words, those who were born elsewhere in the world are more highly concentrated in Brookline than they are in Massachusetts as a whole. While this may indicate a higher concentration of foreign born residents in Brookline as compared to some other communities, it does not provide information as to how many (or what percentage) may be Green Card holders. The U.S. Census reports the numbers of residents who are foreign born and the number of foreign born who are naturalized citizens. The U.S. Census does NOT report the number of Green Card holders.

Federal law restricts voting in national elections to U.S. citizens. However, federal law does not address voting eligibility in states. Green Card holders are informed explicitly that they may have local voting rights. In U.S. history, there is extensive precedent for noncitizens to hold voting rights in state and local elections. Before the 1920s, at least 25 states provided some state or local voting rights for noncitizens. In response to the widespread anti-immigrant sentiment that took hold during the 1920s, states largely eliminated voting rights for noncitizens in state and local elections. In recent years, initiatives have emerged in various places throughout the country to re-establish voting rights for some noncitizens in local elections.

A number of Massachusetts municipalities have already submitted similar home rule petitions to the Legislature. These municipalities include Newton, Cambridge, Amherst, Wayland, and Somerville. The Legislature has not acted on any of the petitions. Most believe it is unlikely the Legislature will ever act on these.

Currently, there is some precedent in other states for voting rights for some noncitizens in local elections. Six municipalities in Maryland provide voting rights for permanent residents who are noncitizens. New York City provided voting rights to Green Card holders in school board elections (until elected school boards were eliminated.) Efforts to extend voting rights to Green Card holders in local elections are underway in California, Connecticut, Illinois, Maine, Maryland, North Carolina, Texas, Washington, DC, and Wisconsin.

The path to citizenship for immigrants can be lengthy, expensive, and difficult. Immigrants may experience great difficulty in obtaining Green Cards. After obtaining Green Cards, they must usually wait from three to five years before they can apply for citizenship. The process of applying for citizenship involves an application fee and the completion of a somewhat lengthy and complex set of forms. Applicants may find it necessary to employ a lawyer at considerable expense for assistance with the application process. A successful effort to obtain citizenship may take significantly more than the minimum five years.

Even though they are long-term residents, some Green Card holders do not apply for U.S. citizenship. These immigrants typically retain an interest in the possibility of returning to their home country. Accepting U.S. citizenship is a problem for these immigrants when their home country does not permit dual citizenship.

Town Clerk, Patrick Ward is confident that the Brookline Board of Registrars of Voters would be able to develop procedures within available resources to permit the voting proposed in the Warrant article. Mr. Ward anticipates that a separate registry would be required for Green Card holders. He also anticipates that Green Card holders would have to vote in person. The motion presented below reflects technical recommendations made by Mr. Ward.

No Green Card holders spoke at the Advisory Committee's hearing on the proposal.

DISCUSSION:
A majority of Advisory Committee members are persuaded that voting rights should be extended to Green Card holders because they are residents with a long-term commitment to living in the United States and have an important stake in Brookline affairs. The proposal is felt by many members to represent a modest and welcome invitation to these residents to participate more fully in Brookline's public life. The majority of committee members believe that immigrants who hold Green Cards are serious about their commitment to living in the United States. The majority also believes that the path to citizenship for Green Card holders is sufficiently burdensome so that there is no good reason to withhold voting rights until citizenship is granted. They believe we have many active and involved residents of our community who contribute to the health and vitality of Brookline and deserve a voice
in local elections.

A significant minority within the Advisory Committee opposes the proposal. In their view, voting is a privilege and a legal right that should be granted only to those who are citizens of the United States or have made the commitment to become a citizen. In their view, voting is not a right to be granted lightly. Others object for varied reasons. Some believe that local voting rights should be extended to those Green Card holders only after they have demonstrated that they intend to become citizens. It was noted also that some Green Card holders had affirmatively decided not to pursue US citizenship in order to retain the ability to qualify for retirement pension and medical benefits, as well as voting rights, in their home country

Some believe that the fact that Green Card holders have not asked for the right to vote on local matters is a sign of their indifference to the proposal. Their argument is the Town should only consider this extension of voting rights when the group affected asks for the right to vote. One committee member believes that the matter should be addressed at the state rather than a local level. Some committee members are concerned that Green Card holders may not be adequately informed about the political culture in the United States because they may not have taken civics classes as do those who are educated in the United States. Concern was expressed about potential political consequences stems from lack of information about the number of Green Card holders in the Town and their residential distribution among precincts. Specific concerns were also raised about "unintended consequences" and how this may factor into such things as over-ride votes.

The Committee discussed a proposal that voting rights for Green Card holders go into effect only after approval by Town Meeting, the Legislature, **and** a positive vote in a local referendum. The rationale for the proposal is that the extension of voting rights to this group would dilute the political power of other voters to some degree. The proponents of this position argued that all voters should participate in a decision to reduce the power of current voters. They feel that such a fundamental issue (who has the right to vote) should be decided by the voting public at large. Other committee members were not persuaded about the need for a referendum on this matter. Some argued that Town Meeting members are elected to make decisions on behalf of their constituents. Brookline is a representative democracy, not a series of referendums by plebiscite. In their judgment, a well informed vote on this matter by Town Meeting members is likely to yield a more thoughtful decision than a referendum in which many voters might have little information on the issue or not consider it to the extent Town Meeting will.

The Committee did not support a requirement for an affirming referendum.

RECOMMENDATION:
By a vote of 14-9-0, the Advisory Committee recommends FAVORABLE ACTION on the following motion:

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

**AN ACT AUTHORIZING CERTAIN LOCAL VOTING RIGHTS FOR PERMANENT LEGAL RESIDENT ALIENS RESIDING IN THE TOWN OF BROOKLINE**

Be it enacted, etc., as follows:

Section 1. Notwithstanding the provision of section one of chapter fifty-one of the General Laws, or any other general or special law, rule or regulation to the contrary, permanent legal resident **aliens** eighteen years of age or older **who are residents of the Town of Brookline** may, upon application, have their names entered on a list of voters established by the Board of Registrars of Voters and administered by the Town Clerk for

the Town of Brookline and may thereafter vote in **all local town elections, for all elected town offices, and for all local ballot questions.**

Section 2. **The Board of Registrars of Voters for the Town of Brookline**, in consultation with the Town Clerk, is authorized to formulate regulations and guidelines to implement the purpose of this act.

Section 3. For the purposes of this act, a permanent legal resident **alien** is a non-U.S. citizen **residing in the Town of Brookline** who has **duly qualified for and been granted**, according to the immigration laws **of the United States of America**, permanent residence as an immigrant with the issuance of a "green card" from the Bureau of Citizenship and Immigration Services.

Section 4. Nothing in this act shall be construed to confer upon permanent legal resident aliens the right to run for **or hold elective** public office, or the right to vote **in any state or federal election.**

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

***XXX***

## ARTICLE 14

## BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

As stated in the Selectmen's Recommendation for Article 14 included in the Combined Reports, the Board voted at its October 26th meeting to reconsider its original vote because of the amendment proposed by Town Meeting Member Stanley Spiegel to make Article 14 subject to a local referendum. The Board had a number of questions on the amendment that could not be answered that night. They have since been answered and the Board is prepared to offer its recommendation in this Supplemental Report.

Article 14 is a Home Rule petition that would authorize legal resident aliens 18 years or older who are residents of the Town of Brookline to vote in all local town elections. The petitioner has expressed the concern that while legal resident aliens are materially affected by the results of elections of Town officials, tax overrides, debt exclusions, and other vote outcomes pertaining only to life in Brookline, they are not allowed to vote in these local elections. In addition, the petitioner believes that local voting rights are a way to encourage the civic engagement of local immigrants in Brookline life.

The subject matter of this article is truly one of personal preference as there is no constitutional bar to the proposal and no moral imperative in its favor. While some Board members agree with the petitioner that these legal, permanent residents should have an equal voice in the local decisions that impact them and their families and supports the article as amended by the Advisory Committee, other Board members believe that granting voting privileges to the people who do not go through the citizenship process seems to diminish the efforts of those who do, would dilute the votes of current voters, and is a sharp break with tradition.. It is for this reason that the amendment makes good sense. Making it subject to referendum gives current voters the right to choose whether or not to extend voting rights to others. If local voting rights for 'green card' aliens is eventually accepted by the Town's voters it will represent a true popular mandate for the measure.

Therefore, by a vote of 5-0, the Board recommends FAVORABLE ACTION on the motion offered by the Advisory Committee, found on pages 14-7 and 14-8 of the Combined Reports, as amended by the amendment offered by Stanley Spiegel found on page 14-3 of the Combined Reports. The motion reads as follows:

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

**AN ACT AUTHORIZING CERTAIN LOCAL VOTING RIGHTS FOR PERMANENT LEGAL RESIDENT ALIENS RESIDING IN THE TOWN OF BROOKLINE**

Be it enacted, etc., as follows:

Section 1. Notwithstanding the provision of section one of chapter fifty-one of the General Laws, or any other general or special law, rule or regulation to the contrary, permanent legal resident **aliens** eighteen years of age or older **who are residents of the Town of Brookline** may, upon application, have their names entered on a list of voters established by the Board of Registrars of Voters and administered by the Town Clerk for the Town of Brookline and may thereafter vote in **all local town elections, for all elected town offices, and for all local ballot questions,** provided that the foregoing provision is approved by the registered voters of the Town of Brookline at the first regularly scheduled annual town election to be held no sooner than 90 days after the date that this act becomes law.

Section 2. **The Board of Registrars of Voters for the Town of Brookline**, in consultation with the Town Clerk, is authorized to formulate regulations and guidelines to implement the purpose of this act.

Section 3. For the purposes of this act, a permanent legal resident **alien** is a non-U.S. citizen **residing in the Town of Brookline** who has **duly qualified for and been granted**, according to the immigration laws **of the United States of America**, permanent residence as an immigrant with the issuance of a "green card" from the Bureau of Citizenship and Immigration Services.

Section 4. Nothing in this act shall be construed to confer upon permanent legal resident aliens the right to run for **or hold elective** public office, or the right to vote **in any state or federal election.**

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

ARTICLE 15

FIFTEENTH ARTICLE

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

AN ACT AMENDING CHAPTER 51 OF THE ACTS OF 2010 TO REFLECT THE PASSAGE OF CHAPTER 398 OF THE ACTS OF 2008 AND TO MAKE CERTAIN OTHER CORRECTIONS

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

SECTION 1. Section 1 of chapter 51 of the acts of 2010 is hereby amended by inserting after the figure "1974" in line 1 the following: "as amended by section 1 of chapter 487 of the acts of 1996."

SECTION 2. Section 1 of chapter 51 of the acts of 2010 is further amended by striking out the word "department" in the second sentence thereof and inserting in its place the word "division."

SECTION 3. Section 2 of said chapter 51 of the acts of 2010 is hereby amended by striking out the words "amended by section 1 of chapter 85 of the acts of 2006" and inserting in place thereof the following: "most recently amended by chapter 398 of the acts of 2008."

SECTION 4. Section 4 of said chapter 51 of the acts of 2010 is hereby amended by striking out the words "amended by section 1 of chapter 85 of the acts of 2006" and inserting in place thereof the following: "most recently amended by chapter 398 of the acts of 2008."

SECTION 5. Section 4 of said chapter 51 of the acts of 2010 is further amended by striking out the word "third" in the first sentence and inserting in place thereof the word "fourth."

SECTION 6. Said chapter 51 of the acts of 2010 is hereby amended by striking out section 5 and inserting in place thereof the following: "SECTION 5. The fifth paragraph of section 4 of said chapter 317 of the acts of 1974, as amended by said chapter 398 of the acts of 2008, is hereby amended by inserting before the first sentence of the paragraph the following sentence: "Except as set forth herein with regard to taxi license sales, the following describes the appeal procedures applicable to any board action."

SECTION 7. This act shall take effect upon its passage.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The intent of this legislation is to make certain corrections to Chapter 51 of the Acts of 2010 ("Chapter 51"), which amended chapter 317 of the Acts of 1974 (the "Transportation Board Act") to authorize the Town to sell taxi licenses pursuant to the November 2008 Special Town Meeting's approval of Article 21 (the warrant article proposing such). Several of the proposed corrections are necessitated by the Legislature's passage on December 18, 2008 -- following the November 2008 Special Town Meeting -- of chapter 398 of the acts of 2008, which amended the Transportation Board Act to add a third paragraph to Section 4 regarding valet parking. As a result, Chapter 51 requires certain amendments reflecting new paragraph number references in Section 4 and adding references to Chapter 398 of the Acts of 2008 as the most recent legislative action applicable to the Transportation Board Act, where appropriate. In addition, a scrivener's error to the final language of Chapter 51 inadvertently deleted a sentence pertaining to the Transportation Board Act's appeal procedure.[1] The Board of Selectmen seek to correct these and several additional minor scrivener's errors found in the final language of chapter 51 (*e.g.*, the use of the word "Department," instead of "Division," following the word "Transportation;" omission of a reference to section 1 of chapter 487 of the acts of 1996 in Section 1 to reflect this act as the most recent legislative action applicable to that section of the Transportation Board Act).

SELECTMEN'S RECOMMENDATION

Article 15 proposes corrections to the taxi medallion Special Act approved by Town Meeting in November, 2008 and signed into law by the Governor on March 18, 2010. That Special Act allows Brookline to convert its taxi industry to a medallion-based system, which has the potential of generating millions of dollars of one-time revenue for the Town and providing medallion holders with a valuable property right. Unfortunately, while the bill made its way through the State's legislative process, a number of changes were made in error and now must be changed; and the only way to change them is to file the proposed Special Act recommended under Article 15.

The Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 5, 2010, on the following:

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

AN ACT AMENDING CHAPTER 51 OF THE ACTS OF 2010 TO REFLECT THE PASSAGE OF CHAPTER 398 OF THE ACTS OF 2008 AND TO MAKE CERTAIN OTHER CORRECTIONS

[1] The inadvertently stricken sentence stated: "Upon the filing of a petition with the board by not less than 20 registered voters of the town seeking the adoption, alteration or repeal of any rule or regulation under this section, the board shall hold an evening public hearing on that petition within 30 days after the petition has been filed."

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

SECTION 1. Section 1 of chapter 51 of the acts of 2010 is hereby amended by inserting after the figure "1974" in line 1 the following: "as amended by section 1 of chapter 487 of the acts of 1996."

SECTION 2. Section 1 of chapter 51 of the acts of 2010 is further amended by striking out the word "department" in the second sentence thereof and inserting in its place the word "division."

SECTION 3. Section 2 of said chapter 51 of the acts of 2010 is hereby amended by striking out the words "amended by section 1 of chapter 85 of the acts of 2006" and inserting in place thereof the following: "most recently amended by chapter 398 of the acts of 2008."

SECTION 4. Section 4 of said chapter 51 of the acts of 2010 is hereby amended by striking out the words "amended by section 1 of chapter 85 of the acts of 2006" and inserting in place thereof the following: "most recently amended by chapter 398 of the acts of 2008."

SECTION 5. Section 4 of said chapter 51 of the acts of 2010 is further amended by striking out the word "third" in the first sentence and inserting in place thereof the word "fourth."

SECTION 6. Said chapter 51 of the acts of 2010 is hereby amended by striking out section 5 and inserting in place thereof the following: "SECTION 5. The fifth paragraph of section 4 of said chapter 317 of the acts of 1974, as amended by said chapter 398 of the acts of 2008, is hereby amended by inserting before the first sentence of the paragraph the following sentence: "Except as set forth herein with regard to taxi license sales, the following describes the appeal procedures applicable to any board action."

SECTION 7. This act shall take effect upon its passage.

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## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

The petitioner's objective is to amend Chapter 51 of the Acts of 2010 to correct the substantive error of omission of the appeal procedure from the Transportation Board Act, to reflect the passage of Chapter 398 of the Acts of 2008 relating to valet parking, and to make certain other minor corrections.

DISCUSSION:

In March 2010, the state legislature (following passage of a warrant article by Town Meeting) approved the Town's request for a new amendment to the Transportation Board Act (as amended in 2008) to authorize the sale of taxi licenses by the Town. This request is reflected in Chapter 51 of the Acts of 2010; however, a number of errors were made by the Commonwealth's clerk or copyist in recording the Town's request. One of those – the deletion of the Transportation Board Act's appeal procedure – is substantive and requires correction.

Also, in 2008, the Legislature, at the Town's request, amended the Transportation Board Act of 1974 to add a paragraph to Section 4 of the Act, regarding valet parking (Chapter 398 of the Acts of 2008). Amendments needed to reflect new paragraph number references were not made at that time and are corrected in this warrant article.

In addition to correcting the substantive error of omission of the appeal procedure, a number of minor errors in Chapter 51 are also corrected by this article (e.g., substituting "division" for "department", and, in accordance with the Legislature's custom, insuring that references are made to the most recent version of a law—"the law as amended in 2008").

RECOMMENDATION:

By a vote of 14 in favor, 0 opposed and 0 abstaining, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Selectmen.

***XXX***

## ARTICLE 16

### SIXTEENTH ARTICLE

To see if the Town of Brookline will vote to dedicate the land known as Fisher Hill Reservoir Park, consisting of 9.7 acres, more or less, as shown on a plan entitled "Plan of Land Showing Conservation and Preservation Restriction Areas at the Fisher Hill Reservoir"; a copy of which is attached and incorporated herein as Exhibit A, for park purposes under the provisions of Massachusetts General Laws, Chapter 45, Section 14, and as it may hereafter be amended and other Massachusetts statutes relating to public parks and playgrounds and as further provided in Chapter 20 of the Acts of 2008, to be managed and controlled by the Department of Public Works, Parks and Open Space Division of the Town of Brookline, and that the Commissioner of the Department of Public Works with the approval of the Board of Selectmen be authorized to file on behalf of the Town of Brookline any and all applications deemed necessary for grants and/or reimbursements from the Commonwealth of Massachusetts deemed necessary under the Land and Water Conservation Fund Act (P.L. 88-578, 78 Stat 897) and/or any others in any way connected with the scope of this Article, and the Commissioner of the Department of Public Works be authorized to enter into all agreements and execute any and all instruments as may be necessary on behalf of the Town of Brookline with the approval of the Board of Selectmen to affect the park development, and to see if the Town will vote to appropriate $500,000, or any other sum, for improvements to said Fisher Hill Reservoir Park including all costs incidental or related thereto, which sum shall be in addition to the $1,350,000 appropriated for purchasing the State-owned reservoir at Fisher Hill and making said property safe and accessible to the public under Article #7, Item #57 of the warrant at the May 29, 2007 Town Meeting; and to determine whether this appropriation shall be raised by borrowing or otherwise; provided that any amount borrowed shall be reduced by the amount of any aid received. Or act on anything relative thereto.

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### PETITIONER'S ARTICLE DESCRIPTION

On July 29, 2010 the Town of Brookline was notified that the Fisher Hill Reservoir Park Project was selected by the Executive Office of Energy and Environmental Affairs to receive up to $500,000 in federal Land and Water Conservation Fund grant assistance. Acceptance of the grant requires that the property remain open to the public and prohibits any other use other than recreation and appropriate outdoor recreation, in perpetuity. Conservation of the property to non-recreation use requires the Park and Recreation Commission to abide by Article 97 of the Articles of Amendment to the State Constitution, as well as the federal Land and Water Conservation Fund Project Agreement. In addition, the LWCF program requires that the converted land be replaced with other property of equal or greater monetary value and recreational use, all at the Town's expense. In addition, the property must be open to the general public (not residents only) for appropriate recreational use and must be protected open space under Article 97 of the Amendments to the Constitution of the Commonwealth of

Massachusetts, dedicated to recreation use in accordance with M.G.L. Chapter 45, Section 3 or 14.

The vote for an additional $500,000 for the total project is essential since this is a reimbursement grant program. The additional $500,000 will be fully reimbursed once the contracts have been executed and the initial improvements completed.

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## SELECTMEN'S RECOMMENDATION

Article 16 is required as part of the process to obtain a Land and Water Conservation Fund (LWCF) grant for the Fisher Hill project, something the Town has been selected to receive in the amount of $500,000. These funds will go toward the engineering, design development, site preparation, and preliminary improvements for the Fisher Hill Reservoir Park. LWCF is funded through the National Park Service and is administered by the State through the Division of Conservation Services. This is great news for an exciting project that will result in additional green space and help ameliorate the play field shortage the Town currently faces.

In order to obtain the grant, an approved project must have a dedicated vote of Town Meeting that collectively addresses the following three provisions:

- Dedicate the land known as Fisher Hill Reservoir Park for park purposes under the provisions of Massachusetts General Laws, Chapter 45, Section 14 and as provided in Chapter 20 of the Acts of 2008. All sites that receive LSCF funding are protected by both Article 97 and Section 6(f), which means that the land must remain as conservation or recreation land in perpetuity.

- Authorize the grant application. This authorizes the Commissioner of Public Works, with approval of the Board of Selectmen, to enter into agreements and file all applications for grants and/or reimbursements necessary under the Land and Water Conservation Fund Act related to the park development.

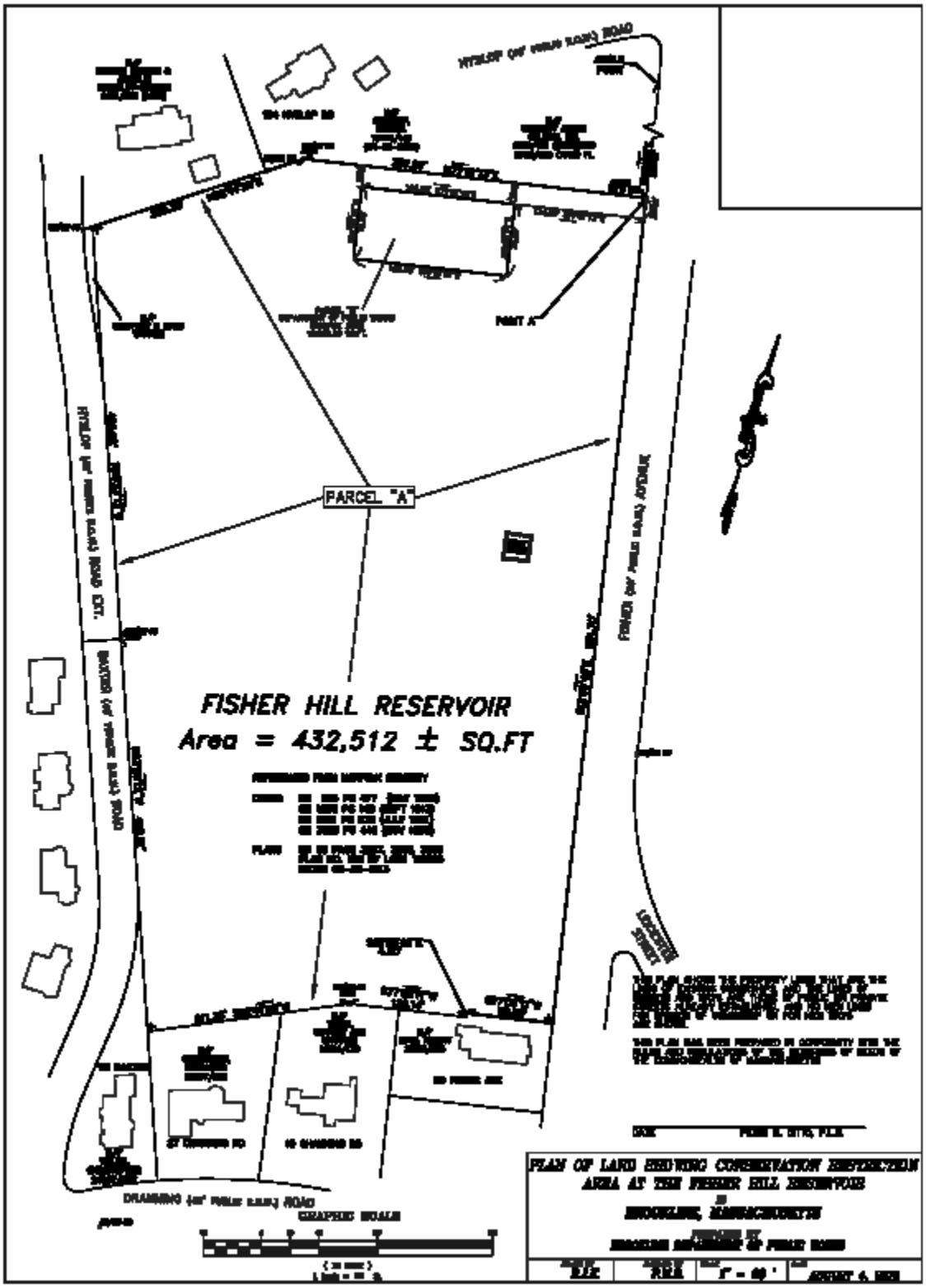
- Approve appropriation of 100% of the project cost. In May, 2007, Town Meeting approved a $1.35 million bond authorization for this project. The language contained in Article 16 adds $500,000 to the project; however, the Town will not actually borrow those monies. As stated in the vote, the $500,000 bond authorization will be rescinded by the $500,000 grant.

While the last bullet may be somewhat confusing, what is actually occurring is not: the Town is basically fronting the $500,000 that will come from the grant once the work is complete. A grant account will be established on the books of the Town (as is the case for all grants received), the $500,000 of expenses will be coded to that account, and that account will be made whole when the grant is received. As a result, the Town will never borrow the money.

The Board congratulates all involved in obtaining this $500,000 grant and unanimously recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 5, 2010, on the following vote:

VOTED: That the Town of Brookline vote to dedicate the land known as Fisher Hill Reservoir Park, consisting of 9.7 acres, more or less, as shown on a plan entitled "Plan of Land Showing Conservation and Preservation Restriction Areas at the Fisher Hill Reservoir"; a copy of which is attached and incorporated herein as Exhibit A, for park purposes under the provisions of Massachusetts General Laws, Chapter 45, Section 14, and as it may hereafter be amended and other Massachusetts statutes relating to public parks and playgrounds and as further provided in Chapter 20 of the Acts of 2008, to be managed and controlled by the Department of Public Works, Parks and Open Space Division of the Town of Brookline, and that the Commissioner of the Department of Public Works with the approval of the Board of Selectmen be authorized to file on behalf of the Town of Brookline any and all applications deemed necessary for grants and/or reimbursements from the Commonwealth of Massachusetts deemed necessary under the Land and Water Conservation Fund Act (P.L. 88-578, 78 Stat 897) and/or any others in any way connected with the scope of this Article, and the Commissioner of the Department of Public Works be authorized to enter into all agreements and execute any and all instruments as may be necessary on behalf of the Town of Brookline with the approval of the Board of Selectmen to affect the park development; that to meet this appropriation, the Treasurer, with the approval of the Selectmen, is authorized to borrow $500,000 under and pursuant to Chapter 44, §7(22) and/or (25) of the General Laws, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefore, for all costs incidental or related thereto, which sum shall be in addition to the $1,350,000 appropriated for purchasing the State-owned reservoir at Fisher Hill and making said property safe and accessible to the public under Article #7, Item #57 of the warrant at the May 29, 2007 Town Meeting; provided that any amount authorized to be borrowed shall be reduced by the amount of any aid received.

Exhibit A


PARCEL "A"
FISHER HILL RESERVOIR
Area = 432,512 ± SQ.FT
GRAPHIC SCALE

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## ADVISORY COMMITTEE'S RECOMMENDATION

Article 16 has several components. First, it asks Town Meeting to dedicate 9.7 acres of the Fisher Hill Reservoir property for park purposes under the provisions of both Chapter 45, Section 14, which addresses the acquisition, use, and management of municipal parks and playgrounds, and Chapter 20 of the Acts of 2008, which authorized the transfer of the former Fisher Hill Reservoir to the Town. (The remaining 12,000 square feet of the 9.9 acre parcel will be fenced off, set back from a public parking area, and used to store equipment for the DPW's Water and Sewer division.)

Under Article 16, Town Meeting acknowledges that Fisher Hill Reservoir Park will be managed and controlled by the DPW, Parks and Open Space Division and authorizes the DPW Commissioner, with the approval of the Board of Selectmen, to apply to the State for grants or reimbursements consistent with the scope of the article. Lastly, it asks Town Meeting to appropriate $500,000 through a bond authorization, to be added to the $1,350,000 previously approved by Town Meeting in May 2007 for the acquisition of the site as well as for the initial improvements to make it safe and accessible to the public.

### BACKGROUND

Plans to purchase and improve the former State-owned MWRA reservoir on Fisher Avenue have been under consideration for over nine years.

- In the Spring of 2001, the Board of Selectmen appointed a Master Plan Committee to evaluate the reuse potential of this property as well as the Town-owned underground reservoir site across the street.
- In December 2002 the Committee recommended that the almost 10 acres of land be treated as a "scenic amenity and public park" and that plans incorporating an athletic field, passive recreational use, and open space be pursued.
- By the fall of 2003, a Design Review Committee appointed by the Selectmen had developed preliminary plans that called for a playing field as well as wooded areas and habitats and addressed parking and handicap accessibility, provided pedestrian access, and protected the historic gatehouse. In response to neighborhood concerns, the proposed playing field was reduced in size but remained able to accommodate high school sports.
- In November 2003, Town Meeting authorized the Board of Selectmen to file a petition with the General Court to transfer the former Fisher Hill Reservoir to the Town of Brookline. Similar, if not identical, articles were approved in 2005 and 2006.
- In the Spring of 2007, Town Meeting approved a $1.35 million bond authorization for the acquisition of, and preliminary improvements to, the site.
- In February 2008, the State authorized the sale of the property, and the following year, it was valued at $800,000.

DISCUSSION

Several months ago the Executive Office of Energy and Environment Affairs notified the Town that the Fisher Hill Reservoir Park project had been selected to receive up to $500,000 in highly competitive federal Land and Water Conservation funds. The conditions of the grant include the requirement that the property be used in perpetuity for appropriate purposes, that it remain open to the public, and that it be protected open space under Article 97 of the Amendments to the State Constitution. Additionally, the grant will be administered as a reimbursement, meaning that the Town will be reimbursed by the State once the work has been completed. Reimbursement funds will be deposited in a "special revenue fund" set up by the Comptroller's Office.

Current plans call for the Town to use both the $1,350,000 approved in 2007 as well as $500,000 in available cash to complete the acquisition of the site ($800,000) and to begin the work to make the property safe and accessible, including site survey work, drawings, grading, fencing, construction of walking paths, and removal of invasive vegetation ($1,050,000). Under the terms of the grant, $500,000 will later be reimbursed, so that the Town will be able to expend $1,850,000 on acquisition and improvements at a net cost of only $1,350,000. After the grant funds are received, the bond authorization will be automatically rescinded by the amount of the grant.

Article 16 reiterates a number of the assurances previously made by the Town, including the use of the former state-owned property for active and passive recreational and park purposes. In addition, it recommits $1.35 million in FY 08 CIP funds for the acquisition of, and improvements to, the site. Finally, although there is no intent to borrow $500,000 to reach the $1,850,000 budgeted for purchasing the property and making it safe and accessible, a two-thirds vote of Town Meeting is necessary to approve this article since it requests bond authorization.

By a vote of 24-0-0, the Advisory Committee recommends FAVORABLE ACTION on the vote offered by the Selectmen.

***XXX***

## ARTICLE 17

SEVENTEENTH ARTICLE

To see if the Town will amend the language of its vote taken on Wednesday, November 18, 2009, under Article No. 9, at the Special Town Meeting called for Tuesday, November 17, 2009 by striking the words "Chapter 218 of the Acts of 2000" and replacing them with "Chapter 20 of the Acts of 2008" so that the amended vote shall read as follows (new language in Bold and underlined):

> 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 $1.00, 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 20 of the Acts of 2008**; 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.

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PETITIONER'S ARTICLE DESCRIPTION

On November 18, 2009 Town Meeting voted unanimously 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 $1.00, 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.

This vote allowed the Town to begin the process toward purchasing the State-owned Fisher Hill Reservoir Site. However, the Special Act referred to in the 2009 vote is incorrect. Chapter 20 of the Acts of 2008 is the proper citation to the legislation that authorizes the transfer of the property and the general terms of the transfer, including its use for active and passive recreation purposes.

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## SELECTMEN'S RECOMMENDATION

Article 17 is required to correct an error made in the vote taken at the November, 2009 Special Town Meeting under Article 9. That vote authorized the Town to commence the process of purchasing the State-owned Fisher Hill Reservoir site from the State. Unfortunately, the vote referenced "Chapter 218 of the Acts of 2000" when it should have been "Chapter 20 of the Acts of 2008". The Board unanimously recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 5, 2010, on the vote offered by the Advisory Committee.

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## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Article 17 offers a technical amendment to a previous vote of Town Meeting.

In November 2009, Town Meeting approved Article 9, authorizing the Selectmen, on behalf of the Town, to purchase the Fisher Hill Reservoir site for not more than $800,000, to accept conservation and preservation restrictions on portions of the land, to use the land for active and passive recreation, and/or to further conservation and open space uses "consistent with Chapter 218 of the Acts of 2000."

It was subsequently noted that the reference to Chapter 218 of the Acts of 2000 was incorrect, since Chapter 218 provided for the disposition of the MWRA's Waterworks Facilities in Chestnut Hill. The correct citation is Chapter 20 of the Acts of 2008.

DISCUSSION
If approved, Article 17 would replace the words "Chapter 218 of the Acts of 2000" with the words "Chapter 20 of the Acts of 2008", thereby inserting the proper statutory citation.

RECOMMENDATION
By a vote of 24-0-0, the Advisory Committee recommends FAVORABLE ACTION on the following motion:

VOTED: That the Town amend the language of its vote taken on Wednesday, November 18, 2009, under Article No. 9, at the Special Town Meeting called for Tuesday, November 17, 2009 by striking the words "Chapter 218 of the Acts of 2000" and replacing them with "Chapter 20 of the Acts of 2008" so that the amended vote shall read as follows (new language in Bold and underlined):

> 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 $1.00, 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 20 of the Acts of 2008**; and upon such other terms and conditions as the Board of Selectmen shall consider proper and in the best interests of the town.

***XXX***

## ARTICLE 18

### EIGHTEENTH ARTICLE

To see if the Town will vote to accept a grant of a surface water drain easement from the Massachusetts Bay Transportation Authority, a body politic and corporate, and a political subdivision of the Commonwealth of Massachusetts ("MBTA") in a portion of land at or near Station Street and Pearl Street in order for the Town to keep its water and sewer pipe in the location described below and to have access to such area. Said easement is situated at or near the MBTA Brookline Village Green Line Station in Norfolk County and contains approximately 1233 square feet as shown on a plan entitled "Plan to Accompany an Easement for a Surface Water Drain Through land of the Massachusetts bay Transportation Authority", dated April 5, 2010 prepared by the Department of Public Works Engineering/Transportation Division to be recorded at the Norfolk Registry of Deeds upon acceptance by the Town, said parcel of land being bounded and described as follows:

Beginning at a point 56.83 feet N57-13-42E of the angle point on the westerly side of Pearl Street at the MBTA Brookline Village Station.

Thence: running N33-18-52W through land of the MBTA sixty five and seventy two hundreds feet (65.72') to a point at Station Street.
Thence: turning and running N61-26-13E along Station Street twenty and seven hundreds feet (20.07') to a point.
Thence: turning and running through land of the MBTA sixty and seventy four hundreds feet (60.74') to Pearl Street.
Thence: turning and running S59-55-10W along Pearl Street seventeen and four hundreds feet to a point.
Thence: turning and running S32-10-37E along Pearl Street four and thirty one hundreds feet to a point.
Thence: turning and running S57-13-42W along Pearl Street two and ninety hundreds feet to the point of beginning.

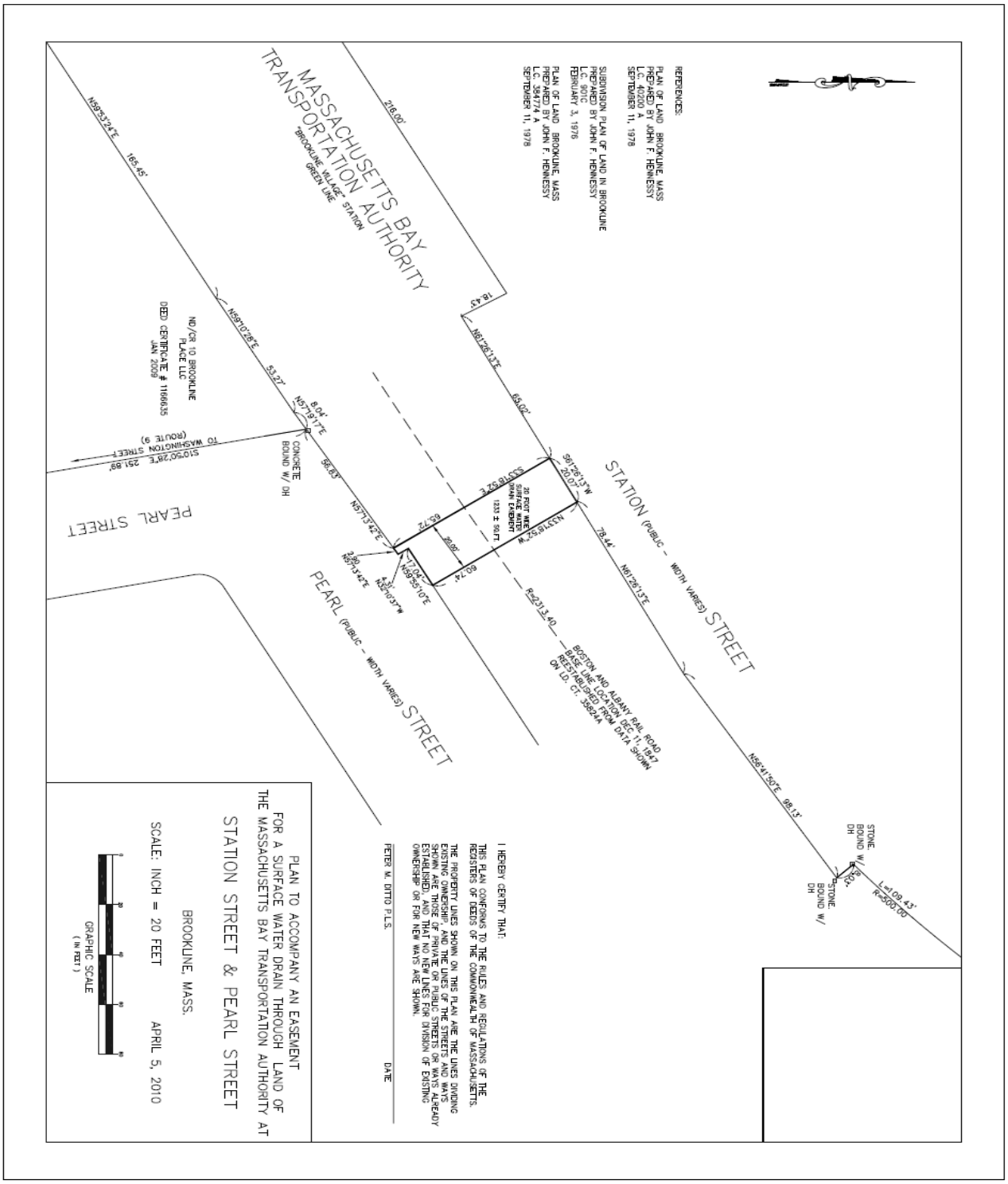
Said easement containing one thousand two hundred thirty three square feet (1233s.f.).

or act on anything relative thereto.

### PETITIONER'S ARTICLE DESCRIPTION

In 2003 the Town's consultant prepared a contract for the installation of a storm drain in the Brookline Village area. This contract was intended to remove the stormwater from the sanitary sewer in this area thereby eliminating/reducing surcharging of the sanitary sewer during storm events. Because of the topography of the area, the proposed storm drain needed to cross the MBTA right of way at the Brookline Village station in order to tie into the existing Pearl Street drain. The Town secured a license from the MBTA on September 18, 2003 to install a 42" concrete drain and, as part of the occupancy agreement, the Town was required to pay an annual rent fee of $2,530.62. The Town

subsequently requested that the MBTA grant a permanent utility easement to the Town and waive any rental payments after September 18, 2004 with the understanding that the Town will prepare the easement plan, suitable for recording at the Registry of Deeds, and pay $10,000.00 in exchange for the easement.



## SELECTMEN'S RECOMMENDATION

Article 18 asks Town Meeting to accept a permanent grant of easement from the Massachusetts Bay Transportation Authority (MBTA) for the placement of a forty-two inch diameter surface water drain near the green line station at Brookline Village. This is being requested so that the Town can cease paying an annual rent fee of $2,530.62 to the MBTA related to a stormwater project the Town undertook in that area.

The project removed stormwater from the sanitary sewer in this area, thereby eliminating/reducing surcharging of the sanitary sewer during storm events. Part of the project included installing a storm drain that crossed the MBTA right of way at the Brookline Village station and tied into the existing Pearl Street drain. In order to cross the MBTA's right of way, the Town secured a license from the MBTA that required the Town to pay the annual rent fee. The Town subsequently requested that the MBTA grant a permanent utility easement to the Town and waive any rental payments after September 18, 2004 with the understanding that the Town will prepare the easement plan, suitable for recording at the Registry of Deeds, and pay $10,000.00 in exchange for the easement. Article 18 is the vehicle required to obtain the permanent easement.

At its October 5 meeting, the Board took a vote of FAVORABLE ACTION, by a vote of 5-0, on the motion shown below. However, the Town was recently advised that the MBTA Board of Directors voted to reject the proposed easement. As of the writing of these Combined Reports, the reason(s) for the rejection have not been conveyed to the Town. A letter from the MBTA is supposed to be sent to the Town detailing their objections. Therefore, there is a possibility that the Selectmen may have to reconsider Article 18. If we do, then a Supplemental Recommendation will be provided prior to the commencement of Town Meeting.

VOTED: That the Town vote to accept a grant of a surface water drain easement from the Massachusetts Bay Transportation Authority, a body politic and corporate, and a political subdivision of the Commonwealth of Massachusetts ("MBTA") in a portion of land at or near Station Street and Pearl Street in order for the Town to keep its water and sewer pipe in the location described below and to have access to such area. Said easement is situated at or near the MBTA Brookline Village Green Line Station in Norfolk County and contains approximately 1233 square feet as shown on a plan entitled "Plan to Accompany an Easement for a Surface Water Drain Through land of the Massachusetts bay Transportation Authority", dated April 5, 2010 prepared by the Department of Public Works Engineering/Transportation Division to be recorded at the Norfolk Registry of Deeds upon acceptance by the Town, said parcel of land being bounded and described as follows:

Beginning at a point 56.83 feet N57-13-42E of the angle point on the westerly side of Pearl Street at the MBTA Brookline Village Station.

Thence: running N33-18-52W through land of the MBTA sixty five and seventy two hundredths feet (65.72') to a point at Station Street.
Thence: turning and running N61-26-13E along Station Street twenty and seven

hundredths feet (20.07') to a point.
Thence: turning and running through land of the MBTA sixty and seventy four hundredths feet (60.74') to Pearl Street.
Thence: turning and running S59-55-10W along Pearl Street seventeen and four hundredths feet to a point.
Thence: turning and running S32-10-37E along Pearl Street four and thirty one hundredths feet to a point.
Thence: turning and running S57-13-42W along Pearl Street two and ninety hundredths feet to the point of beginning.

Said easement containing one thousand two hundred thirty three square feet (1233s.f.).

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
This matter is being brought before Town Meeting by the Department of Public Works, Engineering/Transportation Division.

Article 18, seeks Town Meeting approval to accept a permanent grant of easement from the Massachusetts Bay Transportation Authority (MBTA) for the placement of a forty-two inch diameter surface water drain at or near the MBTA Brookline Village Green Line Station, in Norfolk County containing approximately 1233 square feet as shown on the accompanying plan dated April 5, 2010, prepared by the Department of Public Works Engineering/Transportation Department.

On September 18, 2003, the Town of Brookline, through the use of a consultant, negotiated with the MBTA for a license to install a forty-two inch concrete surface water drain across MBTA land at the Brookline Village Green Line MBTA Station. This surface water drain line was to connect storm drains from Station Street and above to the existing Pearl Street drain. The Town paid a license fee of $2,530.62 in September 2003. The license called for annual rent payments of $2,530.62 due each September 18th. The drain was installed shortly after September 2003. The Town has failed to make further payments after the original license fee of $2,530.62 was paid.

The MBTA and the Town have agreed that the Town will pay the sum of $10,000.00 for a permanent easement from the MBTA and any funds owed after September 18, 2004, under the original license, will be waived by the MBTA.

The $10,000.00 payment will come from Capital Improvement monies from the Water and Sewer Enterprise Fund.

RECOMMENDATION
The Advisory Committee by a Vote of (24-0) recommends FAVORABLE ACTION on the vote offered by the Selectmen.

***XXX***

ARTICLE 19

NINETEENTH ARTICLE
To see if the Town will adopt the following resolution:

**Resolution to Change the Scheduling of Town Meetings**

WHEREAS Town Meeting has regularly met on Tuesday, Wednesday, and Thursday evenings until it has concluded its business; and

WHEREAS a number of Town Meeting members find this schedule inconvenient for various reasons; and

WHEREAS a number of Town Meeting members believe that a schedule of two meetings per week may facilitate greater deliberation and lead to participation by a broader range of Brookline citizens; and

WHEREAS a number of Town Meeting Members have urged a schedule of only two evenings per week; and

WHEREAS other Town Meeting Members prefer the current schedule,

NOW THEREFORE BE IT RESOLVED that Town Meeting intends, as an experiment, that the 2011 Annual Town Meeting be held on two non-consecutive evenings per week and asks the Selectmen and the Moderator to schedule accordingly.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The warrant article asks the Board of Selectmen and Moderator to schedule the 2011 Town Meeting so that Town Meeting occurs on non-consecutive nights (such as Monday and Wednesday, or Tuesday and Thursday). There has been many comments on this issue in various contexts (TMM listserve, annual debrief meeting with the Moderator, informal conversations) and it seemed the most appropriate forum for a structured discussion would be to introduce a warrant article.

The current Town Meeting schedule, meeting for consecutive evenings, has some advantages and some disadvantages.

The advantages are:

- Consolidation of meetings in the calendar is easier for some to schedule
- It is easier for Town Meeting Members who travel for business to participate

The disadvantages are:

- The current schedule may discourage participation by a broader and more representative group of citizens. In particular, working parents of children appear under-represented by the current schedule.
- Senior citizens find it more difficult to participate.
- The current schedule does not allow time inbetween meetings for Town Meeting Members to caucus or negotiate informally between sessions.

By scheduling the 2011 Annual Town Meeting on a non-consecutive night schedule, Town Meeting Members, the Board of Selectmen and the Moderator will be able to gather data on the relative merits of each schedule and determine what schedule best supports the participatory democracy spirit of Town Meeting.

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## SELECTMEN'S RECOMMENDATION

Article 19 is a proposed resolution that asks the Selectmen and the Moderator to schedule the 2011 Annual Town Meeting so that it is held on two non-consecutive evenings per week as opposed to the current practice of having Town Meeting convene on consecutive nights between Tuesday – Thursday. Members of the Board believe that this is a matter of personal preference and that Town Meeting should be polled. This article is the vehicle for the polling and the debate that will take place will dictate whether the current practice is discontinued for the non-consecutive evening proposal.

While the Selectmen NO ACTION, by a vote of 5-0 taken on October 19, 2010, on Article 19, we look forward to getting a better sense of Town Meeting's preferred future meeting schedule.

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## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Article 19 is a resolution that, as an experiment:

- seeks to hold the Annual Town Meeting for the spring of 2011 on two non-consecutive evenings per week (i.e., the opening date and the subsequent adjourned sessions)
- asks the Selectmen and the Moderator to schedule accordingly

The petitioners' objective is to generate a discussion of this matter on the floor of the 2010 Fall Special Town Meeting.

DISCUSSION

The relevant state law governing the timing of Town Meetings requires that annual meeting be (i) held in February, March, April, May or June and (ii) concluded by June 30th, and the Town's by-laws provide the Selectmen with considerable flexibility in

establishing the timing. The Moderator provided the following commentary regarding how Brookline has scheduled its Town Meetings:

> It is generally thought that the referenced statutes give the Board of Selectmen the power to set the opening date of Town Meetings but do not address adjourned sessions. By tradition in Brookline, and for the sake of convenience, the adjourned sessions have been scheduled by the Selectmen's Office, without explicit action on the part of the Board itself. However, the legal power to establish the time and date of adjourned sessions rests with Town Meeting; that is, if the business of Town Meeting has not been concluded, Town Meeting sets the time and place of the next session in its adjournment vote. Brookline has routinely adjourned to the next session as pre-scheduled by the Selectmen's Office, but there would be nothing to prevent Town Meeting from adjourning to another time and date.

The petitioners stated that although the current schedule works for some members, it feels like a marathon to others. There was concern that by the third night people tend to rush through deliberations, and articles do not get the consideration they deserve. One petitioner suggested that the proposed change might encourage more people to consider running for Town Meeting. Another recalled that at some time in the past, Town Meeting met on a Tuesday/Thursday schedule, and then changed to the current consecutive night format. Also, it was suggested that a non-consecutive evening schedule would allow more time for discussion and consideration of articles between meetings.

The advantages expressed in the article and its explanations, and during its consideration by the Advisory Committee are admittedly anecdotal. The petitioners stated that there had been some discussion of the subject on the TMM list-serve.

Article 19 is a *resolution* asking the Town Meeting body to try a one-time experiment in the spring of 2011 in order to assess the most accommodating approach to the scheduling of Town Meeting. Some Advisory Committee members agreed with the advantages expressed by the petitioners, while others did not. Rather than a consensus on the advantages and disadvantages relevant to the issue, the Advisory Committee vote represents a measure of getting the issue before Town Meeting.

RECOMMENDATION

By a vote of 14 favorable, 2 opposed and 4 abstentions, the Advisory Committee recommends Favorable Action on Article 19, as amended:

VOTED: That the Town adopt the following resolution:

Resolution to Change the Scheduling of Town Meetings

WHEREAS Town Meeting has regularly met on Tuesday, Wednesday, and Thursday evenings until it has concluded its business; and

WHEREAS a number of Town Meeting members find this schedule inconvenient for various reasons; and

WHEREAS a number of Town Meeting members believe that a schedule of two meetings per week may facilitate greater deliberation and lead to participation by a broader range of Brookline citizens; and

WHEREAS a number of Town Meeting Members have urged a schedule of only two evenings per week; and

WHEREAS other Town Meeting Members prefer the current schedule and may not agree that there are advantages to a change in schedule,

NOW THEREFORE BE IT RESOLVED that Town Meeting intends, as an experiment, that the 2011 Annual Town Meeting be held on two non-consecutive evenings per week and asks the Selectmen and the Moderator to schedule accordingly.

***XXX***

## ARTICLE 20

### TWENTIETH ARTICLE

To see if the Town will take the following action:

> "Resolved, that the Transportation Board adopt standards for determining when the benefits of prohibiting a right turn on red ("RTOR") outweigh the detrimental environmental consequences and traffic inefficiencies resulting from such a prohibition, conduct a study of all traffic intersections in the Town at which there is a traffic light and a sign or signs not permitting a RTOR, make a separate determination with respect to each such intersection as to whether the standards for prohibiting a RTOR have been met , and remove all such signs at intersections that do not meet such standards.
>
> Further Resolved, that the actions in the foregoing resolution be completed by the Spring 2011 Town Meeting and that the Transportation Board report to the Spring 2011 Town Meeting on the standards that it has adopted for determining when to prohibit a RTOR and which traffic intersections it has determined do not justify the removal of signs prohibiting RTOR"

or act on anything relative thereto

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### PETITIONER'S ARTICLE DESCRIPTION

There are many traffic light intersections throughout the Town at which there are signs that do not permit a right turn on red ("RTOR"). At many of these intersections, a prohibition on making a RTOR is not justified from a safety or traffic efficiency perspective, with the result, in many cases, of idling cars that are polluting the air and needlessly wasting fossil fuel.

The RTOR originated in a 1970s federal law that was in intended to reduce fuel consumption due to cars idling at intersections. It was passed in response to the 1973 oil crisis as a way of reducing our dependence on foreign oil – still a worthy goal. It restricted federal funds to any state that did not legally permit a RTOR, but provided that localities could choose to erect signs at any intersection prohibiting such a turn. At that time, many towns and communities throughout the Commonwealth, without any study, uniformly put up such signs at all traffic light intersections, thereby retaining the status quo. Many of these towns and cities are now removing these signs principally due to environmental concerns. Brookline is long overdue in taking such action.

These resolutions seek to focus the attention of the Transportation Board on taking action that will have a very substantial environmental benefit, with respect to pollution and significantly reducing the fossil footprint of the Town, as well as improving traffic efficiency throughout the Town.

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## SELECTMEN'S RECOMMENDATION

Article 20 is petitioned resolution that asks the Transportation Board to adopt standards regarding a right turn on red. The concern of the petitioner is that many of the intersections that prohibit a right turn on red are not justified from a safety or traffic efficiency perspective, with the result being idling cars that are polluting the air and needlessly wasting fossil fuel. The Board agrees with the petitioner in concept and sees this as another way for Brookline to reduce its carbon footprint. However, the resolution as originally drafted cannot be accomplished within the mandated six-month timeframe (the Spring, 2011 Town Meeting). Therefore, the Board is recommending an amended version of Article 20 that requires the Transportation Board to report annually to Town Meeting on its progress in determining when to prohibit right turn on red and which intersections do not justify removal of signs prohibiting right turn on red. By a vote of 5-0 taken on October 26, 2010, the Board recommends FAVORABLE ACTION on the following motion:

VOTED: That the Town adopt the following resolution:

"Resolved, that the Transportation Board adopt standards for determining when the benefits of prohibiting a right turn on red ("RTOR") outweigh the detrimental environmental consequences and traffic inefficiencies resulting from such a prohibition, conduct a study of all traffic intersections in the Town at which there is a traffic light and a sign or signs not permitting a RTOR, make a separate determination with respect to each such intersection as to whether the standards for prohibiting a RTOR have been met , and remove all such signs at intersections that do not meet such standards.

Further Resolved, that the actions in the foregoing resolution be completed **as expeditiously as possible, and that the Transportation Board report to the Annual Town Meeting on progress in determining when to prohibit right turn on red and which intersections do not justify removal of signs prohibiting RTOR.**

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## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Warrant Article 20 is a resolution requesting that the Transportation Board adopt standards for the use of "No Turn on Red" (NTOR) signage at intersections and re-evaluate intersections presently designated as such, with the intention of eliminating these restrictions wherever prudent.

Right turn on red laws were enacted at state and federal levels in the 1970's during the oil crisis as an energy conservation measure. Federal Law Title 42 Chapter 77 Section 6322 (State energy conservation plans) requires that all states using federal highway funds adopt "a traffic law or regulation which, to the maximum extent practicable consistent with safety, permits the operator of a motor vehicle to turn such vehicle right at a red stop

light after stopping and to turn such vehicle left from a one-way street onto a one-way street at a red light after stopping."

Traffic signs are regulated under MGL Chapter 85 Section 2. This statute incorporates by reference the Manual on Uniform Traffic Control Devices (MUTCD) published by the Federal Highway Administration. The MUTCD, as amended at the state level by MassDOT, is the standard used by all municipalities in Massachusetts. Section 2B.54 of the MUTCD defines six standards to be considered when determining if a given intersection should have a NTOR designation:

> If used, the No Turn on Red sign should be installed near the appropriate signal head. A No Turn on Red sign should be considered when an engineering study finds that one or more of the following conditions exists:
>
> A. Inadequate sight distance to vehicles approaching from the left (or right, if applicable);
> B. Geometrics or operational characteristics of the intersection that might result in unexpected conflicts;
> C. An exclusive pedestrian phase;
> D. An unacceptable number of pedestrian conflicts with right-turn-on-red maneuvers, especially involving children, older pedestrians, or persons with disabilities;
> E. More than three right-turn-on-red accidents reported in a 12-month period for the particular approach; or
> F. The skew angle of the intersecting roadways creates difficulty for drivers to see traffic approaching from their left.

Brookline has at least 21 intersections designated as No Turn on Red.

DISCUSSION:
Fred Lebow, the petitioner, filed this article with the goals improving traffic efficiency and reducing energy consumption. This article is a resolution urging the Transportation Board to adopt standards, evaluate intersections, and remove the No Turn on Red signs if deemed safe after an evaluation based on these standards.

Federal law enacted in the 1970's allowed drivers to make a right turn at a red light provided there is no sign prohibiting the turn. At that time, many towns, including Brookline, put up No Turn on Red signs to keep the status quo. Many towns have since removed many of the signs, reverting to the federal standard that allows turns on red.
As we look to make Brookline greener, this proposal will also have an impact on carbon emissions and air quality by reducing idling time at intersections while waiting for a light to change.

While the Transportation Board had not taken up the article at the time of our review, Michael Sandman, Chairman of the Transportation Board, anticipated favorable action by the board. In support of the article he noted that while you can turn right on red onto Beacon Street from St. Paul Street, you cannot do so from Powell Street—it's inconsistent across town. Transportation Board member Brian Kane also spoke in support of Article 20 as submitted, but cautioned that the Transportation Division is already

taking on a lot of work and that the Town may want to consider increasing the department staff next year to support these types of initiatives.

Brookline Transportation Administrator Todd Kirrane confirmed that he would employ the federal and state standards for the use of "No Turn On Red" (NTOR) designations at intersections as part of this project. His assessment of intersections would include proximity to schools, the volume of pedestrian traffic, and other standards in the MUTCD. Mr. Kirrane also stated that the project could be undertaken without budget changes utilizing current staff capacity, noting that while the project would take longer than anticipated by the petitioner, it is achievable in the time frame specified on the resolution.

The Advisory Committee made suggestions such as utilizing signs at certain intersections to encourage turns and to help change driver behavior. Also, it was noted that Left on Red is also allowed at the intersections of one way streets and these intersections should be included if any exist in Brookline.

The Police Department, represented by Officer Kelliher, was supportive of the resolution, but does want to be involved in the process and the decision making for each intersection. The Police Department keeps statistics on traffic incidents and that data will be useful for the study. They also have definite opinions on the safety of each of the intersections in town. The Advisory Committee encourages strong involvement from the Police Department during the course of the project.

RECOMMENDATION:
By a vote of 22 to 1 with 1 abstention, the Advisory Committee recommends FAVORABLE ACTION on the following:

> VOTED: That the Town adopts the following resolution:
>
> "Resolved, that the Transportation Board adopt standards for determining when the benefits of prohibiting a right turn on red ("RTOR") outweigh the detrimental environmental consequences and traffic inefficiencies resulting from such a prohibition, conduct a study of all traffic intersections in the Town at which there is a traffic light and a sign or signs not permitting a RTOR, make a separate determination with respect to each such intersection as to whether the standards for prohibiting a RTOR have been met , and remove all such signs at intersections that do not meet such standards.
>
> Further Resolved, that the actions in the foregoing resolution be completed by the Spring 2011 Town Meeting and that the Transportation Board report to the Spring 2011 Town Meeting on the standards that it has adopted for determining when to prohibit a RTOR and which traffic intersections it has determined do not justify the removal of signs prohibiting RTOR."

***XXX***

ARTICLE 20

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

VOTED: That the Town adopts the following resolution:

"Resolved, that the Transportation Board adopt standards for determining when the benefits of prohibiting a right turn on red ("RTOR") outweigh the detrimental environmental consequences and traffic inefficiencies resulting from such a prohibition, conduct a study of all traffic intersections in the Town at which there is a traffic light and a sign or signs not permitting a RTOR, make a separate determination with respect to each such intersection as to whether the standards for prohibiting a RTOR have been met, and remove all such signs at intersections that do not meet such standards.

Further Resolved, that the actions in the foregoing resolution be **substantially** completed by the ~~Spring~~ **Fall** 2011 Town Meeting and that the Transportation Board report to the Spring 2011 Town Meeting on the standards that it has adopted for determining when to prohibit a RTOR ~~and which traffic intersections it has determined do not justify the removal of signs prohibiting RTOR~~."

## ARTICLE 21

### TWENTY-FIRST ARTICLE

To see if the Town will enact a resolution requesting that grocers, restaurants, caterers, organizations, and other purveyors of food immediately cease the sale or public serving of veal to the public within the Town of Brookline, such resolution to state as follows:

> WHEREAS calves are particularly abused in order to enhance their appeal to consumers;
>
> WHEREAS the American Veal Association has itself acknowledged this abuse by calling for the end of veal crate use by the industry by 2017;
>
> WHEREAS Brookline Town Meeting has historically provided the platform for providing input into what foods can and cannot be served by local food purveyors;
>
> WHEREAS few proprietors in Brookline sell or serve veal and hence there would be scant economic implications for local businesses;
>
> WHEREAS it is important for Brookline residents to become aware of the unusual cruelty associated with raising calves intended for human consumption;
>
> Now, therefore, be it hereby Resolved that all food purveyors be requested to immediately suspend the sale and/or serving of veal products to the public within the Town of Brookline.

Or act on anything relative thereto.

---

### PETITIONER'S ARTICLE DESCRIPTION

- Calves are separated from their mothers 1-4 days after birth, and are soon put into individual crates measuring roughly 25" x 65". Due to the confining nature of the crates, there is only space to stand or lie down uncomfortably.
- The calves remain in these crates for 12 to 23 days until they are transported to slaughter, by which time their close confinement makes it difficult (if not impossible) for them to walk.
- The tender consistency for which veal is known is due to (and dependent upon) this upbringing, which prevents calf muscle development.
- Calves are fed a milk-replacement diet containing limited nutrients and especially lacking of iron.
- The calves are fed this liquid diet for the entirety of their lives.
- The pale-colored meat demanded upon by consumers is due to the anemia that results from this diet.

- Instead of the 4-10 small meals that calves will ingest through natural suckling, veal calves in factory farms will generally ingest two larger meals. In combination with the 100%-liquid-diet, infection, and stress, this imbalanced meal schedule leads to ulcers in 87% of calves.
- Because of the rapid separation of mother and calf post-birth, many calves will receive insufficient colostrum (the antibody-rich first milk from the mother), or none at all. Lacking necessary antibodies, the calves are more susceptible to hazardous bacteria and viruses, which then have the potential to be passed on to consumers through the calves' meat.
- The American Veal Association passed a resolution calling for the end of veal crate use in the industry by 2017, thereby acknowledging that veal crates are cruel but still leaving seven more years of crate-raised, domestic veal in the market.
- In Massachusetts, there is a precedent for recognizing the cruelty of veal calf confinement. House Bill 815 was filed in 2009 and aims to ban, among other forms of confinement, usage of veal crates in the Massachusetts veal industry. Comparable to the law enacted in California in 2008 (and in seven other states in previous years), HB 815 has not yet passed. It should be noted that even if passed, this legislation would have no impact on veal imported from other states or countries.
- Brookline's Town Meeting input in what food proprietors should or should not do is not a new phenomenon. Most notably, in 2007, the Town Meeting overwhelmingly approved (194-11) a ban on trans-fat in restaurants and schools.
- There are few proprietors in Brookline who continue to supply veal. Therefore, while this resolution is highly important in raising awareness about the issue and encouraging responsible consumption practices among Brookline residents, the impact on small businesses will be small.

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## SELECTMEN'S RECOMMENDATION

Article 21 is petitioned article that proposes a resolution that be requests the suspension of the sale and/or serving of veal products to the public within the Town of Brookline. More specifically, the amended motion pertains to the sale and/or serving of crated veal. The practice of crated veal is cruel. Calves raised for veal are taken from their mothers immediately after birth and raised so as to deliberately induce borderline anemia. Calves are then denied basic needs, including access to their mother's milk, access to pasture and exercise and often prohibited from any movement at all in order to produce the pale-colored flesh for which veal is coveted. The crates they are confined to are small, usually measuring 2-feet-wide, so they cannot turn around, stretch their limbs, or even lie down comfortably. Proof of the cruelty is the American Veal Association passing a resolution calling for the end of veal crate use in the industry by 2017.

The Board recognizes the cruelty of crated veal and applauds the petitioner for bringing forward this resolution. Accoring to our Economic Development Office, the impact on Brookline businesses will be minimal, a fact that makes this decision even easier. The

Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 26, 2010, on the motion offered by the Advisory Committee.

---

## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Article 21, submitted by Petitioner Rachel Baras, a resident of the Town, proposes, in the form of a resolution, that grocers, restaurants, caterers, organizations, and other purveyors of food within the Town of Brookline immediately cease the sale or public serving of crated veal.

Petitioner Rachel Baras states that her interest in promoting this article is her care for animal rights. She is concerned about the inhumane and cruel treatment of farm animals and believes that, since Town Meeting is a body primarily elected by citizens of Brookline, she is voicing this concern in a community setting, is hoping that Brookline will serve as an example to other municipalities and to the Commonwealth, and is hoping to educate the citizenry of Brookline as well as have the sale of crated veal cease within the Town.

She points to the conditions that crated veal calves are subjected to: they are separated from their mothers within a few days of birth and put into individual and confining crates, thereby preventing calves from most movement. They can only stand or lie down uncomfortably. They cannot turn around or stretch their limbs and are kept in this intensive confinement for 2-3 weeks until they are slaughtered. Such treatment prevents calf muscle development which in turn produces tender meat. During their confinement, they are fed a milk-replacement liquid diet, with few nutrients, and the pale color of their meat is due to the anemia that results from this diet.

Dr. Alan Balsam agrees that there are implications for human health from the consumption of crated veal. Because the calves are nursed by their mothers for only a day or two after birth, they don't acquire the mother's antibodies which can protect them from bacteria and viruses. Therefore, they easily acquire illnesses for which they are treated with antibiotics. Those antibiotics are passed on to humans when the veal is eaten, and thus, human illnesses become more resistant to treatment with those antibiotics.

Furthermore, Dr. Balsam stated that the raising of food in the USA is in a sad state which has implications for human health. He cited the example of the recent egg recall due to bacterial contamination, and such contamination is a result of the very cramped confinement of the hens .

Across the country, 5 states have passed measures outlawing the intensive crating of veal calves. These are Arizona, California, Colorado, Maine and Michigan. Such legislation is also pending in New York.

In Massachusetts, House Bill 815 was filed in 2009 and that proposal would prohibit the sale of veal raised in veal crates. The American Veal Association has passed a resolution calling for the end of veal crate use in the industry by 2017. In the UK, it is now illegal to raise crated veal and restaurants there obtain non-crated veal locally or import it from Wales and The Netherlands.

At the sub-committee hearing, Marge Amster, Commercial Areas Coordinator, presented information that 500 restaurants and grocers across the country don't sell crated veal, including Whole Foods. These businesses are easily able to find sources of non-crated veal. And these restaurants and grocers are able to advertise that they use non-crated veal, just as many businesses are promoting the use of locally grown products or free-range chicken.

Ms. Amster also reported that she and Dr. Alan Balsam contacted many restaurants and grocers within the Town and only 1 "push-backed" against the proposal. Ms. Amster does not expect much economic hardship for businesses in the Town as only a very few proprietors within the Town sell or serve crated veal.

If this Article passes, the Department of Public Health plans to send a letter to all restaurants, grocers, caterers, and purveyors of food within the Town, and will ask for the cooperation of those businesses. The letter will suggest sources of non-crated veal. The DPH will also send a letter to the existing suppliers of crated veal, ask that they seek sources of non-crated veal, and provide them with information about sources of non-crated veal.

DISCUSSION:
The Advisory Committee discussed the fact that this is a resolution, and therefore, is not binding on restaurants which do want to implement it. At the same time, members discussed the fact that veal of any sort is not found on many menus of restaurants in Town. We understand the main reason for this is that veal is quite expensive and does not seem to be hugely popular with consumers.

A few members expressed reservations about adopting a resolution concerning the sale of a particular food, and believe that the Commonwealth should adopt such standards first. Other members disagreed, citing the fact that Brookline banned tobacco in restaurants as did other municipalities, before the Commonwealth did so. Town Meeting also has banned the use of trans fats in food served in Brookline restaurants so there is precedent for a measure which impacts human health.

The Advisory Committee, by a vote of 17 – 2 – 2, recommends Favorable Action on the following resolution:

VOTED: That the Town enact a resolution requesting that grocers, restaurants, caterers, organizations, and other purveyors of food immediately cease the sale or public serving of crated veal to the public within the Town of Brookline, such resolution to state as follows:

WHEREAS calves are particularly abused in order to enhance their appeal to consumers;

WHEREAS the American Veal Association has itself acknowledged this abuse by calling for the end of veal crate use by the industry by 2017;

WHEREAS Brookline Town Meeting has historically provided the platform for providing input into what foods can and cannot be served by local food purveyors;

WHEREAS few proprietors in Brookline sell or serve veal and hence there would be scant economic implications for local businesses;

WHEREAS it is important for Brookline residents to become aware of the unusual cruelty associated with raising crated calves intended for human consumption;

Now, therefore, be it hereby Resolved that all food purveyors be requested to immediately suspend the sale and/or serving of crated veal products to the public within the Town of Brookline.

***XXX***

ARTICLE 22

TWENTY-SECOND ARTICLE
Reports of Town Officers and Committees

## ARTICLE 4

### CTO&S' SUPPLEMENTAL RECOMMENDATION

The Committee on Town Organization and Structure (CTO&S) met on Monday, November 1 to finalize its recommendation for Town Meeting. The Committee voted 5-0 to concur with the vote offered by the Board of Selectmen included in the Combined Reports. CTO&S did not meet to review the final amendment approved by the Board of Selectmen included in their vote below.

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### BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

After the Combined Reports were finalized, it was determined that the wording in the language voted by the Selectmen that was susceptible of the interpretation that a single candidate would be recommended to fill both the Police Chief and Fire Chief positions. Therefore, the Board recommends FAVORABLE ACTION, by a vote of 4-1 taken on November 9, 2010, on the motion found on pages 4-9 and 4-10 of the Combined Reports, as amended by adding the words "each of" after the words "With respect to" in the last sentence of section 2 (b).

**ROLL CALL VOTE:**

| Favorable Action | No Action |
|---|---|
| DeWitt | Goldstein |
| Daly | |
| Mermell | |
| Benka | |

## ARTICLE 5

## CTO&S' SUPPLEMENTAL RECOMMENDATION

Following referral by prior Town Meeting to Committee on Town Organization and Structure (CTO&S), the Committee reviewed the article and voted unanimously to recommend conferring titles of Commissioner(s) on the Board of Selectmen. Regarding the addition proposed by the Board of Selectmen, CTO&S voted 5-0 to recommend the addition of the word "civilian" to the titling.

ARTICLE 5

**Amendment offered by Martin Rosenthal, TMM-Prec. *9*** [1]

Motion to amend the Selectmen's motion by *deleting* each of the words *"civilian"* in the third line of the proposed new provision. (Combined Report, p. 5-4)

**EXPLANATION**

This restores CTOS's 7-0 voted article (p. 5-1, Combined Report), revising the spring article (then # 10) referred to CTOS for study. Art. 10's lead petitioner, now offering this motion, accepted every change by CTOS, including the new first sentence from Town Counsel. Then, at the Oct. 12 selectmen's meeting, after four selectmen stated support for CTOS's language, selectman DeWitt proposed inserting the word "*civilian*" before both "Police Commissioner" and "Fire Commissioner" (hereinafter, *"P/C" & "F/C"*). No vote was then taken, but two weeks later the original four supporters agreed to amend the article in that way. Selectman DeWitt – still not supportive – abstained. Presumably she will explain her thinking to Town Meeting, but the Combined Reports (p. 5-3) captures the essence of what she's said at various public meetings, along with her reluctance to have these titles at all:

> ... P/C might imply a law enforcement capability that is not consistent with the Board's civilian oversight authority ...[and cause] confusion about police powers that could be misinterpreted to be vested in the Board. In … other jurisdictions[,] for example, the P/C is a professional department head with direct control over police operations. ... [T]he Board voted to insert ... "civilian"... to clarify the scope of this responsibility ...

Selectman DeWitt's additional word ("*civilian*") is ill-advised, because it is:

1. at a minimum, redundant, unhelpful, and superfluous;
2. awkward, cumbersome, and inelegant, and thus *less likely to be used*; and
3. at worst, confusing &/or excessive *emphasis on limits* of the selectmen's authority.

#1. CTOS (unanimously) added – after last May's proposal – language from selectman Benka, emphasizing the seemingly obvious: "*The Selectmen's responsibilities and authority are not enhanced, diminished, or altered in any fashion from those that exist under applicable Laws by virtue of bearing such titles, nor shall the Board be involved in the day-to-day administration, operations or management of the Police and Fire Departments.*"

#2. Under the Constitution Presidents are "*Commanders in Chief*"*;* and, also, the Mass. Constitution says Governors are *"commander in chief ... of the military forces of the state."* NEITHER saw a need to belabor the obvious and dilute the titles with the word

[1] MRR is CTOS' Art. 5 speaker, but not on this motion, and was absent when CTOS adopted DeWitt's amendment.

"*civilian*." If they had, would the titles have the same visceral, psychological, symbolic impact?

#3. The DeWitt amendment suggests a mystery, "*who is/are the REAL Commissioner(s)?*" And, it over-emphasizes (beyond Art. 5's last sentence) the *limits* of civilian control. The selectmen's authority is now very expansive, like it or not. G.L.c. 41, §97 (the "Weak Chief Law"), adopted by a 1921 Town Meeting, says: "In towns which accept this section ... there shall be *a* police department established *under the direction of the Selectmen*, who shall appoint a chief of police and such other police officers as they deem necessary... and ... may remove such chief or other officers for cause ... [and] *may make suitable regulations governing* the police department ... [emphasis added]." Similarly for FIRE, our 1973 Home Rule Law abolished the then-office of F/C and "transferred ... to the selectmen all [of its] powers and duties ... [making them] *for all purposes whatsoever the lawful successor to the F/C* in relation to the direction and control of the fire department"– but the F/C title then was not explicitly codified by the Town.

As for the need for our traditional, indeed for any *title*, once again, these are "*paramilitary*" departments; see the 1987 *Report on Police/Community Relations*, "§VI, *Disciplinary Process,*" beginning: "Because all police departments are *paramilitary* in tone and structure ... ." See also *Police Dept. v. Tolland*, 67 Mass. App. Ct. 1107 (Unpublished, 2006): "the head of a *paramilitary* organization ... is dependent on adherence to the commands of superior officers."

Will formalizing these titles change anything -- or be confusing or outlandish? Brookline now has about 72 [civilian] "Commissioners," e.g., Preservation, Arts, etc. None are called "*civilian* Commissioners." None are confused to be employees of their departments. Also, recall the famous opening line of David Turner's 1997 memorandum casting a cloud of (formalistic) confusion on these traditional titles and motivating this article: "*Sometime before the memory of man remembereth* the Selectmen … *acquired the additional title of Police Commissioners*."[2] Similarly, these titles – unadorned/unqualified – are common in towns.[3]

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[2] Former Chief Simard, current Chief O'Leary, and all Fire Chiefs have often used these titles. See, e.g., the former's *General Order #85-5*, creating the Internal Affairs process, beginning "The Selectmen, in their capacity as the P/Cs ... have established the position of Internal Affairs/Staff Inspection Officer ... ."; and "Selectmen enjoy power of the badge," Likewise, see 5/27/04 *Brookline TAB* ("...'P/C'... [is] a title reserved for ... the Selectmen. In most communities, the chief of police answers to the P/C; in Brookline's case, that's all five Selectmen. ")

[3] See, 5/6/03, *MassCops-Mass. Law Enforcement Network* ("Selectmen serve as P/Cs by virtue of their office."); and, besides innumerable media references, many towns have *codified* -- and *simple*, P/C titles, *e.g.*, www.**DOVER**ma.org/town-government/town-offices/board-of-selectmen/: "Town Code: ... Selectmen shall be P/C's... .";www.townhall.**WESTWOOD.**ma.us/index.cfm?pk=download&id=22330&pid=15253 ("As P/Cs, Selectmen make final decisions on law enforcement policies.. ."; **WALPOLE**, Charter: "§3-2 ... (2) "selectmen have all the powers and duties of P/Cs, F/Cs, ..."; www.**HINGHAM-**ma.gov/selectmen/index.html: "Selectmen ... [*inter alia*] act as P/Cs ...."; www.town.**FREETOWN**.ma.us/dept/?DeptID=SELECTMEN: "Selectmen... serve as ... P/Cs ..."; www.**NANTUCKET-**ma.gov/Pages/NantucketMA_BOS/index: "Selectmen serve as ... F/C's & P/Cs."

# ARTICLE 10

## BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

At their November 9th meeting, the Board of Selectmen reviewed the motion being offered by the Petitioner (found on page 10-15 of the Combined Reports). While the Board believes that the motion being offered is a better attempt at addressing this extremely complex issue, the motion to refer is still being recommended. The Selectmen again thank the petitioner for the amount of work she put into preparing this article and believe it is a valuable analysis that will help the Committee make an ultimate determination on this issue.

By a vote of 5-0, the Board also amended their vote, found on page 10-23 of the Combined Reports, to include the **bolded** sentence at the end of the following vote:

VOTED: To refer the subject matter of Article 10 to a Selectmen's Committee with a charge to include

- Seeking additional data on cars and parking in Brookline, including, but not limited to, a possible question on the Town Census asking for residents to report the number of cars and how they are housed in Brookline, a survey of owners and managers of multi-unit buildings to identify the number of spaces owned, rented, and vacant; and
- Reviewing and analyzing all available data to select the most consistently reliable, accurate and complete information on ownership of cars and utilization of parking, including the April, 2010, Report of the Selectmen's Committee on Parking; and
- Investigating the relationship of parking and zoning requirements to density and open space with reference to different zoning classifications both residential and commercial, in order to understand all the zoning implications and impacts as much as possible; and
- Making recommendations for changes in the zoning bylaw with regard to reduction in off-street parking requirements taking into account utilization patterns, proximity to transit and car-sharing, and the different residential patterns and densities of Brookline neighborhoods.

**This Committee will make progress reports to each Annual Town Meeting until its work is concluded.**

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# *Town of Brookline*
## *Massachusetts*

**Planning Board**
Town Hall, 3rd Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2130 Fax (617) 730-2442

Mark J. Zarrillo, Chairman
Linda K. Hamlin, Clerk
Steven A. Heikin
Jerome Kampler
Steve R. Kanes
Jonathan Simpson

**ARTICLE 10**
**SUPPLEMENTAL PLANNING BOARD REPORT AND RECOMMENDATION**

At its November 11, 2010 meeting, the Planning Board voted to support Article 10, as revised by petitioner Linda Pehlke. The Board had unanimously supported the original article with revisions that eliminated changes to the use categories but retained the minimum requirements for parking, with the exception of M-0.5 zoning districts. The Board believes that the petitioner's revisions -- to make the minimums applicable only to properties within a half mile of a rapid transit stop -- makes good planning sense. This revision eliminates the article's applicability to much of South Brookline, which is poorly served by public transit. The Board also supports the revision to set the minimum requirement for multi-family studio and one-bedroom units at one parking space per unit.

The Planning Board stressed the following points in its discussion of reducing the minimum multi-family residential parking requirements in the Zoning By-Law: they are applicable only to new construction and do not establish a maximum number of parking spaces; there will be greater flexibility in designing less bulky residential buildings if less parking is required; the Floor Area Ratio of a development is not altered by these parking requirement changes; and more green space may result in the development projects. The Planning Board believes that Article 10 will result in better development, more use of public transit, and the potential for more green space on a property.

Therefore, the Planning Board strongly recommends FAVORABLE ACTION on Article 10 as revised by the Petitioner.

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# *Town of Brookline*
## *Massachusetts*

**Department of Planning and Community Development**
Town Hall, 3rd Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2130 Fax (617) 730-2442

Greer Hardwicke
Jean Innamorati
Preservation Planners

| | |
|---|---|
| TO: | Board of Selectmen |
| FROM: | Preservation Commission Staff |
| DATE: | October 27, 2010 |
| SUBJECT: | Fall 2010 Town Meeting – Preservation Commission support of Article 10 (residential parking requirements) |

---

At their meeting on October 12, 2010, the Preservation Commission voted unanimously to recommend adoption of Article 10 at the Fall 2010 Town Meeting. The Preservation Commission supports the Article proposing to reduce the amount of residential parking required in the town's Zoning By-Law.

The Preservation Commission administers the town's Demolition Delay By-Law and through it often works with developers and property owners to save historic properties. Frequently historic buildings are proposed to be added onto or incorporated into larger projects. In these cases, the Commission believes that the parking requirements often motivate a developer to include more parking than needed and, in effect, work to the detriment of the final design and the historic integrity of the original buildings and their sites.

Recently the Commission has seen a significant increase in the number of significant buildings proposed to be demolished. The Commission believes that in several of these recent cases buildings were slated for demolition because the required amount of parking made them seem unsuitable for multi-use residential development. Although the Commission understands that relief from parking requirements may be granted in some cases, having a high minimum threshold serves to discourage the retention of historically and architecturally significant buildings in densely developed neighborhoods.

The Commission recommends favorable action on Article 10 because it believes that the amendment will help to encourage the preservation of the historic fabric of Brookline's streetscape and eventually lead to more appropriate and sensitive design for new developments.

# Town of Brookline

Massachusetts

## Department of Public Works

**Engineering & Transportation Division**

**TRANSPORTATION BOARD**
MICHAEL SANDMAN, CHAIRMAN
DR. JOSH SAFER, VICE CHAIRMAN
GUSTAAF C.M. DRIESSEN, PE
BRIAN KANE
WILLIAM SCHWARTZ, AICP
PAMELA ZELNICK

October 25, 2010

Betsey Dewitt, Chairman
Brookline Board of Selectmen
333 Washington Street
Brookline, Massachusetts 02445

RE: November Town Meeting Warrant Article 10

Dear Chairman Dewitt,

Per the request of the Petitioner, the Transportation Board held a public meeting on Thursday, October 21, 2010 to discuss and vote on the issuance of a letter of recommendation regarding Warrant Article 10: A Zoning By-law Amendment seeking to Lower the Minimum Number of Off-street Parking Spaces Required for New Residential Developments. Following a public discussion the Transportation Board offers the following recommendation:

WHEREAS The Transportation Board for the Town of Brookline, under Chapter 317 of the Acts of 1974 as amended, are charged with the *"authority to adopt, alter or repeal rules and regulations not inconsistent with general law…relative to pedestrian movement, vehicular and bicycle traffic in the streets and in the town-controlled public off-street parking areas in the town, and to the movement, stopping, standing or parking of vehicles and bicycles on, and their exclusion from, all or any streets, ways, highways, roads, parkways and public off-street parking areas under the control of the town"*;

WHEREAS The Brookline Board of Selectmen convened the Brookline Parking Committee (BPC) in 2008 "in order to maximize the effective and efficient use of Brookline's on- and off-street parking resources for the mutual benefit of local businesses, residents, and visitors. This committee was charged with conducting a comprehensive review of policies and regulations related to parking (other than the year-round ban on overnight on-street parking)." Furthermore two members of The Transportation Board were members of the Committee, including Transportation Board Member William Schwartz who presided as Co-Chair;

WHEREAS the Selectmen's Parking Committee, following a study of overnight residential usage of onsite parking at 20 properties, supported "a reduction in off-street parking requirements within multi-family residential land uses, particularly near transit and in areas served by car sharing organizations, provided that neighborhood concerns are taken into account. The BPC does not recommend a specific number or ratio of parking spaces per unit";

*333 Washington Street ♦ Brookline, MA 02445-6863*
*Telephone: (617) 730-2177 Facsimile: (617) 264-6450*

WHEREAS the Transportation Board held a hearing on Article 10 at its meeting on October 21, 2010 to discuss the Warrant Article;

THEREFORE the Transportation Board, by unanimous vote, supports a reduction in residential parking requirements, particularly near transit, and encourages further analysis of data and community input on this matter. Furthermore, while not part of the final motion, the Board believes that the best way to accomplish this is through the referral of Warrant Article 10 to a Special Selectmen's Committee.

Sincerely Yours,

Michael A. Sandman
Chairman - Transportation Board

CC: Melvin Kleckner, Town Administrator
Jeffrey Levine, Director – Department of Planning & Community Development
Todd M. Kirrane, Transportation Administrator
Brookline Board of Selectmen
Brookline Advisory Committee
Town Meeting Members

ARTICLE 10

**Amendment Offered by A. Joseph Ross, TMM-Prec. 12**

Moved: to amend both the Selectmen's and the Advisory Committee's referral motions by adding the following additional bullet point:

> Exploring alternative regulatory choices, including but not limited to: downzoning, design review, and allowing reduced parking requirements by special permit to deal with parking and development issues raised by Article 10.

ARTICLE 10

**Amendment Offered by Andrew Fischer, TMM-Prec. 13**

Amend the motions to refer of **both** the Board of Selectmen and the Advisory Committee by changing the wording of the third bulleted paragraph in each motion as follows:

> • Investigating the relationship of parking and zoning requirements to density**, [insert comma]** open space **and the cost of housing** with reference to different zoning classifications**, [insert comma]** both residential and commercial, in order to understand all the zoning implications and impacts as much as possible; and

Explanation

PAX supports referral for further study, but with the amendment above, which addresses concerns of PAX members on both sides of the issue who agree that we should better understand the possible impact of reduced parking requirements on the cost of housing.

## ARTICLE 14

## BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

As stated in the Selectmen's Recommendation for Article 14 included in the Combined Reports, the Board voted at its October 26th meeting to reconsider its original vote because of the amendment proposed by Town Meeting Member Stanley Spiegel to make Article 14 subject to a local referendum. The Board had a number of questions on the amendment that could not be answered that night. They have since been answered and the Board is prepared to offer its recommendation in this Supplemental Report.

Article 14 is a Home Rule petition that would authorize legal resident aliens 18 years or older who are residents of the Town of Brookline to vote in all local town elections. The petitioner has expressed the concern that while legal resident aliens are materially affected by the results of elections of Town officials, tax overrides, debt exclusions, and other vote outcomes pertaining only to life in Brookline, they are not allowed to vote in these local elections. In addition, the petitioner believes that local voting rights are a way to encourage the civic engagement of local immigrants in Brookline life.

The subject matter of this article is truly one of personal preference as there is no constitutional bar to the proposal and no moral imperative in its favor. While some Board members agree with the petitioner that these legal, permanent residents should have an equal voice in the local decisions that impact them and their families and supports the article as amended by the Advisory Committee, other Board members believe that granting voting privileges to the people who do not go through the citizenship process seems to diminish the efforts of those who do, would dilute the votes of current voters, and is a sharp break with tradition.. It is for this reason that the amendment makes good sense. Making it subject to referendum gives current voters the right to choose whether or not to extend voting rights to others. If local voting rights for 'green card' aliens is eventually accepted by the Town's voters it will represent a true popular mandate for the measure.

Therefore, by a vote of 5-0, the Board recommends FAVORABLE ACTION on the motion offered by the Advisory Committee, found on pages 14-7 and 14-8 of the Combined Reports, as amended by the amendment offered by Stanley Spiegel found on page 14-3 of the Combined Reports. The motion reads as follows:

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

**AN ACT AUTHORIZING CERTAIN LOCAL VOTING RIGHTS FOR PERMANENT LEGAL RESIDENT ALIENS RESIDING IN THE TOWN OF BROOKLINE**

Be it enacted, etc., as follows:

Section 1. Notwithstanding the provision of section one of chapter fifty-one of the General Laws, or any other general or special law, rule or regulation to the contrary, permanent legal resident **aliens** eighteen years of age or older **who are residents of the Town of Brookline** may, upon application, have their names entered on a list of voters established by the Board of Registrars of Voters and administered by the Town Clerk for the Town of Brookline and may thereafter vote in **all local town elections, for all elected town offices, and for all local ballot questions,** provided that the foregoing provision is approved by the registered voters of the Town of Brookline at the first regularly scheduled annual town election to be held no sooner than 90 days after the date that this act becomes law.

Section 2. **The Board of Registrars of Voters for the Town of Brookline**, in consultation with the Town Clerk, is authorized to formulate regulations and guidelines to implement the purpose of this act.

Section 3. For the purposes of this act, a permanent legal resident **alien** is a non-U.S. citizen **residing in the Town of Brookline** who has **duly qualified for and been granted**, according to the immigration laws **of the United States of America**, permanent residence as an immigrant with the issuance of a "green card" from the Bureau of Citizenship and Immigration Services.

Section 4. Nothing in this act shall be construed to confer upon permanent legal resident aliens the right to run for **or hold elective** public office, or the right to vote **in any state or federal election.**

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

ARTICLE 20

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

VOTED: That the Town adopts the following resolution:

"Resolved, that the Transportation Board adopt standards for determining when the benefits of prohibiting a right turn on red ("RTOR") outweigh the detrimental environmental consequences and traffic inefficiencies resulting from such a prohibition, conduct a study of all traffic intersections in the Town at which there is a traffic light and a sign or signs not permitting a RTOR, make a separate determination with respect to each such intersection as to whether the standards for prohibiting a RTOR have been met, and remove all such signs at intersections that do not meet such standards.

Further Resolved, that the actions in the foregoing resolution be **substantially** completed by the ~~Spring~~ **Fall** 2011 Town Meeting and that the Transportation Board report to the Spring 2011 Town Meeting on the standards that it has adopted for determining when to prohibit a RTOR ~~and which traffic intersections it has determined do not justify the removal of signs prohibiting RTOR~~."

## 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.

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### 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.

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### 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. The Department of Public Works (DPW) has been notified by NStar that there is an outstanding invoice for electricity usage. The unpaid bill represents power usage at a traffic signal control box at 665 Washington St. that was installed by Barletta Heavy Division as part of the Beacon Street reconstruction project. For whatever reason, Barletta, who was responsible only for the installation of the control box, was mistakenly listed as the owner of the account for billing purposes by NStar. The owner should have been the Town. It has been verified that the Town is responsible for payment of the outstanding invoice in the amount of $440.15, which represents the actual electricity usage since 2008. All invoices received since August, 2010 have been paid correctly by the Town.

The Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 19, 2010, on the motion offered by the Advisory Committee.

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### ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Warrant Article 1 would "*see if the Town will, in accordance with General Laws, Chapter 44, Section 64, authorize the payment of one or more of the bills of the previous*

*years, which may be legally unenforceable due to the insufficiency of the appropriations therefor, and appropriate from available funds, a sum or sums of money therefore, or act on anything relative thereto.*"

The State law referenced in the Warrant Article[1] prohibits the Town from paying unpaid bills for goods purchased by it or services rendered to it until and unless Town Meeting has approved the specific appropriation. Therefore, it is customary for every Town Meeting to consider a warrant article to consider and, if appropriate, approve the payment for any goods or services received by the Town the purchase of which was not approved by a prior appropriation. Upon Town Meeting's approval, the Town may then pay for such goods or services.

DISCUSSION

In September of this year, the Town's Department of Public Works (the "DPW") learned of an unpaid electric bill from NSTAR. The bill reflects electricity usage since 2008 for a traffic signal control box located at 665 Washington Street (in front of the Fire Station located near Washington Square).

By way of background, a Canton, Massachusetts-based company called Barletta Companies was a contractor for the Beacon Street Traffic Safety Improvements Project that commenced in 2005. As part of this project, the DPW installed a series of traffic signal control boxes that alert motorists that fire, police or other similar vehicles would be approaching. For some reason, the bill for electricity usage for that traffic signal control box was sent to Barletta's attention, instead of to the DPW. The situation has since been remedied.

The unpaid bill in question reflects energy usage from the date of installation through the date (August 2010) the error was identified and addressed less past due charges, credit for a payment made, and certain other agreed-to discounts. Thus, the total of the unpaid bill is $440.15. The DPW now seeks Town Meeting's approval to pay this charge.

As an aside, the Advisory Committee expressed its appreciation to the DPW for both quickly uncovering this situation and also for auditing the remaining traffic installations to make sure NSTAR charges are now being billed correctly.

RECOMMENDATION

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[1] The statute (Massachusetts General Laws ch. 44, §64) provides in relevant part:

> *Any town … having unpaid bills of previous fiscal years which may be legally unenforceable due to the insufficiency of an appropriation in the year in which such bills were incurred may … at an annual meeting by a four[-]fifths vote, or at a special meeting by a nine[-]tenths vote, of the voters present and voting at a meeting duly called … appropriate money to pay such bills….*

The Advisory Committee agrees with the DPW that the obligation is owed by the Town and ought to be paid. Accordingly, by a vote of 16 in favor and none opposed, the Advisory Committee recommends FAVORABLE ACTION on the following motion:

VOTED: To authorize the payment of the following unpaid bill of a previous fiscal year from the FY2011 Department of Public Works budget:

| | |
|---|---|
| NStar | $440.15 |

***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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SELECTMEN'S RECOMMENDATION

There are no Collective Bargaining agreements for Town Meeting authorization at this time. As a result, the Board recommends NO ACTION, by a vote of 5-0 taken on October 26, 2010.

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ADVISORY COMMITTEE'S RECOMMENDATION

Article 2 would ask Town Meeting to raise and appropriate funds for collective bargaining agreements. As there are no agreements at this time, the Advisory Committee, by a vote of 21-0-0, unanimously recommends NO ACTION.

***XXX***

## ARTICLE 3

### THIRD ARTICLE

To see if the Town will:

A) Appropriate additional funds to the various accounts in the fiscal year 2011 budget or transfer funds between said accounts;

B) Appropriate $530,000, or any other sum, to be expended under the direction of the Building Commission, with the approval of the Board of Selectmen and School Committee, for the expansion of classroom capacity in various schools.

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

or act on anything relative thereto.

### PETITIONER'S ARTICLE DESCRIPTION

This article is inserted in the Warrant for any Town Meeting when budget amendments for the current fiscal year are required. For FY2011, the warrant article is necessary to balance the budget based on final State Aid figures, re-allocate funds, and make an appropriation for additional classroom capacity.

### SELECTMEN'S RECOMMENDATION

Article 3 proposes amendments to the FY11 budget in order to address two positive developments:

1. the final State budget contained higher revenue-sharing allocations for Brookline than assumed in the budget approved by Town Meeting in May;
2. based on the enrollment allocation of employees into GIC plans, there is a projected surplus in health insurance accounts.

**STATE AID**

Because the Governor proposed level-funding local aid at the same the legislative leadership was warning municipalities to prepare for significant cuts, the Town took a hybrid approach in terms of using the Governor's local aid proposal: the budget approved by Town Meeting assumed level-funding of Ch. 70 Aid (what the Governor proposed),

but a 10% cut in Unrestricted General Government Aid (UGGA) (in recognition of the legislative leadership's warning). The state budget signed into law by the Governor on June 30 reduced funding for both Ch. 70 and UGGA for Brookline by 4%. The cut in Ch. 70 on the Cherry Sheet, however, was actually 5.8%: the State used ARRA (Federal "stimulus") funds to augment the appropriation so that no community had a cut of greater than 4%. (Those monies, $134,902 for Brookline, were to be a direct grant to the Schools and, therefore, not accounted for on the Cherry Sheet.) In terms of Cherry Sheet aid, there was $190,736 more than assumed in the FY11 budget as approved by Town Meeting, as shown in the table below:

| | | | Versus Fin Plan | |
|---|---|---|---|---|
| | FY11 Fin Plan | FY11 Orig State Budget | $ VAR | % VAR |
| **Receipts** | | | | |
| Ch. 70 * | 7,323,679 | 6,895,830 | (427,849) | -5.8% |
| UGGA | 4,754,713 | 5,370,029 | 615,316 | 12.9% |
| Quinn | 62,345 | 62,345 | 0 | 0.0% |
| Vets Benefits | 77,195 | 77,195 | 0 | 0.0% |
| Exemptions | 41,905 | 41,905 | 0 | 0.0% |
| Charter School Reimb. | 14,867 | 19,568 | 4,701 | 31.6% |
| **Total Aid** | **12,274,704** | **12,466,872** | **192,168** | **1.6%** |
| **Charges** | | | | |
| County | 638,171 | 638,171 | 0 | 0.0% |
| Retired Empl. Health Ins. | 3,295 | 3,295 | 0 | 0.0% |
| Air Pollution Dist. | 22,073 | 22,046 | (27) | -0.1% |
| MAPC | 16,576 | 16,551 | (25) | -0.2% |
| RMV Surcharge | 283,120 | 283,120 | 0 | 0.0% |
| MBTA | 4,480,479 | 4,480,479 | 0 | 0.0% |
| SPED | 60,590 | 61,616 | 1,026 | 1.7% |
| Charter School Sending Tuition | 50,599 | 51,057 | 458 | 0.9% |
| **Total Charges** | **5,554,903** | **5,556,335** | **1,432** | **0.0%** |
| **Net Local Aid** | **6,719,801** | **6,910,537** | **190,736** | **2.8%** |

On August 10, President Obama signed the "Jobs Bill", which provided $26B to states and school districts, $10B of which was for the Education Jobs Fund and $16B was the six-month extension of FMAP (Medicaid) funding. For Massachusetts, the Education Jobs Fund yields $204M. On August 25, the Governor announced his intention to allocate those monies to K-12 school districts in conjunction with the state's Chapter 70 school funding formula. Specifically:

- $54.6 million was used to replace a portion of the FY11 ARRA allocations previously used to supplement the FY11 Chapter 70 program. Each district's ARRA reduction was offset by a dollar-for-dollar allocation of Education Jobs

funds. (The ARRA funds freed up by this change wsa reserved for other services in the State budget outside of the K-12 area.)

- $143.6 million was used to offset the previously announced 4% cut in most districts' Chapter 70 aid and to fully fund the minimum aid provision of the Chapter 70 formula at $25 per pupil. This meant that every operating district realized a minimum increase of $25 per pupil over FY10 levels, based on the combined amounts of state Chapter 70 aid, federal ARRA grants, and federal Education Jobs grants.

For Brookline, this plan resulted in $586,149 ($37,020 from ARRA and $549,129 from Jobs) going directly to the Schools in the form of grants. These funds were not anticipated in the budget approved by Town Meeting. In addition, they do not require appropriation by Town Meeting.

When the School's share of the additional Cherry Sheet aid (50% of the $190,736 shown on page 3-2, or $95,368) is added, the result is $681,517 of funding for the Schools that was not accounted for in the FY11 budget as approved by Town Meeting. Of this amount, just the $190,736 needs Town Meeting approval. The Schools have stated that these monies will go toward reducing their reliance upon one-time revenue in their FY11 budget, thereby preserving much-needed budget capacity in FY12.

For the Town's share of the additional Cherry Sheet aid (50% of $190,736, or $95,368), the Board is proposing the following allocations:

- $5,000 to the Reserve Fund – when Town Meeting approved the amendment to increase Selectmen stipends, the Reserve Fund was chosen as the funding source (i.e., that appropriation was reduced). In order to bring the fund up to the level called for in the Town's financial policies (1% of prior year net revenue), the $5,000 reduction should be restored.

- $18,500 to the Liability/Catastrophe Fund – the Council on Aging (COA) budget recommended to, and adopted by, Town Meeting differed from the Financial Plan by $18,500. During the budget review process, that amount was added to fund a part-time position. The Liability / Catastrophe Fund was reduced by the same amount to balance the budget. In order to bring the fund up to the level called for in the Town's financial policies (1% of prior year net revenue), the $18,500 reduction should be restored.

- $71,868 to the Stabilization Fund – the Town's financial policies call for a Stabilization Fund equivalent to 3% of prior year net revenue. The Town reached this level in the mid-2000's and has not had to appropriate monies into the fund since FY07 because of investment earnings. However, with investment income declining in concert with the country's economic condition, the fund has now fallen below the 3% threshold. Therefore, it is recommended that these monies be appropriated into the fund.

**HEALTH INSURANCE ENROLLMENT**

When the budget was being developed, information from the GIC indicated that some plans would experience rate increases higher than the projections used by the consultant during GIC negotiations, and some would experience rate increases lower than projected. At that time, the fear was that more employees would end up enrolling in the plans with the higher increases, leaving the group health budget underfunded. In order to avoid that situation, the FY11 budget included a one-time Group Health Enrollment Allocation Reserve to serve as a buffer.

The actual enrollment count and plan allocation results in a very favorable outcome for the Town: approximately 25 fewer enrollees than before the move to the GIC and a much greater level of enrollment in HMO's versus PPO's and the Indemnity plan than anticipated. For the non-Medicare plans, the budget assumed a 10% migration into the Indemnity plan and the rest into PPO's. The actual numbers show just 4% into the Indemnity plan, 25% into HMO's, and the balance (71%) into PPO's. The combination of these two factors results in not only the ability to re-allocate the $400,000 reserve, but also to reduce the health insurance appropriation by $1 million.

In addition to positively impacting the FY11 budget, this experience benefits the FY12 budget outlook by more than $1 million, as the FY11 surplus reduces the base going forward. However, it is critically important that the surplus be used for one-time items in FY11; if not, that positive budgetary impact in FY12 is reduced. Simply building the entire surplus into the budget base in another area of the budget (e.g., salaries, expanded service levels) leaves the Town and School budgets in no better a situation for what stands to be a difficult FY12 budget.

**RECOMMENDED ALLOCATION OF HEALTH INSURANCE SURPLUS**

After working closely with the Schools, the Board is recommending the following allocation of the $1 million health insurance budget surplus and the $400,000 reserve:

- Re-appropriate the School's share of the $1 million surplus ($530,000) as a Special Appropriation (i.e., CIP account) for Classroom Capacity, which requires a vote of Town Meeting. As Town Meeting is aware, the Schools continue to face enrollment pressures, resulting in a scarcity of classroom space. In both FY08 and FY10, Town Meeting authorized $400,000 to increase the number of classrooms district-wide. Those funds have been spent down over the past couple years in an effort to create the 24 new classrooms required to house the increased enrollment. Additional work is required to create more classroom spaces for the next few school years and these funds will be necessary to complete the work.

- Transfer the Town's share of the $1 million surplus ($470,000) to the OPEB Trust Fund, which requires just a vote of the Board of Selectmen. This is identical to the action the Board took last Spring when it moved surplus health insurance funds ($400,000) to OPEB's.

- Transfer the $400,000 Allocation Reserve to the OPEB Trust Fund, which also requires just a vote of the Board of Selectmen. This, too, is identical to the action the Board took last Spring when it moved surplus health insurance funds ($400,000) to OPEB's.

**SUMMARY**

The table below summarizes the actions recommended for Town Meeting approval, as detailed above:

| | |
|---|---|
| Schools * | $95,368 |
| Group Health | ($530,000) |
| Reserve Fund | $5,000 |
| Stabilization Fund | $71,868 |
| Liability/Catastrophe Fund | $18,500 |
| Classroom Capacity (CIP) | $530,000 |
| | |
| Net Change | $190,736 |

* Exclusive of the $586,149 in grants that go directly to the Schools w/o appropriation.

As of the writing of these Combined Reports, the Board has not taken the necessary votes to move the $470,000 and $400,000 to the OPEB Trust Fund because of the uncertainty Questions 1 (elimination of sales tax on alcohol) and 3 (reduction in sales tax to 3%) have caused about State revenues. If they were to pass on November 2, more than $1 billion of state revenue would be lost in FY11, which could very well trigger mid-year cuts to Local Aid. Therefore, it makes sense to hold onto this $870,000 of budget capacity in case the questions were to pass and the Town's Local Aid was cut. If the questions fail to pass, the Board will vote to move these funds at the November 9 meeting.

We believe the recommended approach detailed above is a prudent one that uses available funds in FY11 for documented needs while at the same time benefiting the FY12 budget situation. The enrollment experience in FY11 has put the Town in a position where both short-term and long-term needs can be met if handled appropriately. Therefore, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 12, 2010, on the vote offered by the Advisory Committee.

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Article 3 is submitted in order to correct a number of budget issues which have arisen since Town Meeting met in the Spring of 2010 and passed Brookline's FY11 budget.

Brookline's Annual Town Meeting (in May of 2010) passed the Town's FY 2011 budget *before* the state's FY 2011 budget had been approved by the Legislature and the Governor. Accordingly, the Town's FY 2011 budget by necessity reflected various assumptions about what and the final state budget would provide. Additionally, when Town Meeting met last Spring, the migration of Town employees from Blue Cross/Blue Shield (the Town's former health care provider) to the state Group Insurance Commission (GIC) had not been completed. Therefore, Town Meeting passed a budget that was based on the then-current assumptions as to plan selections Town employees

would make and also the number of Town employees who would obtain their coverage from the GIC.

Now that the state budget has passed and the benefit selections have occurred, Article 3 would reallocate certain monies and funds to reflect experience (rather than the Town's assumptions) as to both of these areas.

Federal and state budgets and monies:
The final Massachusetts state budget included $190,736 more in "Cherry Sheet" Aid than was anticipated in the Town's budget passed by Town Meeting last Spring. Consistent with the so-called "*Town-School Partnership*," the Town Administrator's Office now recommends that this additional aid be split 50/50 between the Schools' and the Town's budgets ($95,368 to each). The Schools will also receive an additional $586,149 above what was included in their current FY 2011 budget as a result of American Recovery and Reinvestment Act of 2009 (ARRA) one-time "stimulus" monies and the recently-enacted Federal jobs bill funding. The Schools thus will receive an additional $681,517 above what was included in the budget Town Meeting passed in May. As required by federal law, the ARRA and the jobs bill, these monies will flow directly from the state to the Schools (and therefore no Advisory Committee or Town Meeting approvals are required).

Article 3 proposes that the Town's share of the additional Cherry Sheet Aid be allocated as follows:

- $5,000 to the Reserve Fund,
- $18,500 to the Liability Fund, and
- 71,868 to the Stabilization Fund.

Employee health insurance costs:
Another factor forming the basis for the proposed budget amendments relates to the cost of providing health insurance coverage for the Town's employees. The Town has experienced favorable (from a budget point-of-view) benefits from the recent shift to the GIC from Town-sponsored insurance coverage. Health insurance costs are somewhat lower than the FY 2011 budget envisioned. More of the Town's employees selected lower cost plans than was originally forecast. Additionally, programs to pay employees to switch to a spouse's or partner's coverage have proven more successful than forecast.

The FY 2011 budget set aside $400,000 in a reserve fund to protect the Town and Schools against a greater percentage of employees than anticipated enrolling in those plans that realized double-digit premium increases. The Town's FY 2011 budget as passed last Spring assumes that 10% of employees would enroll in indemnity plans and 90% would enroll in Preferred Provider Organizations (PPOs). Following significant efforts to make sure our employees understood the pros and cons of various options available to them, only 4% of enrollees selected indemnity plans while 71% of them selected a PPO (with the remaining 25% opting for an Healthcare Maintenance Organization (or HMO)). Bargained-for programs to reward employees to select a

spouse's or partner's coverage also provided very successful. Therefore, the $400,000 reserve fund can now be reallocated and, because of the unanticipated enrollment patterns, the Town and Schools can reduce their combined health care budget by $1 million in the current fiscal year.

The Town Administrator's Office proposes that the reallocated healthcare dollars be used in a way that does not make the FY 2012 budget more difficult than it is expected to be (such as, by using these savings to fund operating expenses in this fiscal year). Therefore, it recommends that the $400,000 reserve fund be reallocated to the OPEB Trust Fund. Further, the Town Administrator's Office recommends that the Town's share of the $1 million cost savings ($470,000) be similarly reallocated to the OPEB Trust Fund. This attention to our OPEB liability is in keeping with a recent Town Meeting resolution.

Finally, it is recommended that the School's share of the healthcare premium savings ($530,000) be allocated to the Schools' needs outside of its base budget—specifically to fund a classroom capacity CIP account. For the past several years enrollment at the lower grades has increased. This trend continues. These funds will help the School Department address pressing space needs.

DISCUSSION:
Mr. Cronin explained that when the Town's budget proposal was designed, his office made use of the most up-to-date budget numbers available at that time. However, the state's final budget process yielded some surprises. As a result, the Town actually received more money from the state than was anticipated when the Town's budget passed. When coupled with monies received from ARRA and the federal jobs bill, the net result is that Brookline has received additional funds above what was anticipated in May 2010 and those fund now need to be reflected in the budget amendments.

The Advisory Committee concurs with the budget changes laid out in Article 3 with one change (described below).

It should be noted that some of the transfers and fund reallocations which the are not contingent upon Town Meeting approval. Specifically, the transfer of funds into the OPEB Trust Fund can be done solely with approval from the Board of Selectmen. Also, Town Meeting is not required to approve the allocation of the grant funding which the Schools will receive. Nonetheless, the Advisory Committee urges Town Meeting to go "on record" as encouraging the Board of Selectmen to use these monies to address the OPEB gap and the School Committee to use their funds to reduce their reliance upon one-time monies in FY11.

Town Meeting may be interested to know that the $18,500 transfer to the Liability Fund discussed previously represents the budgeted cost of the Council on Aging Outreach Worker, which the Advisory Committee amended and Town Meeting subsequently approved in the FY 2011 budget.

It is also interesting to note that the proposed deposit into the Stabilization Fund would be the first since 2007 and is necessary to bring the fund's balance up to the minimum called

for in the Town's financial policies. Since 2007 the interest on earned on the fund's balance has been sufficient, but as a result of decreased interest rates a deposit is necessary this year. The current balance of the fund is approximately $5.8 million.

RECOMMENDATION:
At the time of the Advisory Committee's discussion of Article 3 the results of Question 3 (the statewide referendum to cut the state's sales tax to 3%) were unknown. There was concern on the Committee that if the referendum were to pass (and further assuming that the Legislature would actually follow the voters' action), significant revisiting of the current budget will likely be needed. Without implying that we are taking an issue on a matter before the voters, the Committee thought it prudent to make the OPEB transfers contingent upon the proposal not passing.

Accordingly, the Advisory Committee by a vote of 18-0 with no abstentions on the following motion. The Committee also voted, by a vote of 18-0 with no abstentions, to urge the board of Selectmen to transfer the $870,000 to the OPEB Trust Fund, as outlined above, pending the results of November 2nd's State election on which two tax cutting ballot questions will appear.

VOTED: That the Town:

1. Amend the FY2011 budget as shown below and in the attached Amended Tables I and II:

| ITEM # | ORIGINAL BUDGET | PROPOSED CHANGE | AMENDED BUDGET |
|---|---|---|---|
| 22. Schools | $71,947,765 | $ 95,368 | $72,043,133 |
| 23. Employee Benefits | $40,603,902 | ($530,000) | $40,073,902 |
| 24. Reserve Fund | $ 1,851,956 | $ 5,000 | $ 1,856,956 |
| 25. Stabilization Fund | $ 0 | $ 71,868 | $ 71,868 |
| 26. Liability/Catastrophe Fund | $ 437,000 | $ 18,500 | $ 455,500 |

2. Raise and appropriate $530,000, to be expended under the direction of the Building Commission, with the approval of the Board of Selectmen and School Committee, for the expansion of classroom capacity in various schools.

**XXX**

**FY11 AMENDED BUDGET - TABLE 1**

| | | FY08 ACTUAL | FY09 ACTUAL | FY10 BUDGET | FY11 ORIG. BUDGET | PROPOSED AMENDMENTS | FY11 AMENDED BUDGET | $$ CHANGE FROM FY10 | % CHANGE FROM FY10 |
|---|---|---|---|---|---|---|---|---|---|
| | **REVENUES** | | | | | | | | |
| | Property Taxes | 133,849,950 | 146,542,184 | 152,681,998 | 157,583,115 | | 157,583,115 | 4,901,118 | 3.2% |
| | Local Receipts | 24,524,074 | 22,455,149 | 20,357,125 | 19,868,475 | | 19,868,475 | (488,650) | -2.4% |
| | State Aid | 18,946,277 | 17,962,793 | 16,536,492 | 13,604,374 | 192,168 | 13,796,542 | (2,739,950) | -16.6% |
| | Free Cash | 3,814,792 | 5,954,963 | 7,053,295 | 4,590,079 | | 4,590,079 | (2,463,216) | -34.9% |
| | Overlay Surplus | 850,000 | 0 | 1,505,000 | 0 | | 0 | (1,505,000) | -100.0% |
| | Other Available Funds | 7,753,612 | 5,986,333 | 5,915,039 | 5,059,259 | | 5,059,259 | (855,780) | -14.5% |
| | **TOTAL REVENUE** | **189,738,706** | **198,901,422** | **204,048,949** | **200,705,302** | **192,168** | **200,897,470** | **(3,151,479)** | **-1.5%** |
| | **EXPENDITURES** | | | | | | | | |
| | **DEPARTMENTAL EXPENDITURES** | | | | | | | | |
| | 1 . Selectmen | 622,009 | 635,977 | 600,160 | 608,603 | | 608,603 | 8,442 | 1.4% |
| | 2 . Human Resources | 478,335 | 457,626 | 512,008 | 500,174 | | 500,174 | (11,834) | -2.3% |
| | 3 . Information Technology | 1,362,103 | 1,386,089 | 1,412,632 | 1,392,304 | | 1,392,304 | (20,328) | -1.4% |
| | 4 . Finance Department | 2,934,091 | 3,368,994 | 2,957,457 | 2,929,901 | 0 | 2,929,901 | (27,556) | -0.9% |
| | 5 . Legal Services | 772,840 | 749,476 | 748,648 | 756,296 | | 756,296 | 7,648 | 1.0% |
| | 6 . Advisory Committee | 21,940 | 17,938 | 19,615 | 19,783 | | 19,783 | 168 | 0.9% |
| | 7 . Town Clerk | 525,170 | 604,410 | 481,257 | 600,183 | | 600,183 | 118,926 | 24.7% |
| | 8 . Planning and Community Development | 644,375 | 593,156 | 628,455 | 652,684 | | 652,684 | 24,229 | 3.9% |
| | 9 . Police | 13,636,806 | 14,680,249 | 14,397,219 | 14,695,688 | | 14,695,688 | 298,469 | 2.1% |
| | 10 . Fire | 12,125,596 | 12,280,892 | 12,129,414 | 12,265,426 | | 12,265,426 | 136,013 | 1.1% |
| | 11 . Building | 6,542,701 | 6,965,035 | 6,986,848 | 6,849,744 | | 6,849,744 | (137,104) | -2.0% |
| (1) | 12 . Public Works | 13,178,799 | 13,896,651 | 12,859,891 | 12,772,571 | 0 | 12,772,571 | (87,319) | -0.7% |
| | *a. Administration* | *868,055* | *920,805* | *910,739* | *752,354* | | *752,354* | *(158,385)* | *-17.4%* |
| | *b. Engineering/Transportation* | *849,680* | *929,115* | *904,252* | *945,657* | | *945,657* | *41,405* | *4.6%* |
| | *c. Highway* | *4,723,284* | *4,710,556* | *4,766,446* | *4,895,043* | | *4,895,043* | *128,597* | *2.7%* |
| | *d. Sanitation* | *2,870,421* | *2,593,323* | *2,817,840* | *2,813,173* | | *2,813,173* | *(4,667)* | *-0.2%* |
| | *e. Parks and Open Space* | *2,694,138* | *3,119,380* | *3,092,487* | *2,954,050* | | *2,954,050* | *(138,436)* | *-4.5%* |
| | *f. Snow and Ice* | *1,173,221* | *1,623,472* | *368,127* | *412,294* | | *412,294* | *44,167* | *12.0%* |
| | 13 . Library | 3,398,242 | 3,489,100 | 3,461,307 | 3,469,227 | | 3,469,227 | 7,921 | 0.2% |
| | 14 . Health | 1,024,069 | 1,088,050 | 1,099,574 | 1,085,950 | | 1,085,950 | (13,623) | -1.2% |
| | 15 . Veterans' Services | 203,829 | 241,303 | 241,409 | 242,733 | | 242,733 | 1,324 | 0.5% |
| | 16 . Council on Aging | 746,900 | 767,625 | 759,236 | 780,187 | | 780,187 | 20,952 | 2.8% |
| | 17 . Human Relations | 143,236 | 151,702 | 101,870 | 101,870 | | 101,870 | 0 | 0.0% |
| | 18 . Recreation | 992,864 | 912,909 | 970,754 | 938,533 | | 938,533 | (32,221) | -3.3% |
| (2) | 19 . Energy Reserve | 0 | 0 | 0 | 0 | | 0 | 0 | - |
| (2) | 20 . Personnel Services Reserve | 750,000 | 750,000 | 909,674 | 750,000 | | 750,000 | (159,674) | -17.6% |
| (2) | 21 . Collective Bargaining - Town | 1,600,000 | 3,042,804 | 75,000 | 475,000 | | 475,000 | 400,000 | 533.3% |
| | *Subtotal Town* | *59,353,905* | *62,287,183* | *61,277,427* | *61,886,857* | *0* | *61,886,857* | *609,430* | *1.0%* |
| | 22 . *Schools* | *62,924,864* | *68,000,450* | *68,823,845* | *71,947,765* | *95,368* | *72,043,133* | *3,219,288* | *4.7%* |
| | **TOTAL DEPARTMENTAL EXPENDITURES** | **122,278,769** | **130,287,633** | **130,101,272** | **133,834,622** | **95,368** | **133,929,990** | **3,828,718** | **2.9%** |
| | **NON-DEPARTMENTAL EXPENDITURES** | | | | | | | | |
| (1) | 23 . Employee Benefits | 34,564,193 | 36,103,405 | 41,064,320 | 40,603,902 | (530,000) | 40,073,902 | (990,418) | -2.4% |
| (3) | *a. Pensions* | *11,256,221* | *11,686,639* | *13,258,716* | *13,999,954* | | *13,999,954* | *741,238* | *5.6%* |
| | *b. Group Health* | *19,855,771* | *20,860,382* | *24,073,604* | *21,227,416* | *(530,000)* | *20,697,416* | *(3,376,188)* | *-14.0%* |
| | *c. Group Health Enrollment Allocation Reserve* | *0* | *0* | *0* | *400,000* | | *400,000* | *400,000* | *-* |
| (3) | *d. Retiree Group Health Trust Fund (OPEB's)* | *0* | *0* | *250,000* | *1,142,531* | | *1,142,531* | *892,531* | *357.0%* |
| | *d. Employee Assistance Program (EAP)* | *24,968* | *25,282* | *28,000* | *28,000* | | *28,000* | *0* | *0.0%* |
| | *f. Group Life* | *151,643* | *150,971* | *162,000* | *130,000* | | *130,000* | *(32,000)* | *-19.8%* |
| | *g. Disability Insurance* | *12,813* | *13,460* | *16,000* | *16,000* | | *16,000* | *0* | *0.0%* |
| (3) | *h. Worker's Compensation* | *1,600,000* | *1,550,000* | *1,350,000* | *1,350,000* | | *1,350,000* | *0* | *0.0%* |
| (3) | *i. Public Safety IOD Medical Expenses* | *250,000* | *300,000* | *300,000* | *325,000* | | *325,000* | *25,000* | *8.3%* |
| (3) | *j. Unemployment Compensation* | *166,000* | *166,000* | *166,000* | *400,000* | | *400,000* | *234,000* | *141.0%* |
| | *k. Medical Disabilities* | *15,718* | *9,963* | *30,000* | *30,000* | | *30,000* | *0* | *0.0%* |
| | *l. Medicare Coverage* | *1,231,059* | *1,340,708* | *1,430,000* | *1,555,000* | | *1,555,000* | *125,000* | *8.7%* |
| (2) | 24 . Reserve Fund | 774,834 | 1,297,947 | 1,834,186 | 1,851,956 | 5,000 | 1,856,956 | 22,769 | 1.2% |

| | | FY08 ACTUAL | FY09 ACTUAL | FY10 BUDGET | FY11 ORIG. BUDGET | PROPOSED AMENDMENTS | FY11 AMENDED BUDGET | $$ CHANGE FROM FY10 | % CHANGE FROM FY10 |
|---|---|---|---|---|---|---|---|---|---|
| | 25 Stabilization Fund | 0 | 0 | 0 | 0 | 71,868 | 71,868 | 71,868 | - |
| | 26 . Liability/Catastrophe Fund | 254,629 | 297,476 | 1,443,397 | 437,000 | 18,500 | 455,500 | (987,897) | -68.4% |
| | 27 . General Insurance | 276,146 | 279,490 | 286,198 | 290,000 | | 290,000 | 3,802 | 1.3% |
| | 28 . Audit/Professional Services | 99,433 | 86,765 | 138,987 | 138,987 | | 138,987 | 0 | 0.0% |
| | 29 . Contingency Fund | 11,806 | 13,905 | 15,000 | 15,000 | | 15,000 | 0 | 0.0% |
| | 30 . Out-of-State Travel | 1,979 | 1,076 | 3,000 | 3,000 | | 3,000 | 0 | 0.0% |
| | 31 . Printing of Warrants & Reports | 14,487 | 17,143 | 20,000 | 20,000 | | 20,000 | 0 | 0.0% |
| | 32 . MMA Dues | 10,959 | 11,178 | 11,820 | 12,116 | | 12,116 | 296 | 2.5% |
| | *Subtotal General* | *669,439* | *707,033* | *3,752,588* | *2,768,059* | *95,368* | *2,863,427* | *(889,162)* | *-23.7%* |
| (1) | 33 . Borrowing | 13,824,443 | 12,173,327 | 12,572,215 | 9,594,781 | 0 | 9,594,781 | (2,977,434) | -23.7% |
| | *a. Funded Debt - Principal* | *9,432,797* | *8,247,516* | *8,536,243* | *7,264,649* | | *7,264,649* | *(1,271,594)* | *-14.9%* |
| | *b. Funded Debt - Interest* | *4,354,324* | *3,884,000* | *3,686,572* | *2,176,113* | | *2,176,113* | *(1,510,459)* | *-41.0%* |
| | *c. Bond Anticipation Notes* | *0* | *0* | *289,400* | *94,019* | | *94,019* | *(195,381)* | *-67.5%* |
| | *d. Abatement Interest and Refunds* | *37,322* | *41,811* | *60,000* | *60,000* | | *60,000* | *0* | *0.0%* |
| | **TOTAL NON-DEPARTMENTAL EXPENDITURES** | **49,058,075** | **48,983,765** | **57,389,123** | **52,966,741** | **(434,632)** | **52,532,109** | **(4,857,014)** | **-8.5%** |
| | **TOTAL GENERAL APPROPRIATIONS** | **171,336,844** | **179,271,398** | **187,490,396** | **186,801,364** | **(339,264)** | **186,462,100** | **(1,028,296)** | **-0.5%** |
| | **SPECIAL APPROPRIATIONS** | | | | | | | | |
| | 34 . Technology Applications (revenue financed) | | | | 250,000 | | 250,000 | 250,000 | |
| | 35 . Fire Rescue / Special Operations Truck (revenue financed) | | | | 150,000 | | 150,000 | 150,000 | |
| | 36 . Main Library Front Entrance (revenue financed) | | | | 50,000 | | 50,000 | 50,000 | |
| | 37 . Street Rehabilitation (revenue financed) | | | | 1,740,000 | | 1,740,000 | 1,740,000 | |
| | 38 . Traffic Calming Studies and Improvements (revenue financed) | | | | 100,000 | | 100,000 | 100,000 | |
| | 39 . Sidewalk Repair/Reconstruction (revenue financed) | | | | 262,000 | | 262,000 | 262,000 | |
| | 40 . Bicycle Access Improvements (revenue financed) | | | | 25,000 | | 25,000 | 25,000 | |
| | 41 . Path Reconstruction (revenue financed) | | | | 120,000 | | 120,000 | 120,000 | |
| | 42 . Parking Meter System Replacement (revenue financed) | | | | 1,400,000 | | 1,400,000 | 1,400,000 | |
| | 43 Streetlight Repair / Replacement (revenue financed) | | | | 50,000 | | 50,000 | 50,000 | |
| | 44 Newton St. Steel Guardrail Replacement (revenue financed) | | | | 35,000 | | 35,000 | 35,000 | |
| | 45 . Lincoln School/Kennard House Parking Area Repair (revenue financed) | | | | 250,000 | | 250,000 | 250,000 | |
| | 46 . Playground Equipment, Fields, Fencing (revenue financed) | | | | 270,000 | | 270,000 | 270,000 | |
| | 47 . Town/School Grounds Rehab (revenue financed) | | | | 130,000 | | 130,000 | 130,000 | |
| | 48 . Tree Removal and Replacement (revenue financed) | | | | 155,000 | | 155,000 | 155,000 | |
| | 49 . School Furniture Upgrades (revenue financed) | | | | 25,000 | | 25,000 | 25,000 | |
| | 50 . Town/School Asbestos Removal (revenue financed) | | | | 55,000 | | 55,000 | 55,000 | |
| | 51 . Town/School ADA Renovations (revenue financed) | | | | 55,000 | | 55,000 | 55,000 | |
| | 52 Town/School Building Security / Life Safety (revenue financed) | | | | 100,000 | | 100,000 | 100,000 | |
| | 53 . Town/School Energy Conservation Projects (revenue financed) | | | | 100,000 | | 100,000 | 100,000 | |
| | 54 . Town/School Roof Repair / Replacement (revenue financed) | | | | 300,000 | | 300,000 | 300,000 | |
| | 55 . Old Lincoln Surface Structural Repairs (revenue financed) | | | | 100,000 | | 100,000 | 100,000 | |
| | 56 . Town Hall / Main Library Garage Repair & Driveway Improvements ($850,000 = revenue financed, $950,000 = bond) | | | | 1,800,000 | | 1,800,000 | 1,800,000 | |
| | 57 . Walnut Hills Cemetery (special revenue fund) | | | | 200,000 | | 200,000 | 200,000 | |
| | 58 . Classroom Capacity (revenue financed) | | | | | 530,000 | 530,000 | 530,000 | |
| (4) | **TOTAL SPECIAL APPROPRIATIONS** | **5,928,000** | **8,575,748** | **9,260,572** | **6,572,000** | **530,000** | **7,102,000** | **(2,158,572)** | **-23.3%** |
| | **TOTAL APPROPRIATED EXPENDITURES** | **177,264,844** | **187,847,146** | **196,750,968** | **193,373,364** | **190,736** | **193,564,100** | **(3,186,868)** | **-1.6%** |
| | **NON-APPROPRIATED EXPENDITURES** | | | | | | | | |
| | Cherry Sheet Offsets | 120,749 | 122,866 | 103,079 | 102,036 | | 102,036 | (1,043) | -1.0% |
| | State & County Charges | 5,410,405 | 5,493,891 | 5,550,741 | 5,554,903 | 1,432 | 5,556,335 | 5,594 | 0.1% |
| | Overlay | 1,858,148 | 1,535,026 | 1,619,162 | 1,650,000 | | 1,650,000 | 30,838 | 1.9% |
| | Deficits-Judgments-Tax Titles | 0 | 0 | 25,000 | 25,000 | | 25,000 | 0 | 0.0% |
| | **TOTAL NON-APPROPRIATED EXPEND.** | **7,389,302** | **7,151,783** | **7,297,982** | **7,331,939** | **1,432** | **7,333,371** | **35,389** | **0.5%** |
| | **TOTAL EXPENDITURES** | **184,654,147** | **194,998,929** | **204,048,949** | **200,705,303** | **192,168** | **200,897,471** | **(3,151,478)** | **-1.5%** |
| | **SURPLUS/(DEFICIT)** | **5,084,559** | **3,902,492** | **0** | **0** | **0** | **0** | | |

(1) Breakdown provided for informational purposes.

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

| | | FY08 ACTUAL | FY09 ACTUAL | FY10 BUDGET | FY11 ORIG. BUDGET | PROPOSED AMENDMENTS | FY11 AMENDED BUDGET | $$ CHANGE FROM FY10 | % CHANGE FROM FY10 |
|---|---|---|---|---|---|---|---|---|---|

(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).

**FY11 AMENDED BUDGET - TABLE 2**

| Department/Board/Commission | Personnel Services | Purchase of Services | Supplies | Other Charges/ Expenses | Utilities | Capital Outlay | Inter-Govt'al | Snow & Ice | Debt Service | Personnel Benefits | Agency Total |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Board of Selectmen (Town Administrator) | 586,940 | 7,463 | 4,500 | 6,400 | | 3,300 | | | | | 608,603 |
| Human Resources Department (Human Resources Director) | 260,172 | 213,227 | 8,500 | 15,900 | | 2,375 | | | | | 500,174 |
| Information Technology Department (Chief Information Officer) | 872,366 | 454,284 | 22,336 | 27,550 | | 15,769 | | | | | 1,392,304 |
| Finance Department (Director of Finance) | 1,908,687 | 947,381 | 38,752 | 17,783 | 1,571 | 15,727 | | | | | 2,929,901 |
| Legal Services (Town Counsel) | 519,564 | 126,067 | 2,200 | 104,700 | | 3,765 | | | | | 756,296 |
| Advisory Committee (Chair, Advisory Committee) | 17,415 | 36 | 1,275 | 570 | | 487 | | | | | 19,783 |
| Town Clerk (Town Clerk) | 506,861 | 74,173 | 13,750 | 1,400 | | 4,000 | | | | | 600,183 |
| Planning and Community Department (Plan. & Com. Dev. Dir.) | 614,396 | 16,817 | 9,432 | 4,513 | | 7,525 | | | | | 652,684 |
| Police Department (Police Chief) | 13,265,255 | 342,895 | 210,060 | 59,500 | 365,700 | 452,278 | | | | | 14,695,688 |
| Fire Department (Fire Chief) | 11,610,661 | 121,925 | 132,500 | 25,125 | 241,048 | 134,167 | | | | | 12,265,426 |
| Public Buildings Department (Building Commissioner) | 1,921,958 | 1,863,993 | 123,770 | 5,800 | 2,878,735 | 55,487 | | | | | 6,849,744 |
| Public Works Department (Commissioner of Public Works) | 6,952,545 | 2,965,227 | 691,372 | 35,150 | 1,040,151 | 655,833 | 20,000 | 412,294 | | | 12,772,571 |
| Public Library Department (Library Board of Trustees) | 2,452,242 | 141,702 | 514,992 | 4,502 | 303,688 | 52,101 | | | | | 3,469,227 |
| Health Department (Health Director) | 755,726 | 262,408 | 15,500 | 4,120 | 43,197 | 5,000 | | | | | 1,085,950 |
| Veterans' Services (Veterans' Services Director) | 122,440 | 2,718 | 650 | 116,200 | | 725 | | | | | 242,733 |
| Council on Aging (Council on Aging Director) | 619,131 | 57,632 | 18,825 | 2,900 | 72,799 | 8,900 | | | | | 780,187 |
| Human Relations/Youth Resources (Human Relations Dir.) | 96,017 | 1,807 | 2,800 | 450 | | 796 | | | | | 101,870 |
| Recreation Department (Recreation Director) | 654,186 | 85,287 | 40,703 | 2,400 | 124,576 | 31,380 | | | | | 938,533 |
| School Department (School Committee) | | | | | | | | | | | 72,043,133 |
| **Total Departmental Budgets** | **43,736,563** | **7,685,041** | **1,851,918** | **434,963** | **5,071,465** | **1,449,614** | **20,000** | **412,294** | | | **132,704,993** |
| | | | | | | | | | | | |
| **DEBT SERVICE** | | | | | | | | | | | |
| Debt Service (Director of Finance) | | | | | | | | | 9,594,781 | | 9,594,781 |
| **Total Debt Service:** | | | | | | | | | **9,594,781** | | **9,594,781** |
| | | | | | | | | | | | |
| **EMPLOYEE BENEFITS** | | | | | | | | | | | |
| Contributory Pensions Contribution (Director of Finance) | | | | | | | | | | 13,784,954 | 13,784,954 |
| Non-Contributory Pensions Contribution (Director of Finance) | | | | | | | | | | 215,000 | 215,000 |
| Group Health Insurance (Human Resources Director) | | | | | | | | | | 20,697,416 | 20,697,416 |
| Group Health Enrollment Allocation Reserve (Human Resources Director) | | | | | | | | | | 400,000 | 400,000 |
| Retiree Group Health Insurance - OPEB's (Director of Finance) | | | | | | | | | | 1,142,531 | 1,142,531 |
| Employee Assistance Program (Human Resources Director) | | | | | | | | | | 28,000 | 28,000 |
| Group Life Insurance (Human Resources Director) | | | | | | | | | | 130,000 | 130,000 |
| 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) | | | | | | | | | | 325,000 | 325,000 |
| Unemployment Insurance (Human Resources Director) | | | | | | | | | | 400,000 | 400,000 |
| Ch. 41, Sec. 100B Medical Benefits (Town Counsel) | | | | | | | | | | 30,000 | 30,000 |
| Medicare Payroll Tax (Director of Finance) | | | | | | | | | | 1,555,000 | 1,555,000 |
| **Total Employee Benefits:** | | | | | | | | | | **40,073,902** | **40,073,902** |
| | | | | | | | | | | | |
| **GENERAL / UNCLASSIFIED** | | | | | | | | | | | |
| Reserve Fund (*) (Chair, Advisory Committee) | | | | 1,856,956 | | | | | | | 1,856,956 |
| Liability/Catastrophe Fund (Director of Finance) | | | | 455,500 | | | | | | | 455,500 |
| Stabilization Fund (Director of Finance) | | | | 71,868 | | | | | | | 71,868 |
| General Insurance (Town Administrator) | | 290,000 | | | | | | | | | 290,000 |
| 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) | | | | 12,116 | | | | | | | 12,116 |
| Town Salary Reserve (*) (Director of Finance) | 475,000 | | | | | | | | | | 475,000 |
| Personnel Services Reserve (*) (Director of Finance) | 750,000 | | | | | | | | | | 750,000 |
| **Total General / Unclassified:** | **1,225,000** | **441,987** | **10,000** | **2,411,440** | | | | | | | **4,088,427** |
| **TOTAL APPROPRIATIONS** | **44,961,563** | **8,127,028** | **1,861,918** | **2,846,403** | **5,071,465** | **1,449,614** | **20,000** | **412,294** | **9,594,781** | **40,073,902** | **186,462,100** |

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

## ARTICLE 4

FOURTH ARTICLE

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

AN ACT AMENDING CHAPTER 270 OF THE ACTS OF 1985, AS AMENDED BY CHAPTER 322 OF THE ACTS OF 1990 AND CHAPTER 427 OF THE ACTS OF 1991

Be it enacted, etc., as follows:

Notwithstanding the provisions of any general or special law or general by-law to the contrary, Chapter 270 of the Acts of 1985, as amended, is hereby further amended by striking out Sections 2(b), 2(c) and 2(i) and inserting in place thereof the following:

Section 2(b). recruitment, appointment and re-appointment of all department heads whose appointment on the effective date of this act is the responsibility of the Board of Selectmen, except town counsel and chief of police, and approval of the appointment of all other town employees, except employees of the library, employees of the town clerk's office, employees of the school department, and civil service employees who are subject to chapter 31 of the General Laws. With respect to the position of chief of police, the town administrator shall recommend for appointment a single candidate whom the board of selectmen shall either appoint or reject until one is appointed.

Section 2(c). supervision, written evaluation and training of all department heads appointed by or recommended for appointment by the town administrator.

Section 2(i). authority to remove for just cause any department head appointed by the town administrator.

This act shall take effect upon its passage.

or act on anything relative thereto.

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## PETITIONER'S ARTICLE DESCRIPTION

**Committee on Town Organization & Structure's Majority Report**

In 1985, upon the recommendation of the Committee on Town Organization & Structure (CTO&S), Town Meeting voted to seek home rule legislation significantly strengthening the role of the chief administrator of the Town. Commonly known as the Brookline Town Administrator legislation, it was passed into law as Chapter 270 of the Acts of 1985. Since that time, only a few relatively minor amendments have been made to the original act. Attached is a copy of the 1985 Act and the 1990 and 1991 amendments.

Given the 25 years that had passed since the enactment of the Town Administrator Act, CTO&S felt that a review of its effectiveness was in order and embarked on a comprehensive study of the legislation and the current duties and responsibilities of the Town Administrator.

That two year study was recently completed and included more than 20 public meetings, a public hearing, and a great deal of valuable input from the Board of Selectmen, Town Administrator, members of board and commissions, department heads, town officials in other communities, and interested citizens.

Overall, the Town Administrator legislation has worked well and has enabled the Town Administrator to provide strong, focused and integrated administrative leadership for the town. The Administrator's responsibilities in formulating the annual financial plan, recommending the capital improvement program, and recommending collective bargaining proposals, have been discharged with results that have been of great benefit to the community. An issue of concern felt by some members of CTO&S was what appeared to be a disconnect between the Town Administrator being the chief administrative official in the town, somewhat akin to a Chief Operating Officer in the private sector, and the lack of appointment authority entrusted to the position. Given that the Administrator is held accountable for the day to day performance of the Town management team and the delivery of services they provide, it seems only logical that the ultimate authority for the appointment of that team should be vested in him or her.

This article is designed to correct this concern and potential disconnect and further strengthen the Town Administrator's position by giving the incumbent the authority to select, appoint, and dismiss if necessary, the management team that reports to the Administrator and which manages all of those functions for which he/she is responsible and held accountable to the Board of Selectmen. This would further strengthen the role of the Board of Selectmen as the chief policy officers of the town, eliminating one aspect of their administrative duties, the day to day oversight and evaluation of town department heads. Interestingly, virtually all of the Selectmen that we interviewed stated that they did not have adequate insight into the day to day activities of the department heads to effectively and objectively evaluate their performance. The change in hiring and firing authority from the Board of Selectmen to the Town Administrator embodied in this article would be exactly parallel to the relationship that currently exists in the School Department between the Superintendent of Schools and the School management team (Principals, Department Heads, etc.), with the School Committee serving as the Policy Board. Most larger communities in Massachusetts have moved to this system of town governance. In Brookline, the following top level department heads that report directly to the Town Administrator and whose appointment currently resides with the Board of Selectmen would, under this amendment to the Town Administrator Act, be appointed by the Town Administrator:

Chief of Fire
Commissioner of Public Works
Director of Finance

Chief Information Officer
Director of Planning & Community Development
Building Commissioner
Director of Public Health & Human Services
Human Resources Director
Director of Recreation
Director of Human Relations – Youth Resources
Director of Council on Aging
Veterans Services Director

The appointment of Town Counsel would remain with the Board of Selectmen, because, in the opinion of CTO&S, that position acts largely as counsel to the Board, not as a Department Head in the same manner as the others listed above. CTO&S, after much discussion and citizen input, became convinced that the Selectmen also have a special relationship with the Chief of Police. They exercise elected civilian control over that one Department and Chief that have unique powers over citizens of the Town and act as a civilian review board when considering appeals under the citizen complaint policy. For that reason CTO&S felt that the Chief should continue to be appointed by the Board of Selectmen on recommendation of the Town Administrator. The issue of parity with the Fire Chief also was discussed. The unique powers of the Police Department are not paralleled within the Fire Department and in interview, the Fire Chief stated that he had no objection to breaking parity in this particular regard and that he understood the clear differences in powers between the two Departments that might lead to this distinction in appointing authority. Thus, CTO&S felt that the management concerns outweighed any concerns about parity and we left the appointment of the Fire Chief with the Town Administrator.

Other exemptions contained in the article are the Town Librarian and employees of the Library (because of their relationship to the Library Trustees), the Town Clerk (an elected position) and employees of that office, all employees of the School Department (because of their separate and distinct relationship to the School Committee and Superintendent of Schools). In addition, no civil service employees will be affected by this article. They now comprise 451 out of a total of 730 non-school positions and include police, fire and public works personnel, as well as clerical and custodial employees. Currently, no department heads are under civil service.

The processing of all other town employees' appointments would be handled by the department heads and the Director of Human Resources, with the approval of the Town Administrator. Inasmuch as there are several new pre-employment screening programs that must be adhered to and which have proved valuable in the past, a coordinated, consistent approach across department lines will be assured if the Town Administrator has the authority to approve these appointments.

ATTACHMENTS:

1. Ch. 270 of the Acts of 1985

Chapter 270. AN ACT ESTABLISHING THE POSITION OF TOWN ADMINISTRATOR IN THE TOWN OF BROOKLINE.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any provision of any general or special law to the contrary, there shall be a town administrator, hereinafter called the administrator, in the town of Brookline, who shall be appointed by the board of selectmen for a three year term. During the term of appointment, the administrator may only be removed after notice stating the reason for such removal and a public hearing, by a vote of at least three selectmen.

SECTION 2. The administrator shall be the chief administrative officer of the town. Without limiting the foregoing, the administrator shall perform and discharge the following functions and duties:

(a) daily administration of the town;

(b) recruitment and recommendations for appointment by the board of selectmen of all department heads, except the librarian, school personnel, treasurer/collector, town clerk, and any department head whose appointment is otherwise provided for by statute;

(c) supervision, written evaluation and training of all department heads except personnel in the school department;

(d) coordination of intra- and inter-governmental affairs;

(e) acting as the administrative spokesperson for the town;

(f) formulation of the annual financial plan, including detailed projections of all revenues and expenditures;

(g) recommendations with respect to departmental and non-departmental expenditures, the capital improvement plan submitted by the planning board, the financial impact of warrant articles, and guidelines for collective bargaining;

(h) approval of payment and expense warrants upon the treasury of the town, under section fifty-six of chapter forty-one of the General Laws;

(i) recommendations for the removal for just cause, by the board of selectmen, of any department head appointed by the selectmen;

(j) recommendations concerning collective bargaining proposals for the town, exclusive of the school department;

(k) performance of such other duties and responsibilities as are delegated to the administrator by the board of selectmen.

SECTION 3. The administrator shall not be responsible for matters which are the responsibility of the school committee.

SECTION 4. The board of selectmen shall implement the administrative organization set forth herein and may delegate any additional administrative function, or any civil service appointment, removal or discharge authority or responsibility to the administrator or, upon the recommendation of the administrator, a department head.

SECTION 5. The town may, through its by-laws, delegate any licensing authority, except the licensing of innholders, lodging houses, common victuallers, food vendors, secondhand motor vehicles, open air parking, liquor sales and theaters and entertainment.

SECTION 6. The administrator shall be subject to the authority and direction of the board of selectmen. He shall render reports to the board of selectmen on a regular basis, including in such reports a summary of current activities, a list of both current and long-range issues and objectives and programs in response thereto, and suggestions concerning the goals and objectives of the community.

SECTION 7. This act shall take effect upon its passage.

Approved September 18, 1985.

2. Ch. 322 of the Acts of 1990

**Chapter 322.** **AN ACT RELATIVE TO THE APPOINTMENT OF DEPARTMENT HEADS IN THE TOWN OF BROOKLINE.**

*Be it enacted, etc., as follows:*

**SECTION 1.** Section 2 of chapter 270 of the acts of 1985 is hereby amended by striking out clause *(b)* and inserting in place thereof the following clause:-

*(b)* recruitment and recommendations for appointment by the board of selectmen of all department heads, except the librarian, the superintendent of schools, the treasurer/collector, the town clerk, and any other department head who is elected or who is appointed by another elected board or commission, provided that in the case of the director of recreation any recommendation must be approved by the park and recreation commission, that in the case of the director of the council on aging any recommendation must be approved by the council on aging and that in the case of the rent control board director any recommendation must be approved by the rent control board.

**SECTION 2.** Chapter 13 of the acts of 1963 is hereby amended by striking out section 4.

**SECTION 3.** This act shall take effect upon its passage.

Approved December 17, 1990.

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3. Ch. 427 of the Acts of 1991

**Chapter 427.** **AN ACT RELATIVE TO THE APPOINTMENT OF DEPARTMENT HEADS IN THE TOWN OF BROOKLINE.**

*Be it enacted, etc., as follows:*

**SECTION 1.** Clause (*b*) of section 2 of chapter 270 of the acts of 1985 is hereby amended by inserting after the word "statute", in line 4, the words:- , and in making such recommendations the administrator may in his discretion recommend for appointment as department head single candidates whom the board of selectmen shall either appoint or reject until one is appointed.

**SECTION 2.** Said section 2 of said chapter 270 is hereby further amended by striking out clause (*k*) and inserting in place thereof the following two clauses:-

(*k*) submission to the board of selectmen and to town meeting of plans to reorganize, consolidate or abolish departments, commissions, boards or offices under his direction and supervision, or to establish new departments, commissions, boards and offices, or both, subject to enactment of home rule legislation if otherwise legally required; and

(*l*) performance of such other duties and responsibilities as are delegated to the administrator by the board of selectmen.

Approved December 29, 1991.

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**Committee on Town Organization & Structure's Minority Report**
**(Michael Robbins & Martin Rosenthal)**

*Ben Franklin*, when asked in 1787, "Well, Doctor, what have we got-a Republic or a Monarchy?" replied, *"A Republic, if you can keep it."*[1]

Motivated by cherished values of both republican and democratic government, we respectfully dissent from the proposal to greatly increase the power of the Town Administrator in the appointments of department heads, thereby lessening the power and leadership of the selectmen. We do so not from any disapproval of our recently retired Town Administrator, who served Brookline so well; but his successor, whom we greet with much enthusiasm, is less familiar to all of us, and -- with all due respect -- his newness exemplifies some, albeit not all, of our concerns.

We also note that the apparently strong field of successor candidates belies one of the arguments we heard for the proposed change, that without it we'd have a harder time finding an adequate replacement. In fact, without this proposed change, Brookline is obviously considered a prime administrative post, not just because of its excellent compensation and benefits, but also for its wonderful professional and volunteer infrastructure -- including its passionate, engaged, supportive, and yes, frequently outspoken citizenry.

Indeed, and ironically, we believe the majority's proposal would diminish the influence of Brookline's citizenry, and consequently their active participation, in our governance -- a major reason we have prospered as a Town. Further the proposed change seems a significant step closer to a city form of government, with its inevitable tendency towards an all-powerful City Hall that's often controlled by a small insider clique.

We two, of very different political stripes and affiliations, are strong advocates of citizen participation, especially our Town Meeting form of governance, which we believe would be endangered by the proposed change. We already see very low turnout at town elections, maybe the best stimulus for interest and participation in government, often due to a feeling that "my vote doesn't count." The majority's proposal would exacerbate that feeling.

Largely because of similar regard for Brookline's active citizenry, and similar fears, since at least 1942,[2] Brookline has repeatedly rejected a *Town Manager*, instead always making less revolutionary changes. In 1942, we created an Executive Secretary ("E/S") -- instead of a recommendation by the Public Administration Service of Chicago urging a then-popular Town Manager government. Again in the late '50's, a "blue ribbon" Moderator's Committee, "The Committee Appointed To Study The Question Of The

[1] From the notes of Dr. James McHenry, MD delegate Constitutional Convention, included in The Records of the Federal Convention of 1787, ed. Max Farrand, vol. 3, appendix A, p. 85 (1911, reprinted 1934).
[2] The source of the historical summary which follows is mostly, July 22, 2001, Town Online, "Richard Leary on the evolution of a government," by Larry Ruttman, "Brookline then and now."

Town Manager Form of Government," rejected such a change, recommending -- and Town Meeting in 1959 then voting -- to substantially broaden the E/S's powers.

For two decades, those powers increased, further encroaching on the prerogatives of the selectmen, culminating in 1985 with another look at a Town Manager system; but after a report by this Committee, the Town Meeting chose more finely tuned change, giving our E/S a new title, "Town Administrator," with more management powers, later augmented in 1990, but always refusing to drastically limit the ultimate control of the Selectmen.

Our current Town by-law for the Selectmen, is §3.1.2, "*General Authority, The Selectmen shall exercise general supervision over all matters affecting the general and financial interest and welfare of the town*." The ultimate responsibility should be theirs, not an appointed Administrator. We concede that both the risks -- like the asserted benefits -- of the majority's proposal are intangible and immeasurable. Yet we are convinced that the risks outweigh the benefits from vesting hiring/firing authority in the selectmen, who are more accountable to, and in touch with, not only the citizens --but also, and equally importantly, to the 240 TMM's, who would lose both influence and incentives to get involved.

Nor do we think the *School Superintendent* model from the statewide Education Reform Law is persuasive for the plethora of *non-school* departments, whose ambits and constituencies are broader and more varied than the schools, whose mission and community values are relatively clear-cut. For departments like Public Works, Planning, Park & Rec, HRYR, etc., the missions involve weighing various -- occasionally competing -- community priorities and values. Those department heads must be responsive to democratically elected officials who best know and reflect those values.

We have no illusions that selectmen are either perfect or flawless, any more than appointed administrators. But the selectmen are at least accountable to the people. \We do not consider "politics" to be "bad" or a "dirty word"; the political process is a great American asset. What's "bad" is *bad* politics or bad leadership of any kind, at any level, whether by elected or by appointed officials. We are convinced that the majority's proposal would diminish the power of not only the selectmen, but also (derivatively) the 240 TMM's, and consequently the citizens. It's a "good" thing for department heads to care what the selectmen -- and TMM's -- think about choices and operations. The majority's proposal would inevitably diminish that concern among "our"-- i.e. the citizens' -- high-level employees.

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## SELECTMEN'S RECOMMENDATION

Article 4 is a proposal of the Committee on Town Organization and Structure (CTO&S) to amend the enabling act that established the Town Administrator position. Passed by the Legislature at the request of the Town in 1985, the Brookline Town Administrator Act formally established the position of Town Administrator, reorganized certain functions and defined the respective roles of the Town Administrator and the Board of

Selectmen. Since that time, modest amendments were passed in 1990 and 1991. This article seeks to update the Act by expanding the Town Administrator's administrative authority, ensuring a more effective balance between the policy authority of the Board of Selectmen and the authority of the Town Administrator as the Town's chief administrative officer. The proposal has no effect whatsoever on the authority of Town Meeting, the legislative branch of town government.

It is well accepted that the position of Town Administrator has been a great success for Brookline. As local government has grown more complex and costly, the presence of a full-time, professionally qualified administrator has proven to be very beneficial. This article seeks to build upon this success by accomplishing three objectives. First, as originally proposed by CTO&S, it would expand the Town Administrator's authority for appointment of department heads, with the exception of the position of Town Counsel, Chief of Police and department heads under the jurisdiction of elected boards (e.g. the Superintendent of Schools and the Library Director). The Board of Selectmen has voted to also exclude the Fire Chief position. Second, it would establish the companion authority to remove the applicable department heads for just cause. Third, it would clarify that the Town Administrator has authority to approve the hiring of all subordinate employees, except employees of the library, employees of the town clerk's office, employees of the school department and civil service employees subject to state law (police officers and firefighters).

In practice, the proposed changes are not substantially different from the authority the Town Administrator position currently exercises. Within the current framework, the Town Administrator has authority to recruit and recommend to the Board of Selectmen the appointment of a single candidate. Similarly, the Town Administrator recommends to the Board of Selectmen removal for just cause or non-renewal of department heads who are not performing acceptably. The proposed change would vest that ultimate authority in the Town Administrator. In addition, the Town Administrator, through his/her office as well as the Human Resources department, currently exercises review over a department head's employment of departmental staff. The proposed change would vest with the Town Administrator the ultimate authority to approve these employment decisions. This is critical given the evolving nature of the Town's workforce and the expansion of laws related to non-discrimination and ethics.

Opponents of the proposed changes under Article 4 argue that the fundamental authority of the Board of Selectmen as the Town's chief elected board will be diminished. It is further suggested that the productive discourse between department heads and the Board of Selectmen, or between department heads and citizens, will be compromised. We respectfully disagree. The fact of the matter is that the Board of Selectmen is a part-time body whose members are focused on the larger policy issues of the Town. The Town Administrator is a full-time professional employee, especially fitted by education and experience, to administer the complex functioning of municipal government. In its policymaking role, the Board of Selectmen has pledged to adopt a policy that will define the responsibility for members to participate with the Town Administrator in the appointment and termination process. The incumbent Town Administrator has committed to continue the practice of engaging the Board of Selectmen in employment decisions

through preliminary screening committees and frequent updates. Department heads will continue to be responsive to the Board and the citizens. Finally, the Board of Selectmen will continue to exercise ultimate management authority over the Town through the appointment or removal of the Town Administrator. The Town Administrator, however, has the legal obligation under the Town Administrator Act for the "daily administration of the town" and for the "supervision … of department heads," and his authority should be commensurate with the responsibility.

The CTO&S proposal excluded the Chief of Police position from the appointing authority of the Town Administrator, but not the Fire Chief. At a meeting on October 26, the Board determined that the Fire Chief position was comparable to the Chief of Police in scope and responsibility and voted to exclude the Fire Chief position from the Town Administrator's appointing authority. This decision is also consistent with the Board's support of Article 5 which designates the Board of Selectmen as civilian police and fire commissioners.

The Board recommends FAVORABLE ACTION, by a vote of 4-1 taken on October 26, 2010, on the following motion:

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

AN ACT AMENDING CHAPTER 270 OF THE ACTS OF 1985, AS AMENDED BY CHAPTER 322 OF THE ACTS OF 1990 AND CHAPTER 427 OF THE ACTS OF 1991

Be it enacted, etc., as follows:

Notwithstanding the provisions of any general or special law or general by-law to the contrary, Chapter 270 of the Acts of 1985, as amended, is hereby further amended by striking out Sections 2(b), 2(c) and 2(i) and inserting in place thereof the following:

> Section 2(b). recruitment, appointment and re-appointment of all department heads whose appointment on the effective date of this act is the responsibility of the Board of Selectmen, except town counsel, ~~and~~the chief of police and the fire chief, and approval of the appointment of all other town employees, except employees of the library, employees of the town clerk's office, employees of the school department, and civil service employees who are subject to chapter 31 of the General Laws. With respect to the positions of chief of police and fire chief, the town administrator shall recommend for appointment a single candidate whom the board of selectmen shall either appoint or reject until one is appointed.
>
> Section 2(c). supervision, written evaluation and training of all department heads appointed by or recommended for appointment by the town administrator.

Section 2(i). authority to remove for just cause any department head for whom the town administrator has appointment authority under Section 2(b)~~appointed by the town administrator~~.

This act shall take effect upon its passage.

**ROLL CALL VOTE:**

| Favorable Action | No Action |
|---|---|
| DeWitt | Goldstein |
| Daly | |
| Mermell | |
| Benka | |

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Warrant Article 4 seeks Town Meeting's approval to file a "home rule" petition with the State legislature to further amend (for the third time) the so-called "Town Administrator Act."[3]

There are three alternatives (and potentially a fourth) available to Town Meeting with regard to the Town Administrator Act, as follows:

1. Town Meeting could reject all of the proposals to amend the Town Administrator Act; if so, the current Town Administrator Act, as amended to date (see Attachment A), will remain as is.

2. Town Meeting could instead approve the original proposal from the Committee on Town Organization & Structure (or "CTO&S") (see Attachment B), as discussed below, and seek the legislature's approval for the changes offered thereby.

[3] The full name of the enactment as passed in 1985 is "*An Act Establishing the Position of Town Administrator in the Town of Brookline*" (Chapter 270 of the Acts of 1985).

The 1985 legislation was amended in 1990 by Chapter 322 of the Acts of 1990 to give the Town Administrator the right to recruit and recommend the appointment of certain Town officials. The following year, the Town sought and obtained further changes (Chapter 427 of the Acts of 1991) to rationalize the process by which department head candidates are vetted and approved by the Board of Selectmen and also to give the Town Administrator the right to submit to the Board of Selectmen and Town Meeting plans to reorganize, consolidate, or abolish Town departments, commissions, boards and the like.

3. The Advisory Committee itself proposes a "watered-down" version of the CTO&S proposal (see Attachment C) that would make only one substantive change; as mentioned in footnote 5, below, the change the Advisory Committee recommends could possibly be instituted immediately (although not irrevocably) and without seeking Town Meeting's or the legislature's consent were the Board of Selectmen to adopt by policy its substantive provisions.

4. Finally, the Advisory Committee, at the time this report was written, understood that the Board of Selectmen may propose a separate proposal that would both address substantive issues mentioned in this report and also "clean up" some long-standing typos and the like in the existing legislation.

We refer Town Meeting to the comprehensive summary CTO&S prepared to accompany its original Warrant Article and provided in the Warrant Article Explanations sent out to all Town Meeting Members in September. The CTO&S report reflects the positions reached on proposal to enhance the Town Administrator's powers by the five members of CTO&S who urged that Town Meeting support those changes, together with the report filed by the two members of CTO&S who believed that it would be best not to amend the Town Administrator Act.

As mentioned, the Advisory Committee amends the CTO&S proposal. Nonetheless, we think a summary of both the original CTO&S proposal and the Advisory Committee proposal is warranted.

*The CTO&S Proposal; Pros and Cons*.
The CTO&S is proposing changes to the Town Administrator Act to clarify who has responsibility for various administrative matters; there was, however, no urgent or compelling crisis noted motivating this proposal.[4] Through approximately 25 meetings and hearings over two or three years, CTO&S sought the views of and opinion from various town boards and committees, considered how other communities describe the Town Administrator function, spoke with management consultants about the structural issues raised, and met with various department heads.

CTO&S's Warrant Article 4 (see Attachment A) would, were it enacted by the State legislature:

1. give the Town Administrator the power to appoint and reappoint -- and not just *recommend* the hiring or re-appointment of -- all department heads other than Town counsel and the chief of police;

[4] While the timing of this proposal is roughly coincident with the recent retirement of long-time Town Administrator Kelliher and his replacement with new Town Administrator Mel Kleckner, the proposal had been in the works for a while and the matter has been under consideration since long before Mr. Kelliher announced his retirement.

2. provide the Town Administrator with the right of approval of the hiring of all other Town employees, except for employees subject to State civil service laws and Library, School Dept. and Town Clerk's office employees;

3. eliminate certain procedural requirements relating to the hiring of the Directors of Recreation and the Parks and Recreation departments;

4. eliminate references to and requirements regarding the director of the long-since abolished rent control board;

5. clarify the statute's requirements relating to the way in which candidates are vetted and approved by the Board of Selectmen;

6. provide the Town Administrator with clear powers to supervise, provide written evaluation of, and be ultimately responsible for the training of all department heads (except as to department heads of the Library, School Dept. and Town Clerk's office); and

7. allow the Town Administrator to him- or herself remove – *and not just recommend that the Board of Selectmen remove* – for "just cause" any department head for which the Town Administrator would have the (enhanced) power to appoint.

Currently, the Town Administrator has responsibility to propose department head appointees, but s/he does not have, at least per the current Town Administrator Act, final (that is, *de jure*) say over their hiring or dismissal or the right to veto other staff hiring within a department (although it is, rare, if not unprecedented, for the Board of Selectmen to nix the Town Administrator's recommendation if a candidate is brought before them for final vetting).

DISCUSSION:
An *ad hoc* subcommittee of the Advisory Committee met twice to consider the CTO&S proposal. At a two-hour long initial meeting, many members of the public, three members of CTO&S, and the chairman of the Board of Selectmen shared their views of the benefits, drawbacks, and consequences of the original (CTO&S) proposal. Various witnesses tried to reference an alleged prior instance where a department head implied s/he had the backing of a majority of the Board of Selectmen -- and was, by implication, politically untouchable -- and thus changes to the enactment were required to prevent that from happening again (assuming it actually in fact happened or happened as the popular lore might suggest).

A week later, the subcommittee met again after voting to terminate public comment on the proposal so it could itself discuss the comments expressed to date with a view toward making a recommendation on the proposal. One of the subcommittee members proposed an alternative amended proposal which the Subcommittee and then the entire Advisory

Committee voted to recommend. (The final Advisory Committee alternate is as attached as Attachment B.)

*Arguments in favor of the CTO&S proposal*.
CTO&S feels that it is now appropriate for Brookline to adopt the systems in place now in some local towns (such as, Needham, Lexington, Danvers, and Winchester). The proposal would ensure that a Town Administrator and his/her senior staff are aligned on matters of policy, operating styles, managerial approach, and the like.[5]

The Advisory Committee also heard the following points favoring the proposal:

- Enhancing the Town Administrator's authority provides *both* responsibility and accountability by making him or her fully accountable for the success of the Town's senior staff;

- Greater powers and autonomy might, in the future, be helpful to continue to attract strong candidates for Town Administrator openings;[6]

- Currently, the Superintendant of Schools and Library Director has similar powers and the proposal would seek to have the Town Administrator's powers mirror those other officials;

- Similar approaches have proven non-controversial in other local towns;

- Screening committees and a robust recruitment process will continue to allow for input from the community and the Board of Selectmen who have committed to adopt vigorous standards to ensure public accountability;

- The proposal's provisions as to the hiring of subordinates in departments will bring consistency, heightened quality of public service and increased professionalism, as well as alignment with Selectmen and Town goals;

- Appointing and evaluation authority will bring improved professional development and a better, more effective and responsive Town government with fewer political "*end-arounds*" where department heads are not performing well;

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[5] Concerns that a senior administrative officer, responsible as he or she is for the overall success of his or her organization, are not confined to the municipal context. Bill Parcells, then the coach and general manager of the New England Patriots, famously expressed his displeasure with the team owner's drafting of a particular college player despite the coach's doubts about that player's future success in pro football by quipping "*If they want you to cook the dinner…, they ought to let you shop for … the groceries*."

[6] Although it was clearly stated to the recent applicants that while a proposal to enhance the Town Administrator's powers could be brought before Town Meeting, it was also noted by the relevant search committee that the proposal, as then being formulated by CTO&S, might not pass or might be substantially altered.

- The Town Administrator serves at the pleasure of the Board of Selectmen so that the changes do not serve to abrogate the Selectmen's powers.

- The Selectmen are part-time officers and cannot possibly have the day-to-day knowledge necessary for department head oversight that the Town Administrator would most certainly have; and

- Even if the proposal were to pass, only a handful of department heads could even be subject to removal.

*Arguments against the CTO&S proposal.*
Not surprisingly, the Advisory Committee also heard and also otherwise discussed various points opposing the original proposal.

- There seemed to be a consensus that there was no pressing problem -- or perhaps even any specific pending challenge – fixed by the proposal, and that Warrant Article 4, as proposed by CTO&S, was essentially a solution in search of a problem;

- The Board of Selectmen, not the Town Administrator, are the people's elected representatives, are the group to set the Town's values and standards, and the changes would remove them structurally from the many processes;

- The proposal would move Brookline closer to a city form of government, with less citizen say in many areas;

- Department heads will be more responsive to the Town Administrator than the Board of Selectmen, and therefore less responsive to the public and Town Meeting Members, and that insulating Department Heads from "politics" is not always a good thing for Brookline;

- Department heads have been "eased out" in the past and that might happen again, so there is no inherent inadequacy in our current structure;

- The current structure allows for all appointments to come from the Town Administrator, and allows for the Town Administrator to recommend dismissal; only when the Town Administrator and Selectmen disagree will the Town Administrator's wishes not be executed; and

- The recruitment and screening criteria/process is not codified in the proposed statute; besides, it is informal and there are no assurances that the process will be fulsome or effective in the future.

One Subcommittee member, speaking as one of the majority who would have ideally recommended voting against the entire proposal and keeping the Town Administrator Act as it is now, offered a compromise of sorts. The Subcommittee thereupon voted to recommend its own proposal (see Attachment C) to the entire Advisory Committee.

After discussing the CTO&S proposal, the Advisory Committee voted to amended the motion under Warrant Article 4. Specifically, the amended proposal as ultimately approved by the Advisory Committee would keep the current legislation as is except for:

1) deleting the reference to the now-abolished rent control board in section 2(b) of the existing legislation;

2) adding a new subsection 2(c) providing the "*approval of the appointment of all other town employees, except employees of the library, employees of the town clerk's office, employees of the school department, and civil service employees who are subject to chapter thirty-one of the General Laws*" as new power for the Town Administrator; and

3) relettering all subsequent subsections of section 2 after the new subsection 2(c).

The first and third items are essentially "house keeping" measures. As for deleting the reference to the rent-control board, the agency was abolished over a decade ago. Item 2 would confer a new authority in our Town Administrator. Specifically, it would allow the Town Administrator to, in essence, exercise veto power over a department head's proposed staff hire (with exceptions) should the Administrator feel that it was in the best interest of the organization. Many members felt it was important for the Town Administrator to have a say in overall hiring, others felt there might be hazard in subverting department heads in the event of managerial disputes.[7]

While there was a significant minority within the Advisory Committee who felt that neither the original or the amended proposal merited recommendation and also several members who felt that the original CTO&S proposal deserved the Advisory Committee's recommendation, there was eventually consensus that an amended Warrant Article 4 should be recommended to Town Meeting.

RECOMMENDATION:
Accordingly, by a vote of 20 in favor and 4 opposed (with no members abstaining), the Advisory Committee recommends FAVORABLE ACTION on the substitute Warrant Article 4 offered by the Advisory Committee, as follows:

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

[7] Several members did note, however, that the safeguard proposed by new subsection (c) could be instituted immediately without the need for any home rule legislation were the Board of Selectmen to, on their own, institute an internal control requiring the Town Administrator to him- or herself sign off on any new hires – with one member even wondering why Town Meeting would ask the legislature for permission to institute what was essentially an internal control. The theoretical risk is, of course, such a policy could change without Town Meeting's consent.

AN ACT AMENDING CHAPTER 270 OF THE ACTS OF 1985, AS AMENDED BY CHAPTER 322 OF THE ACTS OF 1990 AND CHAPTER 427 OF THE ACTS OF 1991

Be it enacted, etc., as follows:

Notwithstanding the provisions of any general or special law or general by-law to the contrary, Chapter 270 of the Acts of 1985, as amended, is hereby further amended by amending Section 2(b) as follows:

> Strike the comma and add the word "and" after the phrase "park and recreation commission" and strike all language following the phrase "council on aging" and prior to the phrase "and in making such recommendations", said language referring to the rent control board.

and further amending Section 2 by inserting a new section denoted as Section 2(c) immediately following existing Sections 2(a) and 2(b) as amended above, and retaining all subsequent existing subsections of Section 2, appropriately renumbered, as follows:

> Section 2(c). approval of the appointment of all other town employees, except employees of the library, employees of the town clerk's office, employees of the school department, and civil service employees who are subject to chapter thirty-one of the General Laws

This act shall take effect upon its passage.

Attachments:

Attachment A -- the current Town Administrator Act (as amended to date)

Attachment B -- the changes the original CTO&S proposal would make to the current Town Administrator Act (as amended to date)

Attachment C -- the changes Warrant Article 4, as amended by the Advisory Committee, would make to the current Town Administrator Act (as amended to date)

***XXX***

**Attachment A**

(the current Town Administrator Act, as amended to date)

**AN ACT ESTABLISHING THE POSITION OF TOWN ADMINISTRATOR IN THE TOWN OF BROOKLINE (Chapter 270 of the Acts of 1985, as amended)**

SECTION 1.
Notwithstanding any provision of any general or special law to the contrary, there shall be a Town Administrator, hereinafter called the Administrator, in the Town of Brookline, who shall be appointed by the Board of Selectmen for a three year term. During the term of appointment, the Administrator may only be removed after notice stating the reason for such removal and a public hearing, by a vote of at least three Selectmen.

SECTION 2.
The Administrator shall be the Chief Administrative Officer of the Town. Without limiting the foregoing, the Administrator shall perform and discharge the following functions and duties:

(a) daily administration of the Town;

(b) recruitment and recommendations for appointment by the Board of Selectmen of all department heads, except the Librarian, the Superintendent of Schools, the Treasurer/Collector, the Town Clerk, and any other department head who is elected or who is appointed by another elected board or commission, provided that in the case of the Director of Recreation any recommendation must be approved by the Park and Recreation Commission, that in the case of the Director of the Council on Aging any recommendation must be approved by the council on aging and that in the case of the Rent Control Board director any recommendation must be approved by the Rent Control Board, and in making such recommendations the Administrator may in his discretion recommend for appointment as department head single candidates whom the Board of Selectmen shall either appoint or reject until one is appointed;

(c) supervision, written evaluation and training of all department heads except Personnel in the School Department;

(d) coordination of intra -and intergovernmental affairs;

(e) acting as the administrative spokesperson for the Town;

(f) formulation of the annual financial plan, including detailed projections of all revenues and expenditures;

(g) recommendations with respect to departmental and non-departmental expenditures, the Capital Improvement Plan submitted by the Planning Board, the financial impact of warrant articles, and guidelines for collective bargaining;

(h) approval of payment and expense warrants upon the treasury of the Town, under section fifty-six of chapter forty-one of the General Laws;

**Attachment A**

(the current Town Administrator Act, as amended to date)

(i) recommendations for the removal for just cause, by the Board of Selectmen, of any department head appointed by the Selectmen;

(j) recommendations concerning collective bargaining proposals for the Town, exclusive of the School Department;

(k) submission to the Board of Selectmen and to town meeting of plans to reorganize, consolidate or abolish departments, commissions, boards or offices under his direction and supervision, or to establish new departments, commissions, boards and offices, or both, subject to enactment of home rule legislation if otherwise legally required; and

(l) performance of such other duties and responsibilities as are delegated to the administrator by the Board of Selectmen.

SECTION 3.
The administrator shall not be responsible for matters which are the responsibility of the School Committee.

SECTION 4.
The board of selectmen shall implement the administrative organization set forth herein and may delegate any additional administrative function, or any civil service appointment, removal or discharge authority or responsibility to the administrator or, upon the recommendation of the administrator, a department head.

SECTION 5.
The Town may, through its by-laws, delegate any licensing authority, except the licensing of innholders, lodging houses, common victuallers, food vendors, secondhand motor vehicles, open air parking, liquor sales and theaters and entertainment.

SECTION 6.
The Administrator shall be subject to the authority and direction of the Board of Selectmen. He shall render reports to the Board of Selectmen on a regular basis, including in such reports a summary of current activities, a list of both current and long-range issues and objectives and programs in response thereto, and suggestions concerning the goals and objectives of the community.

SECTION 7.
This act shall take effect upon its passage.

**Attachment B**

(the changes the original CTO&S proposal would make to the current Town Administrator Act)

**AN ACT ESTABLISHING THE POSITION OF TOWN ADMINISTRATOR IN THE TOWN OF BROOKLINE**

**Chapter 270 of the Acts of 1985, as amended)**

SECTION 1.
Notwithstanding any provision of any general or special law to the contrary, there shall be a Town Administrator, hereinafter called the Administrator, in the Town of Brookline, who shall be appointed by the Board of Selectmen for a three year term. During the term of appointment, the Administrator may only be removed after notice stating the reason for such removal and a public hearing, by a vote of at least three Selectmen.

SECTION 2.
The Administrator shall be the Chief Administrative Officer of the Town. Without limiting the foregoing, the Administrator shall perform and discharge the following functions and duties:

(a) daily administration of the Town;

(b) recruitment, appointment and ~~recommendations for~~ re-appointment of all department heads whose appointment on the effective date of this act is the responsibility of ~~by~~ the Board of Selectmen ~~of all department heads~~, except town counsel and chief of police, and approval of the appointment of all other town employees, except employees of the library, employees of the town clerk's office, employees of the school department, and civil service employees who are subject to chapter 31 of the General Laws. With respect to the position of chief of police, the town administrator shall recommend for appointment a single candidate whom the board of selectmen shall either appoint or reject until one is appointed~~except the Librarian, the Superintendent of Schools, the Treasurer/Collector, the Town Clerk, and any other department head who is elected or who is appointed by another elected board or commission, provided that in the case of the Director of Recreation any recommendation must be approved by the Park and Recreation Commission, that in the case of the Director of the Council on Aging any recommendation must be approved by the council on aging and that in the case of the Rent Control Board director any recommendation must be approved by the Rent Control Board, and in making such recommendations the Administrator may in his discretion recommend for appointment as department head single candidates whom the Board of Selectmen shall either appoint or reject until one is appointed~~;

(c) supervision, written evaluation and training of all department heads appointed by or recommended for appointment by the town administrator ~~except Personnel in the School Department~~;

(d) coordination of intra -and intergovernmental affairs;

**Attachment B**

(the changes the original CTO&S proposal would make to the current Town Administrator Act)

(e) acting as the administrative spokesperson for the Town;

(f) formulation of the annual financial plan, including detailed projections of all revenues and expenditures;

(g) recommendations with respect to departmental and non-departmental expenditures, the Capital Improvement Plan submitted by the Planning Board, the financial impact of warrant articles, and guidelines for collective bargaining;

(h) approval of payment and expense warrants upon the treasury of the Town, under section fifty-six of chapter forty-one of the General Laws;

(i) authority to remove~~recommendations for the removal~~ for just cause any department head for whom the Administrator has appointment authority under Section 2(b) ~~by the Board of Selectmen, of any department head appointed by the Selectmen~~;

(j) recommendations concerning collective bargaining proposals for the Town, exclusive of the School Department;

(k) submission to the Board of Selectmen and to town meeting of plans to reorganize, consolidate or abolish departments, commissions, boards or offices under his direction and supervision, or to establish new departments, commissions, boards and offices, or both, subject to enactment of home rule legislation if otherwise legally required; and

(l) performance of such other duties and responsibilities as are delegated to the administrator by the Board of Selectmen.

SECTION 3.
The administrator shall not be responsible for matters which are the responsibility of the School Committee.

SECTION 4.
The board of selectmen shall implement the administrative organization set forth herein and may delegate any additional administrative function, or any civil service appointment, removal or discharge authority or responsibility to the administrator or, upon the recommendation of the administrator, a department head.

**Attachment B**

(the changes the original CTO&S proposal would make
to the current Town Administrator Act)

SECTION 5.
The Town may, through its by-laws, delegate any licensing authority, except the licensing of innholders, lodging houses, common victuallers, food vendors, secondhand motor vehicles, open air parking, liquor sales and theaters and entertainment.

SECTION 6.
The Administrator shall be subject to the authority and direction of the Board of Selectmen. He shall render reports to the Board of Selectmen on a regular basis, including in such reports a summary of current activities, a list of both current and long-range issues and objectives and programs in response thereto, and suggestions concerning the goals and objectives of the community.

SECTION 7.
This act shall take effect upon its passage.

**Attachment C**

(the changes Warrant Article 4, as amended by the Advisory Committee, would make to the current Town Administrator Act)

**AN ACT ESTABLISHING THE POSITION OF TOWN ADMINISTRATOR IN THE TOWN OF BROOKLINE**
**(Chapter 270 of the Acts of 1985, as amended)**

SECTION 1.
Notwithstanding any provision of any general or special law to the contrary, there shall be a Town Administrator, hereinafter called the Administrator, in the Town of Brookline, who shall be appointed by the Board of Selectmen for a three year term. During the term of appointment, the Administrator may only be removed after notice stating the reason for such removal and a public hearing, by a vote of at least three Selectmen.

SECTION 2.
The Administrator shall be the Chief Administrative Officer of the Town. Without limiting the foregoing, the Administrator shall perform and discharge the following functions and duties:

(a) daily administration of the Town;

(b) recruitment and recommendations for appointment by the Board of Selectmen of all department heads, except the Librarian, the Superintendent of Schools, the Treasurer/Collector, the Town Clerk, and any other department head who is elected or who is appointed by another elected board or commission, provided that in the case of the Director of Recreation any recommendation must be approved by the Park and Recreation Commission~~,~~ and that in the case of the director of the council on aging any recommendation must be approved by the council on aging~~ and that in the case of the Rent Control Board director any recommendation must be approved by the Rent Control Board~~, and in making such recommendations the Administrator may in his discretion recommend for appointment as department head single candidates whom the Board of Selectmen shall either appoint or reject until one is appointed;

(c) approval of the appointment of all other town employees, except employees of the library, employees of the town clerk's office, employees of the school department, and civil service employees who are subject to chapter thirty-one of the General Laws;

(d~~c~~) supervision, written evaluation and training of all department heads except personnel in the school department;

(e~~d~~) coordination of intra- and inter-governmental affairs;

(f~~e~~) acting as the administrative spokesperson for the town;

**Attachment C**

(the changes Warrant Article 4, as amended by
the Advisory Committee, would make to the
current Town Administrator Act)

(g~~f~~) formulation of the annual financial plan, including detailed projections of all revenues and expenditures;

(h~~g~~) recommendations with respect to departmental and non-departmental expenditures, the capital improvement plan submitted by the planning board, the financial impact of warrant articles, and guidelines for collective bargaining;

(i~~h~~) approval of payment and expense warrants upon the treasury of the town, under section fifty-six of chapter forty-one of the General Laws;

(j~~i~~) recommendations for the removal for just cause, by the board of selectmen, of any department head appointed by the selectmen;

(k~~j~~) recommendations concerning collective bargaining proposals for the town, exclusive of the school department;

(l~~k~~) submission to the board of selectmen and to town meeting of plans to reorganize, consolidate or abolish departments, commissions, boards or offices under his direction and supervision, or to establish new departments, commissions, boards and offices, or both, subject to enactment of home rule legislation if otherwise legally required; and

(m~~l~~) performance of such other duties and responsibilities as are delegated to the administrator by the board of selectmen.

SECTION 3.
The administrator shall not be responsible for matters which are the responsibility of the school committee.

SECTION 4.
The board of selectmen shall implement the administrative organization set forth herein and may delegate any additional administrative function, or any civil service appointment, removal or discharge authority or responsibility to the administrator or, upon the recommendation of the administrator, a department head.

**Attachment C**

(the changes Warrant Article 4, as amended by
the Advisory Committee, would make to the
current Town Administrator Act)

SECTION 5.
The town may, through its by-laws, delegate any licensing authority, except the licensing of innholders, lodging houses, common victuallers, food vendors, secondhand motor vehicles, open air parking, liquor sales and theaters and entertainment.

SECTION 6.
The administrator shall be subject to the authority and direction of the board of selectmen. He shall render reports to the Board of Selectmen on a regular basis, including in such reports a summary of current activities, a list of both current and long-range issues and objectives and programs in response thereto, and suggestions concerning the goals and objectives of the community.

SECTION 7.
This act shall take effect upon its passage.

## ARTICLE 4

## CTO&S' SUPPLEMENTAL RECOMMENDATION

The Committee on Town Organization and Structure (CTO&S) met on Monday, November 1 to finalize its recommendation for Town Meeting. The Committee voted 5-0 to concur with the vote offered by the Board of Selectmen.

## ARTICLE 5

FIFTH ARTICLE

To see if the Town will amend the By-Laws of the Town of Brookline by amending our current By-Law for "*Board Of Selectmen, §3.1.2, General Authority*, The Selectmen shall exercise general supervision over all matters affecting the general and financial interest and welfare of the town"

by adding immediately afterwards the following new provision:

> *§ 3.1.2.A, Police and Fire Commissioners: In accordance with and to implement the Selectmen's responsibilities under applicable laws, the Selectmen shall bear the titles "Police Commissioners" and "Fire Commissioners" when exercising their responsibilities relating to the town's Police Department and Fire Department, respectively. The Selectmen's responsibilities and authority are not enhanced, diminished, or altered in any fashion from those that exist under applicable Laws by virtue of bearing such titles, nor shall the Board be involved in the day-to-day administration, operations or management of the Police and Fire Departments.*

, or act on anything relative thereto.

### PETITIONER'S ARTICLE DESCRIPTION

This article is submitted by a 7-0 vote of CTOS after 2010's Annual Town Meeting ("ATM") acceded to CTOS' request to study that ATM's (petition) article 10.[1] CTOS' revised wording is consistent with the intent of the principal petitioner, but substitutes some recent Town Counsel language for the original language of article 10. The current proposal also adds its last clause to highlight the intent -- consistent with both our traditions and art. 10's earlier intent -- that the selectmen not be involved in day-to-day administration, operations, or management.

Ultimately this proposal, like art. 10's, is based upon three main prongs:

- a title can matter in a paramilitary organization, analogous to "Commander-in-Chief";
- Brookline's long traditions of both civilian control and these particular titles; and
- the legal underpinnings of selectmen's broad responsibilities vis-à-vis both Departments.

[1] For the A/T/M's Combined Reports of Selectmen & Advisory Committee with Supplemental Reports, see http://www.brooklinema.gov/index.php?option=com_docman&task=doc_download&gid=3300&Itemid=654.

As to the latter, for Police, see *G.L.c. 41, §97*, adopted by the 1921 Town Meeting, the so-called "Weak Chief Law" (as opposed to §97A, "Strong Chief"), which reads (*emphasis added*):

> In towns which accept this section ... there shall be *a police department established under the direction of the Selectmen, who shall appoint a chief of police* and such other police officers as they deem necessary, and fix their compensation ... and the Selectmen may remove such chief or other officers for cause ... . *The Selectmen may make suitable regulations governing the police department and the officers* thereof. The chief of police shall be in immediate control of all town property used by the department, and of the police officers, who shall obey his orders.[2]

For the Fire Department, a 1973 Home Rule Law abolished the office of Fire Commissioner, and transferred to the selectmen "all [of its] powers & duties ... , making them "for all purposes whatsoever the lawful successor to the fire commissioner in relation to the direction and control of the fire department," with the language similar to §97. But, the title was not codified.

CTOS had discussed art. 10 on several occasions last spring, then voting (6-1) to recommend referring it for further study, based partly on desire to debate it at the same T/M as CTOS' own warrant article then planned for this Fall's TM -- to amend the Town Administrator law. CTOS had three summer meetings discussing the issues raised in the 2010 Annual Town Meeting about article 10. Ultimately -- and unanimously -- CTOS agrees that the thrust of this article merely codifies but does not change either any longstanding Brookline practices, or any legal responsibilities of the selectmen.

CTOS discussed, and ultimately rejected, two ideas that were suggested in relation to art. 10, (1) attempting to define, specify, and/or enumerate *the selectmen's authority*, and/or (2) considering either no *titles* or some alternatives. The former was felt to be both a formula for later disputes and virtually impossible to articulate for future boards of selectmen with any degree of specificity while remaining consistent with the current, broad authority under the foregoing laws. As for the titles, CTOS felt that (1) titles are at worst harmless, but might be helpful to emphasize -- to the community, the departments, and the selectmen -- the selectmen's weighty responsibility over public safety; and (2) there is no need to try for a consensus as to any new titles untested by decades of usage -- and (3) our traditional although unwritten one, "Commissioner", was (a) the best and easiest vehicle to resolve this matter and (b) not problematic.

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[2] See also, *Chief of Police v. Westford*, 365 Mass. 526, 530-31 (1974) ("... [T]he primary control of the police department is in the chief of police under §97A and in the Selectmen under §97. ... [T]he Legislature [] has given towns the alternatives of a 'strong' chief, a 'weak' chief, or no chief at all. ...")

## SELECTMEN'S RECOMMENDATION

Article 5 would amend the Town By-Laws: "BOARD OF SELECTMEN, §3.1.2, General Authority", to confer the "official" titles of Police Commissioner and Fire Commissioner on each member of the Board of Selectmen. The Board supports the intention of the petitioner, the Committee on Town Organization and Structure (CTO&S), to make clear that the Selectmen are the ultimate civilian authority over the Police and Fire Departments. The proposal to formalize the title of "Commissioners" upon the Board of Selectman will reinforce this important concept.

The Board of Selectmen's authority relative to the Police Department is within the realm of policy and administration pursuant to the 'weak chief statute' G.L.c. 41 s. 97 and also under the general statutory framework that defines the Board of Selectmen as the Town's chief executive body. The Board's authority is exercised primarily through:

- Promulgation of policies and regulations
- Approval of appointments and promotions including the chief
- Authority to dismiss with cause
- Adjudication of disciplinary actions under Civil Service
- Adjudication of appeals under the Citizen Complaint Policy

Recent experiences with the review of the Citizen Complaint Policy and the Video Surveillance Cameras underscore the crucial functions of the Board in setting policy for public safety.

During consideration of this proposal, the Board expressed concern that the term "police commissioner" might imply a law enforcement capability that is not consistent with the Board's civilian oversight authority. Unqualified inclusion in the by-laws might give rise to confusion about police powers that could be misinterpreted to be vested in the Board. In Cambridge, Boston and other jurisdictions for example, the Police Commissioner is a professional department head with direct control over police operations. As a result, the Board voted to insert the word "civilian" in the titles in order to clarify the scope of this responsibility, and to approve the CTO&S proposal that makes clear that this article does not modify the Board's existing authority and that the Board is not involved in the day-to-day supervision of the Town's public safety departments.

This article is linked to the CTO&S proposal under Article 4 that expands the administrative authority of the Town Administrator. Consistent with the Board of Selectmen's authority to exercise civilian control of the Police and Fire departments under Article 5, the Board would retain authority to appoint and remove the position of Chief of Police and Fire Chief under that proposal.

The Selectmen recommend FAVORABLE ACTION, by a vote of 4-0-1 taken on October 12, 2010, on the following motion:

VOTED: That the Town amend the By-Laws of the Town of Brookline by amending our current By-Law for "*Board Of Selectmen, §3.1.2, General Authority*, The Selectmen shall exercise general supervision over all matters affecting the general and financial interest and welfare of the town" by adding immediately afterwards the following new provision:

> *§ 3.1.2.A, Police and Fire Commissioners: In accordance with and to implement the Selectmen's responsibilities under applicable laws, the Selectmen shall bear the titles "civilian Police Commissioners" and "civilian Fire Commissioners" when exercising their responsibilities relating to the town's Police Department and Fire Department, respectively. The Selectmen's responsibilities and authority are not enhanced, diminished, or altered in any fashion from those that exist under applicable Laws by virtue of bearing such titles, nor shall the Board be involved in the day-to-day administration, operations or management of the Police and Fire Departments.*

**ROLL CALL VOTE:**

| Favorable Action | Abstain |
|---|---|
| Daly | DeWitt |
| Mermell | |
| Benka | |
| Goldstein | |

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Article 5 seeks to bestow the titles of Police and Fire Commissioners on the Board of Selectmen, codifying a longtime Brookline tradition in our by-laws. Town Meeting considered a similar proposal at the Spring 2010 Annual Town Meeting (Article 10).

In the spring, Town Meeting voted to refer this proposal to the Committee on Town Organization and Structure (CTO&S) for further consideration. A few issues surfaced during the deliberations at the spring Town Meeting:

1. CTO&S preferred that the commissioner designation be considered at the same time as a forthcoming Town Administrator proposal,
2. Selectmen expressed concerns about potential liability in codifying the titles, and
3. Specific roles and responsibilities should be enumerated to provide clarity about expectations.

As requested, CTO&S reviewed and modified the commissioner proposal and resubmitted it for consideration at this Town Meeting as Article 5. The article was

endorsed unanimously by CTO&S.

Article 5 amends §3.1.2 of our By-Laws, which enumerates the responsibilities of the Selectmen, by clarifying their role as Police and Fire Commissioners. The Selectmen's responsibilities in these areas were granted and defined in two different state statutes. Though the titles are not codified in our by-laws, their use has been a longtime tradition and practice.

MGL 41 Section 97 is the enabling act for our Police Department and Police Chief. This statute grants authority to the Selectmen to hire and fire the Police Chief and other officers, set compensation for them, and make "suitable regulations" to govern the department. Brookline accepted Section 97 at the 1921 Annual Town Meeting.

Acts 1973 Chapter 534 is a home rule petition abolishing the office of Brookline Fire Commissioner and transferring all powers and duties to the Selectmen. The statute makes the Selectmen the lawful successor to the Fire Commissioner in all regards, including issuing of rules, regulations, and orders for the department. The law also designates the Selectmen as the appointing authority for the Fire Chief, giving them authorization to hire, fire, and set compensation.

The petitioner of the original proposal was inspired during his work on the Citizen Complaint Review Committee, where he learned the roles were not formalized in our by-laws. He believes it is important for three reasons: for the Selectmen to view themselves in these roles; for residents to view the Selectmen as having authority over these functions; and for the departments to see the Selectmen in these roles. This amendment to our by-laws will formalize the titles, affirming the Selectmen are the elected civilian authority over the public safety functions in Brookline.

<u>DISCUSSION</u>:
Article 5 seeks to bestow Fire and Police Commissioner titles on the Selectmen without any changes to their roles and responsibilities in these functions, which are governed by state law. At the request of Town Meeting, CTO&S reviewed the proposal, taking into consideration the feedback from deliberations in the spring.

*Addressing the issues identified in the spring*. In addressing the issue of role specificity, CTO&S decided to keep the role specifications very broad, preferring not to specify details. Since final authority over the departments rests with the Selectmen, listing specific responsibilities could unduly limit their authority. However, to maintain clarity over the separation between the commissioner function and the public safety departments, the proposed by-law does specify what the Selectmen cannot do. The departments felt it important to clarify that the Selectmen are never to be involved in day-to-day operations, administration, and management.

The last sentence of the by-law, added at the request of the Selectmen, has the additional intent of alleviating liability concerns. The by-law clearly states that no new responsibilities or authority are being granted to the Selectmen. The by-law simply clarifies their governing role over public safety as provided under existing state law. In

essence, it is a housekeeping measure tying our by-laws to the existing statutes for clarity's sake.

CTO&S's primary concern in the spring was the desire to have this article considered jointly with their Town Administrator proposal, which is Article 4 in the current warrant. If Article 4 is adopted as submitted on the warrant, the Fire Chief would become a position appointed by the Town Administrator. Transferring the appointing authority under Article 4 would mean "the buck stops" with the Town Administrator. An important question arises as to the value or accuracy of labeling the Selectmen as Fire Commissioners in this scenario. CTO&S sees no linkage between the commissioner designation and the appointing authority proposed in Article 4. They see the two as separate issues—in either scenario the Selectmen maintain their authority over Fire Department policy. Bestowing the Fire Commissioner title may actually clarify the continued policy and oversight roles of the Selectmen with regards to the Fire Department if Article 4 is approved.

Having addressed the three primary concerns, and finding merit in clarifying the responsibilities of the Selectmen in our by-laws, CTO&S unanimously supports the article as submitted.

Chiefs Skerry and O'Leary both indicated they have always treated the BOS as commissioners. The language of the current article addresses a concern they had with the proposal in the spring, because it clarifies the separation of day-to-day operations and BOS responsibilities.

A majority of the Advisory Committee supports the article as amended by the Selectmen, believing it aligns our by-laws with the statutes under which Brookline governs its public safety departments, codifying titles that have been a longtime tradition. There was broad agreement from the Advisory Committee, CTO&S, and members of the public who expressed their views: the Police and Fire Chiefs should be under elected civilian authority, the Police and Fire Chiefs have always treated the Selectmen as commissioners, every Selectman has believed himself/herself to be a commissioner, and the relationship between the Chiefs and the Selectmen should be put in our by-laws. This has been a longtime Brookline tradition and practice.

The majority sees value in codifying our current practice to provide role clarity for Selectmen and the public safety departments, eliminating any ambiguity that may exist. They also felt that it is important for the public to understand that the Selectmen have ultimate authority over our public safety functions.

*Additional concerns raised*. While a majority of the Advisory Committee supports the article, a significant minority felt a number of issues remained:

1. Liability: Although the new by-law would not add responsibilities or authority to the Selectmen that would be subject to new liabilities, some felt that codifying the titles might encourage the inclusion of the Selectmen in any lawsuit, frivolous or not.

2. Title confusion: A commissioner is often a full-time staff member dedicated to a specific department. For example Brookline has a Building Commissioner and a Commissioner or Public Works. The same is true in cities such as Boston and New York, where Police Commissioners are clearly linked directly to their departments rather than a clearly civilian position at arms length.
3. Overstepping bounds: Despite language in the by-law to the contrary, it is possible that future Selectmen may be encouraged to cross the line in terms of interference with day to day operations of the departments if they are granted these titles. Incorporating the title changes may muddy the water in terms of who does what.
4. If it ain't broke: Things work well today with the ambiguity of these functions. If the by-law truly doesn't change anything, we should not enact it.

RECOMMENDATION:
By a split vote of 10 in favor and 9 opposed with 2 abstentions, the Advisory Committee recommends FAVORABLE ACTION on the vote offered by the Selectmen.

***XXX***

## ARTICLE 5

## CTO&S' SUPPLEMENTAL RECOMMENDATION

Following referral by prior Town Meeting to Committee on Town Organization and Structure (CTO&S), the Committee reviewed the article and voted unanimously to recommend conferring titles of Commissioner(s) on the Board of Selectmen. Regarding the addition proposed by the Board of Selectmen, CTO&S voted 5-0 to recommend the addition of the word "civilian" to the titling.

## ARTICLE 6

SIXTH ARTICLE

To see if the Town will amend the Zoning By-Law as follows:

I. Section 1.00.1, Purpose and Scope, by inserting the following language after welfare: "consistent with the intent and the recommendations of the Brookline Comprehensive Plan 2005-2015 or any successor Comprehensive Plan;" or act on anything relative thereto.

The amended Article would read:

The Purpose of this Bylaw is declared to be the promotion of the public health, safety, convenience, and welfare consistent with the intent and the recommendations of the Brookline Comprehensive Plan 2005-2015 or any successor Comprehensive Plan; by:

II. § 9.05, Conditions for Approval of Special Permit, by adding a new 9.05.1.f:

f. The requested Special Permit is consistent with the goals, policies and strategies of the Brookline Comprehensive Plan 2005-2015 or any successor Comprehensive Plan;"

or act on anything relative thereto.

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PETITIONER'S ARTICLE DESCRIPTION

In 2000 the Board of Selectmen appointed the Town Comprehensive Plan Committee composed of 21 representatives of Town boards, commissions, advisory bodies, committees and members of the public to update the previous plan. The Comprehensive Plan 2005-2015 (the "Plan") is the product of more than two years' work and an investment of more than $300,000, about half of which was offset by federal funds.

In adopting the Plan in December 2004, the Board of Selectmen (the "Board") wrote that it "accepts and supports the Comprehensive Plan as presented to it…including the visions, goals policies and strategies contained within." The Board also wrote that it "…expects that the Comprehensive Plan will be used to guide planning, development, and capital investment in the Town for the next ten years***, including the drafting of amendments to the Town Zoning Bylaw***." (Emphasis added.) The Board "Resolved, that the Department of Planning and Community Development should commence development of an Action Plan for implementation of the Comprehensive Plan…" Finally, the Board strongly recommended "the Planning Board adopt" [the Plan] and it did so in January 2005.

Along with the Town's official Master Plan under Massachusetts General Laws chapter 41, section 81D, the Plan serves as the roadmap for the Town's future. The intent of these amendments is to begin to make the Zoning By-Law consistent with the Plan and to stimulate fulfillment of the Plan's visions, goals, policies and strategies so that Brookline's future is well reasoned and meets our needs.

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**PLANNING BOARD REPORT AND RECOMMENDATION**

This article is being submitted by Citizen Petition and proposes to add a provision to the Brookline Zoning By-Law in two different places to explicitly require consistency with the Brookline Comprehensive Plan, in the Purpose and Scope section (Sec. 1.00.1), and in a new subsection (9.05.1.f), under Conditions for Approval of Special Permit.

The Comprehensive Plan was completed in 2005 as a land use policy guide for the Town. It incorporates the work of a number of other Town documents, and provides an overall framework for looking at how the Town should develop in the next ten years. However, it is a set of goals and objectives, not a physical plan, and unlike the Zoning By-Law, it is not a legal document. Although it was approved by the Planning Board, it was not approved by Town Meeting, as is the Zoning By-Law. In addition, although the Comprehensive Plan tried as much as possible to resolve conflicting goals of various stakeholders in the Town, this was not always possible, and the Comprehensive Plan has not been directly compared with the Zoning By-Law to determine and evaluate whether there are any inconsistencies. Lastly, since this amendment would require consistency with future Comprehensive Plans and the content of these are unknown at this time, it would seem prudent not to tie the Zoning By-Law to a future plan.

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

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SELECTMEN'S RECOMMENDATION

Article 6 is a petitioned article that would add direct references to the Brookline Comprehensive Plan in both the Purpose and Scope and the Special Permit Criteria sections of the Zoning By-Law. This proposal was in response to the petitioner's highly positive view of the Brookline Comprehensive Plan and a feeling that it should have some weight in the zoning review of proposed developments.

This proposed amendment raised a number of questions about the relationship of the Comprehensive Plan, which is at its heart a policy guide, and the Zoning By-Law, which is a law. The Planning Board and other Town boards and commissions already use the Comprehensive Plan as a guide in their decision making. However, mandating consistency with the Comprehensive Plan would raise many questions. These include whether the Comprehensive Plan, which has many recommendations in it, might limit the Board of Appeal's ability to review development proposals to the letter of the Zoning By-Law and how to resolve parts of the Comprehensive Plan that may not provide clear

guidance or that might be inconsistent. In addition, the proposed article would raise the question of the role of Town Meeting in crafting the Zoning By-Law: zoning changes require a 2/3 vote of Town Meeting but the Comprehensive Plan is not subject to that requirement. The petitioner has stated that she does not intend to move this article at Town Meeting. For these reasons, the Selectmen unanimously recommend NO ACTION, by a vote of 5-0 taken on October 12, 2010, on Article 6.

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## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Under the provisions of chapter 41, section 81d of the General Laws, the Town periodically produces a Comprehensive Plan, setting forth a vision and goals for its future development. The current Plan covering the years 2005 to 2025 was developed over a two-year period (2003 to 2005) by a Selectman-appointed committee consisting of 21 members of various official town bodies and representatives of the general public at a cost of around $300,000. Article 6 would amend the Zoning By-Law by incorporating the current, and future, Comprehensive Plans into the Zoning By-Law in two ways: inserting an objective of consistency with the Comprehensive Plan to Section 1.00.1 which states the Purpose and Scope of the Zoning By-Law; and adding a new Section 9.05.1.f which would add consistency with the Comprehensive Plan as a condition of approving Special Permits. According to the explanation provided with the article, the Principle Petitioner wished to ensure that the Zoning By-law is consistent with the Plan and sought to stimulate fulfillment of the Plan's vision, goals, policies and strategies so that "Brookline's future is well reasoned and meets our needs."

DISCUSSION
The Planning Board has considered Article 6 and voted unanimously for NO ACTION, observing that the Comprehensive Plan is a set of goals and objectives, not a physical plan nor a legal document, that its stated goals were sometimes in conflict with each other and may be inconsistent with existing portions of the Zoning By-Law, that although approved by the Planning Board, it had never been approved by Town Meeting, and that the Article would moreover require consistency with as yet unwritten future Comprehensive Plans, thereby tying the Zoning By-Law to unspecified future provisions.

At a public hearing on this Article, the Planning Director added that the Plan's recommendations were sometimes ambiguous or contradictory and thus would fail to provide clear guidance on Zoning amendments. Members of the public pointed out in opposition that incorporating the Plan into the Zoning By-Law and then using it to justify zoning changes could lead to unforeseen and unintended results: right now, a Plan goal of promoting development in South Brookline is being used to support redevelopment of Hancock Village, an application never mentioned nor endorsed at public hearings at which this Plan goal was formulated.

Advisory Committee members also noted that the Comprehensive Plan is the product of the executive branch of town government (the Selectmen) whereas enacting the Zoning By-Law is the exclusive domain of the legislative branch (Town Meeting), and that it would be a breach of separation of powers and a violation of appropriate legislative procedure to require Zoning By-Law consistency with the current and all future Comprehensive Plans, documents created independently of the legislative process.

RECOMMENDATION

The Advisory Committee believes that it would be inappropriate to incorporate the Comprehensive Plan into the provisions of the Zoning By-Law, and moreover observes that the goals and objectives of the Plan can still be used to formulate proposed zoning amendments, and can be invoked during Town Meeting debate by proponents or opponents of any such proposed amendments. We have also learned the Petitioner no longer wishes to seek Town Meeting approval of Article 6. Accordingly, the Advisory Committee, by a vote of 18-0-3 recommends NO ACTION on Article 6.

***XXX***

ARTICLE 7

SEVENTH ARTICLE

To see if the Town will amend Section 4.09 of the Zoning By-Law as follows:

1. By amending Section 1: Purpose as follows:

   1. Purpose

   The purpose of this section is to allow the adequate development of wireless telecommunications services and at the same time regulate the design and location of wireless telecommunications facilities to ensure that demand is fulfilled in a manner which preserves the safety, character, appearance, property values, natural resources, and historic sites of the Town. The intent of the Town of Brookline is to exercise the full rights that §704(a) of the Federal Telecommunications Act of 1996, 47 U.S.C. s 332(c) et. seq. confers to localities in regulating the siting of antennas. The standards herein are intended to achieve the following goals: encourage location of antennas on existing commercial buildings and structures rather than on residential ones or new towers, mitigate any adverse visual **and audio** effects through proper design, location and screening, encourage co-location where it will minimize visual and other impacts, and prohibit new towers in districts where they may be incompatible with existing residential uses. Monopoles may be approved in non-residential districts by special permit, only if no other alternative is possible.

2. By amending Section 2. Scope: as follows:

   2. Scope

   This §4.09 shall apply to all wireless telecommunication antennas and towers and related equipment, fixtures and enclosures, including **Distributed Antenna Systems located on public utility poles and** any modifications to any of the ~~**proceeding**~~ **preceding**, but shall not apply to dish or television antennas which receive and do not transmit; amateur ham radio antennas; citizens band radio antennas; fire, police, ambulance and other safety communication antennas; antennas utilized by the Town for its communications systems; and to antennas to be located on Town-owned property ~~**or public utility poles**~~, except that paragraph 4., subparagraph c. of this section shall apply.

3. By amending Section 4.09.4.(c) as follows:

   c. All wireless telecommunications antennas, towers, and related equipment, fixtures, and enclosures to be located on Town-owned property ~~**or public utility poles**~~ shall be exempt from the procedures in subparagraph a. above, and shall require approval from the Board of Selectmen, after an advisory report from the Planning Board and a public hearing. Long term telecommunication leases are

subject to G.L.c.30B and must be approved by Town Meeting. The submittal requirements and approval standards of this section shall serve to guide the Planning Board in its recommendation to the Selectmen.

4. By amending Section 4.09.5(a) as follows:

a. The applicant shall submit to the Building Commissioner the plans and details for the proposed wireless telecommunications antennas, towers and related equipment, fixtures and enclosures. The application shall include: sketches, pictures and photos to illustrate information on the proposed antenna and mount and exterior equipment, fixture and enclose, including: dimensions, appearance (color and finish), location on building facade or roof (setbacks if applicable), height above building roof when mounted, inventory of other antennas on building, including which antennas have not been used for over one year. Additionally, information shall be submitted on proposed method to camouflage or screen antenna and enclosure from view (screen dimensions, color and style), visibility from ground or upper floor levels of nearby residences within a radius of 500 feet, and method to make it blend in with the style of the building. **Information on expected noise impacts on surrounding areas shall be provided.** The Planning Board, at its discretion, may require a balloon test **and/or model** to better evaluate visual impacts or any other information that it deems helpful.

5. By amending Section 4.09.7(a).1. as follows:

1) The following design standards shall apply to all approvals and special permits for wireless telecommunications antennas and related equipment, fixtures and enclosures. They shall be as unobtrusive as possible when viewed from the street and from upper floors of nearby residences. Every effort should be made to have them blend in with the style and color of the building they are located upon and with the surrounding environment and not negatively impact property values or environmentally sensitive areas, such as wetlands or historic sites. Where necessary, screening shall be provided to minimize visible impacts. Items for evaluation during the approval process include color, finish, size, location on building facade or roof, camouflaging, and screening. Greater setback from the edge of a building may be required, if it helps to minimize visual impacts and improves over-all aesthetics. **Noise impacts shall be minimized on surrounding areas through the use of best commercially available technology and noise dampers whenever possible.**

or act on anything relative thereto.

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PETITIONER'S ARTICLE DESCRIPTION

This proposed amendment would level the playing field for wireless facilities in the Town, whether they are wireless antenna systems or the newer Distributed Antenna

Systems (DAS,) by requiring that all such facilities not located on Town-owned property undergo the same zoning review.

Five years ago, Town Meeting amended the Town's Zoning Bylaw with respect to wireless communications facilities to expedite the development of a Distributed Antenna System for south Brookline. At the time, amending the Zoning Bylaw was a way of encouraging development of what was then a less common solution to providing cellular service in areas without tall buildings, without the use of towers or monopoles.

The south Brookline DAS system has since been completed. However, by making it easier to develop DAS systems than to develop traditional wireless antennas, the earlier amendment had the unforeseen side effect of encouraging DAS systems Town-wide. This effect is caused by the fact that, as currently written, the Zoning Bylaw requires more review of wireless antennas than of DAS systems on public utility poles. In addition, in the past two years, DAS systems have become much more common. There are now two active efforts to develop Town-wide DAS systems.

While DAS systems are not necessarily bad for the Town, there is no reason why the Zoning Bylaw should provide them with preferential treatment Town-wide over wireless antennas. DAS systems have visual and audio impacts on neighbors that could be minimized and/or mitigated as part of a zoning review process, much as the Town minimizes the impacts of wireless antennas through the zoning review process. This zoning amendment would provide the Town with ways of achieving these goals.

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**PLANNING BOARD REPORT AND RECOMMENDATION**

This article is being submitted by the Planning and Community Development Department and adds a requirement for Planning Board approval of Distributed Antenna Systems (DAS) on public utility poles and consideration of noise impacts to Section 4.09, Wireless Telecommunications Services. Currently, a proposal for wireless antenna and equipment on a public utility pole must be approved by the Board of Selectmen, after an advisory report from the Planning Board, and the holding of a public hearing. With this amendment, Planning Board approval would be required under the design review process outlined in Sec. 7.03, paragraph 2. This process requires publication of the public meeting in a local newspaper, notice to abutters, Town Meeting members and neighborhood associations in the applicable precincts. Additionally, the submittal requirements would require information on possible noise impacts, and the Planning Board could add conditions requiring that noise impacts be minimized through use of best available technology and noise dampeners, where possible.

This amendment was submitted in response to a couple of proposals for Town-wide DAS systems. While there was general support for a DAS system for south Brookline as an alternative to conventional wireless facilities, there is no apparent need to offer preferential treatment to DAS Town-wide. DAS systems offer an alternative to conventional wireless systems but also have some negative externalities, such as noisy air conditioning units that may be located close to residents' homes. This warrant article is not intended to prohibit such facilities but to allow a system for reviewing and placing

reasonable conditions on DAS systems. In effect, it will level the playing field between conventional wireless facilities and DAS systems.

The Planning Board sees no reason for a Town-wide preferential treatment of DAS systems. Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Article 7.

## SELECTMEN'S RECOMMENDATION

Article 7 was proposed by the Department of Planning and Community Development in response to changing technologies for personal communications. It would explicitly incorporate so-called Distributed Antenna Systems (DAS) into the wireless communications section of the Zoning By-Law. It would also allow the zoning review process to seek information on, and seek limitations on, the audio impacts of DAS systems, which often include noisy hardware.

The existing section has served the Town well in reviewing traditional wireless facilities. It has generally exempted DAS systems from zoning review by exempting facilities on Town-owned or public utility poles. This exemption was added to the by-law intentionally in 2005 in order to allow the DAS to be constructed in South Brookline as a preferred alternative to monopole facilities in that part of town. The South Brookline DAS is complete and currently has two carriers utilizing its infrastructure. That system went through a review process with the Board of Selectmen and is considered a successful public planning solution to the issue of wireless coverage in South Brookline.

Since that time, however, there have been two active proposals for town-wide DAS systems. While these systems are not necessarily bad, they do not accomplish the same public purpose as the South Brookline system. They are more analogous to the traditional wireless systems that are currently permitted through the Zoning By-Law. In addition, the DAS technology, being closer to the ground and consisting of more nodes, has a possibility of intruding on individual residents' quality of life.

The Board of Selectmen agrees that these DAS should be reviewed just like any other wireless facility. While the Town does not have the authority to deny service to a provider, it does have the ability to seek reasonable changes to all wireless systems, including efforts to reduce noise and visual intrusions of the facilities to Town residents. Therefore, the Board unanimously recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 12, 2010, on the following motion:

VOTED: That the Town amend Section 4.09 of the Zoning By-Law as follows:

1. By amending Section 1: Purpose as follows:
    1. Purpose

The purpose of this section is to allow the adequate development of wireless telecommunications services and at the same time regulate the design and location of wireless telecommunications facilities to ensure that demand is fulfilled in a manner which preserves the safety, character, appearance, property values, natural resources, and historic sites of the Town. The intent of the Town of Brookline is to exercise the full rights that §704(a) of the Federal Telecommunications Act of 1996, 47 U.S.C. s 332(c) et. seq. confers to localities in regulating the siting of antennas. The standards herein are intended to achieve the following goals: encourage location of antennas on existing commercial buildings and structures rather than on residential ones or new towers, mitigate any adverse visual **and audio** effects through proper design, location and screening, encourage co-location where it will minimize visual and other impacts, and prohibit new towers in districts where they may be incompatible with existing residential uses. Monopoles may be approved in non-residential districts by special permit, only if no other alternative is possible.

2. By amending Section 2. Scope: as follows:

2. Scope

This §4.09 shall apply to all wireless telecommunication antennas and towers and related equipment, fixtures and enclosures, including **Distributed Antenna Systems located on public utility poles and** any modifications to any of the ~~**proceeding**~~ **preceding**, but shall not apply to dish or television antennas which receive and do not transmit; amateur ham radio antennas; citizens band radio antennas; fire, police, ambulance and other safety communication antennas; antennas utilized by the Town for its communications systems; and to antennas to be located on Town-owned property ~~**or public utility poles**~~, except that paragraph 4., subparagraph c. of this section shall apply.

3. By amending Section 4.09.4.(c) as follows:

c. All wireless telecommunications antennas, towers, and related equipment, fixtures, and enclosures to be located on Town-owned property ~~**or public utility poles**~~ shall be exempt from the procedures in subparagraph a. above, and shall require approval from the Board of Selectmen, after an advisory report from the Planning Board and a public hearing. Long term telecommunication leases are subject to G.L.c.30B and must be approved by Town Meeting. The submittal requirements and approval standards of this section shall serve to guide the Planning Board in its recommendation to the Selectmen.

4. By amending Section 4.09.5(a) as follows:

a. The applicant shall submit to the Building Commissioner the plans and details for the proposed wireless telecommunications antennas, towers and related equipment, fixtures and enclosures. The application shall include: sketches, pictures and photos to illustrate information on the proposed antenna and mount

and exterior equipment, fixture and enclose, including: dimensions, appearance (color and finish), location on building facade or roof (setbacks if applicable), height above building roof when mounted, inventory of other antennas on building, including which antennas have not been used for over one year. Additionally, information shall be submitted on proposed method to camouflage or screen antenna and enclosure from view (screen dimensions, color and style), visibility from ground or upper floor levels of nearby residences within a radius of 500 feet, and method to make it blend in with the style of the building. **Information on expected noise impacts on surrounding areas shall be provided.** The Planning Board, at its discretion, may require a balloon test **and/or model** to better evaluate visual impacts or any other information that it deems helpful.

5. By amending Section 4.09.7(a).1. as follows:

1) The following design standards shall apply to all approvals and special permits for wireless telecommunications antennas and related equipment, fixtures and enclosures. They shall be as unobtrusive as possible when viewed from the street and from upper floors of nearby residences. Every effort should be made to have them blend in with the style and color of the building they are located upon and with the surrounding environment and not negatively impact property values or environmentally sensitive areas, such as wetlands or historic sites. Where necessary, screening shall be provided to minimize visible impacts. Items for evaluation during the approval process include color, finish, size, location on building facade or roof, camouflaging, and screening. Greater setback from the edge of a building may be required, if it helps to minimize visual impacts and improves over-all aesthetics. **Noise impacts shall be minimized on surrounding areas through the use of best commercially available technology and noise dampers whenever possible.**

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## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
This article is being submitted by the Planning and Community Development Department and adds a requirement for Planning Board approval of cellular Distributed Antenna Systems (DAS) mounted on public utility poles and consideration of noise impacts to Section 4.09 of the Brookline zoning bylaw, Wireless Telecommunications Services.

Section 704 of the federal Telecommunications Act of 1996 added a provision to the Communications Act of 1934 at 47 U.S.C. §332(c) dealing with the authority of local zoning authorities to approve the placement of wireless personal communications service (PCS) cell sites and antennas. In general, the legislation preserves most local zoning authority in this area, but preempts municipal authority in several important respects:

47 U.S.C. §332(c) (7) PRESERVATION OF LOCAL ZONING AUTHORITY

`(A) GENERAL AUTHORITY- Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) LIMITATIONS-

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

Thus, the Brookline zoning bylaw must defer to the Federal Communications Commission (FCC) with respect to any "environmental effects of radio frequency emissions" but is not precluded from imposing other zoning-related restrictions and requirements upon such placements so long as these do not operate to "unreasonably discriminate among providers of functionally equivalent services" or "prohibit or have the effect of prohibiting the provision of personal wireless services."

When cellular telephone service was first introduced in the 1980s, radio equipment and associated antenna systems placed at individual "cell sites" were typically situated on roofs of commercial buildings, in church steeples, or on stand-alone structures (towers or monopoles) deployed for this purpose. The introduction of digital "personal communications service" ("PCS") in the mid-1990s was based upon a network design in which the handsets and cell site transmitters operated at considerably lower power levels than had been used for the first generation of cellular telephone service. The lower power levels required a major increase in the number of cell sites due to the shortened distances over which the radio signals would propagate. This, in turn, allowed for much greater "reuse" of the same frequencies across non-adjacent cells, significantly increasing the overall capacity of wireless networks. Today, there are approximately 200,000 PCS cell sites nationwide.

A relatively recent development in cell site technology is the "Distributed Antenna System" ("DAS"). A DAS "is a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure. DAS antenna elevations are generally at or below the clutter level and node installations are compact." See attached description. Individual DAS elements are typically installed on utility poles, connected by fiber optic or other

telecommunications transmission media to common transmit/receive radio equipment for the cell site.

DISCUSSION

Warrant Article 7 is being submitted by the Planning and Community Development Department. As the Petitioner's Explanation for Warrant Article 7 recounts, in 2005, "Town Meeting amended the Town's zoning bylaw with respect to wireless communications facilities to expedite the development of a Distributed Antenna System for south Brookline. At the time, amending the zoning bylaw was a way of encouraging development of what was then a less common solution to providing cellular service in areas without tall buildings, without the use of towers or monopoles." Specifically, the 2005 amendment provided for minimal review of wireless antennas and antenna elements located on utility poles, and thus expedited the deployment of a DAS in south Brookline.

The effect of that amendment, however, was to make it much easier for wireless service providers to deploy a DAS than a conventional cellular antenna to the extent that utility poles, rather than the placement of new structures, were used for the DAS elements. Subsequent experience with the existing South Brookline DAS has revealed several environmental issues not related to electromagnetic emissions. DAS is particularly well-suited to low-density areas such as South Brookline where there are no tall buildings and where, absent the ability to utilize utility poles, towers or monopoles would otherwise need to be constructed. However, the individual DAS antenna elements tend to be situated in residential neighborhoods often in close proximity to individual residences. The electronic equipment used by a DAS requires controlled temperatures, and the associated air conditioning equipment has proven to be a source of continuous noise. DAS may be less suited to more densely populated areas with buildings or other structures sufficiently tall to support conventional cellular antennas. However, because the approval process for a DAS, under existing zoning, may be easier to obtain, the choice of one technology over the other may be inappropriately distorted by the disparate treatment.

The principal amendments to the zoning bylaw being proposed by Article 7 involve two revisions: (1) The *inclusion* of placements on utility poles within the scope of the bylaw requiring zoning approvals, and (2) the specific *inclusion* of audio (noise) impacts as an issue to be addressed as part of the approval process. The mechanical noise emanating from air conditioning or similar equipment is *not* electromagnetic radiation, and thus falls squarely within the scope of the Town's zoning authority.

RECOMMENDATION

The Advisory Committee by a unanimous vote of 21-0 recommends FAVORABLE ACTION on the language of Article 7 as recommended by the Selectmen.

***XXX***

## ARTICLE 8

EIGHTH ARTICLE

To see if the Town will amend Section 7.00.1.c. of the Zoning By-Law as follows:

c. No sign or other advertising device attached to a building shall project above the roof or parapet line nor more than 12 inches out from the wall to which it is attached. However, **a projecting sign constructed of wood, a composite of wood and plastic, metal, glass or another substantial material, or** a vertical banner sign, composed of pliable fabric or similar material, may project more than 12 inches perpendicular to the wall to which it is attached subject to the approval of the Planning Board. **Projecting and banner signs shall not be internally illuminated and shall maintain an 8' minimum clearance above the ground. The Planning Board may limit the number of projecting or banner signs on the facade of a building. In calculating the number of square feet of permitted signage, both sides of a projecting sign shall be included.**

or act on anything relating thereto.

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PETITIONER'S ARTICLE DESCRIPTION

This amendment is being submitted by the Planning Board, because of several advantages in allowing projecting signs as one of the options for identifying commercial uses. Projecting signs are an attractive way to identify shops for pedestrians who cannot see a flat façade sign until they are directly in front of it. Many cities and towns across the country encourage projecting signs, especially in historic districts. At Fall 2003 Town Meeting, an amendment allowing projecting banner signs made of fabric was approved. Originally, this amendment was going to include projecting signs of non-pliable materials, however, it was decided to take an incremental approach and start first with allowing banners.

The attached proposed language for a zoning amendment would allow projecting signs constructed of wood, a composite of wood and plastic, metal, glass or another substantial material, subject to the sign and façade review and approval process of the Brookline Planning Board. The proposed amendment builds upon the existing language that allows fabric banners to project from buildings. Projecting signs would have a more restrictive sign area size allowance than freestanding signs, would have to maintain an 8' clearance above the ground, and could not be internally illuminated. The Planning Board would have the discretion to regulate how many projecting signs, if any, could be installed on a building façade. Other existing requirements in Section 7 of the Zoning Bylaw would apply as well. If the language were to be adopted, additional details regarding design and placement of projecting signs could be added to the Planning Board Sign and Façade Guidelines.

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## PLANNING BOARD REPORT AND RECOMMENDATION

This article is being submitted by the Planning Board, with support from the Sign By-Law Committee, and would allow the Planning Board to approve projecting signs made of substantial materials, in addition to the currently allowed fabric banner signs. Projecting banner signs were approved by Town Meeting in Fall of 2003, by amendment to Article 7, Signs, Illumination, and Regulated Façade Alterations. More permanent projecting signs, made out of metal, wood, glass, or a composite material was initially contemplated as part of the amendment, but subsequently not included, in order to provide time to evaluate the results of allowing banner signs. Banner signs have not proved problematic and are only a tiny proportion of commercial façade sign applications. Where they have been approved, they add interest and vitality to the streetscape. The number of banners on a façade is subject to Planning Board approval, and the Planning Board on a number of occasions has limited the number of requested banners on the basis of either the length of the façade or the architectural features of the building. Several stores on Harvard Street in Brookline Village have installed approved banner signs, as well as a health club at 1285 Beacon Street in Coolidge Corner. Additional safeguards are the dimensional requirements for signage in both the Zoning By-Law and the Building Code. For instance, the Zoning By-law does not allow a sign to be more than 25 feet above the ground and limits the overall square footage of signage in proportion to the size of the building; the Building Code requires all signage to be at least eight feet off the ground, setback two feet from the curb, and submittal of structural engineering information to ensure safety of the sign installation.

In these challenging economic times, it is unlikely that there will be a plethora of applications for non-fabric projecting signs, because they are usually more expensive to manufacture and install, than façade signs. However, as the economy improves, this amendment will provide an additional option for business owners to consider for identification of their businesses. Many communities across the country, especially in historic districts, allow projecting signs and find them an attractive, and sometimes quite creative, way to identify a commercial entity, especially for pedestrians who may not be able to see a flat façade sign, until immediately in front of a store.

The Planning Board, however, believes there should be a maximum size for projecting signs in the Zoning By-Law itself, not just in the sign and façade guidelines. Although the Planning Board must approve the design of each sign, and often does not allow the maximum amount of signage on a building (2 s.f. of sign area for every 1 linear foot of building frontage), explicitly stating a maximum in the By-Law will better serve to guide business owners and sign makers. The Planning Department has reviewed size limits for projecting signs in several communities, including Boston, Cambridge, Portland (Oregon), Providence and Santa Barbara. Some have design review but no size limits, others allow sign sizes ranging between 13 s.f to 60 s.f. Since freestanding signs, which are already allowed in Article 7, have a maximum of 20 s.f. for each face, the Planning Board would recommend deletion of the last sentence of the proposed amendment, which reads “In calculating the number of square feet of permitted signage, both sides of a projecting sign shall be included.” and substituting more consistent language for

measuring the sign area and a maximum size limit, as follows: "No projecting sign shall be larger than 12 square feet in area per face." If the Planning Board finds that a larger sign is more appropriate, because of a building's size or its architectural features, there is an existing provision in Art.7, Sec.7.00.1.d, allowing a sign 25% larger than the stated maximum. The Planning Board would recommend that, at least initially, projecting signs not be greater than 12 s.f. per face, which is one square foot less than Cambridge's requirement. An exception can be made if a building meets the criteria under Sec.7.00.1.d, and a larger sign (by 25%) is appropriate. Lastly, at the request of the Building Commissioner the Planning Board recommends adding the word "non-combustible" in front of "projecting sign" as this is a requirement of the building code and will alert business owners to this requirement.

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

To see if the Town will amend Section 7.00.1.c. of the Zoning By-Law as follows:

c. No sign or other advertising device attached to a building shall project above the roof or parapet line nor more than 12 inches out from the wall to which it is attached. However, **a *non-combustible* projecting sign constructed of wood, a composite of wood and plastic, metal, glass or another substantial material, or** a vertical banner sign, composed of pliable fabric or similar material, may project more than 12 inches perpendicular to the wall to which it is attached subject to the approval of the Planning Board. **Projecting and banner signs shall not be internally illuminated and shall maintain an 8' minimum clearance above the ground. The Planning Board may limit the number of projecting or banner signs on the facade of a building. ~~In calculating the number of square feet of permitted signage, both sides of a projecting sign shall be included.~~ *No projecting or banner sign shall be larger than 12 square feet in area per face.***

or act on anything relating thereto.

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SELECTMEN'S RECOMMENDATION

Article 8, submitted by the Planning Board with the support of the Selectmen's Sign Committee, would allow so-called projecting or blade signs for commercial businesses, subject to overall size limitations and the same design review and as other signs in Town. This article was submitted as a way of permitting businesses to gain some visibility to pedestrians on the sidewalk as an alternative to items such as sandwich boards.

Projecting signs have not been allowed in the Town for over 30 years. They were originally restricted as part of an overall effort to improve the quality of signage in the Town and reduce visual clutter. The Town's Zoning By-Law has extensive regulations on

signage, including a limit of two square feet of signage for each foot of frontage in a building. In addition, the Planning Board conducts detailed design review of proposed signs, which often reduces the size of signage further. The Zoning By-Law does allow the Planning Board to exceed the two square foot per one foot limit by 25% under very limited circumstances related to the proportions of the building, but the Planning Board rarely uses that authority. The Planning Board review process is streamlined and yet quite successful at allowing appropriate and attractive signage for businesses while preventing unsightly signage.

Projecting signs can be quite attractive and add to the visual quality of a business district. As part of the review of this warrant article, the Department of Planning & Community Development provided examples of attractive signage in other communities, as well as information about the size limitations imposed by those communities. The Planning Board suggested an overall cap of 12 square feet for each projecting sign, which would be included as part of the overall square footage permitted for a building. The Planning Board also recommended changing how the size of the sign was calculated, and making sure that the sign was either make of inflammable material or, in the case of materials like wood, treated so as not to burn.

Some questions were asked about whether the 12 square foot size limitation was too lenient. However, it appears that other business districts, such as the ones in Portsmouth, NH and Cambridge, MA, have higher limits without negative visual impacts. Some questions were also asked about whether signs would have structural issues. The Building Commissioner has assured the Board that building code would require signs to be safe. The Board of Selectmen believes that projecting signage, with Planning Board review as part of an overall sign package for a property, will be a benefit to the Town. For this reason, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 12, 2010, on the motion offered by the Advisory Committee, which incorporates the Planning Board amendments.

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## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Article 8 has been submitted by the Planning Board, which has voted unanimously to recommend Favorable Action with amendments.

The Article would allow the Planning Board to approve projecting signs made of substantial materials, such as metal, wood, glass, or a composite material, in addition to the currently allowed fabric banner signs. Article 12 at the fall 2003 Town Meeting amended Article 7 of the Zoning By-Law (Signs, Illumination, and Regulated Façade Alterations) to allow the Planning Board to approve projecting banner signs. Allowing more permanent projecting signs of substantial materials was initially contemplated as part of that 2003 amendment, but subsequently was not included in order to provide time to evaluate the results of allowing banner signs.

Few businesses have attempted to install banner signs since 2003. Several stores on Harvard Street in Brookline Village have installed approved banner signs, as has a health club at 1285 Beacon Street in Coolidge Corner.

The number of banners on a façade is subject to Planning Board approval, and the Planning Board on a number of occasions has limited the number of requested banners on the basis of either the length of the façade or the architectural features of the building. Additional safeguards are the dimensional requirements for signage in both the Zoning By-Law and the Building Code. For instance, the Zoning By-law does not allow a sign to be more than 25 feet above the ground and limits the overall square footage of signage in proportion to the size of the building; the Building Code requires all signage to be at least eight feet off the ground, a setback of two feet from the curb, and submittal of structural engineering information to ensure safety of the sign installation.

DISCUSSION

Allowing the Planning Board to approve projecting signs of substantial materials offers several potential benefits to commercial establishments in Brookline. Signs may be highly visible to passersby, especially pedestrians, and may call greater attention to Brookline businesses. Projecting signs often have a distinctive design, and thus may help a business to establish a clear and memorable identity. At a time when Brookline is attempting to maintain vibrant commercial areas, promote commercial development, and expand the commercial real estate tax base, allowing businesses to install projecting signs may contribute to the Town's overall efforts to assist its commercial areas. Relatively few businesses are likely to install projecting signs, because such signs are expensive to design and manufacture, but more may take advantage of this option as the economy improves.

Projecting signs are also likely to be more attractive than sandwich boards placed on the sidewalks outside businesses. Some businesses have used such sandwich boards, provoking concern about the extent to which they clutter and obstruct sidewalks.

Although some have objected to projecting signs on the grounds that they are unattractive and clutter streetscapes, the current prevailing sentiment is that projecting and/or hanging signs can be attractive and add vitality to commercial areas. It is often better to have a mix of distinctive projecting signs than a set of uniform signs on each building façade. The commercial districts of, for example, Harvard Square, Newburyport, and Charles Street on Beacon Hill are more interesting and attractive because they feature many unique and creative signs.

Two concerns have been raised regarding Article 8. One is whether projecting signs might fall and cause injuries. The signs would have to satisfy the Building Code, so such risks are minimal. Another is the fear that signs might be unattractive. The Planning Board would, however, continue to exercise design review over all proposed signs.

The Planning Board voted to amend Article 8. Its report explains that the amendment to Article 8 reflects the Planning Board's belief that there should be a maximum size for

projecting signs in the Zoning By-Law itself, not just in the sign and façade guidelines. Although the Planning Board must approve the design of each sign, and often does not allow the maximum amount of signage on a building (2 square feet of sign area for every 1 linear foot of building frontage), explicitly stating a maximum in the Zoning By-Law will better serve to guide business owners and sign makers. The Planning and Community Department has reviewed size limits for projecting signs in several communities, including Boston, Cambridge, Portland (Oregon), Providence, and Santa Barbara. Some have design review but no size limits; others allow sign sizes ranging between 13 square feet to 60 square feet. Since freestanding signs, which are already allowed in Article 7, have a maximum of 20 square feet for each face, the Planning Board has recommended deletion of the last sentence of Article 8, which reads, "In calculating the number of square feet of permitted signage, both sides of a projecting sign shall be included", and substituting more consistent language for measuring the sign area and a maximum size limit, as follows: "No projecting sign shall be larger than 12 square feet in area per face." If the Planning Board finds that a larger sign is more appropriate, because of a building's size or architectural features, there is an existing provision in Article 7, Section 7.00.1.d of the Zoning By-Law, allowing a sign 25% larger than the stated maximum of 12 square feet per face, which is one square foot less than Cambridge's requirement. Lastly, at the request of the Building Commissioner the Planning Board has recommended adding the word "non-combustible" in front of "projecting sign" as this is a requirement of the building code and will alert business owners to this requirement.

RECOMMENDATION

The Advisory Committee agreed with the Planning Board's recommended amendments. It accordingly voted to recommend favorable action on Article 8 as amended by the Planning Board.

By a vote of 23–1–0, the Advisory Committee recommends FAVORABLE ACTION on the following motion, which includes the changes the Planning Board is recommending to Article 8:

VOTED: That the Town amend Section 7.00.1.c. of the Zoning By-Law as follows:

c. No sign or other advertising device attached to a building shall project above the roof or parapet line nor more than 12 inches out from the wall to which it is attached. However, **a *non-combustible* projecting sign constructed of wood, a composite of wood and plastic, metal, glass or another substantial material, or** a vertical banner sign, composed of pliable fabric or similar material, may project more than 12 inches perpendicular to the wall to which it is attached subject to the approval of the Planning Board. **Projecting and banner signs shall not be internally illuminated and shall maintain an 8' minimum clearance above the ground. The Planning Board may limit the number of projecting or banner signs on the facade of a building. ~~In~~**

~~**calculating the number of square feet of permitted signage, both sides of a projecting sign shall be included.**~~ ***No projecting or banner sign shall be larger than 12 square feet in area per face.***

***XXX***

ARTICLE 9

NINTH ARTICLE

To see if the Town will amend the Zoning By-law and Map by incorporating the attached Map into the Zoning Map, and to amend the Zoning By-law as follows:

1. Add a new definition 2. under Section 2.07 – "G" DEFINITIONS:
   "**2. GROUND-MOUNTED SOLAR PHOTOVOLTAIC INSTALLATION, LARGE OR SMALL – A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted, unless it is located on the roof of a water reservoir or similar structure that is not designed for human occupancy. Such an installation is considered large-scale if it has a minimum nameplate capacity of at least 250 kW DC; all installations with a minimum nameplate capacity less than 250 kW DC are considered small-scale."**

2. Add a new definition 2. under Section 2.15 – "0" DEFINITIONS, and renumber the section accordingly:
   "**2. ON-SITE SOLAR PHOTOVOLTAIC INSTALLATION – A solar photovoltaic installation that is constructed at a location where other uses of the underlying property occur."**

3. Add a new definition 1. Under Section 2.18 – "R" DEFINITIONS, and renumber the section accordingly:
   "**1. RATED NAMEPLATE CAPACITY – The maximum rated output of electric power production of the Photovoltaic system in Direct Current (DC)."**

4. Add a new overlay district under Section 3.01.4 – Overlay Districts:
   "**b. Solar Overlay District**."

5. Amend Table 4.07 to add a new "**Use #40D. Ground Solar Photovoltaic Installation**," as follows:

| Principal Uses | Residence | | | | | Business | | | Ind. |
|---|---|---|---|---|---|---|---|---|---|
| | S | SC | T | F | M | L | G | O | I |
| 40D. Ground Solar Photovoltaic Installation, Large or Small<br><br>*Permitted in the Renewable Energy Overlay District under site plan review. See **Section 5.06.4.g** for use regulations. | No | No | No | No | No | No | No | No | No |

6. Add a new Section 5.06.4.h under *Special District Regulations*:

"*h. Renewable Energy Overlay District (SOL)*

1) The Town is interested in being designated a Green Community by the Commonwealth of Massachusetts. The Town is also committed to decreasing its carbon footprint by encouraging the development of alternative energy supplies. For these reasons, the Town has surveyed potential sites for a renewable energy facility and created this overlay district.

2) Notwithstanding any other portion of the Zoning Bylaw, including **Section 4.07 – Table of Uses**, the location of renewable energy generation facilities in the form of ground-mounted solar photovoltaic arrays shall be permitted by-right in this district. While both large- and small-scale solar photovoltaic facilities are allowed, large-scale solar photovoltaic facilities are encouraged.

3) **Compliance with Laws, By-laws and Regulations:** The construction and operation of all solar photovoltaic installations, large or small, shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the State Building Code.

4) No ground-based solar photovoltaic installation shall be constructed, installed or modified as provided in this section without first obtaining a building permit.

5) **Site Plan Review:** Such facilities shall be subject to site plan review by the Planning Board to ensure that the facility is adequately set back from neighboring properties, reasonably shielded from view, and that utility connections are adequately screened. Such site plan review shall be conducted in accordance with the design review process outlined in **Section 7.03, paragraph 2,** of the Zoning Bylaw with the exception that such site plan review is not discretionary and any conditions attached cannot render a Large Scale Solar Facility (of at least 250 kW DC) infeasible. All plans and maps submitted for site plan review shall be prepared, stamped, and signed by a Professional Engineer licensed to practice in Massachusetts. Pursuant to the site plan review process, the project proponent shall provide to the Planning Board the following documents:

a. A site plan showing:
   i. Property lines and physical features, including roads, for the project site;
   ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
   iii. Blueprints or drawings of the solar photovoltaic installation signed by a Professional Engineer licensed to practice in the Commonwealth of

Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;

iv. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;

v. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;

vi. Name, address, and contact information for proposed system installer;

vii. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;

viii. The name, contact information and signature of any agents representing the project proponent; and

b. Documentation of actual or prospective access and control of the project site;

c. An operation and maintenance plan;

d. Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose);

e. Proof of liability insurance; and

f. Description of financial surety that satisfies subparagraph **13.c** of this section.

6) **Site Control:** The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation.

7) **Operation & Maintenance Plan:** The project proponent shall submit a plan for the operation and maintenance of the ground-mounted solar photovoltaic installation, which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation.

8) **Utility Notification:** No ground-mounted solar photovoltaic installation shall be constructed until evidence has been given to the Planning Board that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar photovoltaic installation owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

9) **Dimension and Density Requirements**

a. Setbacks: For ground-mounted solar photovoltaic installations, all setbacks from lots lines shall be at least 25 feet. As part of Site Plan Review, the

Planning Board may require larger setbacks if appropriate for screening, provided, however, that such larger setbacks shall not have the effect of rendering a Large Scale Solar Facility (of at least 250 kW DC) infeasible.

b. Appurtenant Structures: All appurtenant structures to ground-mounted solar photovoltaic installations shall be subject to reasonable regulations concerning the bulk and height of structures, lot area, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

10) **Design Standards**

a. Lighting: Lighting of ground-mounted solar photovoltaic installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar photovoltaic installation shall be directed downward and away from residential structures and shall incorporate full cut-off fixtures to reduce light pollution.

b. Signage: Signs on ground-mounted solar photovoltaic installations shall comply with the regulations of Article 7. A sign consistent with these regulations shall be required to identify the owner and provide a 24-hour emergency contact phone number. Solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic installation.

c. Utility Connections: Reasonable efforts, as determined by the Building Commissioner, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider, however, they shall be screened from view.

11) **Safety and Environmental Standards**

a. Emergency Services: The large scale solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

b. Land Clearing, Soil Erosion and Habitat Impacts: Clearing of natural vegetation shall be limited to what is necessary for the construction,

operation and maintenance of the ground-mounted solar photovoltaic installation, or otherwise prescribed by applicable laws, regulations, and bylaws.

12) **Monitoring and Maintenance**

a. Solar Photovoltaic Installation Conditions: The ground-mounted solar photovoltaic installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level applicable to the local Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), unless accepted as a public way.

b. Modifications: All material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require approval by the Planning Board.

13) **Abandonment or Decommissioning**

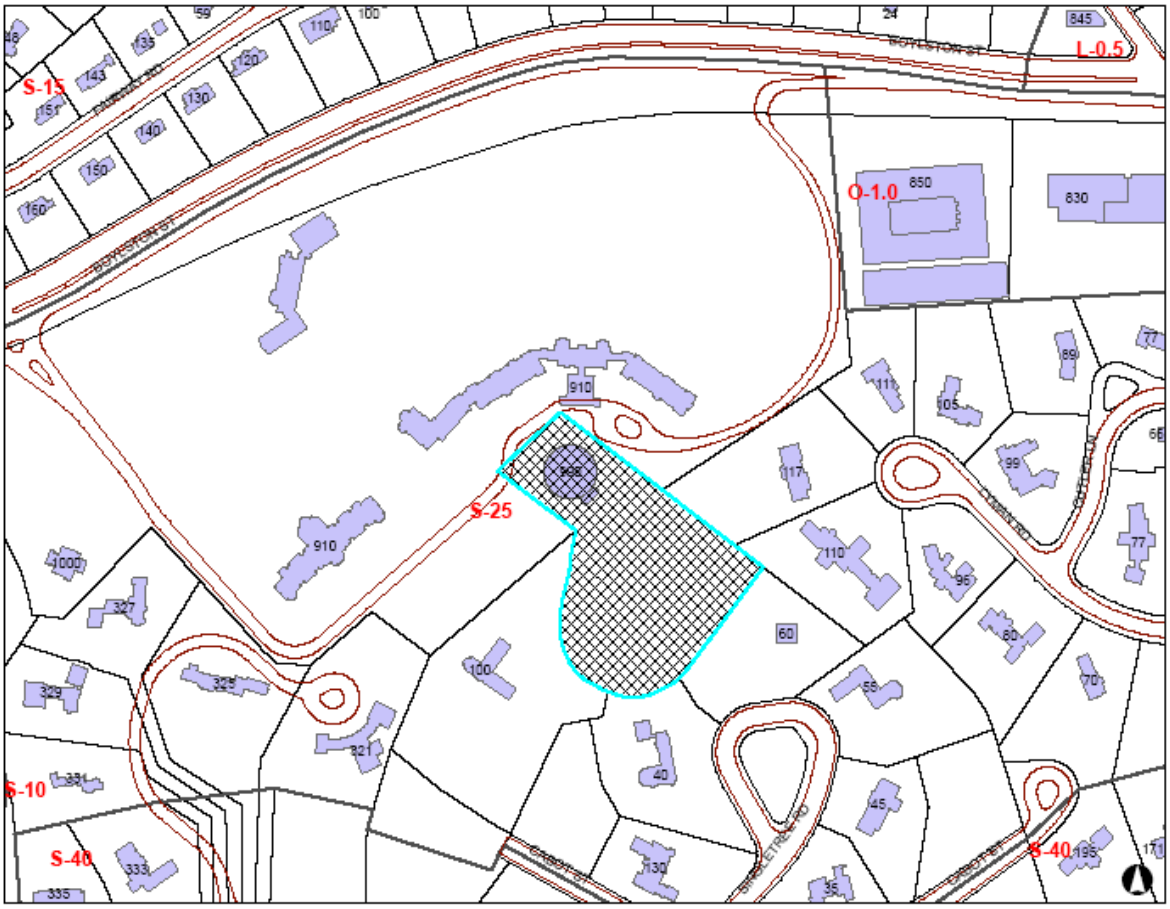
a. Removal Requirements: Any ground-mounted solar photovoltaic installation that has reached the end of its useful life or has been abandoned consistent with sub-paragraph 13.b of this section shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Building Commissioner by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning of the installation shall consist of:

   i. Physical removal of all large-scale ground-mounted solar photovoltaic installations, structures, equipment security barriers and transmission lines from the site.
   ii. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
   iii. Stabilization or re-vegetation of the site as necessary to minimize erosion. The Building Commissioner may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

b. Abandonment: Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar photovoltaic installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board. If the owner or operator of the ground-mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town may enter the property and physically remove the installation.

c. Financial Surety: Proponents of ground-mounted solar photovoltaic projects shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Building Commissioner, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. Such surety will not be required for municipally- or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation."

## Renewable Energy Overlay District (SOL)




SOL Zoning District

Atlas 127, Parcel 437-04-01

or act on anything relative thereto.

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PETITIONER'S ARTICLE DESCRIPTION

This article is being submitted by the Department of Planning & Community Development in order to meet one of the five criteria to qualify as a "Green Community" under the Green Communities Act (GCA) and qualify it for state grants under GCA programs. It would create a new Special District under Section 5.06 of the Zoning Bylaw that would allow ground-mounted solar panels to be located on the site of the Department of Public Works' Singletree Hill Reservoir site in Chestnut Hill.

In order to qualify as a Green Community, the Town needs to meet five criteria:

1. 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,
2. 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,
3. 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,
4. Purchase only fuel-efficient vehicles for municipal use whenever such vehicles are commercially available and practicable, and
5. 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.

The Town received a grant from the state last year to develop a strategy for meeting these criteria. It has made significant progress on criteria #2-5. This warrant article would allow the Town to meet criterion #1, which can be met by allowing a ground-mounted solar energy array facility of at least 250 MW, requiring at least one acre. This proposed overlay district is over 2 acres in size and should provide adequate space for a facility that is sited in a sensitive way and is feasible.

This site is an attractive one to explore for solar energy use. It is the highest point in the Town. Part of the site is located on the top of an old structure, where it is flat and receives significant sunlight. That location is far enough off the ground that it would not be visible from neighboring areas. Any utility connections for such a facility would be located either on the Route Nine side of the site or underground. If the Town were to construct a solar array on this site it would help offset Town reliance on oil and gas, potentially saving the Town money on energy, and also help reduce the Town's carbon footprint.

It is important to note that this zone change would not obligate the Town to actually locate a facility on the site. Since it is a Town-owned site, that decision would ultimately rest with the Town. There would be significant Town control over whether such a facility was ultimately constructed. For example, if a renewable energy facility required a capital outlay, it would have to be placed on the Capital Improvement Program (CIP) and require

a vote of Town Meeting. If a state or federal grant were received for such a facility, accepting the grant would be subject to a vote of the Board of Selectmen.

This site is currently designated as part of the Town's water supply system. This zoning change would not affect that designation.

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**PLANNING BOARD REPORT AND RECOMMENDATION**

This article is being submitted by the Planning and Community Development Department and will create a new overlay zoning district to allow large-scale ground-based solar panels on the town-owned Singletree Hill Reservoir, located off of Boylston Street behind the Chestnut Hill Benevolent Association.

The site is currently used for both an above-ground water tower and an underground water tank. Under this overlay, should the town wish to pursue establishing a solar facility on this site, plans and details for the facility would be submitted to the Planning Board for site plan review to ensure adequate information has been provided and that the facility will comply with safety and design standards.

This site is appropriate for solar panels due to its heightened elevation above other properties and open exposure. The elevation allows for excellent solar exposure while naturally screening any solar facilities from neighboring properties. In addition, the water storage facilities on site need to be routinely cleared of vegetation. The installation of solar panels would assist in keeping that area clear of obstructions. Finally, the proposed zoning also requires a buffer of 25 feet from all lot lines which will further alleviate any impacts on abutting properties.

The Planning Board is supportive of the town's effort to encourage the establishment of renewable energy generating facilities. This property is extremely appropriate for a solar facility because of its elevation and limited visibility, and the proposed zoning would allow for the town to consider establishing such a facility on the site. This zoning amendment may move the town closer towards establishing Green Community status under the state Green Communities Act, but more importantly, it supports the town's efforts to encourage energy alternatives.

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

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SELECTMEN'S RECOMMENDATION

Article 9, submitted by the Department of Planning and Community Development, would create a new zoning overlay district for solar energy generation at the Singletree Hill Reservoir behind the Chestnut Hill Benevolent Society off of Boylston Street (Rt. 9). This SOL overlay would allow the construction of a solar energy generation facility of up to 250 kW subject to design review by the Planning Board. The article would not require

the Town to move forward with an actual solar energy facility at that site, but it would allow one to be constructed if further analysis were to show that such a facility was in the best interest of the Town.

The Town has been actively seeking designation as a Green Community by the State. This SOL district should allow the Town to meet two of the five criteria for Green Community designation -- one that requires a location where a 250 kW solar facility could be constructed, and a second to create an expedited permitting process for this facility. The State has raised some questions about whether this site has enough usable space for a 250 kW facility, but the data collected to date by the Town and members of the Selectmen's Climate Action Committee suggest that it has more than enough space. It has two large cleared areas, totaling over an acre in size.

If this article is successful, the Town plans to move forward with designation as a Green Community, which would allow it to access state grant funds. A total of $8.1 million was given out in the past year, with a minimum grant award of $125,000, and the funding source for these grant funds (the Regional Greenhouse Gas Initiative) seems secure going forward. The next step on this site would be to hire a firm to conduct a thorough analysis of the site, both in terms of engineering and cost, to determine if a solar facility is feasible. If one is, the Town would then have to decide whether such a facility makes sense. In the likely event that creation of a facility involves leasing the land to a third party, such a lease would come back to Town Meeting for a vote.

Some members of the Board of Selectmen raised the question as to whether neighbors to the site were informed of the proposed zoning change. The Department of Planning and Community Development sent out notices to all neighbors about the Planning Board hearing, and also informed them that other hearings would be held. Since there would be a 25 foot buffer around the edges of the facility, it seems quite likely that such a facility would have little impact on abutters. In any case, no abutters have contacted the Department or the Board to date, and, if such a facility were to move forward, there would be additional opportunities for neighbors to weigh in on a proposal. Due to the site's high elevation and isolated location, it is quite screened from view.

The Board of Selectmen is quite pleased that the Town has been able to identify a site that appears to meet the requirements of the Green Communities Act and is also controlled by the Town. Therefore, the Board unanimously recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 12, 2010, on the following motion:

VOTED: That the Town amend the Zoning By-law and Map by incorporating the attached Map into the Zoning Map, and to amend the Zoning By-law as follows:

1. Add a new definition 2. under Section 2.07 – "G" DEFINITIONS:

   **"2. GROUND-MOUNTED SOLAR PHOTOVOLTAIC INSTALLATION, LARGE OR SMALL – A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted, unless it is located on the roof of a water reservoir or similar structure that is not designed for human occupancy. Such an installation is**

**considered large-scale if it has a minimum nameplate capacity of at least 250 kW DC; all installations with a minimum nameplate capacity less than 250 kW DC are considered small-scale."**

2. Add a new definition 2. under Section 2.15 – "0" DEFINITIONS, and renumber the section accordingly:
   "**2. ON-SITE SOLAR PHOTOVOLTAIC INSTALLATION – A solar photovoltaic installation that is constructed at a location where other uses of the underlying property occur."**

3. Add a new definition 1. Under Section 2.18 – "R" DEFINITIONS, and renumber the section accordingly:
   **"1. RATED NAMEPLATE CAPACITY – The maximum rated output of electric power production of the Photovoltaic system in Direct Current (DC)."**

4. Add a new overlay district under Section 3.01.4 – Overlay Districts:
   "**b. Solar Overlay District**."

5. Amend Table 4.07 to add a new "**Use #40D. Ground Solar Photovoltaic Installation**," as follows:

| Principal Uses | Residence | | | | | Business | | | Ind. |
|---|---|---|---|---|---|---|---|---|---|
| | S | SC | T | F | M | L | G | O | I |
| 40D. Ground Solar Photovoltaic Installation, Large or Small<br><br>*Permitted in the Renewable Energy Overlay District under site plan review. See **Section 5.06.4.g** for use regulations. | No | No | No | No | No | No | No | No | No |

6. Add a new Section 5.06.4.h under *Special District Regulations*:

   *"h. Renewable Energy Overlay District (SOL)*

   1) The Town is interested in being designated a Green Community by the Commonwealth of Massachusetts. The Town is also committed to decreasing its carbon footprint by encouraging the development of alternative energy supplies. For these reasons, the Town has surveyed potential sites for a renewable energy facility and created this overlay district.

   2) Notwithstanding any other portion of the Zoning Bylaw, including **Section 4.07 – Table of Uses**, the location of renewable energy generation facilities in the form of ground-mounted solar photovoltaic arrays shall be permitted by-right in this district. While both large- and small-scale solar photovoltaic facilities are allowed, large-scale solar photovoltaic facilities are encouraged.

3) **Compliance with Laws, By-laws and Regulations:** The construction and operation of all solar photovoltaic installations, large or small, shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the State Building Code.

4) No ground-based solar photovoltaic installation shall be constructed, installed or modified as provided in this section without first obtaining a building permit.

5) **Site Plan Review:** Such facilities shall be subject to site plan review by the Planning Board to ensure that the facility is adequately set back from neighboring properties, reasonably shielded from view, and that utility connections are adequately screened. Such site plan review shall be conducted in accordance with the design review process outlined in **Section 7.03, paragraph 2,** of the Zoning Bylaw with the exception that such site plan review is not discretionary and any conditions attached cannot render a Large Scale Solar Facility (of at least 250 kW DC) infeasible. All plans and maps submitted for site plan review shall be prepared, stamped, and signed by a Professional Engineer licensed to practice in Massachusetts. Pursuant to the site plan review process, the project proponent shall provide to the Planning Board the following documents:

a. A site plan showing:
   i. Property lines and physical features, including roads, for the project site;
   ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
   iii. Blueprints or drawings of the solar photovoltaic installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;
   iv. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
   v. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;
   vi. Name, address, and contact information for proposed system installer;
   vii. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
   viii. The name, contact information and signature of any agents representing the project proponent; and

b. Documentation of actual or prospective access and control of the project site;

c. An operation and maintenance plan;

d. Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose);

e. Proof of liability insurance; and

f. Description of financial surety that satisfies subparagraph **13.c** of this section.

6) **Site Control:** The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation.

7) **Operation & Maintenance Plan:** The project proponent shall submit a plan for the operation and maintenance of the ground-mounted solar photovoltaic installation, which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation.

8) **Utility Notification:** No ground-mounted solar photovoltaic installation shall be constructed until evidence has been given to the Planning Board that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar photovoltaic installation owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

9) **Dimension and Density Requirements**

a. Setbacks: For ground-mounted solar photovoltaic installations, all setbacks from lots lines shall be at least 25 feet. As part of Site Plan Review, the Planning Board may require larger setbacks if appropriate for screening, provided, however, that such larger setbacks shall not have the effect of rendering a Large Scale Solar Facility (of at least 250 kW DC) infeasible.

b. Appurtenant Structures: All appurtenant structures to ground-mounted solar photovoltaic installations shall be subject to reasonable regulations concerning the bulk and height of structures, lot area, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

10) **Design Standards**

a. Lighting: Lighting of ground-mounted solar photovoltaic installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar photovoltaic installation shall be directed downward and away from residential structures and shall incorporate full cut-off fixtures to reduce light pollution.

b. Signage: Signs on ground-mounted solar photovoltaic installations shall comply with the regulations of Article 7. A sign consistent with these regulations shall be required to identify the owner and provide a 24-hour emergency contact phone number. Solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic installation.

c. Utility Connections: Reasonable efforts, as determined by the Building Commissioner, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider, however, they shall be screened from view.

11) **Safety and Environmental Standards**

a. Emergency Services: The large scale solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

b. Land Clearing, Soil Erosion and Habitat Impacts: Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the ground-mounted solar photovoltaic installation, or otherwise prescribed by applicable laws, regulations, and bylaws.

12) **Monitoring and Maintenance**

a. Solar Photovoltaic Installation Conditions: The ground-mounted solar photovoltaic installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level applicable to the local Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), unless accepted as a public way.

b. Modifications: All material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require approval by the Planning Board.

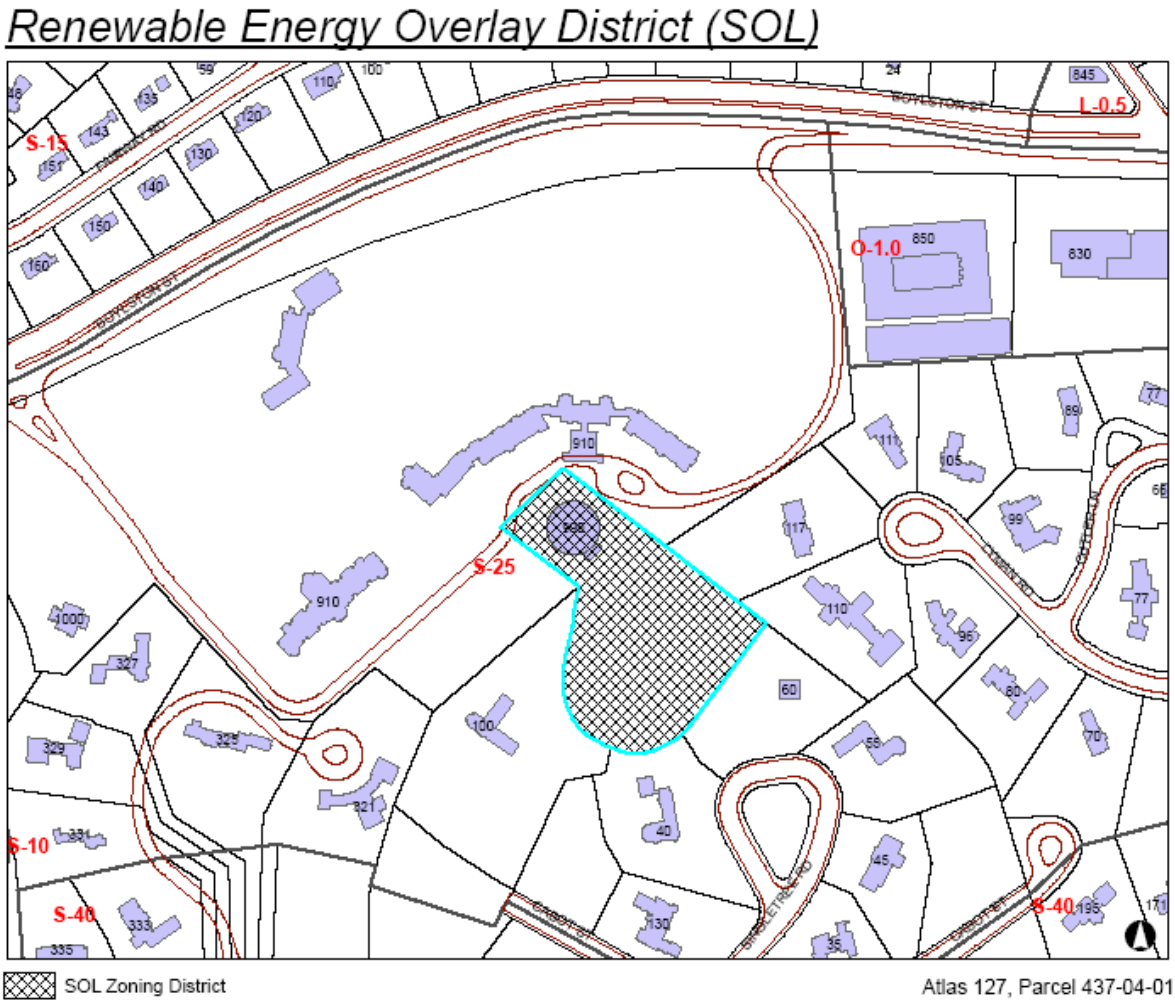
13) **Abandonment or Decommissioning**

a. Removal Requirements: Any ground-mounted solar photovoltaic installation that has reached the end of its useful life or has been abandoned consistent with sub-paragraph 13.b of this section shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Building Commissioner by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning of the installation shall consist of:

   i. Physical removal of all large-scale ground-mounted solar photovoltaic installations, structures, equipment security barriers and transmission lines from the site.
   ii. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
   iii. Stabilization or re-vegetation of the site as necessary to minimize erosion. The Building Commissioner may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

b. Abandonment: Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar photovoltaic installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board. If the owner or operator of the ground-mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town may enter the property and physically remove the installation.

c. Financial Surety: Proponents of ground-mounted solar photovoltaic projects shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Building Commissioner, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. Such surety will not be required for municipally- or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation."

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## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

This article is being submitted by the Planning and Community Development Department and will create a new overlay zoning district to allow large-scale ground-based solar panels on the town-owned Singletree Hill Reservoir, located off of Boylston Street behind the Chestnut Hill Benevolent Association. The site is off Route 9 under the Chestnut Hill Benevolent Association. It is currently used for both an above-ground water tower and an underground water tank. It is shielded from abutters and mostly not visible.

Under this overlay, should the town wish to pursue establishing a solar facility on this site, plans and details for the facility would be submitted to the Planning Board for site

plan review to ensure adequate information has been provided and that the facility will comply with safety and design standards. The proposed zoning also requires a buffer of 25 feet from all lot lines which will further alleviate any impacts on abutting properties. The part of the site which could be used for solar panels would be approximately an acre which, using panels currently available, could general enough electricity to power 10-15 homes.

Note that this article does not commit the Town to undertake a solar panel project. If any town funds are to be used for this purpose, those funds would need to be appropriated by Town Meeting

Discussion

This article is part of the effort to have Brookline designated a Massachusetts Green Community and satisfies 2 of the 5 standards needed to obtain the designation. Town Meeting's recent adoption of the Stretch Building Code was part of the same effort.

With the Green Community designation comes eligibility for certain state funds and grants funded by Regional Greenhouse Gas Initiative auction funds. In July, 2010, the Mass. Department of Energy Resources Green Communities Division awarded grants totaling $8.1 million to 35 cities and towns for municipal renewable energy and energy efficiency projects. The Green Community designation would allow Brookline to compete for this money.

The Green Community components that this article addresses are (1) the community needs to allow a renewable energy development by right in its zoning and (2) there needs to be an expedited review process for such a project. Given the nature of Brookline's location and that Brookline is almost fully developed, the options are limited. Solar seemed to be the only feasible option. A number of sites were considered including Allandale Farm but after study, the Singletree Reservoir seemed to be the most feasible site. The site is remote which will minimize impact on abutters and on a hilltop to maximize exposure to the sun. This site has the added advantage in that it is town owned and thus even if a solar installation is allowed by right, the town is in complete control over the development.

The Department of Public Works is also supportive of this proposal and if developed, will help DPW maintain the site which needs to be occasionally cleared of vegetation anyway. The installation of solar panels would assist in keeping that area clear of obstructions.

Jeff Levine, Director of Planning and Community Development Department stated that the Department notified all abutters and abutters of abutters of this zoning change and the Planning Board hearing.

Mr. Levine stated that the town would only proceed if the economics make sense. He indicated that based on current technology, the cost of deploying the large-scale ground-based solar panels on the Singletree Hill Reservoir is estimated at approximately $2-million. With today's technology, construction of the solar panels would only be possible through grants, rebates or other kinds of incentives.

Climate Change Action Brookline has been a strong advocate for this article.

A sizable minority of the Advisory Committee voted to recommend No Action. Among the reasons stated were:

(1) There is no evidence that the use of this parcel for placement of large-scale ground-based solar panels is economically feasible, and no such evidence was offered by the Petitioner or by other supporters of the Article.

(2) The panels would produce 250 KW (kilowatts) of electricity at maximum – i.e., at midday on a bright sunny day around the summer solstice. The average production, taken over the entire year and 24-hour day, would be considerably less. Output sufficient to power 10-15 homes would represent, at current electricity rates, somewhere around $20,000-$25,000 worth of electricity annually. At a capital investment cost in the range of $2-million, even using the unrealistic assumptions of zero operating costs and zero interest rates, that would suggest a 100-year payback – and even that would require a 100-year life for the solar panels, which is similarly unrealistic. In view of these financial realities, it seems highly likely that a more valuable use of the parcel could be identified, yet no proposals for any alternate use of the parcel were presented, and there is no indication that any have been explored. Before re-zoning for this specific purpose, alternate uses should be explored and evaluated.

(3) While it is suggested that the proposed siting of the solar panels would not be visible to the abutters, potential deforestation of those portions of the parcel necessary to accommodate the solar panels could certainly affect the abutters. Without a specific proposal, however, there is no way that this can be considered or evaluated.

(4) There are other potential alternative sites for this quantity of solar panels. For example, the roofs of Town buildings might collectively provide as much or more area with minimal impacts on abutters or on anything else. The panels could be used to provide electricity to those buildings, eliminating any need for transmission lines. Moreover, unlike the use for residential purposes where the peak demand occurs during periods when the sun is not out and no solar output is being generated, the use of solar on public buildings, where the demand for electricity arises during the daylight hours, is a far more compatible arrangement. Proponents countered that the placement of solar panels on town-owned buildings has been examined, but that this approach did not make economic sense. The Singletree Hill Reservoir project similarly makes no economic sense, but is still being pursued via the proposed overlay zoning district. The minority believes that any re-zoning of this parcel should be considered only after a specific and economically feasible proposal for its use for solar panels is forthcoming.

(5) The minority also questioned the other components of the Green Community designation most particularly the requirement for the town to decrease its energy usage by 20%. The problem here is that the town has been aggressively installing energy conservation measures for a number of years and those prior efforts do not count in determining the designation.

Proponents countered the minority arguments:

(1) A large scale solar panel installation will only proceed if it is economically feasible. If the economics of an installation do not work, it will not happen
(2) Placing solar panels on the top of town owned buildings has been looked at. It did not make economic sense for the Town Hall project. Solar panels were installed at the Health Department and only made sense after rebates, grants and private fund raising.
(3) The portion of the site that would be used for solar panels already needs to be periodically cleared of vegetation given that it sits on top of the underground water tank. There would be little or no additional deforestation should a such a development occur.
(4) Zoning represents the hopes and vision of a community. Zoning is written to express the kinds of development (or lack thereof) the community wants to encourage and is not usually done with specific projects in mind. While there certainly is precedent for project based zoning in Brookline, that is not the norm.
(5) Zoning this site for solar panels does not prevent its use for other purposes should a more desirable use be found. However, given the presence of the above and below ground water uses, alternative uses of the site are severely limited.
(6) The Town needs to set forth a credible plan to reduce energy usage by 20% which town officials stated that they believe they can do. The Town then has 5 years to actually realize the energy savings. During the 5 year realization period, the town will retain the Green Community designation (and eligibility for the grants) even if the savings do not ultimately reach the 20% goal.

RECOMMENDATION

A large majority of the Advisory Committee believes the positives of this article outweigh the negatives. The Green Community designation brings with it eligibility for state funded grants from a designated source (regional carbon emissions auctions) which could be used for projects which will not only decrease our energy usage and carbon emissions but also save operating costs in the future.

The Advisory Committee by a 15-7-1 vote recommends FAVORABLE ACTION on the vote offered by the Board of Selectmen.

***XXX***

ARTICLE 10

TENTH ARTICLE

To see if the Town will amend the Zoning By-Law establishing new residential parking requirements by:

1). Replacing the "residential" column of the TABLE OF OFF-STREET PARKING SPACE REQUIREMENTS, Section 6.02, and reformatting the table, into two tables as follows:

| RESIDENTIAL | | | | | |
|---|---|---|---|---|---|
| Single-Family Detached | Single-Family Attached (Townhomes) and Two/Three-Family | Multi-Family Studio/1 bdrm | Multi-Family 2 bdrms | Multi-Family 3 bdrms | Hotel** |
| Parking Spaces Per Dwelling Unit | | | | | |
| ~~2/2.3~~ **2** | ~~2/2.3~~ **1.3** | ~~2~~ **.8** | ~~2~~ **1.2** | ~~2.3~~ **1.4** | ~~1~~ **.5** |

**For use 8A. Limited Service Hotel in the G-1.75 (LSH) Limited Service Hotel District, the minimum number of spaces for each dwelling unit shall be 0.5 and no additional spaces shall be required for floor areas used for eating, drinking, dancing, meeting halls or similar purposes.

| | | PUBLIC ASSEMBLY** | INSTITUTION | RETAIL & OFFICE | | | INDUSTRIAL | WAREHOUSE & OTHER |
|---|---|---|---|---|---|---|---|---|
| | | (Number of seats requiring one space) | | General | | Medical & Dental | | |
| | | | | Ground Floor | Other | | | |
| | | | (Number of square feet of gross floor area requiring one space) | | | | | |
| ZONING DISTRICT DEFINED BY MAXIMUM FLOOR AREA RATIO | 0.15<br>0.20<br>0.25<br>0.30<br>0.35<br>0.40 | 3 | 350 | 200* | 400* | 200* | 800* | 1200* |
| | 0.50 | 4 | 450 | 200 | 400 | 200 | 800 | 1200 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | 0.75<br>1.00 | | | | | | | |
| | 1.50<br>1.75<br>2.00<br>2.50 | 5 | 550 | 350 | 600 | 250 | 800* | 1200 |

*Applicable to nonconforming uses.

**For use 8A. Limited Service Hotel in the G-1.75 (LSH) Limited Service Hotel District, the minimum number of spaces for each dwelling unit shall be 0.5 and no additional spaces shall be required for floor areas used for eating, drinking, dancing, meeting halls or similar purposes.

~~**The greater requirement shall be provided for each dwelling unit containing more than two bedrooms and for each attached single-family dwelling containing two or more bedrooms. Bedrooms shall include any habitable room containing at least 100 square feet of area which could be converted to a bedroom other than a bathroom, kitchen, or living room.~~

**§6.02, paragraphs 2.** through **7.** contain additional requirements by type of use.

2) Amend 6.01 2.a. As follows:

> 2.a. In SC, T, F, M, L, or G Districts, when a structure is converted for one or more additional dwelling units and the conversion results in an increased parking requirement, parking requirements for the entire structure shall be provided in accordance with the requirements in 6.02 and 6.05. However, the Board of Appeals by special permit under Article IX may waive not more than one-half the minimum number of parking spaces required under 6.02 and 6.05.

3) Removing 6.02 2.e. as follows and re-lettering all the remaining subparagraphs:

> ~~2.e. For a dwelling unit which is occupied by three or more unrelated persons (including lodgers), the parking requirement for the dwelling unit shall be twice that indicated in the Table of Off-Street Parking Space Requirements in 6.02.~~

4) Amend 6.02 2.f. As follows:

> 2.~~e~~f. For residential uses in M, L, and G districts, where the number of required parking spaces exceeds 20 spaces, ~~ten percent~~ 5 percent of all required parking spaces shall be designated and marked for use by visitors ~~and trades people~~. For mixed-use properties ~~the number of visitor spaces shall be based on the parking requirement for the residential use only~~ with at least 10% of the total gross floor area used for commercial purposes, this requirement shall be waived.

5) Amending Use number 22 in the TABLE OF USE REGULATIONS, Section 4.07, As follows:

| Principal Uses | Residence | | | | | Business | | | Ind. |
|---|---|---|---|---|---|---|---|---|---|
| | S | SC | T | F | M | L | G | O | I |
| 22. Residential parking garage or parking area, whether as the sole use of a lot or as a secondary use, solely for the storage of cars of residents of other lots located within 1,400 feet.<br>*By right for five or fewer spaces **as a secondary use on pre-existing parking areas. When a new secondary use parking area is created on a lot with residential structures, up to 2 spaces per dwelling unit on residential lots <10,000 sq. ft., and up to 3 spaces per dwelling unit on residential lots >10,000 sq. ft. are permitted by right, as long as the total number of parking spaces on the lot does not exceed these limits. When a new parking area is created as a sole use or secondary use to a non-residential structure, up to five spaces shall be permitted by special permit.**<br>** **For existing paved areas, by right for five or fewer spaces, or 20% of the total number of on-site parking spaces, whichever is greater.** | No* | No* | SP* | SP* | SP** | Yes | Yes | Yes | Yes |

6) Amending Use number 54, and Use number 55, in the TABLE OF USE REGULATIONS, Section 4.07, as follows:

| Accessory Uses | Residence | | | | | Business | | | Ind. |
|---|---|---|---|---|---|---|---|---|---|
| | S | SC | T | F | M | L | G | O | I |
| 54. An accessory private garage or parking area for noncommercial motor vehicles **belonging to occupants or users of the lot,** with **no**~~t~~ more than: two spaces per dwelling unit on that lot, except that there may be three spaces for a single-family dwelling on a 10,000 sq. ft. or larger lot; four spaces for a permitted nonresidential use. | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| 55. Other private garage* or parking for more non-commercial motor vehicles belonging to occupants or users of the lot than permitted in Use 54. | SP | SP | ~~SP~~ **No** | ~~SP~~ **No** | ~~SP~~ **No** | Yes | Yes | Yes | Yes |

or act on anything relative thereto.

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PETITIONER'S ARTICLE DESCRIPTION

This article seeks to lower the minimum number of off-street parking spaces required for new residential development. Residential parking requirements are applied whenever new dwelling units are created, including new construction or conversions of an existing building.

It is the ultimate goal of this article to set residential parking requirements that reflect, support and protect Brookline's patterns of land use, travel behavior and vehicle ownership. The need to correct our current residential parking requirements became

apparent after detailed analysis revealed that 1) our current multi-family residential parking requirements are too high, requiring more parking than residents need; and 2) requiring too much parking brings with it serious negative consequences.

This article also includes proposed amendments for: Use #22, which governs the by-right amount of parking a property owner can provide for off-site residents, and Uses #54 and 55 which govern accessory parking. These proposed changes are necessary to make all components of our Zoning By-law related to residential parking consistent with the new proposed parking requirements, and to allow for easier shared parking arrangements where large parking lots exist.

**Selectmen's Parking Committee:**

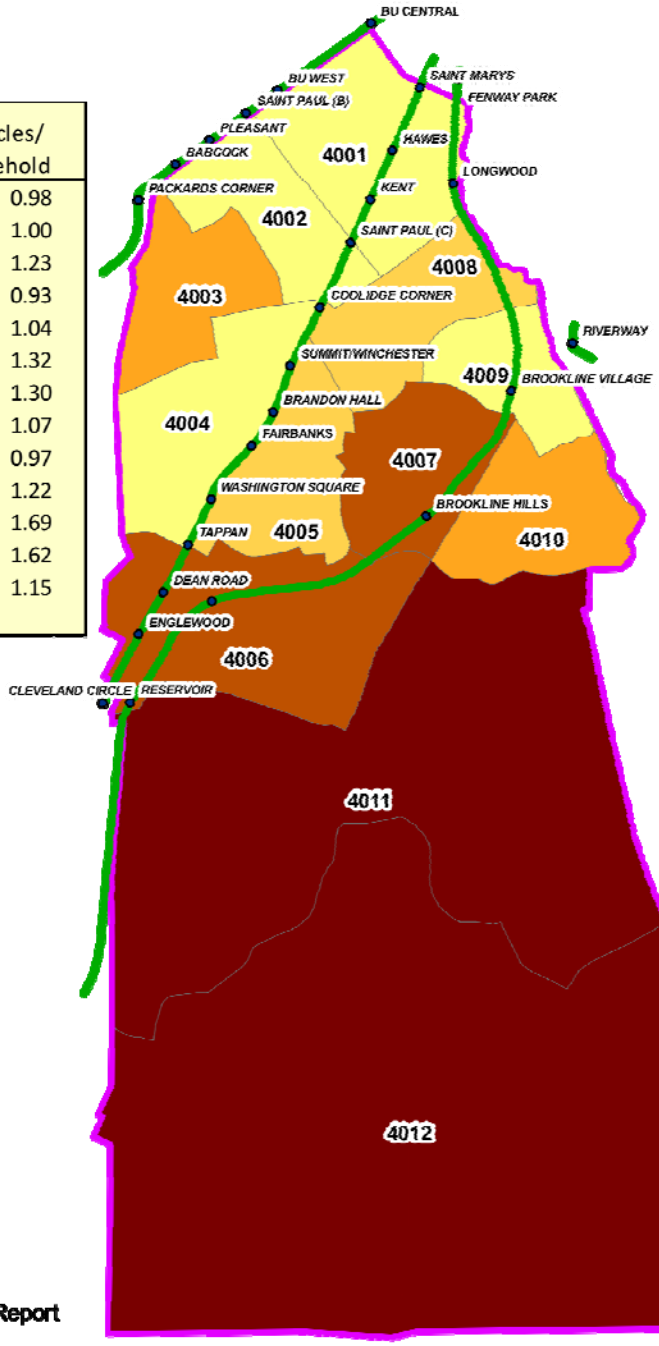
The Selectmen's Parking Committee was convened in August, 2008 and charged with conducting a comprehensive review of policies and regulations related to parking in Brookline. The Regulatory Sub-Committee, of which the petitioner was a member, sought to investigate whether or not the off-street parking requirements in Brookline's Zoning By-law where appropriately matched to existing conditions and whether or not they supported or harmed our ability to achieve other Town-wide policy goals.

The Selectmen's Parking Committee met over a period of 18 months publishing their Final Report in August 2010. The report includes a recommendation to lower multi-family residential parking requirements (pg. 26), based on extensive research done by Committee members and Planning staff. The Committee's report and presentation of all of the research findings are available at the Planning Department's Parking Committee downloads page. A few key findings are:

- Average town wide vehicle ownership is 1.15 per household.
- Excluding Chestnut Hill and South Brookline, the average vehicle ownership is 1.08 per household.
- Multi-Family areas (including 2 and 3 family homes) have vehicle ownership values ranging from .56 to 1.41 per household.
- Only 4-person+ households living in census tract 4011 (Chestnut Hill) average 2 or more vehicles per household.
- 20% of Brookline households own no car. Values range from 3% in South Brookline to 34% in census tract 4004 (Driscoll School).
- Field surveys reveal an average 25% vacancy in multi-family parking lots.
- These same counts correspond to an average of .98 vehicles per dwelling unit.
- 45% of Brookline's working population who commute does so without a car.
- A significant proportion (in many cases greater than 50%) of an average household's other (non-commute) daily travel is achieved without a car.

# Vehicles Owned per Household Analysis

| Census Tract | Area | Vehicles/ Household |
|---|---|---|
| 4001 | St. Mary's | 0.98 |
| 4002 | Coolidge Corner | 1.00 |
| 4003 | Devotion (CC/JFK) | 1.23 |
| 4004 | Corey Hill | 0.93 |
| 4005 | Washington Square | 1.04 |
| 4006 | Fisher Hill | 1.32 |
| 4007 | Cypress/Washington | 1.30 |
| 4008 | Brookline Village (North) | 1.07 |
| 4009 | Brookline Village (South) | 0.97 |
| 4010 | High Street Hill/The Point | 1.22 |
| 4011 | Chestnut Hill | 1.69 |
| 4012 | South Brookline | 1.62 |
| | Town Average | 1.15 |




MBTA Green Line

Town Boundary

**Vehicles Per Household**

- Under 1
- 1. - 1.1
- 1.1 - 1.25
- 1.25 - 1.4
- Over 1.4

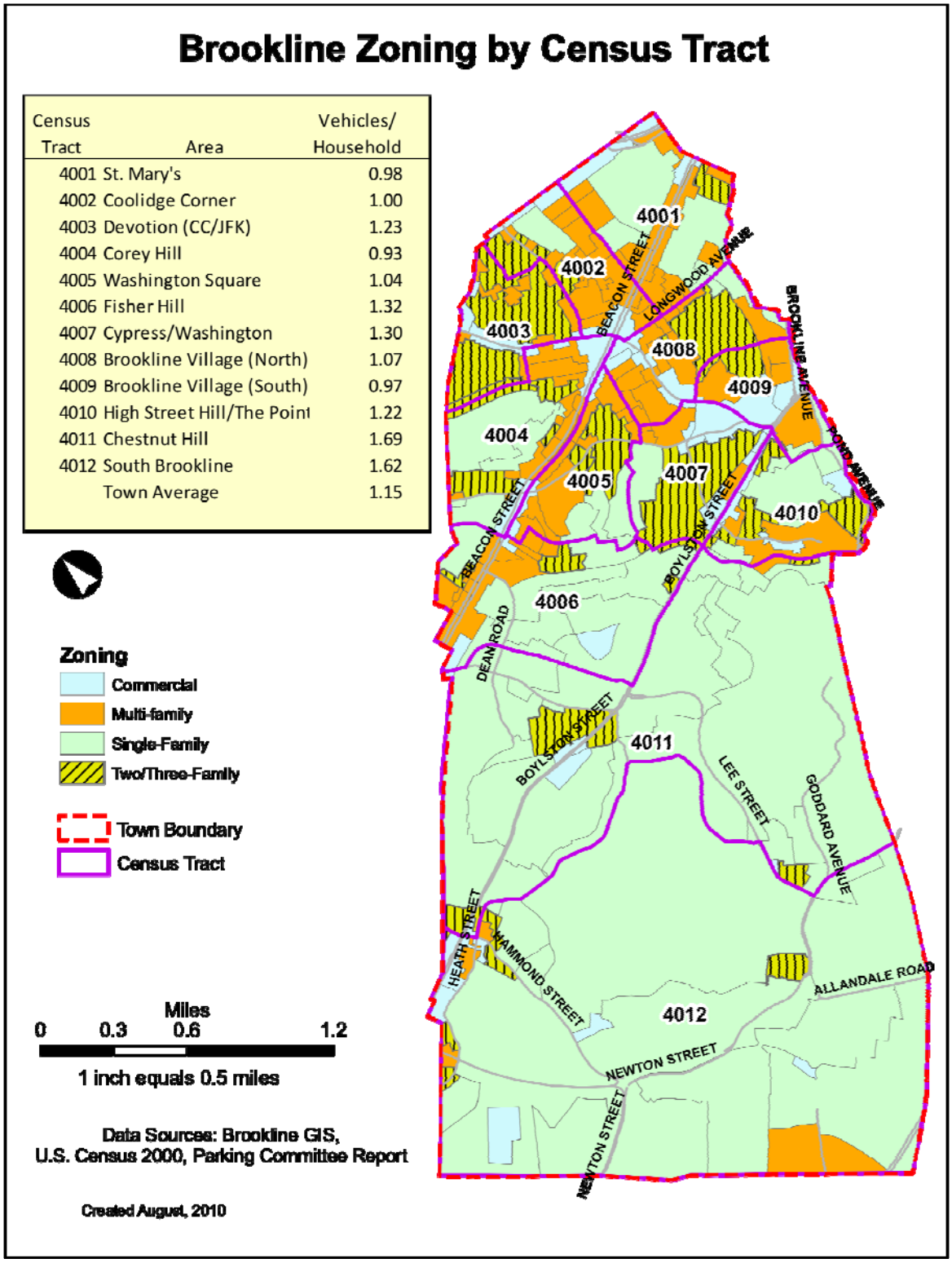
Miles

0 0.3 0.6 1.2

1 inch equals 0.5 miles

Data Sources: Brookline GIS, U.S. Census 2000, Parking Committee Report

Created August, 2010




| Census Tract | Area | Vehicles/ Household |
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| 4010 | High Street Hill/The Point | 1.22 |
| 4011 | Chestnut Hill | 1.69 |
| 4012 | South Brookline | 1.62 |
| | Town Average | 1.15 |

As the above statistics and maps illustrate, Brookline's multi-family residential population, living primarily in North Brookline near transit, are enjoying the benefits of living close to desirable destinations and take advantage of having access to a variety of possible travel modes. The ability to live comfortably with fewer private automobiles provides significant savings, helping to offset the high cost of housing in Brookline. The

average cost of owning and operating a vehicle is approximately $7,000 - $8,000 which can translate into an additional $100,000 + in mortgage purchase price. 3,000 Brookline residents are members of Zipcar, reflecting their desire to reduce the burden of car ownership.

**Where Did the Proposed Rates Come From?**

The proposed rates derive principally from Brookline-specific vehicle ownership data. The 2000 Census was the primary source, with additional reasonableness checks in the form of field survey data, MassGIS Registry of Motor Vehicle geocoded data, examples of parking utilization at existing Brookline buildings, Institute of Transportation Engineers data and data on recently built housing projects in the Boston region. When considering the application of a fractional parking requirement, like 1.3 spaces per unit, it helps to remember that we are working with averages and to visualize a group of households, with every third one owning two vehicles and the other two owning one each. When calculating the required parking for a number of units, a remaining value of .5 or more would be rounded up to 1.

**2 parking spaces** per dwelling unit for **single-family** dwellings exceeds the average vehicle per household values of 1.87, 1.89 and 1.97 for Census Block groups encompassing areas which are exclusively single-family homes. (4011-1 and 4011-2 in South Brookline and 4006-3 on Fisher Hill.)

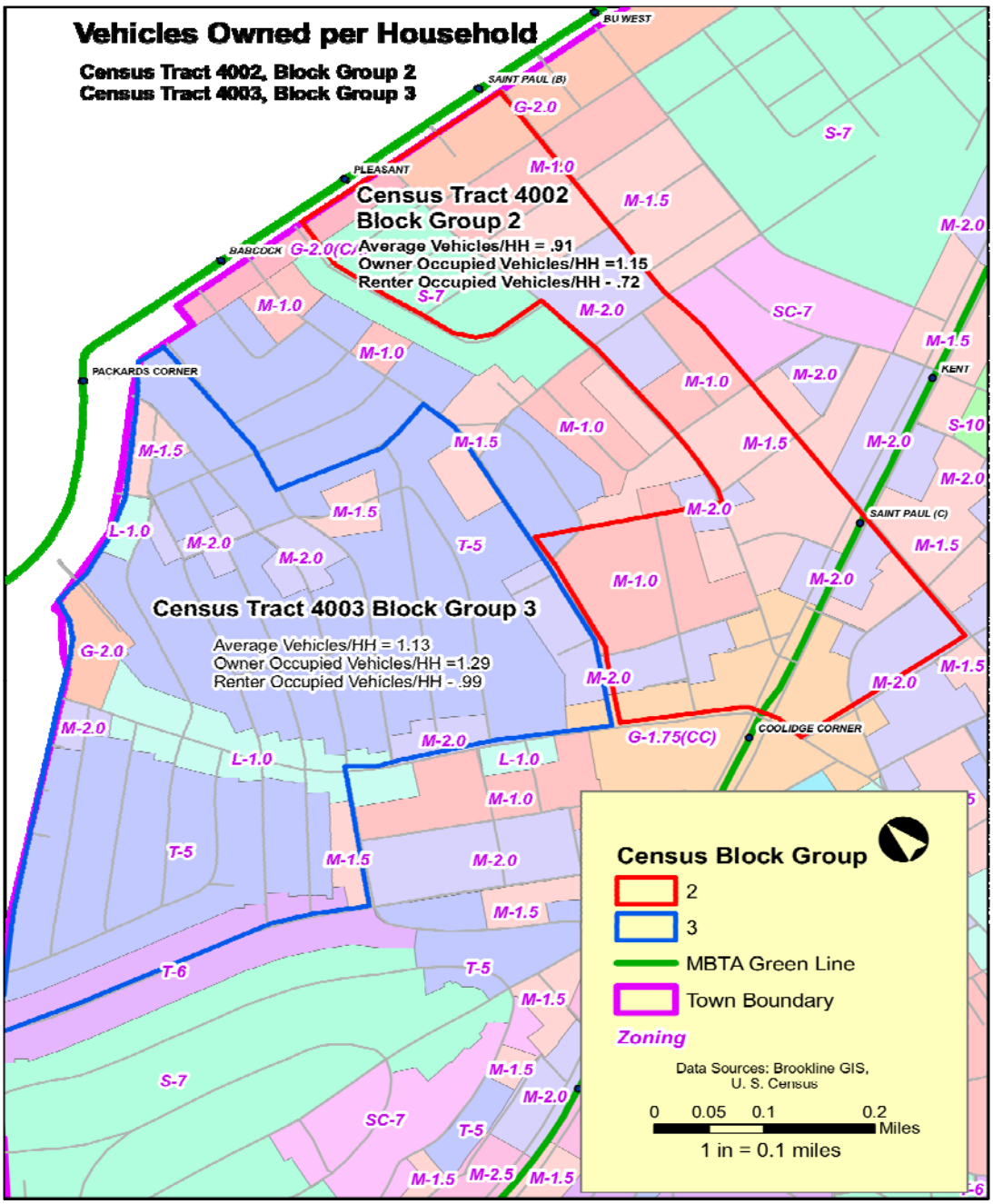
**0.8 parking spaces** per **multi-family studio and one bedroom** dwelling units exceeds the average vehicle ownership value of 0.73 per household in Census Tract 4004 Block Group 1 and 0.79 in Census Tract 4001 Block Group 2. These Block Groups are useful examples because they contain a significant % of studio and 1-bedroom units (48% and 51% respectively). It's important to note that the remaining 50% or so of the units in these Block Groups have 2 or more bedrooms and are contributing to the average. Therefore, the 0.8 rate contains a significant cushion.

**1.2 parking spaces** per **multi-family two bedroom** dwelling units is higher than known multi-family parking utilization data from existing buildings throughout Brookline. As can be seen on the Census Block Group map below, Census Tract 4002, Block Group 2 which is almost entirely multi-family housing, the average owner- occupied household vehicle ownership value is 1.15. By referencing the owner-occupied average, (which is on average 56% higher than the renter vehicle ownership per household value), we are setting the requirement rate to exceed existing conditions.

**1.4 parking spaces** per **multi-family three bedroom** dwelling units exceeds known vehicle ownership per household values of 1.31 and 1.39 in Census Block groups that have both an average unit size close to 3 and a high % of multi-family housing units. Census Tract 4007 Block Group 3's average dwelling unit size is 2.85 bedrooms and 39% of the dwellings are 3 bedroom units. It's important to note that 26% of the units in this Block Group have 4 or more bedrooms, and only 60% of the dwellings in the Census Tract as a whole are multi-family. Therefore the average number of vehicles per household value of 1.39 as applied to multi-family units represents a significant over estimate. Similarly, Census Tract 4010, Block Group 1, with a vehicle ownership per household of 1.31 has an average unit size of 2.85 bedrooms with 38% of the units being

3-bedroom units. 23% of the dwellings in this Block Group are 4+ bedrooms in size and multi-family dwellings comprise 62% of the households in this tract as a whole.

**1.3 parking spaces** per unit for **two and three family** dwellings realizes the goal of *requiring* just one space for each individual unit, and yet, when combined a two family building will be required to provide 3 spaces, a three family 4 spaces. By overlaying Census Block Group geography (the smallest gradation possible) over our current zoning and land use data, it was possible for some areas to isolate vehicle ownership statistics for a particular housing type (such as two-family T-5 or multi-family M zones). This allowed verification of a direct correlation between the proposed requirements and known vehicle ownership values, as in the case of Census Tract 4003 block group 3 illustrated below, which is primarily an area zoned for two-family residential. The average auto ownership in this Block Group is 1.29 vehicles per household for owner-occupied homes.



**Resetting the Parking Footprint with Lower Minimums, An Example: 70 Sewall:**
Even though parking represents a significant expense, standard municipal planning codes and developer's pro forma rarely question parking rules of thumb that are often applied uniformly to suburban and transit rich urban settings alike. It is our responsibility to define parking expectations as "lower than suburban parking requirements". This makes our need and desire for context-sensitive parking clear to developers.

Parking is often a major point of contention as new development projects are reviewed. A recently approved multi-family housing project, 70 Sewall, perfectly illustrates the need to lower our multi-family parking requirements. Had they been lower, the starting point at which the parking debate began on this project would have been lower.

70 Sewall is a historically significant Queen Anne Victorian house, designed by a famous architect, Julius Schweinfurth. The Town's Planning staff encouraged the developer to seek a development solution that would retain the existing historically significant structure. The resulting 7-unit proposal called for moving the house forward on the lot and building a very large addition on the rear, the footprint of which (approx. 3,500 sq. ft.) was determined by the amount of space required for 13 marginally adequate parking spaces (already a slight decrease from current parking requirements, achieving a 1.9 space per unit ratio). The project proponent stated that he wanted to stay as close to the parking requirements as possible.

As a result, the addition was so large that there was at one pinch point, only 36" of setback in the rear, with many close abutters. There were literally only 3' to 5' of side yard setback and most of the larger trees on the site would be lost. From the beginning of design review, it was noted by the Design Advisory Team that with less parking the units could still be generously sized and more reasonable set backs achieved. The Planning Board stated clearly that they would support a special permit for less parking. Statistics were cited supporting the workability of less parking, and yet the developer was reluctant to seek a change. It was not until the Planning Board was on the verge of denying the application, (which would have resulted in the demolition of the historic house, replacing it with a much less interesting "box") that the project proponents agreed to less parking and therefore a smaller building footprint. The resulting parking ratio is 1.43 parking spaces per unit, and many feel the project could still have been greatly improved through additional reduction. The building has 5 3-bedroom units and 2 2-bedroom units.

**History of Parking Requirements in Brookline**
Brookline must have been one of the first communities in the country to adopt an off-street parking requirement. Our 1922 Zoning By-Law required multi-family residential properties to provide 1 off-street parking space for every unit, "In order to lessen congestion in the streets". In 1962 a parking requirement of 1 for single-family districts and 0.8 to 1.2 for multi-family areas was adopted. A 1977 change raised the rates to 2 for single-family and 1.0 to 1.3 (the higher rate applying to areas with 0.5 – 1.0 FAR) spaces per dwelling for multi-family.

A big change was made in 1987 when the parking requirements were raised to 1.6/1.8 per dwelling unit in 0.5 – 1.0 FAR areas, and 1.5/1.7 in 1.5 – 2.5 FAR areas. The higher

value applies when the unit has more than 2 bedrooms. Separate provision of visitor spaces (10%) was also added at this time. A residential mail-back parking survey was performed by the Planning Department prior to the proposed change. The survey results reported that the overall mean vehicle to household ratio was 1.1. Studio and 1-bedroom households reported a value of 0.9 vehicles per household, two bedroom units, 1.3 vehicles per household and three bedroom units, 1.6. The total respondent sample size was 731, (only 83 of those being 3 bedroom units). Despite these findings the Planning Department recommended higher rates to "account for future growth, the need for visitor parking and the increased parking demand generated by larger units".

**2000 Parking Requirement Increase:**

Fall 2000 Town Meeting voted to raise residential parking requirements again. All dwelling units are now required to have a minimum of 2, and sometimes 2.3 off-street parking spaces. Having ten years worth of experience enforcing the new higher requirements has given staff, volunteer boards, citizens and Town Meeting Members a significant record of experience with in which to assess the impacts of this change.

Brookline Parking Requirements: Past, Present and Proposed

| Land Use | 1922 | 1962 | 1977 | 1987 | 2000 | Proposed |
|---|---|---|---|---|---|---|
| Single-Family Residential (S) | N/A | 1 | 2 | 2 | 2 | 2 |
| Two & Three Family (T) (F) | 1 | 1.0 - 1.2 | 1.3 | 1.6/1.8* | 2/2.3* | 1.3 |
| Multi-Family Studio & 1 brm | 1 | 0.8 - 1.0 | 1.0 - 1.2 | 1.5/1.7* | 2 | 0.8 |
| Multi-Family Two Bedroom + | 1 | 0.8 - 1.0 | 1.0 - 1.2 | 1.5/1.7* | 2/2.3* | 1.2/1.4* |

*The higher rate applies to

d.u. with more than 2 bedrms

Despite opposition from the Selectmen, Advisory Committee and Planning Board, Town Meeting passed the warrant article. The rationale for this change was based on several fundamental assumptions, which were: 1) That there was a shortage of overnight residential parking especially in the denser, multi-family housing areas of Brookline, 2) That new housing developments were being built with an insufficient amount of parking (current parking rates were therefore too low) and that occupants of those buildings were arriving with additional vehicles that needed to be parked off-site, thereby competing with current residents in a tight rental parking market and driving up price and reducing availability. And 3) That by increasing the parking requirement for new buildings adequate on-site parking would be provided and any additional excess parking would be added to the rental parking market, thus easing the shortage and relieving the upward pressure on prices.

Secondarily to these primary arguments, proponents cited 1) increasing auto ownership statistics, and 2) a loss of overnight parking spaces due to new development replacing existing surface parking lots.

Research done by the Parking Committee did not confirm the assumptions cited by the proponents of the 2000 rate increase. Instead, we found that:

1) Field surveys of multi-family parking lots revealed an average 25% vacancy. Significant vacancies exist for town owned overnight rental parking. (No shortage of parking).

2) The increase in rental parking rates is consistent with cost of living increases over time. (Increased demand from additional vehicles brought by occupants of buildings with deficient parking is not necessarily driving prices up). Property owners continue to advertise existing and new parking areas for rent to off-site residents, indicating a surplus in parking supply.

3) Many new buildings with excess parking do not allow off-site residents to rent and may not be located near enough to potential renters of that parking. (Excess parking in new buildings would not alleviate perceived parking shortage).

4) Total Vehicle ownership has in fact declined slightly town-wide between 1998 and 2008. Registry of Motor Vehicles town-wide total: 1998 = 33,330, 2008 = 32,897. (Vehicle ownership has not increased while Zipcar usage has).

**Consistent Vehicle Ownership in Brookline Over Time:**

There has actually been a remarkable consistency in the average number of vehicles per household owned in Brookline. The 1990 Census revealed an average of 1.14 vehicles per household in Brookline. The historical record of special permit change requests at Dexter Park reveal a consistent history of parking utilization at that building ranging from 0.9 (a request was made in 1977 to reduce their parking requirement from 1.2 spaces per unit to 0.9) to today's 0.7 spaces per unit. As noted earlier, the survey in 1987 found a mean value of 1.1 vehicles per multi-family dwelling unit. The recent parking utilization study done as part of the preliminary site analysis at Hancock Village revealed a parking demand of 1.1 per dwelling unit. If anything, this data suggests that today's vehicle per household ownership rate has remained relatively consistent over the last 20 years.

**Examples of Existing Buildings:**

It's always helpful when considering abstract concepts like numerical parking requirements, to look at a few real world examples. To that end, we'll consider some existing buildings, representing a range of building types, locations and eras to get a sense of their functionality and the potential impacts of various parking requirements.

| Existing Building | Yr. Built | Unit Mix | Existing Parking Spaces | Used Parking Spaces | Current Parking Required | Proposed Parking Required | Parking Notes |
|---|---|---|---|---|---|---|---|
| 30 Dean Road Condo | 1984 | 2-bd: 11<br>3-bd: 3<br>Total: 14 | 19<br>(1.4 sp/ unit) | 18<br>(1.3 sp/ per unit) | 29<br>(2.1 sp/ unit) | 17<br>(1.2 sp/ unit) | Building has extra available parking. Building integrates well w/surrounding streetscape. |
| 125/135 Pleasant (Amory House) Condo | 1975 | studio: 2<br>1-bd: 62<br>2-bd: 62<br>3-bd: 1<br>4-bd: 2<br>Total: 129 | 140<br>(1.1 sp/ unit) | 132<br>(1.0 sp/ unit) | 259<br>(2.0 sp/ unit) | 130<br>(1.0 sp/ unit) | Majority of parking is underground. Off-site residents are not allowed to rent here. |
| 175 Freeman (Dexter Park) Apts. | 1968 | 1-bd: 76<br>2-bd: 262<br>3-bd: 71<br>Total: 409 | 396<br>(0.97 sp/ unit) | 315<br>(0.77 sp/ unit) | 839<br>(2.05 sp/ unit) | 475<br>(1.16 sp/ unit) | Special Permit recently sought to rent 35 spaces to off-site residents; 28 were granted. |
| Hancock Village Apts. | 1946 | 1-bd: 246<br>2-bd: 255<br>3-bd: 229<br>Total: 730 | 1022<br>(1.4 sp/ unit) | 803<br>(1.1 sp/ unit) | 1,529<br>(2.09 sp/ unit) | 949<br>(1.3 sp/ unit) | Open Green Space a key feature of existing site. Transportation amenities include bus stop, shuttle bus and Zipcars. |

Note: The number of used parking spaces is from owners, property managers.

As can be seen from these existing building examples, a variety of multi-family housing types, built in different eras and locations all function comfortably, (most have an excess of parking available), at rates that match the proposed parking requirements in this article. Currently required amounts of parking would significantly over build on-site parking for each of these examples.

**How will Lower Parking Requirements Affect Development?**

Brookline's Zoning By-law regulates the size of a building or buildings allowed on a piece of property through one principal mechanism, the Floor Area Ratio (FAR). This ratio is the result of dividing the square footage of usable built floor area by the square footage of the lot. For an M 1.5 zone, (which stands for Multi-Family with a FAR of 1.5), a 10,000 sq. ft. lot, would equate to a maximum allowable building of 15,000 sq. ft. 15,000/10,000 = 1.5.

Residential developers base their project pro forma on the assumption that they will be able to build to the maximum allowable FAR because it represents the valuable space being sold for $400 – 600 per square foot. This fact does not change if the required amount of parking rises or falls. What does change are the spatial parameters within which the building must be designed. Each parking space requires approx. 330 sq. ft. not including the driveway. In addition, our Zoning By-law contains other standards to be met, such as minimum set back from the street, side yard requirements, open space requirements etc.

By requiring an excessive level of residential off-street parking we are creating an inherent conflict between these three elements: the allowable FAR, the setback requirements, and the space necessary for the required parking. What's left is a physically improbable puzzle to be solved, which is especially problematic in the case of our multi-family and two- and three- family neighborhoods. Here, lots are small, homes are close together and the basic structural fabric of the neighborhood is one of small, walkable blocks that assure easy access to parks, shops, transit, etc.

Because these conflicting requirements are in our zoning ordinance, the Planning Board and Zoning Board of Appeals often find themselves in the position of granting Special Permits allowing violations of our ordinance's basic protections, such as side yard requirements, rear yard set backs and minimum open space mandates, in order to accommodate a building that allows the permissible FAR and achieves the high-level parking requirement. What gets sacrificed are some of the fundamental protections our Zoning By-law is meant to uphold.

In fact, the higher parking requirements create pressure to demolish existing structures and build over-sized buildings in order to both accommodate the high parking count and recoup the additional cost of providing that parking. These tortured design responses lead to disruptive structures that either dedicate the first floor to excess parking, (thereby adding an extra floor to the building) or force the building of expensive underground parking garages with massive concrete retaining walls and ramps that are an eye sore and pedestrian hazard.

Lowering our parking requirements will improve the quality of the development that does occur, allowing for more neighborhood-compatible building, with less bulk, less loss of open space, fewer negative impacts to the streetscape and pedestrian experience, while still providing for adequate on-site parking.

**What's Wrong with Too Much Parking?**

Requiring excessive amounts of multi-family residential parking has unintended negative impacts for our economy, urban fabric and community livability. What may seem like "free" parking is of course not free at all: its cost is instead passed onto residents and property owners. The new buyer or renovating property owner has little choice but to purchase the excess parking, whether or not they need it.

The negative externalities of excessive residential parking requirements are borne by the entire community, both motorist and non-motorist alike. By requiring excessive levels of off-street residential parking we:

- **Waste Money, Resources and Opportunities**: Requiring developers to build parking instead of investing in other higher value amenities, which could add greater benefit to the community.

- **Decrease Housing Diversity:** High parking requirements encourage large, luxury units and discourage smaller, more affordable housing. The cost of extra parking must be recouped in the selling price of the unit, and the diversity of housing types available is decreased.

- **Degrade Building Design**: Accommodating excess parking has lead to poorly designed buildings, with the parking being the primary focus. Buildings often have excess bulk, height and pavement, with the first floor of the building and most of the remaining lot being consumed by parking.

- **Threaten Historic Structures**: Existing historic structures are more likely to be demolished because our high parking requirements make conversion or expansion impossible within spatial limitations.

- **Lose Green and Open Space:** Excess parking often requires the sacrifice of our limited front, side and/or rear yard space, necessitating special permit waivers of our own zoning protections.

- **Increase Impervious Surfaces**: Paved surfaces increase the amount of polluted run-off and storm-water flows, adding to flood dangers and pollution threats.

- **Incentivize Auto Use to the Exclusion of Alternatives:** Mandated provision of extra parking spaces acts as an incentive to additional car ownership and use, shifting individuals who would otherwise choose to use alternative transportation modes and reduce car ownership.

- **Increase Traffic Congestion**: Extra parking brings additional traffic to our already over-burdened roadway infrastructure, increasing delay, frustration, pollution and anxiety.

- **Degrade our Neighborhood Streetscapes**: Over-sized buildings, large garage frontages, additional curb-cuts and driveways, surface parking lots, underground garage ramps and loss of street trees disrupt the existing rhythm of our neighborhood streetscapes. As the pedestrian experience deteriorates, more will choose to drive, thereby increasing the degradation of the walker's and bicyclist's experience and increasing traffic congestion.

- **Negate Location-Efficient Savings**: Many choose to live in Brookline precisely because of the good transit access and close proximity available. While housing costs are high, these are somewhat off set by the ability for households to save on transportation costs. Requiring excess parking negates this advantage by adding the cost of excess parking to new housing.

Brookline's historic streetcar suburb development pattern affords its residents the choice of non-automobile dependent accessibility, making Brookline a highly desirable place to live. Requiring excessive amounts of multi-family residential parking has unintended negative impacts on our community's viability. It is in our best interest to more closely align our community's current transportation choices and parking policies by setting our parking requirements to match known vehicle ownership and use patterns.

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**MOTION TO BE OFFERED BY THE PETITIONER**
**Linda Olson Pehlke, TMM-Prec. 2**
(shaded areas reflect change from original article)

To see if the Town will amend the Zoning By-Law establishing new residential parking requirements by:

1). Replacing the "residential" column of the TABLE OF OFF-STREET PARKING SPACE REQUIREMENTS, Section 6.02, and reformatting the table, into two tables as follows:

| RESIDENTIAL | | | | | |
|---|---|---|---|---|---|
| Single-Family Detached | Single-Family Attached (Townhomes) and Two/Three-Family | Multi-Family Studio/1 bdrm** | Multi-Family 2 bdrms** | Multi-Family 3 bdrms** | Hotel*** |
| Parking Spaces Per Dwelling Unit | | | | | |
| ~~2/2.3~~ **2** | ~~2/2.3~~ **1.3*** | ~~2~~ **1*** | ~~2~~ **1.2*** | ~~2.3~~ **1.4*** | ~~1~~ **.5*** |

*Residential uses on lots beyond 0.5 miles from an MBTA Green Line T stop shall be required to provide 2 spaces per dwelling unit, or 2.3 spaces per dwelling unit with 3 or more bedrooms. Hotels on lots beyond 0.5 miles from an MBTA Green Line T stop shall be required to provide 1 space per hotel room.
**Bedrooms shall include any habitable room containing at least 100 square feet of area which could be converted to a bedroom other than a bathroom, kitchen, or living room.
***For use 8A. Limited Service Hotel in the G-1.75 (LSH) Limited Service Hotel District, the minimum number of spaces for each dwelling unit shall be 0.5 and no additional spaces shall be required for floor areas used for eating, drinking, dancing, meeting halls or similar purposes.

| | | PUBLIC ASSEMBLY** | INSTITUTION | RETAIL & OFFICE | | | INDUSTRIAL | WAREHOUSE & OTHER |
|---|---|---|---|---|---|---|---|---|
| | | (Number of seats requiring one space) | | General | | Medical & Dental | | |
| | | | | Ground Floor | Other | | | |
| | | | (Number of square feet of gross floor area requiring one space) | | | | | |
| ZONING DISTRICT DEFINED BY MAXIMUM FLOOR AREA RATIO | 0.15<br>0.20<br>0.25<br>0.30<br>0.35<br>0.40 | 3 | 350 | 200* | 400* | 200* | 800* | 1200* |
| | 0.50<br>0.75<br>1.00 | 4 | 450 | 200 | 400 | 200 | 800 | 1200 |
| | 1.50<br>1.75<br>2.00<br>2.50 | 5 | 550 | 350 | 600 | 250 | 800* | 1200 |

*Applicable to nonconforming uses.

**§6.02, paragraphs 2.** through **7.** contain additional requirements by type of use.

2) Amend 6.01.2.a. As follows:

In SC, T, F, M, L, or G Districts, when a structure is converted for one or more additional dwelling units and the conversion results in an increased parking requirement, parking requirements for the entire structure shall be provided in accordance with the requirements in 6.02 and 6.05. However, the Board of Appeals by special permit under Article IX may waive not more than one-half the minimum number of parking spaces required under 6.02 and 6.05.

3) Removing 6.02 2.e. as follows and re-lettering all the remaining subparagraphs:

~~2.e. For a dwelling unit which is occupied by three or more unrelated persons (including lodgers), the parking requirement for the dwelling unit shall be twice that indicated in the Table of Off-Street Parking Space Requirements in 6.02.~~

4) Amend 6.02 2.f. As follows:

2.~~e~~f. For residential uses in M, L, and G districts, where the number of required parking spaces exceeds 20 spaces, ~~ten percent~~ 5 percent of all required parking spaces shall be designated and marked for use by visitors ~~and trades people~~. For mixed-use properties ~~the number of visitor spaces shall be based on the parking requirement for the residential use only~~ with at least 10% of the total gross floor area used for commercial purposes, this requirement shall be waived.

5) Amending Use number 22 in the TABLE OF USE REGULATIONS, Section 4.07. REMOVED.

6) Amending Use number 54, and Use number 55, in the TABLE OF USE REGULATIONS, Section 4.07. REMOVED.

or act on anything relative thereto.

Explanation of Amendments:
Several amendments have been made to the original Article 10. They are:

1) The minimum parking requirement for Studio and 1 bedroom multi-family dwelling units has been changed from 0.8 per unit to 1.0 per unit.

> *Concern was frequently expressed about having a minimum parking requirement below 1.0 per dwelling unit.*

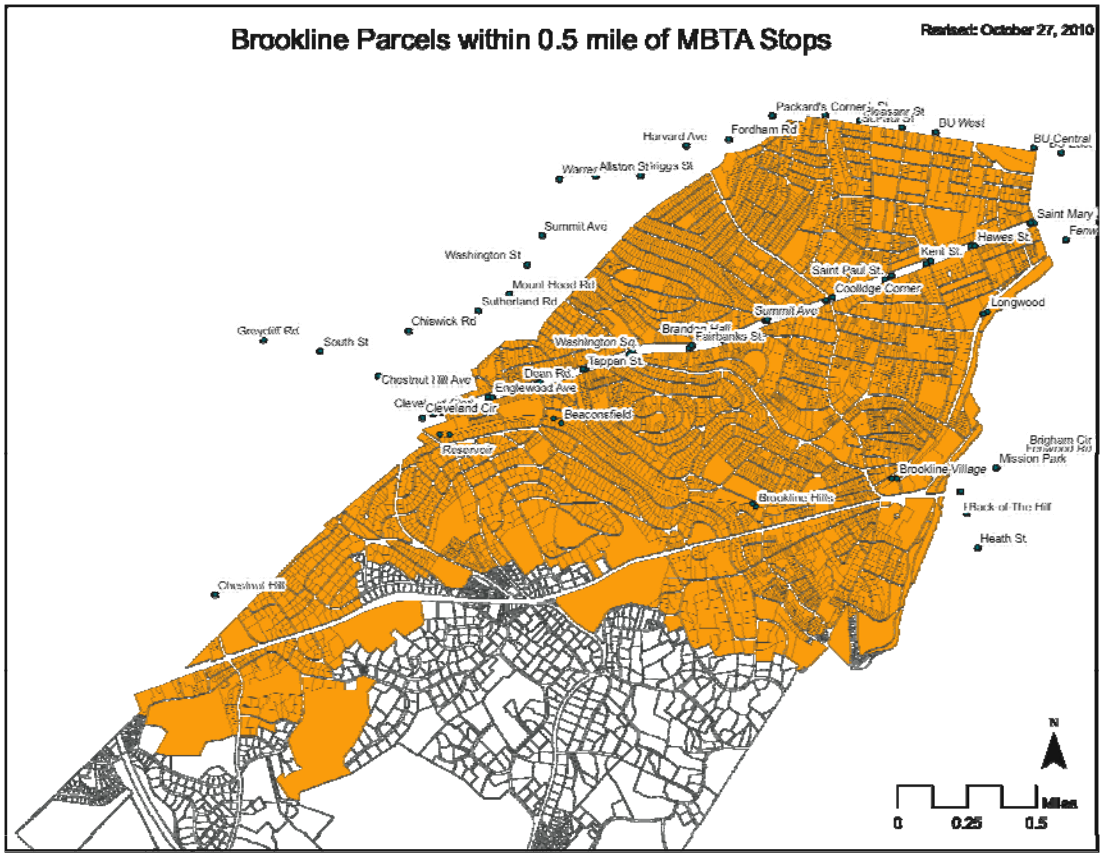
2) The footnote stating, "Bedrooms shall include any habitable room containing at least 100 square feet of area which could be converted to a bedroom other than a bathroom, kitchen, or living room." has been retained. It was removed in the original Article.

> *Planning Department staff suggested that this was an important safe guard to retain because builders sometimes rename spaces for other uses that end up being used for bedrooms. The Planning Board agreed this should be retained.*

3) The new minimum parking requirements will only apply to residential uses on lots (parcels) within 0.5 miles of an MBTA Green Line stop. If any portion of a lot (parcel) falls within the radius of 0.5 miles from an MBTA Green Line stop the new minimum parking requirements will apply.

> *See map below. Concern was raised about the Article's potential impact on the Hancock Village development proposal currently being put forth by Chestnut Hill Realty. Simply excluding the M 0.5 zone which is exclusive to the Hancock Village property was considered to be potentially problematic legally, as it treated this site in a singular manner.*
>
> *Many residents also pointed out that "one size does not fit all" when it comes to parking requirements. The petitioner agrees. Recognizing the truth of this*

*statement makes our current town-wide requirement for 2+ parking spaces per dwelling unit, regardless of size or location, particularly problematic. The Article is applicable to multi-family housing only, which is principally located within the area encompassed by the 0.5 radius from the MBTA Green Line stop area.*




4) The proposed changes to Use #22, which allows for the rental of residential parking to residents of other lots within 1400' are removed.

*The Planning Board and the Planning Department agreed with the intent of the proposed changes, which sought to encourage the shared use of existing parking resources and tie the by-right amount of accessory parking to both the size of the lot and the number of dwelling units. It was felt a more comprehensive re-working of this proposed change, in conjunction with the proposed changes to Uses #54 and #55 would be preferable.*

5) The proposed changes to Use #54 and #55, accessory parking, are removed.

*The proposed changes had the goal of linking the number of accessory parking spaces allowed to the size of the lot and number of dwelling units. These proposed amendments were also removed on the recommendation of the Planning Department and Planning Board who agreed with the intent, but thought it best to address the reformulation of Uses #22, 54 and 55 comprehensively and to concentrate on the main thrust of the Article, which is to lower the minimum multi-family parking requirement.*

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**PLANNING BOARD REPORT AND RECOMMENDATION**

This article is being submitted by Citizen Petition and proposes to: 1) amend the Table of Off-Street Parking Requirements, Sec.6.02, by significantly lowering the minimum requirements for off-street parking for any residential development, other than a detached single family dwelling; 2) amend the Table of Use Regulations, Section 4.07, Use #22 to limit the number of spaces that can be constructed on a lot, for the purpose of rental parking or otherwise, based on the number of dwelling units in the structure and the size of the lot; 3) amend the Table of Use Regulations, Section 4.07, Use #54, by no longer allowing parking spaces in an accessory garage or parking area to be rented to non-occupants or users of the lot, and 4) amend the Table of Use Regulations, Section 4.07, Use # 55 to no longer provide a special permit to allow more than three spaces per dwelling unit on a lot greater than 10,000 s.f, nor four spaces for a permitted nonresidential use, in two (T), three (F) and multi-family (M) districts, even for vehicles belonging to occupants or users of the lot.

The current parking regulations under the Table of Off-Street Parking Requirements, Section 6.02, requires 2 parking spaces per single family dwelling, 2 parking spaces per studio, 1 and 2 bedroom units in a multi-family structure, and 2.3 parking spaces for attached single families with two or more bedrooms and multi-family structures with 3 or more bedroom units. The proposed regulation would reduce those requirements for multi-family dwellings to .8 spaces per studio/1 bedroom units, 1.2 spaces for 2 bedroom units, 1.4 spaces for 3+ bedroom units. The proposed regulation would also reduce the number of parking spaces hotels are required to provide per room from 1 space to .5 spaces. The Petitioner has submitted ample data from the 2000 US Census, which provides a rational basis for the selection of these figures based on how many cars are owned per household in Brookline. The reduction in required parking spaces for multi-family dwellings would allow greater flexibility in designing new residential buildings, including reducing the mass of the structure, and therefore the visual impact on neighboring properties. The reduction in the parking requirement will also mean fewer cars on the street and a reduction in traffic.

However, the Planning Board believes that the M-0.5 zoning district, of which there is only one in Brookline at Hancock Village, should be excluded at this time from a parking reduction. South Brookline is not well-served by public transportation and must rely more heavily on automobile travel. There is currently a discussion of future development of Hancock Village based on the owner's proposal to add more than 450 units to the development. As this discussion unfolds, it makes sense to retain the current parking requirements for this multi-family zone. If a rezoning for the Hancock Village site is ultimately proposed, it can address parking at that time. The rest of South Brookline consists of single family dwellings, for which the parking requirement is not changing.

There are two other revisions the Planning Board would recommend for the Table of Parking Requirements: 1) the heading under Multi/Family for Studio/1 bedroom should be changed to limit the size of a Studio to no more than 500 s.f.; and 2) a proposal to

delete a footnote also deletes an important clause that states that any room over 100 square feet should be considered a bedroom. That clause should be retained.

The amendments to the Table of Uses, Section 4.07, would further limit the number of parking spaces that can be constructed on residential properties in T, F and M residential districts. The amendments are intended to discourage construction of new or additional parking facilities to serve dwellings not on the same lot, whether for rental or otherwise. The amendment would also limit the provision of parking in excess of what is required for the structure, as the special permit option to do so would be eliminated. The proposed wording of the amendment to Use #22 explicitly applies to pre-existing parking areas and is therefore problematic. It would likely be struck down by the Attorney General as treating two comparable parking lots differently, in a way that is not consistent with how grandfathering works in this state. A comparable situation arose when Town Meeting approved changes to the Zoning Bylaw in the fall of 2002 that allowed additional Floor Area Ratios, but only for homes in existence as of the date of the Bylaw approval. The Attorney General struck down that clause and the Bylaw was ultimately amended to say that the additional Floor Area Ratio was available to any home 10 years after it was constructed, therefore treating all comparable homes the same. Related to the amendments to Use # 54, the Planning Board believes clarification of the phrase "users of the lot" is needed because it is not clear whether this is meant to exclude or include off-site residents from renting a space on a lot.

The Planning Board is sympathetic to the goal of the amendments to uses #22, #54 and #55; however, even with the changes suggested by the petitioner, the Board finds these sections need more analysis and reconfiguring to make them less complicated and more easily understandable.

Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Article 10, with the following revisions to amend the Table of Dimensional Requirements as described above, and eliminate the changes to the Table of Uses, Section 4.07, Uses #22, #54 and #55, until further evaluation:

**ARTICLE 10**

To see if the Town will amend the Zoning By-Law establishing new residential parking requirements by:

1). Replacing the "residential" column of the TABLE OF OFF-STREET PARKING SPACE REQUIREMENTS, Section 6.02, and reformatting the table, into two tables as follows:

| RESIDENTIAL | | | | | |
|---|---|---|---|---|---|
| Single-Family Detached+ | Single-Family Attached (Townhomes) and Two/Three-Family+ | Multi-Family Studio (>500 s.f)/ 1 bdrm+* | Multi-Family 2 bdrms+* | Multi-Family 3 bdrms+* | Hotel** |
| **Parking Spaces Per Dwelling Unit+*** | | | | | |
| ~~2/2.3~~ **2** | ~~2/2.3~~ **1.3** | ~~2~~ **.8** | ~~2~~ **1.2** | ~~2.3~~ **1.4** | ~~1~~ **.5** |

***+The parking requirement for M-0.5 districts is excluded from the above parking table and shall be 2 spaces for single families , attached single-families, and dwelling units in multi-families, except 2.3 spaces for each attached single-family containing two or more bedrooms, and 2.3 spaces for a multi-family dwelling unit containing 3 or more bedrooms.***

****Bedrooms shall include any habitable room containing at least 100 square feet of area which could be converted to a bedroom other than a bathroom, kitchen, or living room.***

**For use 8A. Limited Service Hotel in the G-1.75 (LSH) Limited Service Hotel District, the minimum number of spaces for each dwelling unit shall be 0.5 and no additional spaces shall be required for floor areas used for eating, drinking, dancing, meeting halls or similar purposes.

| | | PUBLIC ASSEMBLY** | INSTITUTION | RETAIL & OFFICE | | | INDUSTRIAL | WAREHOUSE & OTHER |
|---|---|---|---|---|---|---|---|---|
| | | (Number of seats requiring one space) | | General | | Medical & Dental | | |
| | | | | Ground Floor | Other | | | |
| | | | (Number of square feet of gross floor area requiring one space) | | | | | |
| ZONING DISTRICT DEFINED BY MAXIMUM FLOOR AREA RATIO | 0.15<br>0.20<br>0.25<br>0.30<br>0.35<br>0.40 | 3 | 350 | 200* | 400* | 200* | 800* | 1200* |
| | 0.50<br>0.75<br>1.00 | 4 | 450 | 200 | 400 | 200 | 800 | 1200 |
| | 1.50<br>1.75<br>2.00<br>2.50 | 5 | 550 | 350 | 600 | 250 | 800* | 1200 |

*Applicable to nonconforming uses.

**For use 8A. Limited Service Hotel in the G-1.75 (LSH) Limited Service Hotel District, the minimum number of spaces for each dwelling unit shall be 0.5 and no additional spaces shall be required for floor areas used for eating, drinking, dancing, meeting halls or similar purposes.

~~**The greater requirement shall be provided for each dwelling unit containing more than two bedrooms and for each attached single-family dwelling containing two or more bedrooms. Bedrooms shall include any habitable room containing at least 100 square feet of area which could be converted to a bedroom other than a bathroom, kitchen, or living room.~~

**§6.02, paragraphs 2.** through **7.** contain additional requirements by type of use.

2) Amend 6.01 2.a. As follows:

> 2.a. In SC, T, F, M, L, or G Districts, when a structure is converted for one or more additional dwelling units and the conversion results in an increased parking requirement, parking requirements for the entire structure shall be provided in accordance with the requirements in 6.02 and 6.05. However, the Board of Appeals by special permit under Article IX may waive not more than one-half the minimum number of parking spaces required under 6.02 and 6.05.

3) Removing 6.02 2.e. as follows and re-lettering all the remaining subparagraphs:

> ~~2.e. For a dwelling unit which is occupied by three or more unrelated persons (including lodgers), the parking requirement for the dwelling unit shall be twice that indicated in the Table of Off-Street Parking Space Requirements in 6.02.~~

4) Amend 6.02 2.f. As follows:

> 2.~~e~~f. For residential uses in M, L, and G districts, where the number of required parking spaces exceeds 20 spaces, ~~ten percent~~ 5 percent of all required parking spaces shall be designated and marked for use by visitors ~~and trades people~~. For mixed-use properties ~~the number of visitor spaces shall be based on the parking requirement for the residential use only~~ with at least 10% of the total gross floor area used for commercial purposes, this requirement shall be waived.

or act on anything relative thereto.

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## SELECTMEN'S RECOMMENDATION

Article 10 is a petitioned article that would reduce the residential parking requirements in the Town. The number of spaces required would change from a flat requirement of 2.0 spaces per unit (except for 2.3 spaces per 3+ bedroom unit in multifamily zones) to different rates for various unit sizes. The proposed regulation would reduce the requirements for multi-family dwellings to 0.8 spaces for each studio or one bedroom unit, 1.2 spaces for each two bedroom unit, and 1.4 spaces for 3+ bedroom units. The proposed regulation would also reduce the number of parking spaces hotels are required to provide per room from 1 space to 0.5 spaces. As originally submitted, it would also amend the Use Table (Section 4.07) to limit the construction of additional spaces above the minimum for rental or tenant use to finite numbers.

The petitioner has presented some federal Census data about the existing car ownership in the town. In addition, she has presented information gathered from the Selectmen's Parking Committee to support a reduction of parking requirements near transit. While her article does not explicitly tie her reductions to proximity to transit, she notes that the single-family districts in south Brookline would not have any change in parking

requirements, and that she was additionally willing to adopt the Planning Board's recommendation to remove Hancock Village from the proposed changes.

However, another member of the Parking Committee has presented an analysis that suggests that further consideration is warranted. Specifically, there appear to be some discrepancies between the Census data used by the petitioner and the excise tax data collected by the State. These differences should be reflected in any proposed parking reduction. In addition, residents have expressed concern that lowering the parking ratios to the level suggested by the petitioner may have side effects on the secondary market for parking spaces, and may even reduce the Town's leverage in negotiating with developers. Other residents and members of the Parking Committee and Planning Board have expressed support for the article as submitted, with some possible amendments to increase the ratios to numbers that more closely match the existing requirements. These parties have noted that building design is often driven by the parking requirements, resulting in inferior design; that existing parking requirements mean that people with two or more cars buy the units and therefore increase traffic on the Town's roads; and that, since these are not maximums, developers would still be free to provide more parking spaces if they so desired.

In the end, the Board of Selectmen believes that parking requirement is a complex issue with many impacts. This Article proposes a worthy goal that needs further analysis. The Board supports formation of a Selectmen's Committee that will examine the residential parking requirement and related issues specifically, and come back with a recommendation based on more analysis and discussion. Therefore, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 26, 2010, on the following motion for referral:

VOTED: To refer the subject matter of Article 10 to a Selectmen's Committee with a charge to include

- Seeking additional data on cars and parking in Brookline, including, but not limited to, a possible question on the Town Census asking for residents to report the number of cars and how they are housed in Brookline, a survey of owners and managers of multi-unit buildings to identify the number of spaces owned, rented, and vacant; and
- Reviewing and analyzing all available data to select the most consistently reliable, accurate and complete information on ownership of cars and utilization of parking, including the April, 2010, Report of the Selectmen's Committee on Parking; and
- Investigating the relationship of parking and zoning requirements to density and open space with reference to different zoning classifications both residential and commercial, in order to understand all the zoning implications and impacts as much as possible; and
- Making recommendations for changes in the zoning bylaw with regard to reduction in off-street parking requirements taking into account utilization patterns, proximity to transit and car-sharing, and the different residential patterns and densities of Brookline neighborhoods.

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## ADVISORY COMMITTEE'S RECOMMENDATION

Article 10 is a citizen's petition which would amend Brookline's bylaw to significantly reduce the amount of parking required for new residential construction. More specifically it proposes to:

1) amend the Table of Off-Street Parking Requirements, Sec.6.02, by significantly lowering the minimum requirements for off-street parking for any residential development/use, other than a detached single family dwelling;
2) amend the Table of Use Regulations, Section 4.07, Use #22 to limit the number of spaces that can be constructed on a lot, for the purpose of rental parking or otherwise, based on the number of dwelling units in the structure and the size of the lot;
3) amend the Table of Use Regulations, Section 4.07, Use #54, by no longer allowing parking spaces in an accessory garage or parking area to be rented to non-occupants or users of the lot, and
4) amend the Table of Use Regulations, Section 4.07, Use # 55 to no longer provide a special permit to allow more than three spaces per dwelling unit on a lot greater than 10,000 s.f, nor four spaces for a permitted nonresidential use, in two (T), three (F) and multi-family (M) districts, even for vehicles belonging to occupants or users of the lot.

The **current parking** minimums under Section 6.02, are:

- **2 parking spaces** per studio, 1 and 2 bedroom units in a multi-family structure, and
- **2.3 parking spaces** for attached single families with two or more bedrooms and multi-family structures with 3 or more bedroom units.

The **proposed bylaw** would reduce those requirements for multi-family dwellings to:

- **.8 parking spaces** per studio/1 bedroom units,
- **1.2 parking spaces** for 2 bedroom units,
- **1.4 parking spaces** for 3+ bedroom units.

The proposed bylaw would also reduce the number of parking spaces **hotels** are required to provide per room **from 1 space to .5 spaces**.

Parking Committee

The Selectmen appointed the Brookline Parking Committee ("BPC") in 2008 "in order to maximize the effective and efficient use of Brookline's on and off-street parking resources for the mutual benefit of local businesses residents and visitors. The committee was charged with conducting a comprehensive review of the policies and regulations related to parking (other than the year round ban on overnight on-street parking". The

committee studied many areas related to parking and the zoning requirements was just one of the areas studied With respect to zoning, the BPC recommendations were:

- Reduce the off street parking requirements for residential land uses, **particularly near transit and in areas served by car sharing organizations, provided that neighborhood concerns are taken into account**. The BPC did not recommend a specific number or ratio of parking spaces per unit (Emphasis Added.)
- The Zoning Bylaw Committee (ZBC) should consider a reduction of minimum parking requirements in M, T & F districts within proximity to rail stops and bus stop.

The Advisory Committee's Planning and Regulation Subcommittee held a public hearing on Article 10 where over 60 citizens attended. Most spoke against the article. In addition the Subcommittee received comments from more than 30 citizens by email (19 against and 11 for the article.

DISCUSSION

The current parking requirements were passed in 2000 with the intention of insuring adequate parking in the town as a whole. It was stated then, that any new units should provide adequate parking for its occupants to relieve market pressure on the limited supply of existing off site parking. It was also intended to discourage too dense development, mainly in North Brookline.

We note that these proposed minimums would not only roll back the requirements to the pre-2000 levels, but actually reduce the minimums to levels not seen since the 1970s and 1980s. See the petitioner's explanation for details.

Arguments for reducing the parking requirements

The lead Petitioner of Article 10 has presented the Article with an extensive explanation. The Petitioner has stated that she made an effort to collect substantial data on the current car utilization in Brookline from many sources including the most recent federal census, as well as information developed as part of the Selectman's Parking Committee's prior review and from field studies which demonstrated excess parking in multi-family dwellings.

It is the proponents' contention that the current parking requirements exceed actual parking utilization. That additional required parking is not only unnecessary but creates a disincentive to individuals who would live in Brookline but for whom the cost of living is higher due to the parking requirements then would apply for many individuals given the transit oriented nature of Brookline.

The petitioner noted that her data shows that current vehicle ownership is 1.15 per household. The Petitioner also noted that for many of the snout-nosed and badly designed buildings with too much bulk that have recently cropped up in North Brookline seem to be a function of the need to install the current level of parking. Reducing the parking limits would create better design and more green space, and that, in effect, the 2000 required parking increase contributed to this problem. Other supporters of Article 10 have noted that many of the badly designed buildings in the Coolidge Corner area seem to be a function of the need for current levels of parking.

In summary, the proponents believe that the proposal:

- Is based on data showing actual levels of car ownership;
- Improve the quality of development by allowing more neighborhood compatible buildings with less bulk, more open space, fewer negative impacts to the streetscape with adequate parking

Additionally, proponents of this article have noted that that given climate change, increasing energy costs and the importance of encouraging transit oriented development passing Article 10 would be a welcome modification of current zoning.

Arguments against reducing the parking limits

At both, the subcommittee's public hearing and the full Advisory Committee discussion, much of the data upon which the proposal was based has been questioned. Appendix 1 to this report contains a full analysis by Advisory Committee member Sean Lynn-Jones. An earlier version of this analysis was published as an appendix to the BPC report.

In summary, Mr. Lynn-Jones questions the accuracy of the petitioners data specifically noting that he had reviewed excise tax information and data from the RMV which demonstrated a higher rate of vehicle ownership in Brookline. He notes that there is data from the parking survey that would suggest there is even higher actual parking in Brookline than suggested by the RMV and excise tax data (i.e., 44% of the cars surveyed by the Planning Department in various parking lots and building parking facilities were cars not registered in Brookline).

Others have questioned the Petitioner's data with some noting since the 2010 federal census data will be available, making these decisions based on 10 year old data would not be wise. Further comments noted that actual observations of current parking in multi-unit dwellings were not excessive. For example, there was a discussion of Amory House where of the 140 spaces, 132 were utilized.

At the subcommittee hearing, numerous members of the public spoke about what they viewed as the inappropriate reduction of parking as it relates to the proposed Hancock Village Development. Citizens submitted photographs showing that current parking at Hancock Village is fully utilized. We note that the Planning Board's recommendation would remove Hancock Village from the effects of this zoning bylaw revision.

A number of hearing attendees who are realtors noted that one of the significant market issues in selling a condo is adequate parking. In their view, encouraging development that did not have adequate parking or generally reducing parking supply in the town would affect real estate values at least for those units.

Other commentators noted the fact that many parts of Brookline are not accessible to mass transit, and in any event, given the fact that the current transit system is a spoke and wheel system (e.g., directed downtown) given current commuting patterns residents working in the suburbs had little practical access to transit for commuting purposes.

Some attendees at the hearing, while generally opposed to the Article, thought that some modifications of parking requirements for studio units would make sense or that some

limiting of the area where parking ratios would be decreased to areas close to mass transit might be better accepted. The Petitioner noted that she did not see transit accessible zones as workable. Other commenter's noted that while the studio and 1 bedroom numbers might seem high that requirement was based on the idea that there needed to be space in these larger developments for visitors, tradesmen, etc.

RECOMMENDATION

As presented, Article 10 is a major change to the Brookline Zoning bylaw. The Advisory Committee believes this article is not ready to be passed and needs further study. The Committee is thus recommending a referral to a Moderators Committee. The reasons for this referral include:

1. This proposal significantly reduces parking requirements townwide and does not consider the BPC's recommendation to reduce parking in areas accessible to public transit and to consider neighborhood concerns.

2. Members questioned at least some of the data used as the basis to formulate this proposal. Members were especially skeptical of the stated rates of overnight parking vacancies in private buildings.

3. There is a possibility that the residents of new construction may have a higher rate of vehicle ownership than the current town-wide average. That average, whatever it is, is calculated for a population that includes elderly housing, affordable/BHA housing, residents of older apartments with little or no parking, SROs, and college dorms. New residential units are more likely to be high-end condominiums. Occupants of these units are likely to own cars at a higher rate than the current town-wide average.

4. The committee heard conflicting views on the effects of the proposal on North Brookline. While it may be difficult to bridge the philosophical differences in a revised consensus proposal, it became clear that the unintended consequences of this proposal have not been adequately studied. For example, the potential impact of reduced parking on development probably needs further discussion. Arguments have been made in cities such as Washington, DC that such reductions would stimulate development and thereby help the local construction industry recover from the recession.

5. Several committee members expressed the view that a reduction in the ratio of spaces to dwelling units might have the effect of increasing the overall number of units in the building rather than, as the petitioner suggests, resulting in smaller buildings with more green space. This obviously unintended consequence of the proposal needs to be studied and factored into any final scheme.

6. Many South Brookline residents appear to be opposed to the proposal given the suburban, car dependant development pattern plus perceptions of how changing the town wide rules at this point may affect the proposal for development at Hancock Village. The Hancock Village proposal is potentially the largest residential development proposal in the town in many years. The Planning Board's proposal to exclude Hancock Village, while politically expedient, even

further highlights the lack of study of the unintended consequences of the proposal. Is Hancock Village the only multi family zoned area which should have different parking requirements than other parts of town?

7. One explanation for the claimed underutilization of parking spaces in multi-unit buildings, if in fact this is the case, arises from the assignment of specific spaces to tenants or the deeding of specific spaces to condominium owners. When specific spaces are set aside for a specific resident's use, a vacant space is not available for use by others. All else equal, when spaces are assigned in this manner, more total spaces are required to satisfy a given level of demand than where the entirety of the parking lot is available to any tenant/condo owner in the building. A reduction in the total number of spaces may operate to make space assignments impractical, and this should be studied prior to approval of the proposed reductions.

8. The fact that many of the parking spaces set aside for overnight use in the town's municipal lots are not currently being used has been taken to imply that there is no longer a shortage in offstreet parking for town residents, but the fact that the majority of these spaces remain occupied despite that fact that they are undesirable -- not accessible before 8 PM, must be vacated by 9 AM -- actually shows that there is still a shortage of convenient offstreet parking available for residential use. Ideally, the overnight spaces in municipal lots should revert to their original purpose, servicing the commercial sector by providing evening parking for customers in the town's business districts. Caution is needed before adopting any changes to residential parking requirements that might increase, rather than lessen, the need to keep these commercial spaces available for residential use.

9. The assertion that Brookline's parking requirements are the crucial cause of unattractive building built recently needs further study. There clearly have been unattractive buildings built recently but there also have been attractive buildings built.

The Advisory Committee with a 14-4-0 vote recommends the following motion:

VOTED: to refer the subject matter of Article 10 to a Moderator's Committee with a charge to include

- Seeking additional data on cars and parking in Brookline, including, but not limited to, a possible question on the Town Census asking for residents to report the number of cars and how they are housed in Brookline, a survey of owners and managers of multi-unit buildings to identify the number of spaces owned, rented, and vacant; and
- Reviewing and analyzing all available data to select the most consistently reliable, accurate and complete information on ownership of cars and utilization of parking, including the April, 2010, Report of the Selectmen's Committee on Parking; and

- Investigating the relationship of parking and zoning requirements to density and open space with reference to different zoning classifications both residential and commercial, in order to understand all the zoning implications and impacts as much as possible; and
- Making recommendations for changes in the zoning bylaw with regard to reduction in off-street parking requirements taking into account utilization patterns, proximity to transit and car-sharing, and the different residential patterns and densities of Brookline neighborhoods.

***XXX***

APPENDIX TO ADVISORY COMMITTEE'S RECOMMENDATION

An Alternative Analysis of Available Data Related to Article 10

The petitioner argues that current parking requirements are excessive because Brookline households have, on average, only 1.15 vehicles, and the Parking Committee's survey of twenty parking areas at residential buildings found that only 75% of the spaces were occupied.

If it were true that Brookline has a low number of vehicles per household and many unused residential parking spaces, there might be a case for reducing parking requirements. A close look at the data, however, raises several questions and suggests a more cautious approach.

*Issues with the Overall Count of Vehicles and the Reported Number per Household*
There are some issues and discrepancies regarding the petitioner's calculations of the number of vehicles per household and the total number of vehicles in Brookline.

The first problem with the reported average of 1.15 vehicles per Brookline household is that multiplying 1.15 times the total number of households (25,573 or 26,388 according to the 2000 U.S. Census; 26,401 in 2008 according to the American Community Survey of the U.S. Census) yields a range of totals (29,409–30,361) that is lower than the number of vehicles in Brookline according to excise tax lists and registry data shown in the following two tables in almost any year since 1998. (The number of vehicles varies by year and according to whether one uses calendar year or fiscal year data and/or Excise Tax data from the Assessor or Excise and RMV data compiled by the Parking Committee. Note that Excise figures have been adjusted for abatements when the number of abatements is available. Also note that further research is necessary to investigate the differences in the data from different sources.)

Table 1. Brookline Motor Excise Tax Bills, 1998–2010

**BROOKLINE MVE BILLING SUMMARY**

| FISCAL YEAR | MVE BILLS ISSUED | MVE BILLS ABATED | CALENDAR YEAR | MVE BILLS ISSUED | MVE BILLS ABATED |
|---|---|---|---|---|---|
| 1998 | 38,970 | N/A | 1998 | 38,527 | N/A |
| 1999 | 37,171 | N/A | 1999 | 39,142 | N/A |
| 2000 | 39,469 | N/A | 2000 | 39,440 | N/A |
| 2001 | 40,900 | N/A | 2001 | 38,350 | N/A |
| 2002 | 35,525 | N/A | 2002 | 37,434 | N/A |
| 2003 | 37,259 | N/A | 2003 | 37,343 | N/A |
| 2004 | 36,087 | 1,796 | 2004 | 36,507 | 2,164 |
| 2005 | 36,611 | 1,704 | 2005 | 35,654 | 2,295 |
| 2006 | 36,840 | 2,581 | 2006 | 34,409 | 1,861 |
| 2007 | 32,207 | 1,943 | 2007 | 33,806 | 1,583 |
| 2008 | 33,679 | 1,299 | 2008 | 33,276 | 1,416 |
| 2009 | 33,352 | 1,626 | 2009 | 32,946 | 1,353 |
| 2010 | 33,392 | 1,687 | 2010 | 27,937 | 844 (partial yr) |

Source: Brookline Town Assessor, October 4, 2010

Table 2: Excise Bill and Registry of Motor Vehicles Data Compiled by the Parking Committee

| Calendar Year | Number of Bills | % Change Previous Yr | Cum. Change from '98 | Excise-RMV Discrepency | RMV Data | % Change Previous Yr | Cum. Change from '98 |
|---|---|---|---|---|---|---|---|
| **1998** | **38,469** | NA | NA | 5,139 | **33,330** | NA | NA |
| **1999** | **36,522** | -5.06% | -5.06% | 2,419 | **34,103** | 2.32% | 2.32% |
| **2000** | **38,994** | 6.77% | 1.36% | 4,978 | **34,016** | -0.26% | 2.06% |
| **2001** | **40,726** | 4.44% | 5.87% | 6,837 | **33,889** | -0.37% | 1.68% |
| **2002** | **35,206** | -13.55% | -8.48% | 1,169 | **34,037** | 0.44% | 2.12% |
| **2003** | **39,260** | 11.52% | 2.06% | 5,332 | **33,928** | -0.32% | 1.79% |
| **2004** | **36,869** | -6.09% | -4.16% | 3,052 | **33,817** | -0.33% | 1.46% |
| **2005** | **35,831** | -2.82% | -6.86% | 2,460 | **33,371** | -1.32% | 0.12% |
| **2006** | **33,402** | -6.78% | -13.17% | 586 | **32,816** | -1.66% | -1.54% |
| **2007** | **34,055** | 1.95% | -11.47% | 1,372 | **32,683** | -0.41% | -1.94% |
| **2008** | **34,298** | 0.71% | -10.84% | 1,401 | **32,897** | 0.65% | -1.30% |

Source: Data Compiled by the Parking Committee and posted on the website of the Planning and Community Development Department:
http://www.brooklinema.gov/index.php?option=com_docman&Itemid=947

The petitioner's estimate of 1.15 vehicles per household seems particularly implausible for the year 2000, when the U.S. Census data was collected. Brookline's Comprehensive Plan estimated that there were 1.5 vehicles per household on Brookline in 2000. See *Brookline Comprehensive Plan, 2005–2015*, p. 16, and *Brookline Comprehensive Plan, 2005–2015: Issues and Opportunities*, p. 112. (The *Issues and Opportunities* section of the Comprehensive Plan calculates that there were 1.508 vehicles per household in Brookline in 2000.)

The petitioner has pointed out that the estimate of 1.15 vehicles per household in Brookline is not the only basis for Article 10's proposed requirements for parking spaces per residential unit. She has performed much more detailed calculations of the current number of vehicles per various types of units (one-bedroom, two-bedroom, etc.) in various parts of Brookline. In principle, this fine-grained approach could yield estimates that might be useful in setting parking requirements. The problem, however, is that these more specific calculations still rely on the data that yields the overall estimate of 1.15 vehicles per household. If that estimate is too low, it is likely that some or all of the estimates for particular areas and particular types of housing are also too low.

POTENTIAL INACCURACIES IN THE 2000 CENSUS DATA

The petitioner reports that the 1.15 vehicles/household estimate comes from data gathered during the 2000 U.S. Census. The 2000 long form questionnaire asked residents, "How many automobiles, vans, and trucks of one-ton capacity or less are kept at home for use by members of your household?" There are several reasons why the data used to produce this estimate may not be accurate. First, the data may be subject to sampling error,

because the 2000 long form was sent to approximately one-sixth of households. Second, some residents may not have answered the question accurately because they were uncertain about whether their light trucks or SUVs had a one-ton capacity or if vehicles not parked at their home (i.e., in a town or private lot) should be counted. Third, residents who had not registered or insured their vehicles in Brookline may have been reluctant to reveal this information to a government agency. (Anti-census websites that try to discourage participation in the U.S. Census specifically object to the question about household vehicles. One asks: "Why do they need to know this information? It's not hard for the Administration to use this to determine whom [sic] has more cars than they need, and must be either taxed or fined for having too much." For one of many examples, see: http://zombiehero213.wordpress.com/2010/03/11/can-the-government-ask-that/ ) Even if Brookline respondents did not share the extreme anti-census views of such websites, they may have hesitated to list vehicles not registered in Brookline. (See below for a discussion of the potential number of such vehicles.)

ALTERNATIVE ESTIMATES

It is estimated that the *registered or excised* vehicle per household figure for Brookline in 2008 was approximately 1.23, using the 32,380 as the number of vehicles subject to excise tax in fiscal 2008 (33,679 – 1299 abated bills, according to the Town Assessor) and dividing by the 26,401 households estimated by the U.S. Census American Community Survey for 2006–2008. Note that there are almost certainly more vehicles that are not registered, as discussed below, and the vehicles per household figure would be higher if these vehicles were included.

Using data from the Registry of Motor vehicles, she has calculated that there are approximately 1.2 vehicles per household for a total of 31,657. The petitioner excludes 1330 heavy trucks, trailers, motorcycles, and category listed as "other" from this calculation. These vehicles may not be cars or light trucks, but in most cases they are likely to require a parking space. Adding them to the total of 31,657 yields a total of 32,987. Dividing by 26,401 households yields 1.25 vehicles per household.

In either case, the estimate exceeds 1.15 vehicles per household. More important, these estimates do not take into account vehicles not registered in Brookline.

*The need to count vehicles not registered in Brookline*

The Registry data and estimates of 1.15–1.25 cars per household may understate the number of vehicles in Brookline, because many vehicles parked in Brookline are not registered in Brookline.

The Parking Committee survey of vehicles in twenty parking areas at multifamily buildings in Brookline that the petitioner cites also found that only 56% of the vehicles observed were registered in Brookline. Thus 44% were registered elsewhere—including 7% registered in other states—and therefore would not be included in the Registry of Motor Vehicle's data on vehicles in Brookline. It is possible that some of these vehicles were leased vehicles. One out of every eleven vehicles in Brookline is a leased vehicle. It is also possible that some of these vehicles were temporarily unregistered when they were observed and that their owners plan to register them in Brookline.

If the Parking Committee survey's finding that 44% of parked vehicles observed were not registered in Brookline applies to all vehicles in Brookline, it suggests that the current total number of cars is 80% higher than the number reported by the Registry, or between 55,000 and 60,000. If we adjust the 44% figure downward by 10% on the assumption that approximately 10% of vehicles in Brookline are leased vehicles that actually appear in the excise tax lists (because leasing companies are responsible for paying taxes where the car is garaged), we could estimate 34% of the vehicles in Brookline are registered elsewhere. That would imply that the current actual number of vehicles in Brookline is 50% higher than the total reported by the Registry, or approximately 50,000. If we go further, and estimate that only 20% of the vehicles in Brookline are not registered, the current total would still be approximately 40,000—more than 1.5 per household

Whatever figure is correct, the finding that 44% of parked cars were not registered in Brookline suggests that the Excise/RMV figures do not include all cars in Brookline and that the vehicles per household figure is higher than 1.25 (my estimate of registered vehicles per household) or 1.15 (the petitioner's estimate of vehicles per household).

*Vehicle ownership per household for new construction is likely to exceed the current average rate of vehicle ownership*

The petitioner's estimate of 1.15 vehicles per household is an average for existing households in Brookline. Even if it is accurate—and there are reasons to believe that it is based on an undercount of vehicles parked in Brookline, it may not be a good basis for setting parking requirements for new construction.

The parking requirements in Article 10's amendments to the zoning by-law would apply only to future construction. Residents of new construction are likely to have more vehicles than the town-wide average. New construction tends to be more expensive—not just because it has more parking, but because there is a premium for new buildings that have modern amenities and no wear and tear. Buyers tend to be more affluent and to own more vehicles than the residents of older Brookline multi-family buildings. New construction also will not include many, if any, rooming houses/single-room occupancies, affordable senior housing units, and college dormitories—categories of housing in which the residents tend to own few cars. New residential construction will probably be condominiums, not rental units, and homeowners are more likely to own cars than renters.

*Don't Extrapolate too Much from Recent History*.

Finally, we should be cautious about making any major changes in policies on the basis of data from the past decade. Statistics from 2000–2010 have been skewed by two factors. First, the worst recession since the Great Depression made it more difficult for many families to own and operate cars, depressing vehicle ownership rates. Second, gasoline prices spiked from low levels to record highs, before leveling off at a fairly high level. Vehicle-miles driven actually fell during the late 2000s before recovering slightly. These trends may not continue, so policies—particularly parking requirements—should not be based on the assumption that vehicle ownership and use rates will decline in the coming decades.

*Issues with the Reported Occupancy Rate of 75% at Various Brookline Buildings*

The petitioner argues that parking requirements can be reduced because a June/July 2009 survey of twenty multifamily parking lots conducted by Planning and Community Development staff revealed that only 75% of the spaces were occupied at 5:00 a.m., when one would expect most residents to be at home. The results are in the report of the Parking Committee.

Before we can conclude that this survey supports Article 10, however, we need to consider some other factors and questions.

- *The adjusted occupancy rate is higher*. The Parking Committee report includes a higher estimate of the occupancy rate (802 cars in 994 spaces, or approximately 80%.) The adjusted total includes the number of cars that are listed as paying excise tax at the address of the parking lot, thereby taking into account some cars that were absent when the survey was conducted.

- *Empty spaces are not unoccupied or surplus spaces*. Even at 5:00 a.m, some residents' cars are likely to be away due to business or personal travel. At any given time, some units will be vacant. Some residents may have other residences and spend time there, particularly in the summer

- *How many spaces were actually rented or owned*? The key question is not how many spaces were vacant, but how many have been rented or purchased. Evidence from other buildings (e.g., Amory House) suggests that most parking spaces are rented or have been bought when that option is available.

- *Article 10 would reduce parking requirements by much more than 25%*. If it were true that 25% of Brookline's residential parking spaces are vacant and unnecessary, there might be a case for reducing parking requirements to 75% of their current level. Article 10, however, would reduce the parking minimums to approximately 40–60% of their current levels, depending on the number of bedrooms in the residential unit.

*Uncertainty and Parking Policy*

The previous discussion suggests that there are many uncertainties surrounding the number of cars in Brookline and the ratio of cars to available parking spaces. In light of this uncertainty, the Town should move cautiously and not make drastic changes to its parking requirements. Better data should be gathered and analyzed first.

## ARTICLE 11

ELEVENTH ARTICLE

To see if the Town will amend the third paragraph of Section 2.5.2 of the Town By-Laws as follows: (**bold language** is new; ~~strike-out language~~ is deletion)

SECTION 2.5.2 COMBINED REPORTS

The Combined Reports shall include, with each recommendation of the Board of Selectmen**, the Advisory Committee, and any other Town board or committee which takes a formal vote on a recommendation**, a roll-call showing the vote of each member~~; and shall include, with each recommendation of the Advisory committee, a statement of the number of members voting for and against the recommendation~~ and the date of the vote. ~~When a minority report is presented, the Combined Reports shall identify the members supporting the minority report.~~

Or act on anything relative thereto.

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PETITIONER'S ARTICLE DESCRIPTION

This change in the by-laws would require that the Combined Reports contain a roll-call showing the votes of each member of the Advisory Committee or other Town board or committee, in addition to the roll-call vote already included by the Board of Selectmen.

One important function of the Combined Reports is to provide useful information to inform Town Meeting about each article in the Warrant. The vote of each member of the Advisory Committee or other Town board or committee provides additional information for each Town Meeting Member. For some Articles, this may prove useful.

For example, upon seeing that an Advisory Committee member voted contrary to what a Town Meeting Member may have expected, he or she may wish to contact that member to discuss the Article further. Likewise, a Town Meeting Member might choose to contact a Transportation Board member or Planning Board member to better understand which nuances in the issue weighed heavily in that member's vote.

This will not be burdensome: the recently revised Massachusetts Open Meeting Law now requires that the minutes of all public bodies require all votes to be recorded. This by-law would merely require that those votes -- already being recorded and a part of the public record -- are also included in the Combined Reports.

This proposed change in the by-laws would further improve transparency by making the roll-call vote information easier for Town Meeting Members to obtain while adding little or no burden in the process. In recent years, the Town of Brookline has progressed toward more transparency in the town government process, including the inclusion of Board of Selectmen votes and Advisory Committee vote totals in the Combined Reports, a reduction of the required number of Town Meeting Members supporting a recorded

vote, and the formation of the Brookline Recorded Vote Coalition. This change in the by-laws would further increase transparency and help Town Meeting to make the best decision possible on each Article in the Warrant.

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## SELECTMEN'S RECOMMENDATION

Article 11 is a petitioned article that would amend the Town's By-Laws to require the Advisory Committee and any other Town board or committee to take a roll-call showing the vote of each member on any formal vote related to a recommendation for Town Meeting. The Selectmen are already required to do so.

This article recycles a proposal that was rejected by Town Meeting in 2002. A majority of the Board believes that the proposed change would only politicize the Advisory Committee, a body that now is non-political and advisory in nature. If this were to happen, the Advisory Committee's role would be threatened. Town Meeting should not focus how individual Advisory Committee members vote; rather, Town Meeting should be concerned with their deliberation, thoughtful analysis, and independent recommendation to Town Meeting. While the majority understands the transparency argument, it believes that the ramifications outweigh the benefits.

As elected officials, the Selectmen's individual votes should be, and are, recorded. As can be seen throughout these Combined Reports, when the vote is anything other than 5-0, a roll call vote is presented. All Board members should be, and are, held accountable for their votes on election day every three years. There is no such reason for individual Advisory Committee members to be judged by their individual votes.

A minority of the Board believes that this is a "good government" article that continues to make town government more transparent. The minority does not believe that having the Advisory Committee's votes recorded in a roll call fashion will politicize them and threaten their role as an independent body.

Therefore, the Board recommends NO ACTION, by a vote of 3-2 taken on October 26, 2010, on Article 11.

**ROLL CALL VOTE:**

| No Action | Favorable Action |
|---|---|
| DeWitt | Mermell |
| Daly | Goldstein |
| Benka | |

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## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
If enacted, this article will require any of Brookline's 46 Town boards and committees (or commissions) that formally vote on a recommendation regarding a Warrant Article to publish a roll-call vote with its recommendation in the Combined Reports for Town Meeting.

In practice, this article primarily affects the Advisory Committee. As a statutory requirement, the Planning Board formally and publicly renders recommendations on all zoning articles and those recommendations are currently published in the Combined Reports.

On occasion, other boards, committees or commissions may take a formal position on an article. The Advisory Committee considers those in its public hearings and deliberation and often the body issuing the opinion reports separately at Town Meeting.

The petitioner believes this article will impart a level of transparency to Town government. Several letters to the Advisory Committee also echoed the theme of transparency and accountability. These writers expressed the belief that this change would not stifle productive debate or inhibit various boards, commissions or committees. They contended that the additional information in a roll-call vote could provide valuable information to one's deliberations; that being "familiar with the background, talents and proclivities of individuals serving" may prompt a call or email to an individual to find out more about their thoughts and vote. The petitioner has noted that one cannot attend every Advisory Committee meeting and, even if one were to attend, it is unlikely that an individual could jot down a roll-call vote quickly enough given the size of the Committee.

DISCUSSION:
It was acknowledged by Committee members that this sort of information might be viewed as valuable to some Town Meeting Members and that providing such information would not be an onerous task. Rather, it may only be a modest extension of current record keeping.

The petitioner, Tom Vitolo, also suggested this would serve as a tool for Town Meeting Members to better understand the Committee's recommendations and help guide members in reaching out to Committee members with questions. One example offered was that if a Committee member, an engineer, were one of three dissenting votes on a ditch easement, it would prompt the question of "why?", since the votes of "experts" on the Advisory Committee might be "telling". He noted that this could provide a "hook" for TMM's to call the "correct" member. The petitioner allowed that some votes were straightforward and would not warrant this level of active scrutiny (Measurers of Wood and Bark), but that this would provide "additional value occasionally".

One Committee member offered to amend the language by changing the phrase "with each recommendation" to "for each recommendation". This would allow the option of a single chart showing all votes in a cross-referenced manner or as a full appendix to the reports. The petitioner was not amenable to such a change.

In considering the effect of this proposal, the Advisory Committee considered its charge and purpose, and the institutional effect of such a change. Advisory Committee members are appointed, not elected. In addition to, there are a number of At-Large members who are not Town Meeting Members. Rather, they are appointed citizens of the community who offer their time and expertise.

The Advisory Committee does not have the discrete authority of other boards or commissions, such as the Transportation Board. The Advisory Committee has no executive authority nor does it promulgate legislation or regulations. It collects and analyzes information and then reports to Town Meeting As a statutory requirement, the Committee offers recommendations regarding Warrant Articles.

A number of members expressed the view that TMMs should be persuaded by the strength of the argument rather than "which people voted which way", underscoring the belief that people should evaluate the *content* of the report. Some expressed concern that this might simply become a way to target or retaliate against Committee members based on their votes and that one's tenure on the Committee, as well as voting biases, should be isolated from such a political process. Concern was also expressed over the petitioner's use of the word "hook" and the its implications.

Town Meeting considered a very similar proposal in 2002. The consensus of Town Meeting was that Advisory Committee reports should include a vote tally to give some sense as to the closeness of a particular vote, but that it should not include a roll-call vote. An excerpt from that year's Combined Reports is as follows:

> "The Advisory Committee is an appointed body whose most important function is to provide Town Meeting Members with the information necessary to decide an issue on their own. The Committee does this by, after engaging in the fact finding and decision making process described above, (1) describing the issues in the Combined Report, (2) presenting arguments both for and against the issue and (3) then making a recommendation. In essence, the Advisory Committee's most important role is to help frame the debate.
>
> The Advisory Committee views itself as a provider of objective analysis and advice on issues, each no more important than the other. Town Meeting many times votes differently than the Committee's recommendation, but it always considers the analysis it presents. The Committee believes that the publishing of a roll call vote on every recommendation would unintentionally emphasize the recommendation of the Advisory Committee to an extent greater than its analysis.
>
> In other words, the scorecard would distract from the analysis.
> The Committee also believes that a published roll call would introduce a level of politics into the Advisory Committee that does not currently exist. Town Meeting

needs non-political, objective analysis and advice from the Advisory Committee. Its current role should be preserved."

The Advisory Committee is intended to be a body where some of the politics are extracted from the debate. People will naturally have individual biases, but Committee members tend to be fair, candid and objective in their conversations and considerations. Town Meeting members must always strike a balance between being an advocate and a trustee. As an Advisory Committee member, one must defer to their role as trustee. That means that during consideration and deliberation, a member may cast a vote, or a series of amending votes that best serve to improve the language of a Warrant Article – even if that member may not eventually support it at Town Meeting. In this regard, unless one is willing to do the work of following up and seeking clarification, a roll-call approach could easily be misleading.

Discussion revolved around the importance of content over characterizations. Most members feel that relying on a personalized scorecard risks diminishing the quality of the objective deliberative process and may in fact prove a distraction more often than adding, in the words of the petitioner, "additional value occasionally". While well intended, this change could quickly inject an element of politics precisely where, by design, it does not belong - the objective, deliberative consideration, analysis and reporting of proposed town matters by the Advisory Committee.

RECOMMENDATION

The Advisory Committee, by a vote of 13-0-4, recommends NO ACTION on Article 11.

***XXX***

ARTICLE 12

TWELFTH ARTICLE

To see if the Town will amend the General By-Laws by adding Article 7.12 as follows:

7.12 Prohibition on Transporting Children or Babies by Bicycle

Bicyclists are prohibited from carrying, transporting, babies or children of any age on bicycles, with or without the use of tandems, baskets, rear bicycle seats, carriers, or any and all attachments to transport children or babies.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Without this as a law we are encouraging "Child Endangerment." It has come to my attention by observing while driving in vehicles "Child Endangerment." The sheer negligence of adults transporting a baby or child in a basket, mounted on the handle bars of a bicycle, seated on the rear carrier of a bicycle; a tandem carrying two young children in a basket, being pulled by a bicyclist on a main street; a bicyclist driving down a one way street with a child mounted on the rear carrier of the bike. A bicyclist endangering a child on his shoulders while riding on a street. How about witnessing these things at night some weaving in and out of busy traffic. The wisdom of these adults must be that helmets are the overall safety protection for children or babies riding as passengers on a bicycle. Under State Law children riding in a motor vehicle must be seated in the rear of the motor vehicle, in a state approved baby seat. This law applies to a steel motor vehicle that weighs a ton or more built to safeguard its passengers. What law safeguards children, babies or adults riding as passengers on bikes"
HELMETS?

**MOTION TO BE OFFERED BY THE PETITIONER**
**Seymour A. Ziskend, TMM-Prec. 7**

VOTED: That the Town adopt the following resolution:

WHEREAS Child safety is of the utmost importance to our community; and

WHEREAS bicycle use has increased in recent years; and

WHEREAS vehicular child safety laws are significantly more stringent than child safety laws regarding bicycles; and

WHEREAS the Town continues to invest in our bicycling infrastructure to encourage more and safer bicycle use,

NOW THEREFORE BE IT RESOLVED, THAT
Town Meeting urges the Board of Selectmen to call upon our representatives in the General Court to review and recommend changes, if appropriate, to Massachusetts General Laws, Chapter 85, Section 11b regulating bicycle operation, safety and equipment, pending collection and review of data, with the goal of advancing the safety of children transported as passengers on bicycles, including on child seats or "baby seats", so-called, attached to the bicycle or upon a trailer or any other mechanism attached to the bicycle on roadways with vehicular traffic, and further request that our representatives report back to Town Meeting.

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## SELECTMEN'S RECOMMENDATION

Article 12 is a petitioned article that proposes an amendment to the Town's General By-laws. As proposed, the proposed by-law would prohibit the carrying or transporting of babies or children of any age while on bicycles. The petitioner made some compelling arguments regarding the danger that exists when bicyclists travel along busy streets in Brookline with their child/children. In fact, some Board members stated that they never traveled down busy streets with their child on the bike or attached to the bike out of fear of the safety of their child.

However, the regulation of traffic in town is done by the Transportation Board, via special legislation. As a result, the substance of Article 12 exceeds the authority of Town Meeting, meaning that the article, if passed, would be non-binding. Moreover, the Town's streets are used by bicyclists from neighboring communities that do not have regulations similar to those proposed in Article 12, suggesting that review on a statewide level is appropriate. Therefore, the Board does support the resolution offered by the Advisory Committee that asks our representatives in the Legislature to review and recommend appropriate changes to the state statute regulating bicycle operation (MGL Ch. 85, Sec, 11b). By a vote of 5-0 taken on October 26, 2010, the Board recommends FAVORABLE ACTION on the motion offered by the Advisory Committee.

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## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
A citizen petition, Article 12 seeks to ban the transport of children and infants as bicycle passengers, whether by use of bike trailers, attached seats, or any other mechanism. The petitioner, Seymour Ziskend filed this article based on a perceived risk to children who are bicycle passengers.

DISCUSSION:
The petitioner believes that cyclists transporting children are ignoring the grave and sometimes unexpected risks on our roadways. He worries about the potential dangers of

adults riding bicycles in urban traffic with young children strapped into a seat, wearing just a helmet for protection. "For adults to ride through traffic and take risks, that's up to them. To do this with a child is sheer negligence." He believes that accidents involving cars and bikes with children may happen frequently and he notes the negative impact on both the driver and the injured cyclist.

There was a discussion of potentially dangerous roadways, such as Longwood Avenue in the "share the road" section. Bicyclists routinely crisscross the road, passing on both sides of cars, which can be unnerving to motorists and dangerous to bicyclists. On the other hand, there are quieter roads or trails along the Muddy River which seem ideal for taking children on bicycle rides. The article, however, does not distinguish between these circumstances, which creates a technical problem.

It was the unanimous opinion of the Brookline Bicycle Advisory Committee (BBAC), which does not support this article, that state law already adequately addresses bicycle safety. They also researched accident history within the last two years in Brookline and found no accidents relevant to this article. It was suggested that perhaps motorists are more cautious around a bicyclist with a child passenger, leading to safer driving habits.

The current article is, in fact, more restrictive than MA G.L. Ch.85 Sec 11b, which states:

> *ii) The operator shall not transport another person between the ages of one to four years, or weighing forty pounds or less, on a bicycle, except in a "baby seat", so-called, attached to the bicycle, in which such other person shall be able to sit upright; provided however, that such seat is equipped with a harness to hold such other person securely in the seat and that protection is provided against the feet or hands of such person hitting the spokes of the wheel of the bicycle; or upon or astride a seat of a tandem bicycle equipped so that the other person can comfortably reach the handlebars and pedals. The operator shall not transport any person under the age of one year on said bicycle.*
>
> *iii) Any person 16 years of age or younger operating a bicycle or being carried as a passenger on a bicycle on a public way, bicycle path or on any other public right-of-way shall wear a helmet. Said helmet shall fit the person's head, shall be secured to the person's head by straps while the bicycle is being operated, and shall meet the standards for helmets established by the United States Consumer Product Safety Commission…."*

The passage of Article 12 would require a home rule petition to the legislature.

The Advisory Committee is sympathetic to issues raised by the petitioner, and values the dialog and subsequent awareness generated by the article. The article, however, relies on anecdotal evidence, rather than on objective facts. Although the National Highway Traffic Safety Administration collects state data on some measures of traffic safety (number of accidents by type of vehicle, for instance), and the Massachusetts Department of Transportation (DOT) keeps some statistics (such as, traffic counts and crash statistics by municipality), there is a lack of detailed objective data that would enable us to know if there is, in fact, a safety issue related to children as passengers on bicycles. A member of

the BBAC confirmed that there is a lack of data and would support an effort to encourage the Commonwealth to collect such information.

The Advisory Committee recommends FAVORABLE ACTION on a vote of 14 in favor, 6 opposed, 1 abstention, on the following:

VOTED: That the Town adopt the following resolution:

WHEREAS Child safety is of the utmost importance to our community; and

WHEREAS bicycle use has increased in recent years; and

WHEREAS vehicular child safety laws are significantly more stringent than child safety laws regarding bicycles; and

WHEREAS the Town continues to invest in our bicycling infrastructure to encourage more and safer bicycle use,

NOW THEREFORE BE IT RESOLVED, THAT
Town Meeting urges the Board of Selectmen to call upon our representatives in the General Court to review and recommend changes, if appropriate, to Massachusetts General Laws, Chapter 85, Section 11b regulating bicycle operation, safety and equipment, pending collection and review of data, with the goal of advancing the safety of children transported as passengers on bicycles, including on child seats or “baby seats”, so-called, attached to the bicycle or upon a trailer or any other mechanism attached to the bicycle on roadways with vehicular traffic, and further request that our representatives report back to Town Meeting.

***XXX***

## ARTICLE 13

### THIRTEENTH ARTICLE

To see if the Town will amend the General By-Laws as follows (**bold language** is new):

> Amend Section 8.27 (Wetlands Protection Bylaw), paragraph 8.27.2.i:
>
> RESOURCE AREAS - Land under lakes, ponds, rivers or streams; any bank, marsh, wet meadow, bog or swamp bordering on any lake, pond, river or stream; land subject to flooding bordering on any lake, pond, river or stream; **isolated land subject to flooding;** isolated vegetated wetlands; riverfront areas; and vernal pools.

### PETITIONER'S ARTICLE DESCRIPTION

The Wetlands Protection By-Law, adopted by Town Meeting in 2006, extends and adapts the principles of wetlands protection established under state law in the Massachusetts Wetlands Protection Act. "Isolated land subject to flooding", or ILSF, is a type of wetland resource area protected by the Act. In the 2006 warrant article that led to the by-law, proponents defined "isolated land subject to flooding' (paragraph 8.27.e), but inadvertently excluded it from the list of Resource Areas (paragraph 8.27.i.). Inclusion of ILSF in the paragraph would have made it subject to protection under the by-law, as it is under the state Act. This warrant article would correct the omission and make the by-law more consistent with state law.

### SELECTMEN'S RECOMMENDATION

Article 13 proposes a technical amendment to the Wetlands Protection By-Law, which was originally adopted in 2006. As written in the petitioner's description, this amendment extends and adapts the principles of wetlands protection established under state law in the Massachusetts Wetlands Protection Act. As originally approved in 2006, the by-law defined "Isolated land subject to flooding" (ILSF), but excluded it from the list of Resource Areas in paragraph 8.27.i, thereby excluding it from protection under the by-law. This article corrects the omission and makes the by-law more consistent with state law.

The Board unanimously recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 5, 2010, on the vote offered by the Advisory Committee.

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## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Article 13 has been submitted by the Brookline Conservation Commission to correct an inadvertent omission in the Wetlands Protection by-law passed by Town Meeting in 2006. At that time, the warrant article proposing the by-law, while defining "isolated land subject to flooding", mistakenly excluded this category from the list of Resource Areas. If approved, Article 13 would correct the omission by including "isolated land subject to flooding" in the Resource Area section of the Town's Wetlands Protection by-law, and would make it consistent with state law.

Any regulation from the Commonwealth of Massachusetts that starts with 310 CMR is an environmental regulation and the regulation for Wetlands is 310 CMR 10.00. The definition of an Isolated Land Subject to Flooding is embodied in the regulation 310 CMR 10.57 (b) and is stated as follows:

1. Isolated Land Subject to Flooding is an isolated depression or a close basin which serves as a ponding area for run-off or high ground water which has risen above the ground surface. Such areas are likely to be locally significant to flood control and storm damage prevention. In addition, where such areas are underlain by pervious material they are likely to be significant to public or private water supply and to ground water supply. Where such areas are underlain by pervious material covered by a mat of organic peat and muck, they are also likely to be significant to the prevention of pollution. Finally, where such areas are vernal pool habitat, they are significant to the protection of wildlife habitat.

2. Isolated Land Subject to Flooding provides a temporary storage area where run-off and high ground water pond and slowly evaporate or percolate into the substrate. Filling causes lateral displacement of the ponded water onto contiguous properties, which may in turn result in damage to said properties.

3. Isolated Land Subject to Flooding, where it is underlain by pervious material, provides a point of exchange between ground and surface waters. Contaminants introduced into said area, such as septic system discharges and road salt, find easy access into ground water and neighboring wells. Where these conditions occur and a mat of organic peat or muck covers the substrate of the area, said mat serves to detain and remove contaminants which might otherwise enter the ground water and neighboring wells.

4. Isolated Land Subject to Flooding, where it is vernal pool habitat, is it an essential breading site for certain amphibians which require isolated areas that are generally flooded for at least two continuous months in the spring and/or summer and are free from fish predators. Most of these and amphibians remain near the breeding pool during the remainder of their lifecycle. Many reptiles, birds and mammals also feed here.

There are several areas in Brookline that fall into ILSF category, including a portion of the property belonging to Pine Manor College. No other scrivener's errors have been identified, and no substantive changes are being sought at this time.

RECOMMENDATION

By a vote of 22-0-1, the Advisory Committee recommends FAVORABLE ACTION on the following motion:

VOTED: That the Town amend the General By-Laws as follows (**bold language** is new):

Amend Section 8.27 (Wetlands Protection Bylaw), paragraph 8.27.2.i:

RESOURCE AREAS - Land under lakes, ponds, rivers or streams; any bank, marsh, wet meadow, bog or swamp bordering on any lake, pond, river or stream; land subject to flooding bordering on any lake, pond, river or stream; **isolated land subject to flooding;** isolated vegetated wetlands; riverfront areas; and vernal pools.

***XXX***

ARTICLE 14

FOURTEENTH ARTICLE

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

**AN ACT AUTHORIZING CERTAIN LOCAL VOTING RIGHTS FOR PERMANENT LEGAL RESIDENTS RESIDING IN BROOKLINE**

Be it enacted, etc., as follows:

Section 1. Notwithstanding the provision of section one of chapter fifty-one of the General Laws, or any other general or special law, rule or regulation to the contrary, permanent legal residents eighteen years of age or older who reside in Brookline may, upon application, have their names entered on a list of voters established by the Town Clerk for the Town of Brookline and may thereafter vote in any election for local office, including but not limited to Selectmen, School Committee, Town Meeting, and Library Trustees, as well as local ballot questions distinct to Brookline.

Section 2. The Brookline Board of Selectmen, in consultation with the Town Clerk, is authorized to formulate regulations and guidelines to implement the purpose of this act.

Section 3. For the purposes of this act, a permanent legal resident is a non-U.S. citizen with primary residence in Brookline who has been given the privilege, according to the immigration laws, of residing permanently as an immigrant with the issuance of a "green card" from the Bureau of Citizenship and Immigration Services.

Section 4. Nothing in this act shall be construed to confer upon legal resident aliens the right to run for public office, or the right to vote for any state or federal office or any state or federal ballot question.

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

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Legal permanent residents (LPRs, a.k.a. Green Card Holders, or Permanent Resident Aliens) have been and continue to be materially affected by the results of elections of Town officials, tax overrides, debt exclusions, and other vote outcomes pertaining only to life in Brookline. Because anti-immigrant sentiment has increased recently due to debates

and fears concerning *illegal* immigration, the Petitioner offers local voting rights as a way to celebrate and encourage the civic engagement of local immigrants in Brookline life. These legal, permanent residents should have an equal voice in local decisions of import to them and their families.

Some will argue that voting is a privilege of U.S. citizenship. On the contrary, while federal and state elections (including state ballot questions) *are* restricted to U.S. citizens 18 years of age and older, the U.S. constitution is mute on state-level voting rights, leaving those decisions up to individual localities. Until the 1920s, most states in the U.S. *allowed* some non-citizen local voting.

Legal Permanent Residents are working members of our community, often homeowners or business owners, who are subject to local property and other municipal taxes without concomitant representation in government. Taxation without representation is unconstitutional in the U.S. Local voting rights acknowledge LPRs' status as legal, tax-paying residents and encourage these legal immigrants to become more involved in civic life as they pursue full citizenship and the expansive rights and protections that come with it.

Some will say that granting local voting rights reduces the incentive to pursue U.S. citizenship. But there is no evidence of this. The great majority of green card holders intend to become US citizens and areas that allow local voting have not seen a reduced rate of application for naturalization. On the other hand, the cumbersome naturalization process *has* become a barrier to full citizenship. In recent years, the US Customs and Immigration Services has had a two-year backlog of naturalization applications; such delays increased after September 11, 2001 because of new security measures.

Five municipalities in the state of Maryland have extended the rights to vote for local offices to non-citizens. The city of Chicago allows non-citizen voting in school board elections; New York City had the same non-citizen rights until NY eliminated local school boards a few years ago. This November, Portland, Maine will consider the question as a ballot initiative.

In Massachusetts, the cities of Boston, Cambridge, Chelsea, Somerville, Newton and the Town of Amherst have debated and/or passed home-rule petitions to grant legal resident non-citizens the right to vote on various local questions. While the General Court has not acted, to date, on any such petitions filed, the addition of Brookline to this list only increases the likelihood that the State Legislature will finally respond to this expression of local voice in support of our legal immigrants.

**Notes and References**:
MA General Laws: Chapter 51: Section 1. Qualifications of voters
[Text of section as amended by 2008, 369, Sec. 2 effective November 5, 2008.]

Section 1. Every citizen eighteen years of age or older, not being a person under guardianship or incarcerated in a correctional facility due to a felony conviction, and not being temporarily or permanently disqualified by law because of corrupt practices in

respect to elections, who is a resident in the city or town where he claims the right to vote at the time he registers, and who has complied with the requirements of this chapter, may have his name entered on the list of voters in such city or town, and may vote therein in any such election, or except insofar as restricted in any town in which a representative town meeting form of government has been established, in any meeting held for the transaction of town affairs. Notwithstanding any special law to the contrary, every such citizen who resides within the boundaries of any district, as defined in section one A of chapter forty-one, may vote for district officers and in any district meeting thereof, and no other person may so vote. A person otherwise qualified to vote for national or state officers shall not, by reason of a change of residence within the commonwealth, be disqualified from voting for such national or state officers in the city or town from which he has removed his residence until the expiration of 6 months from such removal.

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## AMENDMENT OFFERED BY STANLEY L. SPIEGEL, TMM-PREC.2

Replace the final period of Section 1 with the following language:

, provided that the foregoing provision is approved by the registered voters of the Town of Brookline at the first regularly scheduled annual town election to be held no sooner than 90 days after the date that this act becomes law.

Explanation

This amendment is offered for three reasons: it will increase chances of the home rule petition being approved by the legislature, it will improve the stature of Town Meeting in the eyes of town voters, and most importantly, it is the right thing to do.

Unlike many issues that come before Town Meeting that require the fact-finding and thoughtful analysis that TMMs receive and develop through the Combined Reports and other sources, whether or not to extend voting privileges to non-citizens is largely a matter of personal feelings and opinion. Reasonable arguments can be made either way. The feelings and opinions of 248 Town Meeting Members are no more valid in this regard than the feelings and opinions of the voters we've been elected to represent.

For many Town Meeting agenda items -- by-law changes, special appropriations, etc. -- voters can reverse a controversial decision by employing a petition drive to place a referendum vote on the town ballot. Not so with home rule petitions, unless the petition itself provides for ultimate voter approval, something this amendment would add.

It's been argued that extending voting privileges is a matter that shouldn't be subject to voter approval, but this matter has to be decided democratically, the only question being who gets to vote on it. In a fundamental issue such as this, on which TMMs are no better qualified to decide than the general public, all Brookline voters should ultimately have a say on whether to extend voting rights to non-citizens, rather than simply having it imposed on them irrespective of their wishes.

This year, referenda on extending voting privileges to non-citizens are on the November ballots in both San Francisco and Portland, Maine. Brookline's current electorate, which will clearly be affected if Article 14 becomes law, should similarly be able to vote on this fundamental question. Town Meeting will please voters by allowing this to occur, but many voters will be disappointed, others perhaps outraged, and some may even become contemptuous of Town Meeting if they're denied this opportunity.

Finally, the legislature, which itself insisted on a voter referendum when approving a home rule petition that changed our Treasurer-Collector from an elected to an appointed position some years ago, is more likely to look with favor on this petition if it contains a requirement that town voters demonstrate their support before the proposed change takes effect. And out of respect for our constituents, TMMs should be unwilling to impose this change without letting town voters voice their approval, as this amendment requires.

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## SELECTMEN'S RECOMMENDATION

Article 14 is a Home Rule petition that would authorize legal resident aliens 18 years or older who are residents of the Town of Brookline to vote in all local town elections. The petitioner has expressed the concern that while legal resident aliens are materially affected by the results of elections of Town officials, tax overrides, debt exclusions, and other vote outcomes pertaining only to life in Brookline, they are not allowed to vote in these local elections. In addition, the petitioner believes that local voting rights are a way to encourage the civic engagement of local immigrants in Brookline life.

At its October 26th meeting, the Board voted to reconsider its vote taken on October 19th because of an amendment proposed by a member of the Advisory Committee to make Article 14 subject to a local referendum. The Board raised a number of questions on the amendment that could not be answered that night, which was the last Selectmen meeting prior to the printing of these Combined Reports. Therefore, the Board will present its recommendation in a Supplemental Report that will be made available prior to the commencement of Town Meeting.

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## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Warrant Article 14 is brought to Town Meeting by Brookline resident, Rebecca Stone on her own initiative. She is concerned about the current unfavorable political climate in the United States with respect to immigrants, and believes that Brookline residents have a more favorable perspective on immigrants. She introduced the article to convey to Brookline's immigrant population that the Town values their contributions. She became concerned about legal residents who could not vote when she campaigned on behalf of a recent local initiative. She was struck by the number of people who said that they are not

eligible to vote because they lacked citizenship in the United States. This article proposes to extend voting rights to Legal Permanent Residents or Permanent Resident Aliens (those with Green Cards) to encourage civic engagement among them. The petitioner points out that these are established residents with a stake in Brookline affairs. Many are home owners, and many send their children to Brookline schools.

The number of Green Card holders who are residents of Brookline is unknown, but people who were born abroad are well represented in Brookline. Ms. Stone estimates that the number of Green Card holders is between 100 and 3,000. After contacting several Federal offices, the Advisory Committee has not been able to verify any precise estimates. However, in 2009 according to the American Community Survey administered by the U.S. Census Bureau, 7% of Massachusetts residents were born abroad and are naturalized citizens of the United States. An additional 7.3% of Massachusetts residents were foreign born but are not citizens of the United States. For Brookline, the American Community Survey (based upon 2006 to 2008 data) estimates that 24.6% of residents are foreign born. In other words, those who were born elsewhere in the world are more highly concentrated in Brookline than they are in Massachusetts as a whole. While this may indicate a higher concentration of foreign born residents in Brookline as compared to some other communities, it does not provide information as to how many (or what percentage) may be Green Card holders. The U.S. Census reports the numbers of residents who are foreign born and the number of foreign born who are naturalized citizens. The U.S. Census does NOT report the number of Green Card holders.

Federal law restricts voting in national elections to U.S. citizens. However, federal law does not address voting eligibility in states. Green Card holders are informed explicitly that they may have local voting rights. In U.S. history, there is extensive precedent for noncitizens to hold voting rights in state and local elections. Before the 1920s, at least 25 states provided some state or local voting rights for noncitizens. In response to the widespread anti-immigrant sentiment that took hold during the 1920s, states largely eliminated voting rights for noncitizens in state and local elections. In recent years, initiatives have emerged in various places throughout the country to re-establish voting rights for some noncitizens in local elections.

A number of Massachusetts municipalities have already submitted similar home rule petitions to the Legislature. These municipalities include Newton, Cambridge, Amherst, Wayland, and Somerville. The Legislature has not acted on any of the petitions. Most believe it is unlikely the Legislature will ever act on these.

Currently, there is some precedent in other states for voting rights for some noncitizens in local elections. Six municipalities in Maryland provide voting rights for permanent residents who are noncitizens. New York City provided voting rights to Green Card holders in school board elections (until elected school boards were eliminated.) Efforts to extend voting rights to Green Card holders in local elections are underway in California, Connecticut, Illinois, Maine, Maryland, North Carolina, Texas, Washington, DC, and Wisconsin.

The path to citizenship for immigrants can be lengthy, expensive, and difficult. Immigrants may experience great difficulty in obtaining Green Cards. After obtaining Green Cards, they must usually wait from three to five years before they can apply for citizenship. The process of applying for citizenship involves an application fee and the completion of a somewhat lengthy and complex set of forms. Applicants may find it necessary to employ a lawyer at considerable expense for assistance with the application process. A successful effort to obtain citizenship may take significantly more than the minimum five years.

Even though they are long-term residents, some Green Card holders do not apply for U.S. citizenship. These immigrants typically retain an interest in the possibility of returning to their home country. Accepting U.S. citizenship is a problem for these immigrants when their home country does not permit dual citizenship.

Town Clerk, Patrick Ward is confident that the Brookline Board of Registrars of Voters would be able to develop procedures within available resources to permit the voting proposed in the Warrant article. Mr. Ward anticipates that a separate registry would be required for Green Card holders. He also anticipates that Green Card holders would have to vote in person. The motion presented below reflects technical recommendations made by Mr. Ward.

No Green Card holders spoke at the Advisory Committee's hearing on the proposal.

DISCUSSION:
A majority of Advisory Committee members are persuaded that voting rights should be extended to Green Card holders because they are residents with a long-term commitment to living in the United States and have an important stake in Brookline affairs. The proposal is felt by many members to represent a modest and welcome invitation to these residents to participate more fully in Brookline's public life. The majority of committee members believe that immigrants who hold Green Cards are serious about their commitment to living in the United States. The majority also believes that the path to citizenship for Green Card holders is sufficiently burdensome so that there is no good reason to withhold voting rights until citizenship is granted. They believe we have many active and involved residents of our community who contribute to the health and vitality of Brookline and deserve a voice
in local elections.

A significant minority within the Advisory Committee opposes the proposal. In their view, voting is a privilege and a legal right that should be granted only to those who are citizens of the United States or have made the commitment to become a citizen. In their view, voting is not a right to be granted lightly. Others object for varied reasons. Some believe that local voting rights should be extended to those Green Card holders only after they have demonstrated that they intend to become citizens. It was noted also that some Green Card holders had affirmatively decided not to pursue US citizenship in order to retain the ability to qualify for retirement pension and medical benefits, as well as voting rights, in their home country

Some believe that the fact that Green Card holders have not asked for the right to vote on local matters is a sign of their indifference to the proposal. Their argument is the Town should only consider this extension of voting rights when the group affected asks for the right to vote. One committee member believes that the matter should be addressed at the state rather than a local level. Some committee members are concerned that Green Card holders may not be adequately informed about the political culture in the United States because they may not have taken civics classes as do those who are educated in the United States. Concern was expressed about potential political consequences stems from lack of information about the number of Green Card holders in the Town and their residential distribution among precincts. Specific concerns were also raised about "unintended consequences" and how this may factor into such things as over-ride votes.

The Committee discussed a proposal that voting rights for Green Card holders go into effect only after approval by Town Meeting, the Legislature, **and** a positive vote in a local referendum. The rationale for the proposal is that the extension of voting rights to this group would dilute the political power of other voters to some degree. The proponents of this position argued that all voters should participate in a decision to reduce the power of current voters. They feel that such a fundamental issue (who has the right to vote) should be decided by the voting public at large. Other committee members were not persuaded about the need for a referendum on this matter. Some argued that Town Meeting members are elected to make decisions on behalf of their constituents. Brookline is a representative democracy, not a series of referendums by plebiscite. In their judgment, a well informed vote on this matter by Town Meeting members is likely to yield a more thoughtful decision than a referendum in which many voters might have little information on the issue or not consider it to the extent Town Meeting will.

The Committee did not support a requirement for an affirming referendum.

RECOMMENDATION:
By a vote of 14-9-0, the Advisory Committee recommends FAVORABLE ACTION on the following motion:

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

**AN ACT AUTHORIZING CERTAIN LOCAL VOTING RIGHTS FOR PERMANENT LEGAL RESIDENT ALIENS RESIDING IN THE TOWN OF BROOKLINE**

Be it enacted, etc., as follows:

Section 1. Notwithstanding the provision of section one of chapter fifty-one of the General Laws, or any other general or special law, rule or regulation to the contrary, permanent legal resident **aliens** eighteen years of age or older **who are residents of the Town of Brookline** may, upon application, have their names entered on a list of voters established by the Board of Registrars of Voters and administered by the Town Clerk for

the Town of Brookline and may thereafter vote in **all local town elections, for all elected town offices, and for all local ballot questions.**

Section 2. **The Board of Registrars of Voters for the Town of Brookline**, in consultation with the Town Clerk, is authorized to formulate regulations and guidelines to implement the purpose of this act.

Section 3. For the purposes of this act, a permanent legal resident **alien** is a non-U.S. citizen **residing in the Town of Brookline** who has **duly qualified for and been granted**, according to the immigration laws **of the United States of America**, permanent residence as an immigrant with the issuance of a "green card" from the Bureau of Citizenship and Immigration Services.

Section 4. Nothing in this act shall be construed to confer upon permanent legal resident aliens the right to run for **or hold elective** public office, or the right to vote **in any state or federal election.**

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

***XXX***

ARTICLE 15

FIFTEENTH ARTICLE

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

AN ACT AMENDING CHAPTER 51 OF THE ACTS OF 2010 TO REFLECT THE PASSAGE OF CHAPTER 398 OF THE ACTS OF 2008 AND TO MAKE CERTAIN OTHER CORRECTIONS

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

SECTION 1. Section 1 of chapter 51 of the acts of 2010 is hereby amended by inserting after the figure "1974" in line 1 the following: "as amended by section 1 of chapter 487 of the acts of 1996."

SECTION 2. Section 1 of chapter 51 of the acts of 2010 is further amended by striking out the word "department" in the second sentence thereof and inserting in its place the word "division."

SECTION 3. Section 2 of said chapter 51 of the acts of 2010 is hereby amended by striking out the words "amended by section 1 of chapter 85 of the acts of 2006" and inserting in place thereof the following: "most recently amended by chapter 398 of the acts of 2008."

SECTION 4. Section 4 of said chapter 51 of the acts of 2010 is hereby amended by striking out the words "amended by section 1 of chapter 85 of the acts of 2006" and inserting in place thereof the following: "most recently amended by chapter 398 of the acts of 2008."

SECTION 5. Section 4 of said chapter 51 of the acts of 2010 is further amended by striking out the word "third" in the first sentence and inserting in place thereof the word "fourth."

SECTION 6. Said chapter 51 of the acts of 2010 is hereby amended by striking out section 5 and inserting in place thereof the following: "SECTION 5. The fifth paragraph of section 4 of said chapter 317 of the acts of 1974, as amended by said chapter 398 of the acts of 2008, is hereby amended by inserting before the first sentence of the paragraph the following sentence: "Except as set forth herein with regard to taxi license sales, the following describes the appeal procedures applicable to any board action."

SECTION 7. This act shall take effect upon its passage.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The intent of this legislation is to make certain corrections to Chapter 51 of the Acts of 2010 ("Chapter 51"), which amended chapter 317 of the Acts of 1974 (the "Transportation Board Act") to authorize the Town to sell taxi licenses pursuant to the November 2008 Special Town Meeting's approval of Article 21 (the warrant article proposing such). Several of the proposed corrections are necessitated by the Legislature's passage on December 18, 2008 -- following the November 2008 Special Town Meeting -- of chapter 398 of the acts of 2008, which amended the Transportation Board Act to add a third paragraph to Section 4 regarding valet parking. As a result, Chapter 51 requires certain amendments reflecting new paragraph number references in Section 4 and adding references to Chapter 398 of the Acts of 2008 as the most recent legislative action applicable to the Transportation Board Act, where appropriate. In addition, a scrivener's error to the final language of Chapter 51 inadvertently deleted a sentence pertaining to the Transportation Board Act's appeal procedure.[1] The Board of Selectmen seek to correct these and several additional minor scrivener's errors found in the final language of chapter 51 (*e.g.*, the use of the word "Department," instead of "Division," following the word "Transportation;" omission of a reference to section 1 of chapter 487 of the acts of 1996 in Section 1 to reflect this act as the most recent legislative action applicable to that section of the Transportation Board Act).

SELECTMEN'S RECOMMENDATION

Article 15 proposes corrections to the taxi medallion Special Act approved by Town Meeting in November, 2008 and signed into law by the Governor on March 18, 2010. That Special Act allows Brookline to convert its taxi industry to a medallion-based system, which has the potential of generating millions of dollars of one-time revenue for the Town and providing medallion holders with a valuable property right. Unfortunately, while the bill made its way through the State's legislative process, a number of changes were made in error and now must be changed; and the only way to change them is to file the proposed Special Act recommended under Article 15.

The Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 5, 2010, on the following:

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

AN ACT AMENDING CHAPTER 51 OF THE ACTS OF 2010 TO REFLECT THE PASSAGE OF CHAPTER 398 OF THE ACTS OF 2008 AND TO MAKE CERTAIN OTHER CORRECTIONS

[1] The inadvertently stricken sentence stated: "Upon the filing of a petition with the board by not less than 20 registered voters of the town seeking the adoption, alteration or repeal of any rule or regulation under this section, the board shall hold an evening public hearing on that petition within 30 days after the petition has been filed."

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

SECTION 1. Section 1 of chapter 51 of the acts of 2010 is hereby amended by inserting after the figure "1974" in line 1 the following: "as amended by section 1 of chapter 487 of the acts of 1996."

SECTION 2. Section 1 of chapter 51 of the acts of 2010 is further amended by striking out the word "department" in the second sentence thereof and inserting in its place the word "division."

SECTION 3. Section 2 of said chapter 51 of the acts of 2010 is hereby amended by striking out the words "amended by section 1 of chapter 85 of the acts of 2006" and inserting in place thereof the following: "most recently amended by chapter 398 of the acts of 2008."

SECTION 4. Section 4 of said chapter 51 of the acts of 2010 is hereby amended by striking out the words "amended by section 1 of chapter 85 of the acts of 2006" and inserting in place thereof the following: "most recently amended by chapter 398 of the acts of 2008."

SECTION 5. Section 4 of said chapter 51 of the acts of 2010 is further amended by striking out the word "third" in the first sentence and inserting in place thereof the word "fourth."

SECTION 6. Said chapter 51 of the acts of 2010 is hereby amended by striking out section 5 and inserting in place thereof the following: "SECTION 5. The fifth paragraph of section 4 of said chapter 317 of the acts of 1974, as amended by said chapter 398 of the acts of 2008, is hereby amended by inserting before the first sentence of the paragraph the following sentence: "Except as set forth herein with regard to taxi license sales, the following describes the appeal procedures applicable to any board action."

SECTION 7. This act shall take effect upon its passage.

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## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

The petitioner's objective is to amend Chapter 51 of the Acts of 2010 to correct the substantive error of omission of the appeal procedure from the Transportation Board Act, to reflect the passage of Chapter 398 of the Acts of 2008 relating to valet parking, and to make certain other minor corrections.

DISCUSSION:

In March 2010, the state legislature (following passage of a warrant article by Town Meeting) approved the Town's request for a new amendment to the Transportation Board Act (as amended in 2008) to authorize the sale of taxi licenses by the Town. This request is reflected in Chapter 51 of the Acts of 2010; however, a number of errors were made by the Commonwealth's clerk or copyist in recording the Town's request. One of those – the deletion of the Transportation Board Act's appeal procedure – is substantive and requires correction.

Also, in 2008, the Legislature, at the Town's request, amended the Transportation Board Act of 1974 to add a paragraph to Section 4 of the Act, regarding valet parking (Chapter 398 of the Acts of 2008). Amendments needed to reflect new paragraph number references were not made at that time and are corrected in this warrant article.

In addition to correcting the substantive error of omission of the appeal procedure, a number of minor errors in Chapter 51 are also corrected by this article (e.g., substituting "division" for "department", and, in accordance with the Legislature's custom, insuring that references are made to the most recent version of a law—"the law as amended in 2008").

RECOMMENDATION:

By a vote of 14 in favor, 0 opposed and 0 abstaining, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Selectmen.

***XXX***

## ARTICLE 16

### SIXTEENTH ARTICLE

To see if the Town of Brookline will vote to dedicate the land known as Fisher Hill Reservoir Park, consisting of 9.7 acres, more or less, as shown on a plan entitled "Plan of Land Showing Conservation and Preservation Restriction Areas at the Fisher Hill Reservoir"; a copy of which is attached and incorporated herein as Exhibit A, for park purposes under the provisions of Massachusetts General Laws, Chapter 45, Section 14, and as it may hereafter be amended and other Massachusetts statutes relating to public parks and playgrounds and as further provided in Chapter 20 of the Acts of 2008, to be managed and controlled by the Department of Public Works, Parks and Open Space Division of the Town of Brookline, and that the Commissioner of the Department of Public Works with the approval of the Board of Selectmen be authorized to file on behalf of the Town of Brookline any and all applications deemed necessary for grants and/or reimbursements from the Commonwealth of Massachusetts deemed necessary under the Land and Water Conservation Fund Act (P.L. 88-578, 78 Stat 897) and/or any others in any way connected with the scope of this Article, and the Commissioner of the Department of Public Works be authorized to enter into all agreements and execute any and all instruments as may be necessary on behalf of the Town of Brookline with the approval of the Board of Selectmen to affect the park development, and to see if the Town will vote to appropriate $500,000, or any other sum, for improvements to said Fisher Hill Reservoir Park including all costs incidental or related thereto, which sum shall be in addition to the $1,350,000 appropriated for purchasing the State-owned reservoir at Fisher Hill and making said property safe and accessible to the public under Article #7, Item #57 of the warrant at the May 29, 2007 Town Meeting; and to determine whether this appropriation shall be raised by borrowing or otherwise; provided that any amount borrowed shall be reduced by the amount of any aid received. Or act on anything relative thereto.

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### PETITIONER'S ARTICLE DESCRIPTION

On July 29, 2010 the Town of Brookline was notified that the Fisher Hill Reservoir Park Project was selected by the Executive Office of Energy and Environmental Affairs to receive up to $500,000 in federal Land and Water Conservation Fund grant assistance. Acceptance of the grant requires that the property remain open to the public and prohibits any other use other than recreation and appropriate outdoor recreation, in perpetuity. Conservation of the property to non-recreation use requires the Park and Recreation Commission to abide by Article 97 of the Articles of Amendment to the State Constitution, as well as the federal Land and Water Conservation Fund Project Agreement. In addition, the LWCF program requires that the converted land be replaced with other property of equal or greater monetary value and recreational use, all at the Town's expense. In addition, the property must be open to the general public (not residents only) for appropriate recreational use and must be protected open space under Article 97 of the Amendments to the Constitution of the Commonwealth of

Massachusetts, dedicated to recreation use in accordance with M.G.L. Chapter 45, Section 3 or 14.

The vote for an additional $500,000 for the total project is essential since this is a reimbursement grant program. The additional $500,000 will be fully reimbursed once the contracts have been executed and the initial improvements completed.

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## SELECTMEN'S RECOMMENDATION

Article 16 is required as part of the process to obtain a Land and Water Conservation Fund (LWCF) grant for the Fisher Hill project, something the Town has been selected to receive in the amount of $500,000. These funds will go toward the engineering, design development, site preparation, and preliminary improvements for the Fisher Hill Reservoir Park. LWCF is funded through the National Park Service and is administered by the State through the Division of Conservation Services. This is great news for an exciting project that will result in additional green space and help ameliorate the play field shortage the Town currently faces.

In order to obtain the grant, an approved project must have a dedicated vote of Town Meeting that collectively addresses the following three provisions:

- Dedicate the land known as Fisher Hill Reservoir Park for park purposes under the provisions of Massachusetts General Laws, Chapter 45, Section 14 and as provided in Chapter 20 of the Acts of 2008. All sites that receive LSCF funding are protected by both Article 97 and Section 6(f), which means that the land must remain as conservation or recreation land in perpetuity.

- Authorize the grant application. This authorizes the Commissioner of Public Works, with approval of the Board of Selectmen, to enter into agreements and file all applications for grants and/or reimbursements necessary under the Land and Water Conservation Fund Act related to the park development.

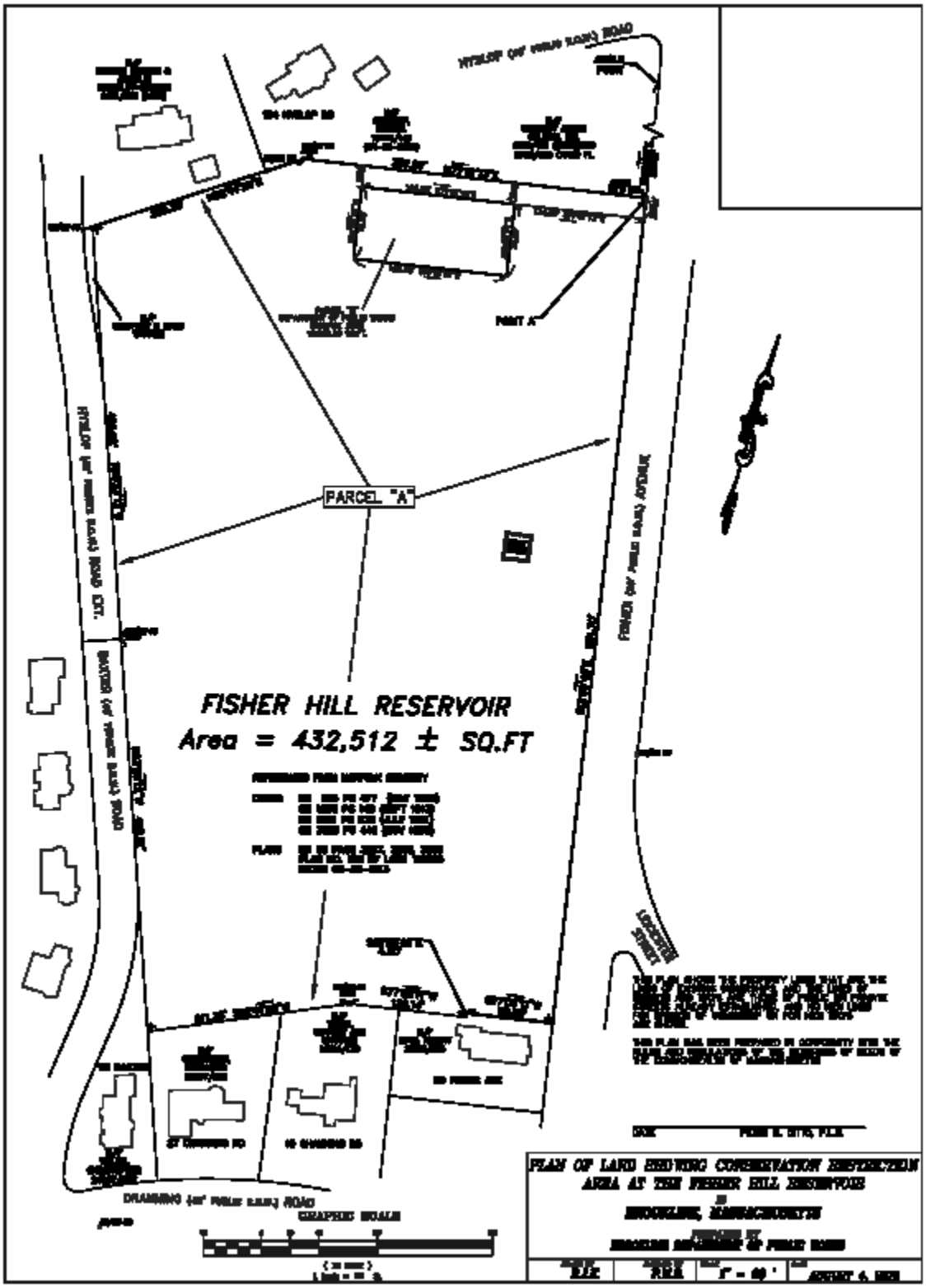
- Approve appropriation of 100% of the project cost. In May, 2007, Town Meeting approved a $1.35 million bond authorization for this project. The language contained in Article 16 adds $500,000 to the project; however, the Town will not actually borrow those monies. As stated in the vote, the $500,000 bond authorization will be rescinded by the $500,000 grant.

While the last bullet may be somewhat confusing, what is actually occurring is not: the Town is basically fronting the $500,000 that will come from the grant once the work is complete. A grant account will be established on the books of the Town (as is the case for all grants received), the $500,000 of expenses will be coded to that account, and that account will be made whole when the grant is received. As a result, the Town will never borrow the money.

The Board congratulates all involved in obtaining this $500,000 grant and unanimously recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 5, 2010, on the following vote:

VOTED: That the Town of Brookline vote to dedicate the land known as Fisher Hill Reservoir Park, consisting of 9.7 acres, more or less, as shown on a plan entitled "Plan of Land Showing Conservation and Preservation Restriction Areas at the Fisher Hill Reservoir"; a copy of which is attached and incorporated herein as Exhibit A, for park purposes under the provisions of Massachusetts General Laws, Chapter 45, Section 14, and as it may hereafter be amended and other Massachusetts statutes relating to public parks and playgrounds and as further provided in Chapter 20 of the Acts of 2008, to be managed and controlled by the Department of Public Works, Parks and Open Space Division of the Town of Brookline, and that the Commissioner of the Department of Public Works with the approval of the Board of Selectmen be authorized to file on behalf of the Town of Brookline any and all applications deemed necessary for grants and/or reimbursements from the Commonwealth of Massachusetts deemed necessary under the Land and Water Conservation Fund Act (P.L. 88-578, 78 Stat 897) and/or any others in any way connected with the scope of this Article, and the Commissioner of the Department of Public Works be authorized to enter into all agreements and execute any and all instruments as may be necessary on behalf of the Town of Brookline with the approval of the Board of Selectmen to affect the park development; that to meet this appropriation, the Treasurer, with the approval of the Selectmen, is authorized to borrow $500,000 under and pursuant to Chapter 44, §7(22) and/or (25) of the General Laws, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefore, for all costs incidental or related thereto, which sum shall be in addition to the $1,350,000 appropriated for purchasing the State-owned reservoir at Fisher Hill and making said property safe and accessible to the public under Article #7, Item #57 of the warrant at the May 29, 2007 Town Meeting; provided that any amount authorized to be borrowed shall be reduced by the amount of any aid received.

Exhibit A


PARCEL "A"
FISHER HILL RESERVOIR
Area = 432,512 ± SQ.FT
GRAPHIC SCALE

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## ADVISORY COMMITTEE'S RECOMMENDATION

Article 16 has several components. First, it asks Town Meeting to dedicate 9.7 acres of the Fisher Hill Reservoir property for park purposes under the provisions of both Chapter 45, Section 14, which addresses the acquisition, use, and management of municipal parks and playgrounds, and Chapter 20 of the Acts of 2008, which authorized the transfer of the former Fisher Hill Reservoir to the Town. (The remaining 12,000 square feet of the 9.9 acre parcel will be fenced off, set back from a public parking area, and used to store equipment for the DPW's Water and Sewer division.)

Under Article 16, Town Meeting acknowledges that Fisher Hill Reservoir Park will be managed and controlled by the DPW, Parks and Open Space Division and authorizes the DPW Commissioner, with the approval of the Board of Selectmen, to apply to the State for grants or reimbursements consistent with the scope of the article. Lastly, it asks Town Meeting to appropriate $500,000 through a bond authorization, to be added to the $1,350,000 previously approved by Town Meeting in May 2007 for the acquisition of the site as well as for the initial improvements to make it safe and accessible to the public.

### BACKGROUND

Plans to purchase and improve the former State-owned MWRA reservoir on Fisher Avenue have been under consideration for over nine years.

- In the Spring of 2001, the Board of Selectmen appointed a Master Plan Committee to evaluate the reuse potential of this property as well as the Town-owned underground reservoir site across the street.
- In December 2002 the Committee recommended that the almost 10 acres of land be treated as a "scenic amenity and public park" and that plans incorporating an athletic field, passive recreational use, and open space be pursued.
- By the fall of 2003, a Design Review Committee appointed by the Selectmen had developed preliminary plans that called for a playing field as well as wooded areas and habitats and addressed parking and handicap accessibility, provided pedestrian access, and protected the historic gatehouse. In response to neighborhood concerns, the proposed playing field was reduced in size but remained able to accommodate high school sports.
- In November 2003, Town Meeting authorized the Board of Selectmen to file a petition with the General Court to transfer the former Fisher Hill Reservoir to the Town of Brookline. Similar, if not identical, articles were approved in 2005 and 2006.
- In the Spring of 2007, Town Meeting approved a $1.35 million bond authorization for the acquisition of, and preliminary improvements to, the site.
- In February 2008, the State authorized the sale of the property, and the following year, it was valued at $800,000.

DISCUSSION

Several months ago the Executive Office of Energy and Environment Affairs notified the Town that the Fisher Hill Reservoir Park project had been selected to receive up to $500,000 in highly competitive federal Land and Water Conservation funds. The conditions of the grant include the requirement that the property be used in perpetuity for appropriate purposes, that it remain open to the public, and that it be protected open space under Article 97 of the Amendments to the State Constitution. Additionally, the grant will be administered as a reimbursement, meaning that the Town will be reimbursed by the State once the work has been completed. Reimbursement funds will be deposited in a "special revenue fund" set up by the Comptroller's Office.

Current plans call for the Town to use both the $1,350,000 approved in 2007 as well as $500,000 in available cash to complete the acquisition of the site ($800,000) and to begin the work to make the property safe and accessible, including site survey work, drawings, grading, fencing, construction of walking paths, and removal of invasive vegetation ($1,050,000). Under the terms of the grant, $500,000 will later be reimbursed, so that the Town will be able to expend $1,850,000 on acquisition and improvements at a net cost of only $1,350,000. After the grant funds are received, the bond authorization will be automatically rescinded by the amount of the grant.

Article 16 reiterates a number of the assurances previously made by the Town, including the use of the former state-owned property for active and passive recreational and park purposes. In addition, it recommits $1.35 million in FY 08 CIP funds for the acquisition of, and improvements to, the site. Finally, although there is no intent to borrow $500,000 to reach the $1,850,000 budgeted for purchasing the property and making it safe and accessible, a two-thirds vote of Town Meeting is necessary to approve this article since it requests bond authorization.

By a vote of 24-0-0, the Advisory Committee recommends FAVORABLE ACTION on the vote offered by the Selectmen.

***XXX***

## ARTICLE 17

SEVENTEENTH ARTICLE

To see if the Town will amend the language of its vote taken on Wednesday, November 18, 2009, under Article No. 9, at the Special Town Meeting called for Tuesday, November 17, 2009 by striking the words "Chapter 218 of the Acts of 2000" and replacing them with "Chapter 20 of the Acts of 2008" so that the amended vote shall read as follows (new language in Bold and underlined):

> 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 $1.00, 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 20 of the Acts of 2008**; 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.

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PETITIONER'S ARTICLE DESCRIPTION

On November 18, 2009 Town Meeting voted unanimously 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 $1.00, 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.

This vote allowed the Town to begin the process toward purchasing the State-owned Fisher Hill Reservoir Site. However, the Special Act referred to in the 2009 vote is incorrect. Chapter 20 of the Acts of 2008 is the proper citation to the legislation that authorizes the transfer of the property and the general terms of the transfer, including its use for active and passive recreation purposes.

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## SELECTMEN'S RECOMMENDATION

Article 17 is required to correct an error made in the vote taken at the November, 2009 Special Town Meeting under Article 9. That vote authorized the Town to commence the process of purchasing the State-owned Fisher Hill Reservoir site from the State. Unfortunately, the vote referenced "Chapter 218 of the Acts of 2000" when it should have been "Chapter 20 of the Acts of 2008". The Board unanimously recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 5, 2010, on the vote offered by the Advisory Committee.

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## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Article 17 offers a technical amendment to a previous vote of Town Meeting.

In November 2009, Town Meeting approved Article 9, authorizing the Selectmen, on behalf of the Town, to purchase the Fisher Hill Reservoir site for not more than $800,000, to accept conservation and preservation restrictions on portions of the land, to use the land for active and passive recreation, and/or to further conservation and open space uses "consistent with Chapter 218 of the Acts of 2000."

It was subsequently noted that the reference to Chapter 218 of the Acts of 2000 was incorrect, since Chapter 218 provided for the disposition of the MWRA's Waterworks Facilities in Chestnut Hill. The correct citation is Chapter 20 of the Acts of 2008.

DISCUSSION
If approved, Article 17 would replace the words "Chapter 218 of the Acts of 2000" with the words "Chapter 20 of the Acts of 2008", thereby inserting the proper statutory citation.

RECOMMENDATION
By a vote of 24-0-0, the Advisory Committee recommends FAVORABLE ACTION on the following motion:

VOTED: That the Town amend the language of its vote taken on Wednesday, November 18, 2009, under Article No. 9, at the Special Town Meeting called for Tuesday, November 17, 2009 by striking the words "Chapter 218 of the Acts of 2000" and replacing them with "Chapter 20 of the Acts of 2008" so that the amended vote shall read as follows (new language in Bold and underlined):

> 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 $1.00, 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 20 of the Acts of 2008**; and upon such other terms and conditions as the Board of Selectmen shall consider proper and in the best interests of the town.

***XXX***

## ARTICLE 18

### EIGHTEENTH ARTICLE

To see if the Town will vote to accept a grant of a surface water drain easement from the Massachusetts Bay Transportation Authority, a body politic and corporate, and a political subdivision of the Commonwealth of Massachusetts ("MBTA") in a portion of land at or near Station Street and Pearl Street in order for the Town to keep its water and sewer pipe in the location described below and to have access to such area. Said easement is situated at or near the MBTA Brookline Village Green Line Station in Norfolk County and contains approximately 1233 square feet as shown on a plan entitled "Plan to Accompany an Easement for a Surface Water Drain Through land of the Massachusetts bay Transportation Authority", dated April 5, 2010 prepared by the Department of Public Works Engineering/Transportation Division to be recorded at the Norfolk Registry of Deeds upon acceptance by the Town, said parcel of land being bounded and described as follows:

Beginning at a point 56.83 feet N57-13-42E of the angle point on the westerly side of Pearl Street at the MBTA Brookline Village Station.

Thence: running N33-18-52W through land of the MBTA sixty five and seventy two hundreds feet (65.72') to a point at Station Street.
Thence: turning and running N61-26-13E along Station Street twenty and seven hundreds feet (20.07') to a point.
Thence: turning and running through land of the MBTA sixty and seventy four hundreds feet (60.74') to Pearl Street.
Thence: turning and running S59-55-10W along Pearl Street seventeen and four hundreds feet to a point.
Thence: turning and running S32-10-37E along Pearl Street four and thirty one hundreds feet to a point.
Thence: turning and running S57-13-42W along Pearl Street two and ninety hundreds feet to the point of beginning.

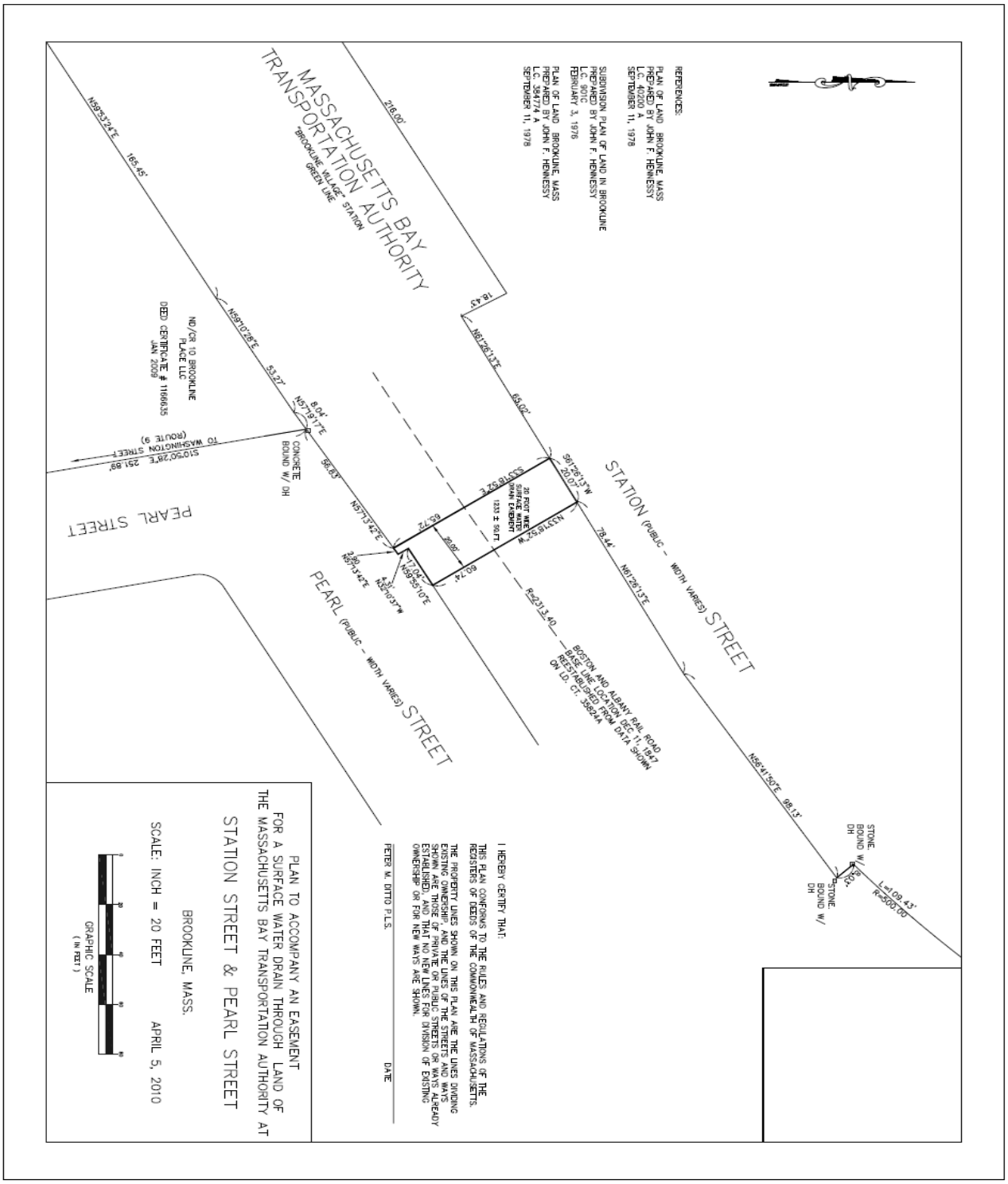
Said easement containing one thousand two hundred thirty three square feet (1233s.f.).

or act on anything relative thereto.

### PETITIONER'S ARTICLE DESCRIPTION

In 2003 the Town's consultant prepared a contract for the installation of a storm drain in the Brookline Village area. This contract was intended to remove the stormwater from the sanitary sewer in this area thereby eliminating/reducing surcharging of the sanitary sewer during storm events. Because of the topography of the area, the proposed storm drain needed to cross the MBTA right of way at the Brookline Village station in order to tie into the existing Pearl Street drain. The Town secured a license from the MBTA on September 18, 2003 to install a 42" concrete drain and, as part of the occupancy agreement, the Town was required to pay an annual rent fee of $2,530.62. The Town

subsequently requested that the MBTA grant a permanent utility easement to the Town and waive any rental payments after September 18, 2004 with the understanding that the Town will prepare the easement plan, suitable for recording at the Registry of Deeds, and pay $10,000.00 in exchange for the easement.



## SELECTMEN'S RECOMMENDATION

Article 18 asks Town Meeting to accept a permanent grant of easement from the Massachusetts Bay Transportation Authority (MBTA) for the placement of a forty-two inch diameter surface water drain near the green line station at Brookline Village. This is being requested so that the Town can cease paying an annual rent fee of $2,530.62 to the MBTA related to a stormwater project the Town undertook in that area.

The project removed stormwater from the sanitary sewer in this area, thereby eliminating/reducing surcharging of the sanitary sewer during storm events. Part of the project included installing a storm drain that crossed the MBTA right of way at the Brookline Village station and tied into the existing Pearl Street drain. In order to cross the MBTA's right of way, the Town secured a license from the MBTA that required the Town to pay the annual rent fee. The Town subsequently requested that the MBTA grant a permanent utility easement to the Town and waive any rental payments after September 18, 2004 with the understanding that the Town will prepare the easement plan, suitable for recording at the Registry of Deeds, and pay $10,000.00 in exchange for the easement. Article 18 is the vehicle required to obtain the permanent easement.

At its October 5 meeting, the Board took a vote of FAVORABLE ACTION, by a vote of 5-0, on the motion shown below. However, the Town was recently advised that the MBTA Board of Directors voted to reject the proposed easement. As of the writing of these Combined Reports, the reason(s) for the rejection have not been conveyed to the Town. A letter from the MBTA is supposed to be sent to the Town detailing their objections. Therefore, there is a possibility that the Selectmen may have to reconsider Article 18. If we do, then a Supplemental Recommendation will be provided prior to the commencement of Town Meeting.

VOTED: That the Town vote to accept a grant of a surface water drain easement from the Massachusetts Bay Transportation Authority, a body politic and corporate, and a political subdivision of the Commonwealth of Massachusetts ("MBTA") in a portion of land at or near Station Street and Pearl Street in order for the Town to keep its water and sewer pipe in the location described below and to have access to such area. Said easement is situated at or near the MBTA Brookline Village Green Line Station in Norfolk County and contains approximately 1233 square feet as shown on a plan entitled "Plan to Accompany an Easement for a Surface Water Drain Through land of the Massachusetts bay Transportation Authority", dated April 5, 2010 prepared by the Department of Public Works Engineering/Transportation Division to be recorded at the Norfolk Registry of Deeds upon acceptance by the Town, said parcel of land being bounded and described as follows:

Beginning at a point 56.83 feet N57-13-42E of the angle point on the westerly side of Pearl Street at the MBTA Brookline Village Station.

Thence: running N33-18-52W through land of the MBTA sixty five and seventy two hundredths feet (65.72') to a point at Station Street.
Thence: turning and running N61-26-13E along Station Street twenty and seven

hundredths feet (20.07') to a point.
Thence: turning and running through land of the MBTA sixty and seventy four hundredths feet (60.74') to Pearl Street.
Thence: turning and running S59-55-10W along Pearl Street seventeen and four hundredths feet to a point.
Thence: turning and running S32-10-37E along Pearl Street four and thirty one hundredths feet to a point.
Thence: turning and running S57-13-42W along Pearl Street two and ninety hundredths feet to the point of beginning.

Said easement containing one thousand two hundred thirty three square feet (1233s.f.).

---

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
This matter is being brought before Town Meeting by the Department of Public Works, Engineering/Transportation Division.

Article 18, seeks Town Meeting approval to accept a permanent grant of easement from the Massachusetts Bay Transportation Authority (MBTA) for the placement of a forty-two inch diameter surface water drain at or near the MBTA Brookline Village Green Line Station, in Norfolk County containing approximately 1233 square feet as shown on the accompanying plan dated April 5, 2010, prepared by the Department of Public Works Engineering/Transportation Department.

On September 18, 2003, the Town of Brookline, through the use of a consultant, negotiated with the MBTA for a license to install a forty-two inch concrete surface water drain across MBTA land at the Brookline Village Green Line MBTA Station. This surface water drain line was to connect storm drains from Station Street and above to the existing Pearl Street drain. The Town paid a license fee of $2,530.62 in September 2003. The license called for annual rent payments of $2,530.62 due each September 18th. The drain was installed shortly after September 2003. The Town has failed to make further payments after the original license fee of $2,530.62 was paid.

The MBTA and the Town have agreed that the Town will pay the sum of $10,000.00 for a permanent easement from the MBTA and any funds owed after September 18, 2004, under the original license, will be waived by the MBTA.

The $10,000.00 payment will come from Capital Improvement monies from the Water and Sewer Enterprise Fund.

RECOMMENDATION
The Advisory Committee by a Vote of (24-0) recommends FAVORABLE ACTION on the vote offered by the Selectmen.

***XXX***

ARTICLE 19

NINETEENTH ARTICLE
To see if the Town will adopt the following resolution:

**Resolution to Change the Scheduling of Town Meetings**

WHEREAS Town Meeting has regularly met on Tuesday, Wednesday, and Thursday evenings until it has concluded its business; and

WHEREAS a number of Town Meeting members find this schedule inconvenient for various reasons; and

WHEREAS a number of Town Meeting members believe that a schedule of two meetings per week may facilitate greater deliberation and lead to participation by a broader range of Brookline citizens; and

WHEREAS a number of Town Meeting Members have urged a schedule of only two evenings per week; and

WHEREAS other Town Meeting Members prefer the current schedule,

NOW THEREFORE BE IT RESOLVED that Town Meeting intends, as an experiment, that the 2011 Annual Town Meeting be held on two non-consecutive evenings per week and asks the Selectmen and the Moderator to schedule accordingly.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The warrant article asks the Board of Selectmen and Moderator to schedule the 2011 Town Meeting so that Town Meeting occurs on non-consecutive nights (such as Monday and Wednesday, or Tuesday and Thursday). There has been many comments on this issue in various contexts (TMM listserve, annual debrief meeting with the Moderator, informal conversations) and it seemed the most appropriate forum for a structured discussion would be to introduce a warrant article.

The current Town Meeting schedule, meeting for consecutive evenings, has some advantages and some disadvantages.

The advantages are:

- Consolidation of meetings in the calendar is easier for some to schedule
- It is easier for Town Meeting Members who travel for business to participate

The disadvantages are:

- The current schedule may discourage participation by a broader and more representative group of citizens. In particular, working parents of children appear under-represented by the current schedule.
- Senior citizens find it more difficult to participate.
- The current schedule does not allow time inbetween meetings for Town Meeting Members to caucus or negotiate informally between sessions.

By scheduling the 2011 Annual Town Meeting on a non-consecutive night schedule, Town Meeting Members, the Board of Selectmen and the Moderator will be able to gather data on the relative merits of each schedule and determine what schedule best supports the participatory democracy spirit of Town Meeting.

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## SELECTMEN'S RECOMMENDATION

Article 19 is a proposed resolution that asks the Selectmen and the Moderator to schedule the 2011 Annual Town Meeting so that it is held on two non-consecutive evenings per week as opposed to the current practice of having Town Meeting convene on consecutive nights between Tuesday – Thursday. Members of the Board believe that this is a matter of personal preference and that Town Meeting should be polled. This article is the vehicle for the polling and the debate that will take place will dictate whether the current practice is discontinued for the non-consecutive evening proposal.

While the Selectmen NO ACTION, by a vote of 5-0 taken on October 19, 2010, on Article 19, we look forward to getting a better sense of Town Meeting's preferred future meeting schedule.

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## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Article 19 is a resolution that, as an experiment:

- seeks to hold the Annual Town Meeting for the spring of 2011 on two non-consecutive evenings per week (i.e., the opening date and the subsequent adjourned sessions)
- asks the Selectmen and the Moderator to schedule accordingly

The petitioners' objective is to generate a discussion of this matter on the floor of the 2010 Fall Special Town Meeting.

DISCUSSION

The relevant state law governing the timing of Town Meetings requires that annual meeting be (i) held in February, March, April, May or June and (ii) concluded by June 30th, and the Town's by-laws provide the Selectmen with considerable flexibility in

establishing the timing. The Moderator provided the following commentary regarding how Brookline has scheduled its Town Meetings:

> It is generally thought that the referenced statutes give the Board of Selectmen the power to set the opening date of Town Meetings but do not address adjourned sessions. By tradition in Brookline, and for the sake of convenience, the adjourned sessions have been scheduled by the Selectmen's Office, without explicit action on the part of the Board itself. However, the legal power to establish the time and date of adjourned sessions rests with Town Meeting; that is, if the business of Town Meeting has not been concluded, Town Meeting sets the time and place of the next session in its adjournment vote. Brookline has routinely adjourned to the next session as pre-scheduled by the Selectmen's Office, but there would be nothing to prevent Town Meeting from adjourning to another time and date.

The petitioners stated that although the current schedule works for some members, it feels like a marathon to others. There was concern that by the third night people tend to rush through deliberations, and articles do not get the consideration they deserve. One petitioner suggested that the proposed change might encourage more people to consider running for Town Meeting. Another recalled that at some time in the past, Town Meeting met on a Tuesday/Thursday schedule, and then changed to the current consecutive night format. Also, it was suggested that a non-consecutive evening schedule would allow more time for discussion and consideration of articles between meetings.

The advantages expressed in the article and its explanations, and during its consideration by the Advisory Committee are admittedly anecdotal. The petitioners stated that there had been some discussion of the subject on the TMM list-serve.

Article 19 is a *resolution* asking the Town Meeting body to try a one-time experiment in the spring of 2011 in order to assess the most accommodating approach to the scheduling of Town Meeting. Some Advisory Committee members agreed with the advantages expressed by the petitioners, while others did not. Rather than a consensus on the advantages and disadvantages relevant to the issue, the Advisory Committee vote represents a measure of getting the issue before Town Meeting.

RECOMMENDATION

By a vote of 14 favorable, 2 opposed and 4 abstentions, the Advisory Committee recommends Favorable Action on Article 19, as amended:

VOTED: That the Town adopt the following resolution:

Resolution to Change the Scheduling of Town Meetings

WHEREAS Town Meeting has regularly met on Tuesday, Wednesday, and Thursday evenings until it has concluded its business; and

WHEREAS a number of Town Meeting members find this schedule inconvenient for various reasons; and

WHEREAS a number of Town Meeting members believe that a schedule of two meetings per week may facilitate greater deliberation and lead to participation by a broader range of Brookline citizens; and

WHEREAS a number of Town Meeting Members have urged a schedule of only two evenings per week; and

WHEREAS other Town Meeting Members prefer the current schedule and may not agree that there are advantages to a change in schedule,

NOW THEREFORE BE IT RESOLVED that Town Meeting intends, as an experiment, that the 2011 Annual Town Meeting be held on two non-consecutive evenings per week and asks the Selectmen and the Moderator to schedule accordingly.

***XXX***

## ARTICLE 20

### TWENTIETH ARTICLE

To see if the Town will take the following action:

> "Resolved, that the Transportation Board adopt standards for determining when the benefits of prohibiting a right turn on red ("RTOR") outweigh the detrimental environmental consequences and traffic inefficiencies resulting from such a prohibition, conduct a study of all traffic intersections in the Town at which there is a traffic light and a sign or signs not permitting a RTOR, make a separate determination with respect to each such intersection as to whether the standards for prohibiting a RTOR have been met , and remove all such signs at intersections that do not meet such standards.
>
> Further Resolved, that the actions in the foregoing resolution be completed by the Spring 2011 Town Meeting and that the Transportation Board report to the Spring 2011 Town Meeting on the standards that it has adopted for determining when to prohibit a RTOR and which traffic intersections it has determined do not justify the removal of signs prohibiting RTOR"

or act on anything relative thereto

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### PETITIONER'S ARTICLE DESCRIPTION

There are many traffic light intersections throughout the Town at which there are signs that do not permit a right turn on red ("RTOR"). At many of these intersections, a prohibition on making a RTOR is not justified from a safety or traffic efficiency perspective, with the result, in many cases, of idling cars that are polluting the air and needlessly wasting fossil fuel.

The RTOR originated in a 1970s federal law that was in intended to reduce fuel consumption due to cars idling at intersections. It was passed in response to the 1973 oil crisis as a way of reducing our dependence on foreign oil – still a worthy goal. It restricted federal funds to any state that did not legally permit a RTOR, but provided that localities could choose to erect signs at any intersection prohibiting such a turn. At that time, many towns and communities throughout the Commonwealth, without any study, uniformly put up such signs at all traffic light intersections, thereby retaining the status quo. Many of these towns and cities are now removing these signs principally due to environmental concerns. Brookline is long overdue in taking such action.

These resolutions seek to focus the attention of the Transportation Board on taking action that will have a very substantial environmental benefit, with respect to pollution and significantly reducing the fossil footprint of the Town, as well as improving traffic efficiency throughout the Town.

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## SELECTMEN'S RECOMMENDATION

Article 20 is petitioned resolution that asks the Transportation Board to adopt standards regarding a right turn on red. The concern of the petitioner is that many of the intersections that prohibit a right turn on red are not justified from a safety or traffic efficiency perspective, with the result being idling cars that are polluting the air and needlessly wasting fossil fuel. The Board agrees with the petitioner in concept and sees this as another way for Brookline to reduce its carbon footprint. However, the resolution as originally drafted cannot be accomplished within the mandated six-month timeframe (the Spring, 2011 Town Meeting). Therefore, the Board is recommending an amended version of Article 20 that requires the Transportation Board to report annually to Town Meeting on its progress in determining when to prohibit right turn on red and which intersections do not justify removal of signs prohibiting right turn on red. By a vote of 5-0 taken on October 26, 2010, the Board recommends FAVORABLE ACTION on the following motion:

VOTED: That the Town adopt the following resolution:

"Resolved, that the Transportation Board adopt standards for determining when the benefits of prohibiting a right turn on red ("RTOR") outweigh the detrimental environmental consequences and traffic inefficiencies resulting from such a prohibition, conduct a study of all traffic intersections in the Town at which there is a traffic light and a sign or signs not permitting a RTOR, make a separate determination with respect to each such intersection as to whether the standards for prohibiting a RTOR have been met , and remove all such signs at intersections that do not meet such standards.

Further Resolved, that the actions in the foregoing resolution be completed **as expeditiously as possible, and that the Transportation Board report to the Annual Town Meeting on progress in determining when to prohibit right turn on red and which intersections do not justify removal of signs prohibiting RTOR.**

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## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Warrant Article 20 is a resolution requesting that the Transportation Board adopt standards for the use of "No Turn on Red" (NTOR) signage at intersections and re-evaluate intersections presently designated as such, with the intention of eliminating these restrictions wherever prudent.

Right turn on red laws were enacted at state and federal levels in the 1970's during the oil crisis as an energy conservation measure. Federal Law Title 42 Chapter 77 Section 6322 (State energy conservation plans) requires that all states using federal highway funds adopt "a traffic law or regulation which, to the maximum extent practicable consistent with safety, permits the operator of a motor vehicle to turn such vehicle right at a red stop

light after stopping and to turn such vehicle left from a one-way street onto a one-way street at a red light after stopping."

Traffic signs are regulated under MGL Chapter 85 Section 2. This statute incorporates by reference the Manual on Uniform Traffic Control Devices (MUTCD) published by the Federal Highway Administration. The MUTCD, as amended at the state level by MassDOT, is the standard used by all municipalities in Massachusetts. Section 2B.54 of the MUTCD defines six standards to be considered when determining if a given intersection should have a NTOR designation:

> If used, the No Turn on Red sign should be installed near the appropriate signal head. A No Turn on Red sign should be considered when an engineering study finds that one or more of the following conditions exists:
>
> A. Inadequate sight distance to vehicles approaching from the left (or right, if applicable);
> B. Geometrics or operational characteristics of the intersection that might result in unexpected conflicts;
> C. An exclusive pedestrian phase;
> D. An unacceptable number of pedestrian conflicts with right-turn-on-red maneuvers, especially involving children, older pedestrians, or persons with disabilities;
> E. More than three right-turn-on-red accidents reported in a 12-month period for the particular approach; or
> F. The skew angle of the intersecting roadways creates difficulty for drivers to see traffic approaching from their left.

Brookline has at least 21 intersections designated as No Turn on Red.

DISCUSSION:
Fred Lebow, the petitioner, filed this article with the goals improving traffic efficiency and reducing energy consumption. This article is a resolution urging the Transportation Board to adopt standards, evaluate intersections, and remove the No Turn on Red signs if deemed safe after an evaluation based on these standards.

Federal law enacted in the 1970's allowed drivers to make a right turn at a red light provided there is no sign prohibiting the turn. At that time, many towns, including Brookline, put up No Turn on Red signs to keep the status quo. Many towns have since removed many of the signs, reverting to the federal standard that allows turns on red.
As we look to make Brookline greener, this proposal will also have an impact on carbon emissions and air quality by reducing idling time at intersections while waiting for a light to change.

While the Transportation Board had not taken up the article at the time of our review, Michael Sandman, Chairman of the Transportation Board, anticipated favorable action by the board. In support of the article he noted that while you can turn right on red onto Beacon Street from St. Paul Street, you cannot do so from Powell Street—it's inconsistent across town. Transportation Board member Brian Kane also spoke in support of Article 20 as submitted, but cautioned that the Transportation Division is already

taking on a lot of work and that the Town may want to consider increasing the department staff next year to support these types of initiatives.

Brookline Transportation Administrator Todd Kirrane confirmed that he would employ the federal and state standards for the use of "No Turn On Red" (NTOR) designations at intersections as part of this project. His assessment of intersections would include proximity to schools, the volume of pedestrian traffic, and other standards in the MUTCD. Mr. Kirrane also stated that the project could be undertaken without budget changes utilizing current staff capacity, noting that while the project would take longer than anticipated by the petitioner, it is achievable in the time frame specified on the resolution.

The Advisory Committee made suggestions such as utilizing signs at certain intersections to encourage turns and to help change driver behavior. Also, it was noted that Left on Red is also allowed at the intersections of one way streets and these intersections should be included if any exist in Brookline.

The Police Department, represented by Officer Kelliher, was supportive of the resolution, but does want to be involved in the process and the decision making for each intersection. The Police Department keeps statistics on traffic incidents and that data will be useful for the study. They also have definite opinions on the safety of each of the intersections in town. The Advisory Committee encourages strong involvement from the Police Department during the course of the project.

RECOMMENDATION:
By a vote of 22 to 1 with 1 abstention, the Advisory Committee recommends FAVORABLE ACTION on the following:

> VOTED: That the Town adopts the following resolution:
>
> "Resolved, that the Transportation Board adopt standards for determining when the benefits of prohibiting a right turn on red ("RTOR") outweigh the detrimental environmental consequences and traffic inefficiencies resulting from such a prohibition, conduct a study of all traffic intersections in the Town at which there is a traffic light and a sign or signs not permitting a RTOR, make a separate determination with respect to each such intersection as to whether the standards for prohibiting a RTOR have been met , and remove all such signs at intersections that do not meet such standards.
>
> Further Resolved, that the actions in the foregoing resolution be completed by the Spring 2011 Town Meeting and that the Transportation Board report to the Spring 2011 Town Meeting on the standards that it has adopted for determining when to prohibit a RTOR and which traffic intersections it has determined do not justify the removal of signs prohibiting RTOR."

***XXX***

## ARTICLE 21

### TWENTY-FIRST ARTICLE

To see if the Town will enact a resolution requesting that grocers, restaurants, caterers, organizations, and other purveyors of food immediately cease the sale or public serving of veal to the public within the Town of Brookline, such resolution to state as follows:

> WHEREAS calves are particularly abused in order to enhance their appeal to consumers;
>
> WHEREAS the American Veal Association has itself acknowledged this abuse by calling for the end of veal crate use by the industry by 2017;
>
> WHEREAS Brookline Town Meeting has historically provided the platform for providing input into what foods can and cannot be served by local food purveyors;
>
> WHEREAS few proprietors in Brookline sell or serve veal and hence there would be scant economic implications for local businesses;
>
> WHEREAS it is important for Brookline residents to become aware of the unusual cruelty associated with raising calves intended for human consumption;
>
> Now, therefore, be it hereby Resolved that all food purveyors be requested to immediately suspend the sale and/or serving of veal products to the public within the Town of Brookline.

Or act on anything relative thereto.

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### PETITIONER'S ARTICLE DESCRIPTION

- Calves are separated from their mothers 1-4 days after birth, and are soon put into individual crates measuring roughly 25" x 65". Due to the confining nature of the crates, there is only space to stand or lie down uncomfortably.
- The calves remain in these crates for 12 to 23 days until they are transported to slaughter, by which time their close confinement makes it difficult (if not impossible) for them to walk.
- The tender consistency for which veal is known is due to (and dependent upon) this upbringing, which prevents calf muscle development.
- Calves are fed a milk-replacement diet containing limited nutrients and especially lacking of iron.
- The calves are fed this liquid diet for the entirety of their lives.
- The pale-colored meat demanded upon by consumers is due to the anemia that results from this diet.

- Instead of the 4-10 small meals that calves will ingest through natural suckling, veal calves in factory farms will generally ingest two larger meals. In combination with the 100%-liquid-diet, infection, and stress, this imbalanced meal schedule leads to ulcers in 87% of calves.
- Because of the rapid separation of mother and calf post-birth, many calves will receive insufficient colostrum (the antibody-rich first milk from the mother), or none at all. Lacking necessary antibodies, the calves are more susceptible to hazardous bacteria and viruses, which then have the potential to be passed on to consumers through the calves' meat.
- The American Veal Association passed a resolution calling for the end of veal crate use in the industry by 2017, thereby acknowledging that veal crates are cruel but still leaving seven more years of crate-raised, domestic veal in the market.
- In Massachusetts, there is a precedent for recognizing the cruelty of veal calf confinement. House Bill 815 was filed in 2009 and aims to ban, among other forms of confinement, usage of veal crates in the Massachusetts veal industry. Comparable to the law enacted in California in 2008 (and in seven other states in previous years), HB 815 has not yet passed. It should be noted that even if passed, this legislation would have no impact on veal imported from other states or countries.
- Brookline's Town Meeting input in what food proprietors should or should not do is not a new phenomenon. Most notably, in 2007, the Town Meeting overwhelmingly approved (194-11) a ban on trans-fat in restaurants and schools.
- There are few proprietors in Brookline who continue to supply veal. Therefore, while this resolution is highly important in raising awareness about the issue and encouraging responsible consumption practices among Brookline residents, the impact on small businesses will be small.

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## SELECTMEN'S RECOMMENDATION

Article 21 is petitioned article that proposes a resolution that be requests the suspension of the sale and/or serving of veal products to the public within the Town of Brookline. More specifically, the amended motion pertains to the sale and/or serving of crated veal. The practice of crated veal is cruel. Calves raised for veal are taken from their mothers immediately after birth and raised so as to deliberately induce borderline anemia. Calves are then denied basic needs, including access to their mother's milk, access to pasture and exercise and often prohibited from any movement at all in order to produce the pale-colored flesh for which veal is coveted. The crates they are confined to are small, usually measuring 2-feet-wide, so they cannot turn around, stretch their limbs, or even lie down comfortably. Proof of the cruelty is the American Veal Association passing a resolution calling for the end of veal crate use in the industry by 2017.

The Board recognizes the cruelty of crated veal and applauds the petitioner for bringing forward this resolution. Accoring to our Economic Development Office, the impact on Brookline businesses will be minimal, a fact that makes this decision even easier. The

Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 26, 2010, on the motion offered by the Advisory Committee.

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## ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Article 21, submitted by Petitioner Rachel Baras, a resident of the Town, proposes, in the form of a resolution, that grocers, restaurants, caterers, organizations, and other purveyors of food within the Town of Brookline immediately cease the sale or public serving of crated veal.

Petitioner Rachel Baras states that her interest in promoting this article is her care for animal rights. She is concerned about the inhumane and cruel treatment of farm animals and believes that, since Town Meeting is a body primarily elected by citizens of Brookline, she is voicing this concern in a community setting, is hoping that Brookline will serve as an example to other municipalities and to the Commonwealth, and is hoping to educate the citizenry of Brookline as well as have the sale of crated veal cease within the Town.

She points to the conditions that crated veal calves are subjected to: they are separated from their mothers within a few days of birth and put into individual and confining crates, thereby preventing calves from most movement. They can only stand or lie down uncomfortably. They cannot turn around or stretch their limbs and are kept in this intensive confinement for 2-3 weeks until they are slaughtered. Such treatment prevents calf muscle development which in turn produces tender meat. During their confinement, they are fed a milk-replacement liquid diet, with few nutrients, and the pale color of their meat is due to the anemia that results from this diet.

Dr. Alan Balsam agrees that there are implications for human health from the consumption of crated veal. Because the calves are nursed by their mothers for only a day or two after birth, they don't acquire the mother's antibodies which can protect them from bacteria and viruses. Therefore, they easily acquire illnesses for which they are treated with antibiotics. Those antibiotics are passed on to humans when the veal is eaten, and thus, human illnesses become more resistant to treatment with those antibiotics.

Furthermore, Dr. Balsam stated that the raising of food in the USA is in a sad state which has implications for human health. He cited the example of the recent egg recall due to bacterial contamination, and such contamination is a result of the very cramped confinement of the hens .

Across the country, 5 states have passed measures outlawing the intensive crating of veal calves. These are Arizona, California, Colorado, Maine and Michigan. Such legislation is also pending in New York.

In Massachusetts, House Bill 815 was filed in 2009 and that proposal would prohibit the sale of veal raised in veal crates. The American Veal Association has passed a resolution calling for the end of veal crate use in the industry by 2017. In the UK, it is now illegal to raise crated veal and restaurants there obtain non-crated veal locally or import it from Wales and The Netherlands.

At the sub-committee hearing, Marge Amster, Commercial Areas Coordinator, presented information that 500 restaurants and grocers across the country don't sell crated veal, including Whole Foods. These businesses are easily able to find sources of non-crated veal. And these restaurants and grocers are able to advertise that they use non-crated veal, just as many businesses are promoting the use of locally grown products or free-range chicken.

Ms. Amster also reported that she and Dr. Alan Balsam contacted many restaurants and grocers within the Town and only 1 "push-backed" against the proposal. Ms. Amster does not expect much economic hardship for businesses in the Town as only a very few proprietors within the Town sell or serve crated veal.

If this Article passes, the Department of Public Health plans to send a letter to all restaurants, grocers, caterers, and purveyors of food within the Town, and will ask for the cooperation of those businesses. The letter will suggest sources of non-crated veal. The DPH will also send a letter to the existing suppliers of crated veal, ask that they seek sources of non-crated veal, and provide them with information about sources of non-crated veal.

DISCUSSION:
The Advisory Committee discussed the fact that this is a resolution, and therefore, is not binding on restaurants which do want to implement it. At the same time, members discussed the fact that veal of any sort is not found on many menus of restaurants in Town. We understand the main reason for this is that veal is quite expensive and does not seem to be hugely popular with consumers.

A few members expressed reservations about adopting a resolution concerning the sale of a particular food, and believe that the Commonwealth should adopt such standards first. Other members disagreed, citing the fact that Brookline banned tobacco in restaurants as did other municipalities, before the Commonwealth did so. Town Meeting also has banned the use of trans fats in food served in Brookline restaurants so there is precedent for a measure which impacts human health.

The Advisory Committee, by a vote of 17 – 2 – 2, recommends Favorable Action on the following resolution:

VOTED: That the Town enact a resolution requesting that grocers, restaurants, caterers, organizations, and other purveyors of food immediately cease the sale or public serving of crated veal to the public within the Town of Brookline, such resolution to state as follows:

WHEREAS calves are particularly abused in order to enhance their appeal to consumers;

WHEREAS the American Veal Association has itself acknowledged this abuse by calling for the end of veal crate use by the industry by 2017;

WHEREAS Brookline Town Meeting has historically provided the platform for providing input into what foods can and cannot be served by local food purveyors;

WHEREAS few proprietors in Brookline sell or serve veal and hence there would be scant economic implications for local businesses;

WHEREAS it is important for Brookline residents to become aware of the unusual cruelty associated with raising crated calves intended for human consumption;

Now, therefore, be it hereby Resolved that all food purveyors be requested to immediately suspend the sale and/or serving of crated veal products to the public within the Town of Brookline.

***XXX***

ARTICLE 22

TWENTY-SECOND ARTICLE
Reports of Town Officers and Committees

**INTERIM REPORT OF MODERATOR'S COMMITTEE ON WASTE DISPOSAL**
**November 3, 2010**

## I. BACKGROUND

The moderator established the committee in July 2009 in response to Article 26 of the May 2009 Annual Town Meeting. Article 26 called for the "…Adoption of a *Pay As You Throw* (*PAYT*) Municipal Waste System." By a majority vote, Town Meeting voted "To refer the substance of Article 26 to a Moderator's Committee whose members shall include representation from the prior *Pay As You Throw* Study Committee to report at the latest to the 2010 Fall Special Town Meeting. Besides studying *Pay As You Throw*, the Moderator's Committee should also study possible alternative ways of meeting the goals of increasing recycling and reducing solid waste including but not limited to education, single stream recycling, and automated waste collection."

A list of committee members follows in Appendix A.

## II. THE COMMITTEE'S PROCESS

The committee met as a whole on twelve occasions. All meetings followed public notice. In addition, the committee held a public hearing in May 2010.

Most meetings focused on data gathering on specific topics, including:

- Review of current Brookline waste recycling and trash disposal programs
- Presentation by the Director of the Municipal Waste Reduction Program at the Massachusetts Department of Environmental Protection regarding municipal waste reduction strategies
- Vendor presentation regarding single stream recycling and processing
- City of Newton DPW Commissioner's presentation on Newton's waste disposal programs

## III. SINGLE STREAM RECYCLING – RECOMMENDATION TO BOARD OF SELECTMEN

Brookline's Department of Public Works began evaluating alternate recycling strategies in the fall of 2009 in order to prepare for the mid-2010 expiration of the town's recycling contract. The DPW commissioner indicated that a shift to a single stream recycling program constituted a viable consideration for the Town.

In December 2009, in recognition of the generally acknowledged financial and environmental advantages of single stream recycling programs, the committee developed a recommendation to the Board of Selectmen in favor of single stream recycling. The specific text of the recommendation is noted below:

> The Committee recommends to the Board of Selectmen that (1) the Town of Brookline adopt a single-stream recycling program using 64 gallon containers (2) the Selectmen authorize the Commissioner of Public Works to contract for single stream recycling with automated pickup. The Committee further advises the Board of Selectmen that supporting data for single stream recycling are to be provided by the Commissioner of Public Works, and that the Committee continues to evaluate Pay As You Throw and other related waste collection alternatives.

## IV. SINGLE STREAM RECYCLING – IMPLEMENTATION AND IMPLICATIONS

Discussion regarding the implementation of Single Stream Recycling began in early 2010, with significant community interest and comment. The committee's May 2010 public hearing became a joint hearing regarding both Single Stream Recycling and alternate approaches to trash disposal.

During the summer of 2010, some committee members felt that the then-pending implementation of Single Stream Recycling should be completed and allowed to stabilize before the committee could fully evaluate other possible recommendations, including *PAYT*. These committee members expect that Brookline's solid waste volume and disposal costs will decrease as a result of Single Stream Recycling, and believe that the impact of the implementation should be taken into account as a recommendation is developed.

The committee was impressed by the multi-million dollar savings achieved in Newton as a result of their hybrid PAYT and single stream recycling program. Newton's program allows residents to dispose of a baseline amount of trash per household per week, then charges an additional PAYT fee for additional volume.

## V. NEXT STEPS

With the DPW, the committee will develop comprehensive recommendations to drive improvements in Brookline's solid waste management systems.

Some of the additional measures include identification and evaluation of multiple specific waste management alternatives for feasibility, environmental impact, cost, and other considerations. The committee plans to hold at least one additional public hearing, focused on obtaining diverse perspectives and comments related to specific options.

In considering alternatives, the committee will:

- Assess increased waste reduction from single stream recycling
- Further explore alternatives to how citizens pay for trash collection
- Evaluate possible changes in use of collection technology
- Consider other waste reduction strategies including increased types of recycling and municipal composting
- Investigate pathways to "zero waste"
- Evaluate the effect "wasting" has on the Town's greenhouse gas inventory
- Where appropriate, seek out additional input or expertise

The committee expects to complete its final report no later than the Fall Town Meeting of 2011.

## APPENDIX A: Committee Members

Dr. Franklin Friedman
Kenneth M. Goldstein, Esq.
Dr. Gerald P. Koocher
Adam Mitchell
Andrew Pappastergion
Stanley Spiegel
Virginia Smith
Raymond Wise

**SELECTMEN'S CLIMATE ACTION COMMITTEE**
**REPORT TO TOWN MEETING FALL 10**

## 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 fifteen members: twelve representatives of various boards and commissions and three citizens appointed by the Selectmen (Appendix 2). In November 2009, the committee released its first annual Report to Town Meeting, which served to update the town regarding the committee's work and progress. The 2010 Report to Town Meeting builds upon the ambitions and projects of the previous report and also sets new objectives for the committee.

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 hold additional meetings monthly or as needed (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

- Held a public forum and promoted the town's adoption of the Stretch Energy Code, which was adopted at spring Town Meeting and became an option to the conventional building code on July 1st, 2010. The Stretch Energy Code will be a requirement come January 1st, 2011. The code requires more energy efficient construction, therefore removing the disconnect between the motivations of builders wishing to save money during construction and those of residents wishing to save money in energy costs.
- Developed and promoted a zoning warrant article to allow for large-scale ground-mounted solar panels on the Singletree Hill Reservoir, which is currently up for consideration by Town Meeting this fall. If adopted, the article will allow for the by-right development of renewable energy-generating resources in the town, without the need for special permits.

- Made significant progress towards attaining the "Green Community" designation for the Town of Brookline, as recognized by the Commonwealth. This designation would both affirm and publicize the commitment of the town to sustainability, as well as provide additional funding opportunities for renewable energy or energy efficiency projects. Should Town Meeting vote for favorable action on the above mentioned solar warrant article, the Town will have fulfilled three of the five necessary criteria.
- Completed initial research relating to the Green Communities criteria for the adoption of a fuel efficient vehicle purchasing policy by examining how other cities and towns in Massachusetts have addressed the issue.
- Assisted in the development of an RFP and the review of the responses for an energy audit and weatherization program to be funded by the Energy Efficiency and Conservation Block Grant (EECBG) program. Energy services company Next Step Living, in partnership with non-profits New Ecology and the Massachusetts Energy Consumers Alliance, was selected to administer the program, dubbed "Green Homes Brookline." The program will encourage all Brookline residents, regardless of housing tenure, to obtain free energy audits of their homes. In addition, households earning between 60% and 120% of area median income can receive subsidized energy improvements. The CAC is also partnering with local grassroots group Climate Change Action Brookline (CCAB) to promote this program and encourage participation.
- In a joint campaign with CCAB, established partnerships with nearly 100 businesses and over 700 residents for the Brookline 2010 Campaign. This public education and engagement campaign aims to reduce Brookline's carbon footprint by developing relationships with virtually every organization in town (schools, businesses, neighborhood associations, civic organizations, houses of worship, Town departments, etc.), who then agree to adopt activities that reduce carbon emissions. Brookline's carbon footprint for transportation, heating and cooling, electricity and solid waste is around 540,000 tons per year. Approximately 74% of the total is residential consumption.
- In conjunction with the Department of Information Technology, created the Brookline 2010 website for promotion of the campaign.
- Finalized the Brookline Greenhouse Gas Inventory in preparation for a new Local Climate Action Plan.
- Continued and strengthened a close working relationship with CCAB. Joint initiatives include Green Homes Brookline, Brookline 2010, and CCAB's 85/25 initiative, which aims to contact 85 percent of Brookline households and achieve an average 25 percent GHG reduction from 2008 levels.
- Served in advisory capacity to the Department of Planning and Community Development and the Board of Selectmen regarding the management of EECBG funds, Green Communities milestones, the Green Homes Brookline program, and other related projects.
- Further developed the partnership between CCAB, CAC, the Public Health Department, and the Recreation Department. This coalition collaborates to plan events meant to raise awareness of the parallels between healthy behaviors (such as walking, biking, and eating a locally produced, plant-based diet) and reducing greenhouse gas emissions.

## III. WORK PLAN

The CAC has identified the following tasks for the coming year:

1. Collaborate with CCAB on community education and engagement activities to promote lifestyle changes that lead to greenhouse gas reduction.
2. Monitor and support the town's implementation of the Green Homes Brookline Program, as well as other EECBG initiatives.
3. Collaborate with CCAB to organize and run Climate Action Week, to be held January 23-30, 2011, and other events that are part of the continuation of the Brookline 2010 campaign. Climate Week is also sponsored by the Brookline Department of Public Health, Brookline School Committee, and Brookline Adult and Community Education. Events include a special kick off on Jan. 23rd, BACE classes, and various workshops.
4. Continue to organize and implement municipal efforts to meet the criteria of the Green Communities Act, including the adoption of a fuel efficient vehicle purchasing policy and the development of a municipal energy use inventory and reduction plan.
5. Draft a new Local Climate Action Plan to replace the Town's original Climate Action Plan adopted in 2002.
6. Collect and refine data on town energy use and GHG emissions, by sector and source.

## IV. 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 Hayes, 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
- Measurements & Goals
- Communications, Education & Engagement

In 2009, we re-organized into four subcommittees centered on our current projects:

- Brookline 2010 Initiative
- Green Communities Act
- Buildings & Infrastructure Strategies & Technologies
- Measurements & Goals

In 2010 we re-organized again in order to strategically and efficiently accomplish our goals:

- Brookline 2010

- Buildings & Infrastructure Strategies & Technologies
- Measurements & Goals

**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 and improvements 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. Town of Brookline Greenhouse Gas Inventory Overview

***History and Purpose***

In May 2000, the Town of Brookline elected to participate in the Cities for Climate Protection Campaign, a program of the International Council of Local Environmental Initiatives (ICLEI). The Cities for Climate Protection Campaign follows a 'Five Milestone' process:

- Milestone One: Conduct a Greenhouse Gas Emissions Inventory and Report
- Milestone Two: Set a Greenhouse Gas Emissions Reduction Target
- Milestone Three: Develop a Local Climate Action Plan
- Milestone Four: Implement the Local Climate Action Plan
- Milestone Five: Monitor Emissions Reductions

The Town completed the first three milestones in the ICLEI program, publishing a greenhouse gas inventory in August 2000 and a Greenhouse Gas Emissions Reduction Target and Climate Action Plan in February 2002.

The August 2000 Greenhouse Gas Inventory reported emissions for calendar years 1995 and 1998. The following summary updates those initial findings to include information for calendar years 2003 and 2008. Since the goal of the Greenhouse Gas Inventory is to guide Brookline's process of writing and implementing a plan to reduce the emissions contributing to climate change, it is recommended that the Selectmen's Climate Action Committee work with the Town to revise Brookline's Greenhouse Gas Reduction Target and Climate Action Plan based on the greenhouse gas emission trends from 1995 through 2008.

***Brookline's Community Greenhouse Gas Emissions Totaled 520,000 Tons $CO_2$ for CY2008***

Brookline's community greenhouse gas emissions (Table 1 and Figure 1) have been steady at roughly 520,000 tons of $CO_2$ per year for, at least, the five year period from 2003 through 2008. Community emissions comprise the residential, commercial, and government sectors.

Brookline's 2008 community greenhouse gas emissions were about eight percent below the annual emissions rate of 560,000 tons previously reported for 1995 (August 2000 Greenhouse Gas Inventory Report). Adjusting for possible inconsistencies in electricity and natural gas usage and vehicle emissions described below, Brookline's 1995 greenhouse gas emissions may have been as low as 515,000 tons per year. In either case, Brookline has done better than the United States, as a whole. Greenhouse gas emissions increased about ten percent nationally from 1995 through 2007.

Greenhouse gas emissions from Brookline's government operations (Figure 2) for 2008 are relatively unchanged from those previously reported for 1995 (August 2000 Greenhouse Gas Inventory Report). Government operations are responsible for about three percent of Brookline's total community emissions.

Emissions from MBTA trolleys and buses were not been included in this analysis. Emissions from these sources are likely about one percent of the reported total community emissions, based on the August 2000 Greenhouse Gas Inventory Report.

***Brookline's Climate Action Plan Base Year Should be Changed from 1995 to 2003***
The ICLEI Local Government Protocol (September 2008) states: "It is good practice to compile an emissions inventory for the earliest year for which complete and accurate data can be gathered. The base year for the UNFCCC and subsequent Kyoto Protocol is calendar year 1990. However, required data from 1990 is often prohibitively difficult or impossible to collect. Given that the priority for a greenhouse gas management program should be on practical results, it is more important that the base year be documented with enough detail to provide a good basis for local action planning than it is that all local governments produce an inventory with the same, stipulated base year."

Graphs of electricity usage (Figure 3) and natural gas usage (Figure 4) from 1995 through 2008 indicate anomalies in trends for both utilities. Values for 1995 and 1998 were reported in the August 2000 Greenhouse Gas Inventory report based on information provided by Boston Edison and Boston Gas. Usage information for 2002 through 2008 was obtained from NSTAR and National Grid. The significant drop in usage of gas and electricity from 1998 to 2002 is inconsistent with both population growth in Brookline and national trends in residential energy consumption during that period.

$CO_2$ emissions from vehicles traveling in Brookline may also have been overstated, based on a November 2009 report from the United States Environmental Protection Agency. Vehicle emission factors generated for 1995 by the ICLEI software (CACP 2009) were based on projections that predated the recent EPA report.

Due to the above inconsistencies, it is recommended that 2003 be used as the base year for Brookline's Greenhouse Gas Reduction Target and Climate Action Plan.

***Brookline's Residential Carbon Footprint is Much Lower than the U.S. Average***
Brookline 2010 and Climate Change Action Brookline (CCAB) are participating in the Massachusetts Climate Action Network's Cool Mass initiative. The Cool Mass Campaign seeks to empower 25 percent of the households in Massachusetts to reduce their carbon footprints 25 percent. CCAB is working to exceed that target by engaging 85 percent of Brookline households in $CO_2$ reduction by the end of 2012, with an average $CO_2$ emissions reduction of 25 percent for each participating household.

Cool Mass households are being asked to follow the Empowerment Institute's Low Carbon Diet, which begins with calculating a carbon footprint. Eleven Cool Mass towns, including Brookline, were asked to estimate their residential sector carbon footprint.

CCAB estimated Brookline's residential carbon footprint using information compiled during the process of completing Brookline's Greenhouse Gas Inventory. A few assumptions were made regarding the allocation of electricity, natural gas, and heating oil among residential and commercial users. The Greenhouse Gas Inventory followed the

ICLEI protocol of using total vehicle miles travelled by residents and non-residents within Brookline's borders. The carbon footprint was based on the Low Carbon Diet approach, using an estimate of vehicle miles travelled by cars and trucks driven anywhere by Brookline residents and businesses.

In 2008, Brookline's average residential carbon footprint was about 31,000 pounds of $CO_2$ per year. The average US household had a carbon footprint of 46,000 pounds of $CO_2$ per year, according to data from the US Energy Information Agency's (EIA) 2005 Residential Energy Consumption Survey and a household vehicle use survey for 2009 published by the National Highway Transportation Survey (NHTS). In both cases, $CO_2$ emissions from personal air travel were not included. If CCAB achieves its goal of engaging 85 percent of Brookline households in $CO_2$ with an average $CO_2$ emissions reduction of 25 percent for each participating household, Brookline's residential carbon footprint will be reduced to 25,000 pounds of $CO_2$ per year.
Brookline's average commercial carbon footprint was 162,000 pounds of $CO_2$ per year in 2008, excluding air travel.

**Table 1** **Greenhouse Gas Emissions**
**$CO_2$e, Tons/Year**

| | 1995 | 2003 | 2008 |
|---|---|---|---|
| Electricity | 140,920 | 130,384 | 137,125 |
| Natural Gas | 120,369 | 104,223 | 126,643 |
| Heating Oil | 126,267 | 112,366 | 103,678 |
| Cars and Trucks | 151,315 | 152,194 | 128,992 |
| Solid Waste | 21,129 | 21,129 | 21,264 |
| Total | 559,999 | 520,295 | 517,702 |

**Table 2** **2008 GHG Emissions By Sector**
**$CO_2$e, Tons/Year**

| | Residential | Commercial | Municipal | Total |
|---|---|---|---|---|
| Electricity | 75,688 | 54,106 | 7,331 | 137,125 |
| Natural Gas | 89,812 | 34,474 | 2,357 | 126,643 |
| Heating Oil | 81,070 | 19,980 | 2,629 | 103,679 |
| Cars and Trucks | | | | 128,992 |
| Solid Waste | 14,176 | 6,998 | 90 | 21,264 |
| Total | | | | 517,702 |

**Table 3** **Greenhouse Gas Sources**

| | | 1995 | 2003 | 2008 |
|---|---|---|---|---|
| Electricity | kwh | 311,702,637 | 288,397,640 | 293,386,860 |
| Natural Gas | Therms | 20,445,394 | 17,702,807 | 21,511,045 |
| Heating Oil | Gallons | 11,283,499 | 10,041,279 | 9,264,891 |
| Cars and Trucks | Miles | 232,094,937 | 242,992,126 | 210,333,390 |
| Solid Waste | Tons | 21,000 | 21,000 | 21,135 |

**Table 4 Brookline's Residential Carbon Footprint - 2008**

| | $CO_2e$, Tons/Year |
|---|---|
| Electricity | 75,688 |
| Natural Gas | 89,812 |
| Heating Oil | 81,071 |
| Gasoline/Diesel | 139,156 |
| Solid Waste | 14,176 |
| Total | 399,901 |
| Number of Households | 25,573 |
| Pounds $CO_2$/Household/Year | 31,275 |

**Table 5 Brookline's Commercial Carbon Footprint - 2008**

| | $CO_2e$, Tons/Year |
|---|---|
| Electricity | 52,536 |
| Natural Gas | 34,474 |
| Heating Oil | 19,980 |
| Gasoline/Diesel | 7,576 |
| Solid Waste | 6,998 |
| | 121,564 |
| Number of Businesses | 1,500 |
| Pounds $CO_2$/Business/Year | 162,086 |

**Table 6 Brookline's Municipal Carbon Footprint - 2008**

| | $CO_2e$, Tons/Year |
|---|---|
| Electricity | 8,901 |
| Natural Gas | 2,357 |
| Heating Oil | 2,629 |
| Gasoline/Diesel | 2,305 |
| Solid Waste | 90 |
| | 16,282 |

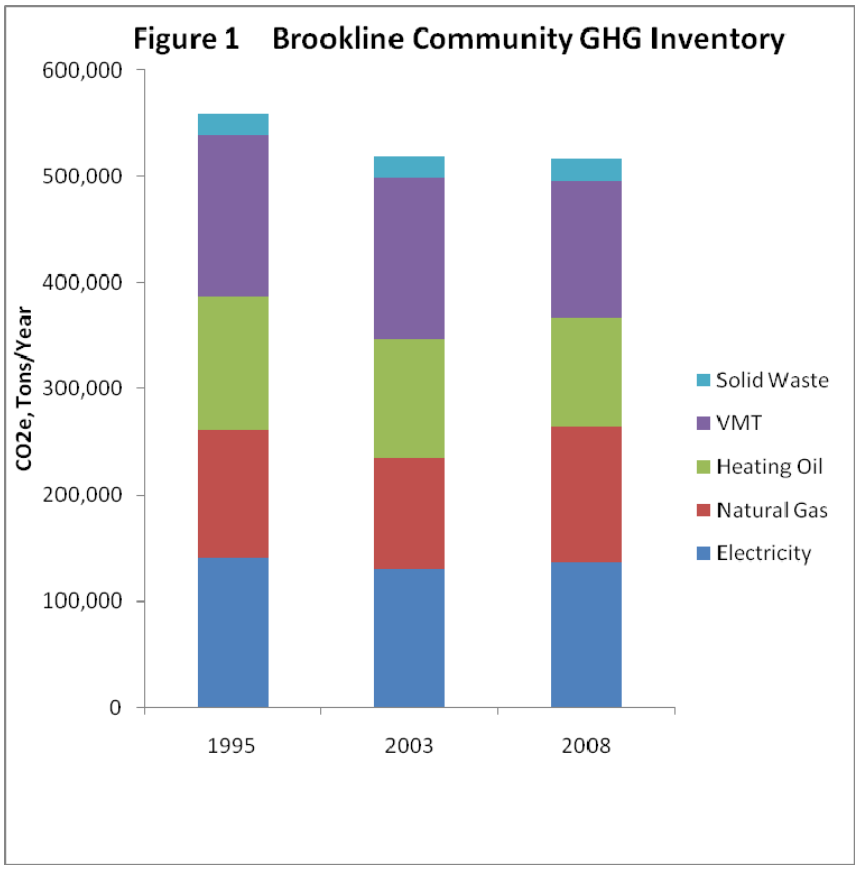
Figure 1 Brookline Community GHG Inventory
600,000
500,000
400,000
300,000
200,000
100,000
0
CO2e, Tons/Year
1995
2003
2008
Solid Waste
VMT
Heating Oil
Natural Gas
Electricity

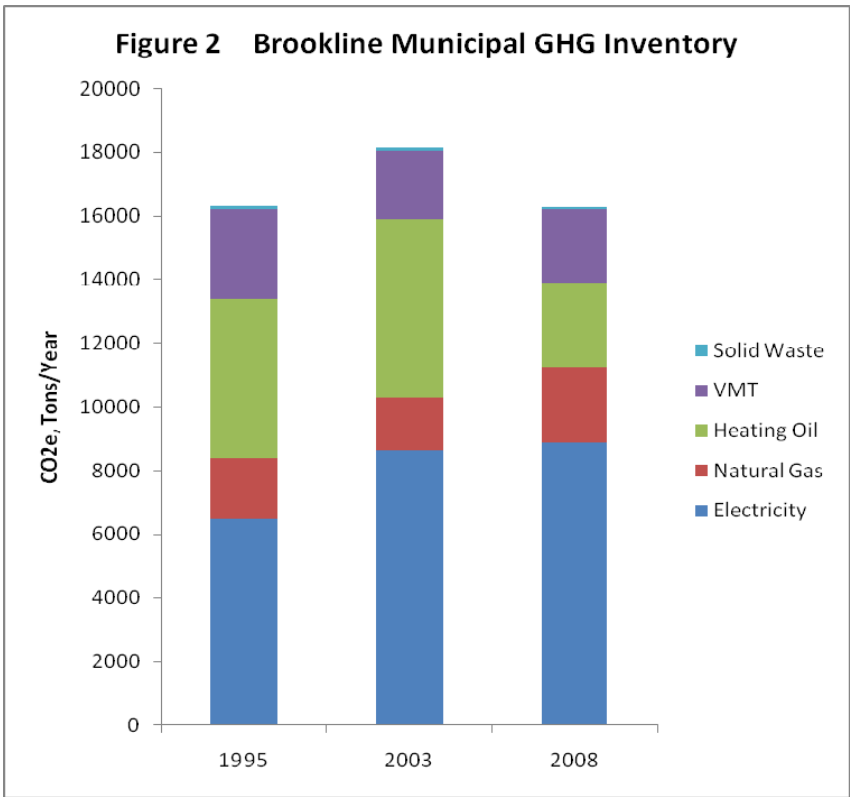
Figure 2 Brookline Municipal GHG Inventory
20000
18000
16000
14000
12000
10000
8000
6000
4000
2000
0
CO2e, Tons/Year
1995
2003
2008
Solid Waste
VMT
Heating Oil
Natural Gas
Electricity

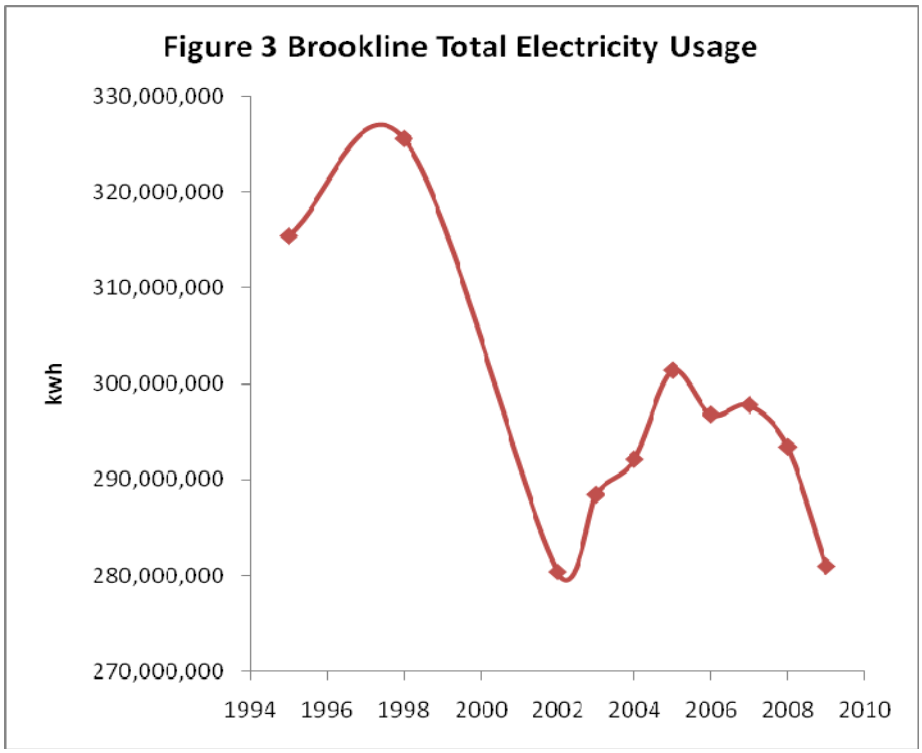
Figure 3 Brookline Total Electricity Usage
kwh
330,000,000
320,000,000
310,000,000
300,000,000
290,000,000
280,000,000
270,000,000
1994
1996
1998
2000
2002
2004
2006
2008
2010

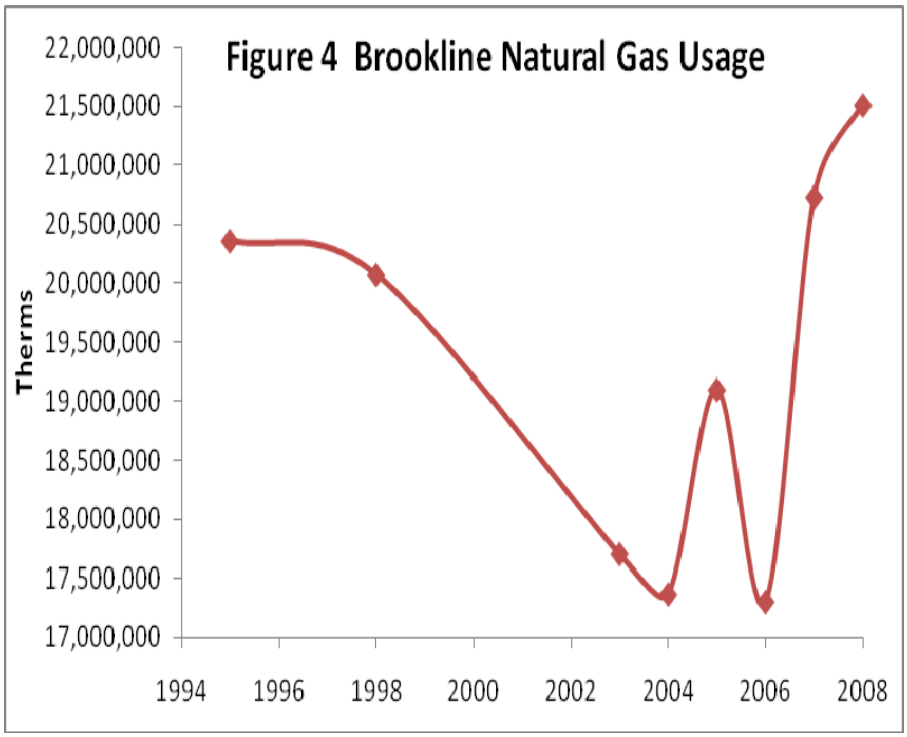
Figure 4 Brookline Natural Gas Usage
Therms
22,000,000
21,500,000
21,000,000
20,500,000
20,000,000
19,500,000
19,000,000
18,500,000
18,000,000
17,500,000
17,000,000
1994
1996
1998
2000
2002
2004
2006
2008

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The CAC has identified the following tasks for the coming year:

1. Collaborate with CCAB on community education and engagement activities to promote lifestyle changes that lead to greenhouse gas reduction.
2. Monitor and support the town's implementation of the Green Homes Brookline Program, as well as other EECBG initiatives.
3. Collaborate with CCAB to organize and run Climate Action Week, to be held January 23-30, 2011, and other events that are part of the continuation of the Brookline 2010 campaign. Climate Week is also sponsored by the Brookline Department of Public Health, Brookline School Committee, and Brookline Adult and Community Education. Events include a special kick off on Jan. 23rd, BACE classes, and various workshops.
4. Continue to organize and implement municipal efforts to meet the criteria of the Green Communities Act, including the adoption of a fuel efficient vehicle purchasing policy and the development of a municipal energy use inventory and reduction plan.
5. Draft a new Local Climate Action Plan to replace the Town's original Climate Action Plan adopted in 2002.
6. Collect and refine data on town energy use and GHG emissions, by sector and source.

## IV. 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 Hayes, 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
- Measurements & Goals
- Communications, Education & Engagement

In 2009, we re-organized into four subcommittees centered on our current projects:

- Brookline 2010 Initiative
- Green Communities Act
- Buildings & Infrastructure Strategies & Technologies
- Measurements & Goals

In 2010 we re-organized again in order to strategically and efficiently accomplish our goals:

- Brookline 2010

- Buildings & Infrastructure Strategies & Technologies
- Measurements & Goals

**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 and improvements 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. Town of Brookline Greenhouse Gas Inventory Overview

***History and Purpose***

In May 2000, the Town of Brookline elected to participate in the Cities for Climate Protection Campaign, a program of the International Council of Local Environmental Initiatives (ICLEI). The Cities for Climate Protection Campaign follows a 'Five Milestone' process:

- Milestone One: Conduct a Greenhouse Gas Emissions Inventory and Report
- Milestone Two: Set a Greenhouse Gas Emissions Reduction Target
- Milestone Three: Develop a Local Climate Action Plan
- Milestone Four: Implement the Local Climate Action Plan
- Milestone Five: Monitor Emissions Reductions

The Town completed the first three milestones in the ICLEI program, publishing a greenhouse gas inventory in August 2000 and a Greenhouse Gas Emissions Reduction Target and Climate Action Plan in February 2002.

The August 2000 Greenhouse Gas Inventory reported emissions for calendar years 1995 and 1998. The following summary updates those initial findings to include information for calendar years 2003 and 2008. Since the goal of the Greenhouse Gas Inventory is to guide Brookline's process of writing and implementing a plan to reduce the emissions contributing to climate change, it is recommended that the Selectmen's Climate Action Committee work with the Town to revise Brookline's Greenhouse Gas Reduction Target and Climate Action Plan based on the greenhouse gas emission trends from 1995 through 2008.

***Brookline's Community Greenhouse Gas Emissions Totaled 520,000 Tons $CO_2$ for CY2008***

Brookline's community greenhouse gas emissions (Table 1 and Figure 1) have been steady at roughly 520,000 tons of $CO_2$ per year for, at least, the five year period from 2003 through 2008. Community emissions comprise the residential, commercial, and government sectors.

Brookline's 2008 community greenhouse gas emissions were about eight percent below the annual emissions rate of 560,000 tons previously reported for 1995 (August 2000 Greenhouse Gas Inventory Report). Adjusting for possible inconsistencies in electricity and natural gas usage and vehicle emissions described below, Brookline's 1995 greenhouse gas emissions may have been as low as 515,000 tons per year. In either case, Brookline has done better than the United States, as a whole. Greenhouse gas emissions increased about ten percent nationally from 1995 through 2007.

Greenhouse gas emissions from Brookline's government operations (Figure 2) for 2008 are relatively unchanged from those previously reported for 1995 (August 2000 Greenhouse Gas Inventory Report). Government operations are responsible for about three percent of Brookline's total community emissions.

Emissions from MBTA trolleys and buses were not been included in this analysis. Emissions from these sources are likely about one percent of the reported total community emissions, based on the August 2000 Greenhouse Gas Inventory Report.

***Brookline's Climate Action Plan Base Year Should be Changed from 1995 to 2003***
The ICLEI Local Government Protocol (September 2008) states: "It is good practice to compile an emissions inventory for the earliest year for which complete and accurate data can be gathered. The base year for the UNFCCC and subsequent Kyoto Protocol is calendar year 1990. However, required data from 1990 is often prohibitively difficult or impossible to collect. Given that the priority for a greenhouse gas management program should be on practical results, it is more important that the base year be documented with enough detail to provide a good basis for local action planning than it is that all local governments produce an inventory with the same, stipulated base year."

Graphs of electricity usage (Figure 3) and natural gas usage (Figure 4) from 1995 through 2008 indicate anomalies in trends for both utilities. Values for 1995 and 1998 were reported in the August 2000 Greenhouse Gas Inventory report based on information provided by Boston Edison and Boston Gas. Usage information for 2002 through 2008 was obtained from NSTAR and National Grid. The significant drop in usage of gas and electricity from 1998 to 2002 is inconsistent with both population growth in Brookline and national trends in residential energy consumption during that period.

$CO_2$ emissions from vehicles traveling in Brookline may also have been overstated, based on a November 2009 report from the United States Environmental Protection Agency. Vehicle emission factors generated for 1995 by the ICLEI software (CACP 2009) were based on projections that predated the recent EPA report.

Due to the above inconsistencies, it is recommended that 2003 be used as the base year for Brookline's Greenhouse Gas Reduction Target and Climate Action Plan.

***Brookline's Residential Carbon Footprint is Much Lower than the U.S. Average***
Brookline 2010 and Climate Change Action Brookline (CCAB) are participating in the Massachusetts Climate Action Network's Cool Mass initiative. The Cool Mass Campaign seeks to empower 25 percent of the households in Massachusetts to reduce their carbon footprints 25 percent. CCAB is working to exceed that target by engaging 85 percent of Brookline households in $CO_2$ reduction by the end of 2012, with an average $CO_2$ emissions reduction of 25 percent for each participating household.

Cool Mass households are being asked to follow the Empowerment Institute's Low Carbon Diet, which begins with calculating a carbon footprint. Eleven Cool Mass towns, including Brookline, were asked to estimate their residential sector carbon footprint.

CCAB estimated Brookline's residential carbon footprint using information compiled during the process of completing Brookline's Greenhouse Gas Inventory. A few assumptions were made regarding the allocation of electricity, natural gas, and heating oil among residential and commercial users. The Greenhouse Gas Inventory followed the

ICLEI protocol of using total vehicle miles travelled by residents and non-residents within Brookline's borders. The carbon footprint was based on the Low Carbon Diet approach, using an estimate of vehicle miles travelled by cars and trucks driven anywhere by Brookline residents and businesses.

In 2008, Brookline's average residential carbon footprint was about 31,000 pounds of $CO_2$ per year. The average US household had a carbon footprint of 46,000 pounds of $CO_2$ per year, according to data from the US Energy Information Agency's (EIA) 2005 Residential Energy Consumption Survey and a household vehicle use survey for 2009 published by the National Highway Transportation Survey (NHTS). In both cases, $CO_2$ emissions from personal air travel were not included. If CCAB achieves its goal of engaging 85 percent of Brookline households in $CO_2$ with an average $CO_2$ emissions reduction of 25 percent for each participating household, Brookline's residential carbon footprint will be reduced to 25,000 pounds of $CO_2$ per year.
Brookline's average commercial carbon footprint was 162,000 pounds of $CO_2$ per year in 2008, excluding air travel.

**Table 1** **Greenhouse Gas Emissions**
**$CO_2$e, Tons/Year**

| | 1995 | 2003 | 2008 |
|---|---|---|---|
| Electricity | 140,920 | 130,384 | 137,125 |
| Natural Gas | 120,369 | 104,223 | 126,643 |
| Heating Oil | 126,267 | 112,366 | 103,678 |
| Cars and Trucks | 151,315 | 152,194 | 128,992 |
| Solid Waste | 21,129 | 21,129 | 21,264 |
| Total | 559,999 | 520,295 | 517,702 |

**Table 2** **2008 GHG Emissions By Sector**
**$CO_2$e, Tons/Year**

| | Residential | Commercial | Municipal | Total |
|---|---|---|---|---|
| Electricity | 75,688 | 54,106 | 7,331 | 137,125 |
| Natural Gas | 89,812 | 34,474 | 2,357 | 126,643 |
| Heating Oil | 81,070 | 19,980 | 2,629 | 103,679 |
| Cars and Trucks | | | | 128,992 |
| Solid Waste | 14,176 | 6,998 | 90 | 21,264 |
| Total | | | | 517,702 |

**Table 3** **Greenhouse Gas Sources**

| | | 1995 | 2003 | 2008 |
|---|---|---|---|---|
| Electricity | kwh | 311,702,637 | 288,397,640 | 293,386,860 |
| Natural Gas | Therms | 20,445,394 | 17,702,807 | 21,511,045 |
| Heating Oil | Gallons | 11,283,499 | 10,041,279 | 9,264,891 |
| Cars and Trucks | Miles | 232,094,937 | 242,992,126 | 210,333,390 |
| Solid Waste | Tons | 21,000 | 21,000 | 21,135 |

**Table 4 Brookline's Residential Carbon Footprint - 2008**

| | $CO_2e$, Tons/Year |
|---|---|
| Electricity | 75,688 |
| Natural Gas | 89,812 |
| Heating Oil | 81,071 |
| Gasoline/Diesel | 139,156 |
| Solid Waste | 14,176 |
| Total | 399,901 |
| Number of Households | 25,573 |
| Pounds $CO_2$/Household/Year | 31,275 |

**Table 5 Brookline's Commercial Carbon Footprint - 2008**

| | $CO_2e$, Tons/Year |
|---|---|
| Electricity | 52,536 |
| Natural Gas | 34,474 |
| Heating Oil | 19,980 |
| Gasoline/Diesel | 7,576 |
| Solid Waste | 6,998 |
| | 121,564 |
| Number of Businesses | 1,500 |
| Pounds $CO_2$/Business/Year | 162,086 |

**Table 6 Brookline's Municipal Carbon Footprint - 2008**

| | $CO_2e$, Tons/Year |
|---|---|
| Electricity | 8,901 |
| Natural Gas | 2,357 |
| Heating Oil | 2,629 |
| Gasoline/Diesel | 2,305 |
| Solid Waste | 90 |
| | 16,282 |

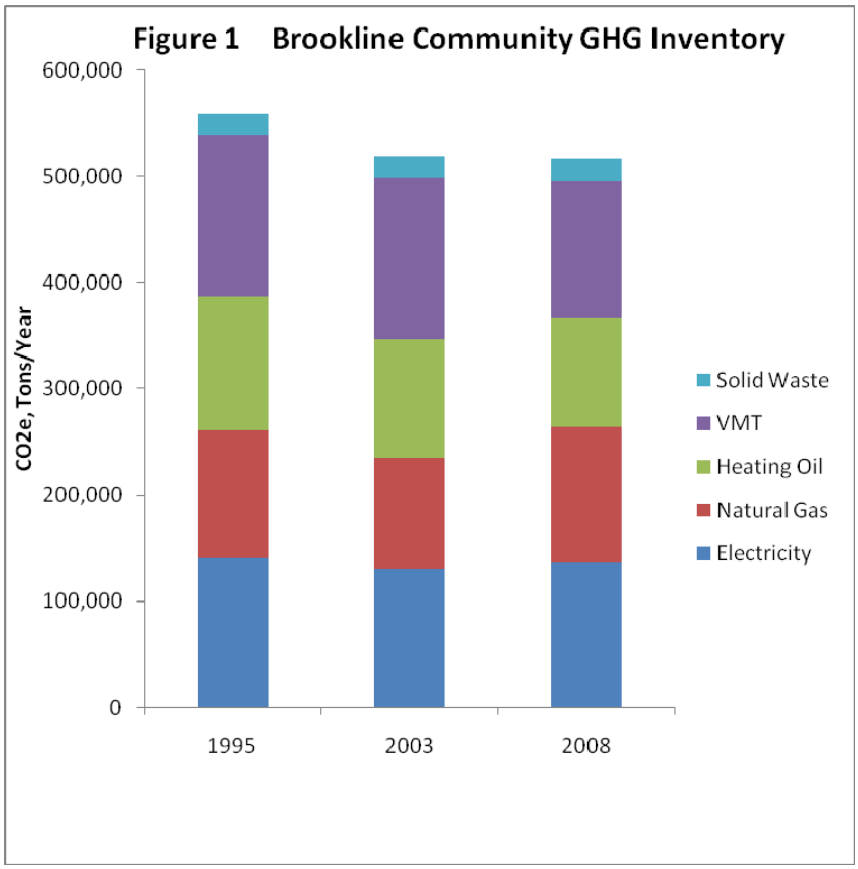
Figure 1 Brookline Community GHG Inventory
600,000
500,000
400,000
300,000
200,000
100,000
0
CO2e, Tons/Year
1995
2003
2008
Solid Waste
VMT
Heating Oil
Natural Gas
Electricity

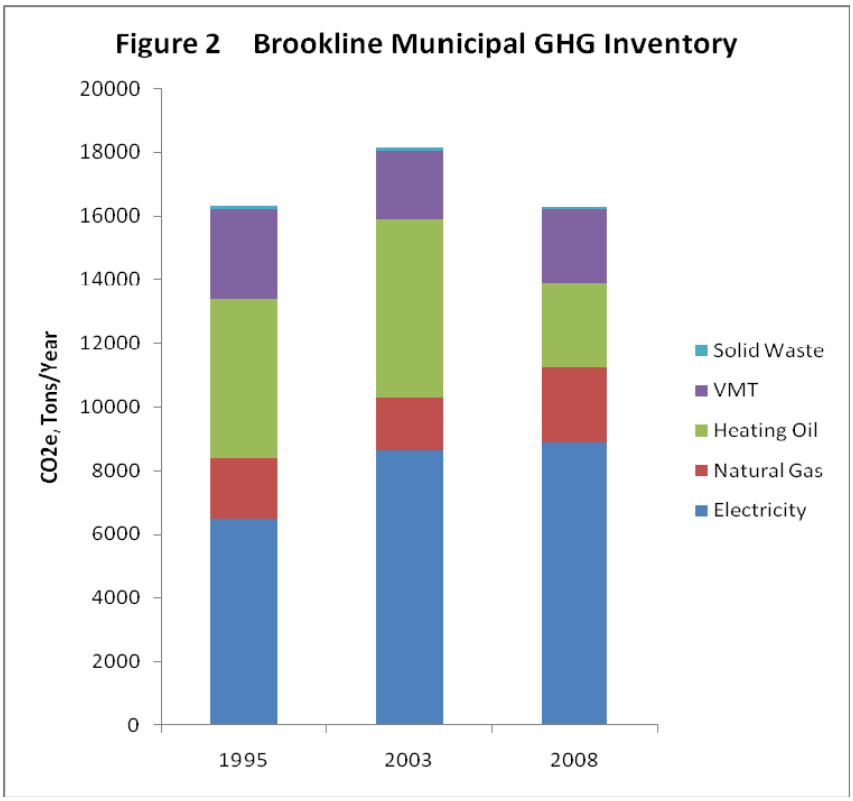
Figure 2 Brookline Municipal GHG Inventory
20000
18000
16000
14000
12000
10000
8000
6000
4000
2000
0
CO2e, Tons/Year
1995
2003
2008
Solid Waste
VMT
Heating Oil
Natural Gas
Electricity

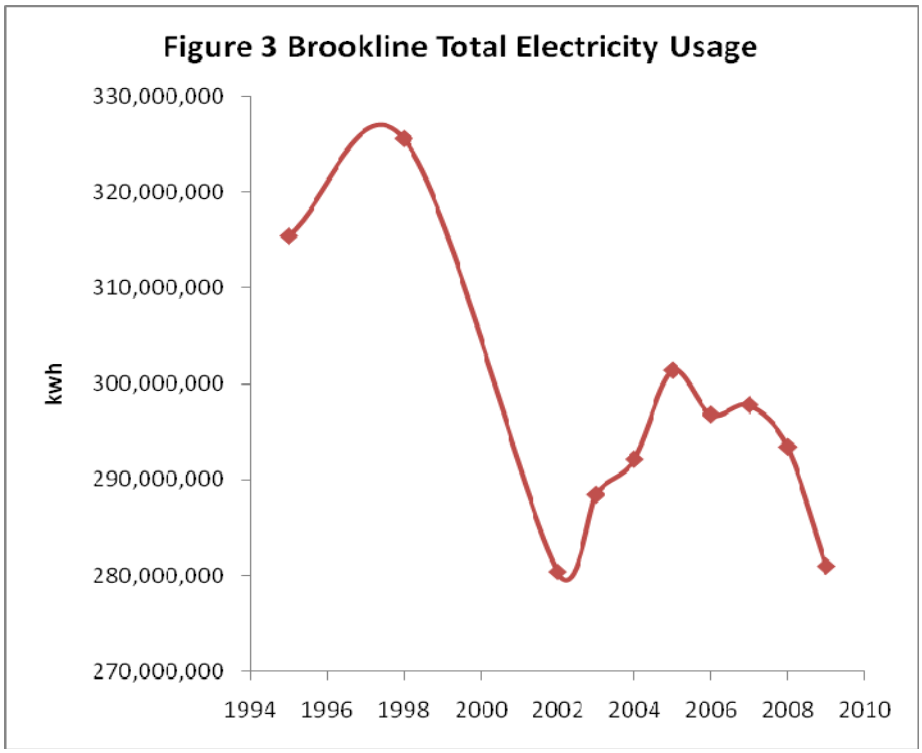
Figure 3 Brookline Total Electricity Usage
kwh
330,000,000
320,000,000
310,000,000
300,000,000
290,000,000
280,000,000
270,000,000
1994
1996
1998
2000
2002
2004
2006
2008
2010

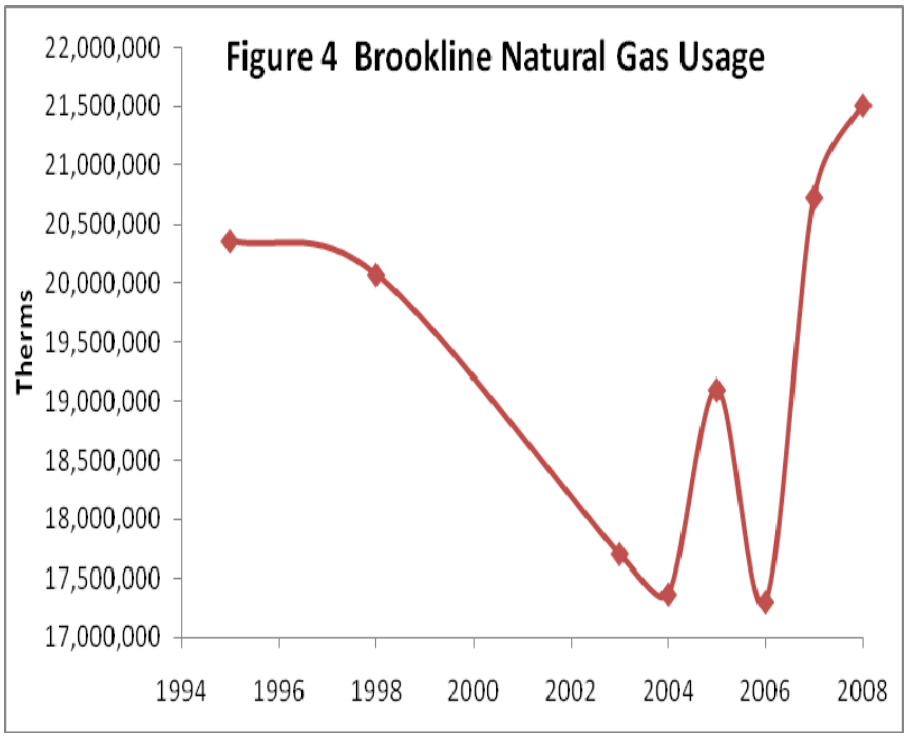
Figure 4 Brookline Natural Gas Usage
Therms
22,000,000
21,500,000
21,000,000
20,500,000
20,000,000
19,500,000
19,000,000
18,500,000
18,000,000
17,500,000
17,000,000
1994
1996
1998
2000
2002
2004
2006
2008

**INTERIM REPORT OF MODERATOR'S COMMITTEE ON WASTE DISPOSAL**
**November 3, 2010**

## I. BACKGROUND

The moderator established the committee in July 2009 in response to Article 26 of the May 2009 Annual Town Meeting. Article 26 called for the "…Adoption of a *Pay As You Throw* (*PAYT*) Municipal Waste System." By a majority vote, Town Meeting voted "To refer the substance of Article 26 to a Moderator's Committee whose members shall include representation from the prior *Pay As You Throw* Study Committee to report at the latest to the 2010 Fall Special Town Meeting. Besides studying *Pay As You Throw*, the Moderator's Committee should also study possible alternative ways of meeting the goals of increasing recycling and reducing solid waste including but not limited to education, single stream recycling, and automated waste collection."

A list of committee members follows in Appendix A.

## II. THE COMMITTEE'S PROCESS

The committee met as a whole on twelve occasions. All meetings followed public notice. In addition, the committee held a public hearing in May 2010.

Most meetings focused on data gathering on specific topics, including:

- Review of current Brookline waste recycling and trash disposal programs
- Presentation by the Director of the Municipal Waste Reduction Program at the Massachusetts Department of Environmental Protection regarding municipal waste reduction strategies
- Vendor presentation regarding single stream recycling and processing
- City of Newton DPW Commissioner's presentation on Newton's waste disposal programs

## III. SINGLE STREAM RECYCLING – RECOMMENDATION TO BOARD OF SELECTMEN

Brookline's Department of Public Works began evaluating alternate recycling strategies in the fall of 2009 in order to prepare for the mid-2010 expiration of the town's recycling contract. The DPW commissioner indicated that a shift to a single stream recycling program constituted a viable consideration for the Town.

In December 2009, in recognition of the generally acknowledged financial and environmental advantages of single stream recycling programs, the committee developed a recommendation to the Board of Selectmen in favor of single stream recycling. The specific text of the recommendation is noted below:

> The Committee recommends to the Board of Selectmen that (1) the Town of Brookline adopt a single-stream recycling program using 64 gallon containers (2) the Selectmen authorize the Commissioner of Public Works to contract for single stream recycling with automated pickup. The Committee further advises the Board of Selectmen that supporting data for single stream recycling are to be provided by the Commissioner of Public Works, and that the Committee continues to evaluate Pay As You Throw and other related waste collection alternatives.

## IV. SINGLE STREAM RECYCLING – IMPLEMENTATION AND IMPLICATIONS

Discussion regarding the implementation of Single Stream Recycling began in early 2010, with significant community interest and comment. The committee's May 2010 public hearing became a joint hearing regarding both Single Stream Recycling and alternate approaches to trash disposal.

During the summer of 2010, some committee members felt that the then-pending implementation of Single Stream Recycling should be completed and allowed to stabilize before the committee could fully evaluate other possible recommendations, including *PAYT*. These committee members expect that Brookline's solid waste volume and disposal costs will decrease as a result of Single Stream Recycling, and believe that the impact of the implementation should be taken into account as a recommendation is developed.

The committee was impressed by the multi-million dollar savings achieved in Newton as a result of their hybrid PAYT and single stream recycling program. Newton's program allows residents to dispose of a baseline amount of trash per household per week, then charges an additional PAYT fee for additional volume.

## V. NEXT STEPS

With the DPW, the committee will develop comprehensive recommendations to drive improvements in Brookline's solid waste management systems.

Some of the additional measures include identification and evaluation of multiple specific waste management alternatives for feasibility, environmental impact, cost, and other considerations. The committee plans to hold at least one additional public hearing, focused on obtaining diverse perspectives and comments related to specific options.

In considering alternatives, the committee will:

- Assess increased waste reduction from single stream recycling
- Further explore alternatives to how citizens pay for trash collection
- Evaluate possible changes in use of collection technology
- Consider other waste reduction strategies including increased types of recycling and municipal composting
- Investigate pathways to "zero waste"
- Evaluate the effect "wasting" has on the Town's greenhouse gas inventory
- Where appropriate, seek out additional input or expertise

The committee expects to complete its final report no later than the Fall Town Meeting of 2011.

## APPENDIX A: Committee Members

Dr. Franklin Friedman
Kenneth M. Goldstein, Esq.
Dr. Gerald P. Koocher
Adam Mitchell
Andrew Pappastergion
Stanley Spiegel
Virginia Smith
Raymond Wise

ARTICLE 12

**Amendment Offered by the Petitioner,**
**Seymour A. Ziskend, TMM-Prec. 7**

Moved: to amend the language at the top of page 12-2 to read as follows:

Town Meeting urges the Board of Selectmen to call upon our representatives in the General Court to review and recommend changes to Massachusetts General Laws, Chapter 85, Section 11b regulating bicycle operation, safety and equipment to prohibit transporting children or babies by bicycle, and further request that our representatives report back to Town Meeting.

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BOARD OF SELECTMEN'S & ADVISORY COMMITTEE'S
SUPPLEMENTAL RECOMMENDATIONS

Both the Board of Selectmen and the Advisory Committee continue to support the language originally voted under Article 12 as shown on page 12-4 of the Combined Reports.

## ARTICLE 16

## BOARD OF SELECTMEN'S & ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATIONS

As originally approved by the Selectmen and Advisory Committee, Article 16 allowed the $500,000 grant to be used only for the development of the park. The amended language below allows it to be used toward the purchase of the site. This is helpful in terms of the timing of the reimbursement: the purchase of the site will obviously be done before the development of the park, meaning the Town will be able to file for reimbursement sooner. Both the Selectmen and Advisory Committee unanimously recommend FAVORABLE ACTION on Article 16 as amended below:

VOTED: That the Town of Brookline vote to dedicate the land known as Fisher Hill Reservoir Park, consisting of 9.7 acres, more or less, as shown on a plan entitled "Plan of Land Showing Conservation and Preservation Restriction Areas at the Fisher Hill Reservoir"; a copy of which is attached and incorporated herein as Exhibit A, for park purposes under the provisions of Massachusetts General Laws, Chapter 45, Section 14, and as it may hereafter be amended and other Massachusetts statutes relating to public parks and playgrounds and as further provided in Chapter 20 of the Acts of 2008, to be managed and controlled by the Department of Public Works, Parks and Open Space Division of the Town of Brookline, and that the Commissioner of the Department of Public Works with the approval of the Board of Selectmen be authorized to file on behalf of the Town of Brookline any and all applications deemed necessary for grants and/or reimbursements from the Commonwealth of Massachusetts deemed necessary under the Land and Water Conservation Fund Act (P.L. 88-578, 78 Stat 897) and/or any others in any way connected with the scope of this Article, and the Commissioner of the Department of Public Works be authorized to enter into all agreements and execute any and all instruments as may be necessary on behalf of the Town of Brookline with the approval of the Board of Selectmen to acquire the land and e~~a~~ffect the park development; that to meet this appropriation, the Treasurer, with the approval of the Selectmen, is authorized to borrow $500,000 under and pursuant to Chapter 44, §7(2), (22) and/or (25) of the General Laws, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefore, for all costs incidental or related thereto, which sum shall be in addition to the $1,350,000 appropriated for purchasing the State-owned reservoir at Fisher Hill and making said property safe and accessible to the public under Article #7, Item #57 of the warrant at the May 29, 2007 Town Meeting; provided that any amount authorized to be borrowed shall be reduced by the amount of any aid received.

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