ARTICLE 1

FIRST ARTICLE

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

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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

SELECTMEN'S RECOMMENDATION

State statutes provide that unpaid bills from previous fiscal years may not be paid from the current year's appropriations without the specific approval of Town Meeting. There are unpaid bills totaling $3,959.26 that need Town Meeting approval. The bills, which are from a bill payment services vendor, Official Payments (OPAY), are for costs associated with the on-line payment of Motor Vehicle Excise (MVE) bills. Toward the end of July, 2009, the Town switched from Kelly and Ryan to OPAY for on-line MVE bill payment services in order to save money: OPAY charged 2.35% compared to the approximately 3.4% charged by Kelly and Ryan. On an annual basis, this saved the Town approximately $14,000.

Unfortunately, there was an issue with the invoice for the first five months of service with OPAY. The Town was not sent the bill for this period until this calendar year. All monthly invoices since December, 2009 have been paid on a timely basis;.These are legitimate costs for which the Town owes OPAY. Therefore, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on September 13, 2011, on the motion offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

This article was submitted by the Town Administrator's Office in order to authorize payment of $3,959.26 to Official Payments (OPAY) that is associated with on-line

payment of Motor Vehicle Excise Tax bills by Brookline residents. The bills are for services rendered to the Town of Brookline between July 2009 and November 2009. At this time, it is believed that all funds due to OPAY have been paid without incident since December 2009.

In July 2009, the Town changed on-line payment venders for Motor Vehicle Excise Tax bills moving from Kelly Ryan to OPAY in order to save money: OPAY charged a 2.35% transaction charge compared with Kelly Ryan's 3.4% rate. On an annual basis this change has saved the Town $14,000.

DISCUSSION:
Sean Cronin, Brookline's Deputy Town Administrator, explained that the $3,959.26 before the committee is legitimately owed to OPAY. Mr. Cronin explained that these bills went unpaid for two years because OPAY never submitted invoices to the Town seeking payment. The fact that this money was owed came to light just after Brookline's Annual Town Meeting in May 2011, and as a result the Fall 2011 Special Town Meeting is the first opportunity for this expense to be authorized. Mr. Cronin informed the Committee that no late fee or penalty is being charged by OPAY for lack of payment of these outstanding bills.

Should payment be authorized the funds would be taken from the IT Department budget.

COMMITTEE RECOMMENDATION:
The Advisory Committee felt comfortable with authorizing payment of these outstanding bills and notes the fact that the Town's Administration does not contest the legitimacy of the bills.

Accordingly, the Advisory Committee by a vote of 23-0-0 recommends FAVORABLE ACTON on Article 1, as submitted and amended, as follows:

VOTED: To authorize the payment of the following unpaid bill of a previous fiscal year from the FY2012 Information Technology Department budget:

Official Payments	$3,959.26

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.

PETITIONER'S ARTICLE DESCRIPTION

This article is inserted in the Warrant for any Town Meeting when there are unsettled labor contracts. Town Meeting must approve the funding for any collective bargaining agreements.

SELECTMEN'S RECOMMENDATION

There are on-going negotiations with Town unions. Therefore, the Board has held off on taking a vote on Article 2. There will be a Supplemental Recommendation prior to the commencement of Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

Article 2 would ask Town Meeting to raise and appropriate funds for collective bargaining agreements. As there are no agreements to consider at this time, the Advisory Committee unanimously recommends NO ACTION on Article 2.

XXX

ARTICLE 2

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

There are no Collective Bargaining agreements for Town Meeting to approve. Therefore, the Selectmen recommend NO ACTION, by a vote of 5-0 taken on November 8, 2011, on Article 2.

ARTICLE 3

THIRD ARTICLE

To see if the Town will:

A) Appropriate additional funds to the various accounts in the fiscal year 2012 budget or transfer funds between said accounts;

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

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This article is inserted in the Warrant for any Town Meeting when budget amendments for the current fiscal year are required. For FY2012, the warrant article is necessary to balance the budget based on final State Aid figures and re-allocate funds from the Group Health Insurance line-item.

SELECTMEN'S RECOMMENDATION

Article 3 proposes amendments to the FY12 budget. The article is required to address two outstanding items:

1. the final State budget contained higher revenue-sharing allocations for Brookline than assumed in the budget approved by Town Meeting in May;
2. the Town's share of the savings from the final GIC rates[1].

STATE AID

When the Town's FY12 budget was being developed, a hybrid approach was taken in terms of using the Governor's local aid proposal. He proposed a 7% cut in Unrestricted General Government Aid (UGGA), a figure that was uncertain due to the Legislature taking different stances on various budgetary issues and the fact that there was a significant assumption that the 40% of the budget associated with health care

[1] The School's share has already been reallocated from the Group Health budget to their budget as part of the appropriation approved by Town Meeting in May.

(MassHealth, GIC, etc) was going to increase by just 1%. Because of this uncertainty, Town Meeting approved a budget that assumed a 10% cut in UGGA.

The State budget signed into law by the Governor maintained the 7% cut in UGGA. Coupled with changes in other smaller accounts, such as the elimination of the Quinn reimbursement, and reduced Cherry Sheet assessments, the result is $113,688 in additional Net State Aid. This is shown in the table below:

	FY12 FIN PLAN	FY12 STATE BUDGET	VERSUS FINANCIAL PLAN	
RECEIPTS				
Ch. 70	6,932,850	6,932,850	0	0.0%
Unrestricted General Gov't Aid	4,833,026	4,981,754	148,728	3.1%
Quinn	65,501	0	(65,501)	-100.0%
Vets Benefits	81,803	81,803	0	0.0%
Exemptions	37,892	37,892	0	0.0%
Charter School Reimbursements	16,980	14,791	(2,189)	-12.9%
TOTAL RECEIPTS	**11,968,052**	**12,049,090**	**81,038**	**0.7%**
CHARGES				
County	698,333	698,333	0	0.0%
Retired Empl. Health Ins.	1,855	1,855	0	0.0%
Air Pollution Dist.	23,973	23,973	0	0.0%
MAPC	17,164	17,164	0	0.0%
RMV Surcharge	271,360	271,360	0	0.0%
MBTA	4,534,376	4,534,376	0	0.0%
SPED	71,805	68,120	(3,685)	-5.1%
School Choice Sending Tuition	11,500	2,279	(9,221)	-80.2%
Charter School Sending Tuition	73,792	54,048	(19,744)	-26.8%
TOTAL CHARGES	**5,704,158**	**5,671,508**	**(32,650)**	**-0.6%**
OFFSETS				
School Lunch	26,417	26,417	0	0.0%
Libraries	80,422	80,422	0	0.0%
TOTAL OFFSETS	**106,839**	**106,839**	**0**	**0.0%**
NET LOCAL AID W/O OFFSETS	**6,263,894**	**6,377,582**	**113,688**	**1.8%**

When run through the Town/School Split, $56,844 is available for both the Town and School budgets.

HEALTH INSURANCE BUDGET

One of the outstanding issues at the time the FY12 Financial Plan was presented in mid-February was actual health insurance rate increases. Prior to entering the GIC, the Town knew its final rate increase for the ensuing fiscal year in mid-January, allowing the Town

Administrator to incorporate that into the Financial Plan. With the move to the GIC, the Town must wait until March to find out what the rate increases will be. In the first week of March, the GIC approved rates for FY12 that increased, in the aggregate, approximately 4.4% for Brookline, well below the 10% assumed in the Financial Plan. The 4.4% came from having 41% of employees covered by plans that grew 2% or less (Tufts Navigator, Harvard Medicare, and Unicare Medicare) and from having 32% of employees covered by a plan that grew by 8% (Harvard PPO). As a result, the impact on the FY12 Group Health budget was significant.

Based on the final rates, the Group Health budget for FY12 was estimated to be $21.759 million, an amount that was $960,816 less than the amount built into the Financial Plan. Of this amount, $511,477 was the School's share and $449,339 was the Town's share, as shown in the following table:

FY12 Group Health Budget in Fin Plan	22,719,498
FY12 Group Health Revised Budget	21,758,682
Variance	**(960,816)**
School	**(511,477)**
Town	**(449,339)**

The School's share was added to their appropriation that was approved by Town Meeting in May. The Town's share was left in the Group Health line-item as a hedge against budget uncertainties.

RECOMMENDATIONS

The recommendations are to (1) add the School's share of the additional Net State Aid ($56,844) to their budget and (2) split the Town's $506,183 ($56,844 in Net State Aid + $449,339 from health insurance) equally between the OPEB appropriation and the Stabilization Fund. These recommendations are being made for the following reasons:

1. funding the OPEB liability has been, and must continue to be, a priority of the Town, and taking steps such as the one being recommended improves the current funding plan. Part of this recommendation is to have the $253,091 built into the FY12 base as opposed to being a one-time infusion into the fund, thereby expediting the date by which the Town reaches its Annual Required Contribution (ARC). If approved, the FY12 OPEB appropriation will be $1,801,527 and the amount in the OPEB Fund will be approximately $12 million.

2. placing $253,091 into the Stabilization Fund will help the Town in its efforts to improve overall fund balance levels, something that the Fiscal Policy Review Committee (FPRC) focused on after Moody's raised concern about declining fund balance levels during each of the past few years' ratings reports. The Town is one of the 162 Aaa-rated local governments across the country that Moody's reviewed after the discussion at the federal level regarding the debt ceiling caused them to place the nation's credit rating under review for a downgrade. During the review with Moody's, the Town Administrator and his budget/finance team informed

Moody's that the Board of Selectmen and the Advisory Committee were recommending to Town Meeting that this deposit into the Stabilization Fund be made.

3. this approach does not allocate all of the funds to areas that increase the base Operating Budget going forward into FY13.

The Board believes that taking steps to increase OPEB funding and improve overall fund balance levels are prudent and recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 4, 2011, on the motion offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

STATE BUDGET
When the Town's FY12 budget was being developed tremendous uncertainty existed as to what Brookline's final State Aid would be. As a result, the budget that was proposed, and ultimately adopted by Town Meeting, contained a number of assumptions about what the Town's final State funding would be. Specifically, the budget assumed that the Governor's local aid proposal would be adopted by the Legislature. As you may recall, Governor Patrick had proposed a 7% cut in Unrestricted General Government Aid (UGGA) in his budget proposal, but the Legislature took a different stances and was contemplating a far higher reduction in UGGA. The Town, for this reason, adopted a budget that assumed a 10% cut in UGGA.

The State budget signed into law by the Governor contained the 7% cut in UGGA that Governor Patrick had sought. This 3% increase in UGGA above what the budget had assumed would be received, coupled with changes in other smaller accounts and reduced Cherry Sheet assessments, means that Brookline received an additional $113,688 in State Aid.

In accordance with the so-called "Town School Partnership" formula this means $56,844 is available for both the Town and School budgets.

HEALTH INSURANCE BUDGET
When Brookline's FY12 was built the increase in health insurance premium costs was not known. Prior to entering the GIC, the Town knew its final rate increase for the coming fiscal year in mid-January, thereby allowing the Town Administrator to incorporate the increased expense into the coming fiscal year's budget. The GIC, however, does not release its new rates until March, and as a result the Town must wait until then to find out what the rate increases will be. In the first week of March, the GIC approved rates for FY12 that increased approximately 4.4% for Brookline, well below the 10% assumed in the Financial Plan.

The 4.4% came from having 41% of employees covered by plans that grew 2% or less (Tufts Navigator, Harvard Medicare, and Unicare Medicare) and from having 32% of employees covered by a plan that grew by 8% (Harvard PPO). As a result, Brookline's Group Health budget was in considerable excess.

Based on the final rates, the Group Health budget for FY12 is estimated to be $21.759 million, an amount that is $960,816 less than the amount built into the Town Meeting passed budget.

Of this amount, the School's share is $511,477 and the Town's share is $449,339.

The final budget approved by Town Meeting moved the School's share of this savings to its appropriation. The Town's share of the savings was, however, left in the Group Health line-item as a way to protect against various budget uncertainties.

DISCUSSION:

The Advisory Committee heard several recommendations from Mr. Cronin about how the additional State Aid and Group Health budget surplus should be allocated within the Town' FY12 budget. The Town's administration recommends that the School's share of the additional Net State Aid ($56,844) be added to their budget. The Administration believes that the Town's additional $506,183 ($56,844 in State Aid + $449,339 Group Health surplus) should be split with 50% to be added to the base OPEB appropriation authorized in May 2011 and 50% going into the Stabilization Fund.

Mr. Cronin explained the rationale behind these recommendations first by saying that increasing the base OPEB appropriation by $253,091 is advisable not only because it puts more money into the fund immediately, but also because it increases the base appropriation as opposed transferring the funds as a one-time special appropriation. Increasing the base appropriation will help the Town meet its ARC (Annual Required Contribution) sooner, thereby providing saving to the Town and significantly reducing the amount of time necessary to get Brookline's unfunded OPEB liability funded.

The allocation of the Town's remaining $253,091 into the Stabilization Fund will help Brookline in its efforts to increase the Stabilization Fund's overall balance, a goal specifically prioritized by the Fiscal Policy Review Committee (FPRC) after Moody's raised concern about declining fund balance levels during each of the past few years' ratings reports. Additionally, several months ago Moody's publicly stated that they will be reviewing their bond rating of hundreds of local governments across the country as a result of their downgrading of the Federal government's bond rating, placing additional funds into the Stabilization Fund to help shore up fund balance position can only be viewed positively by Moody's.

It is important to note that the proposed approach does not allocate all of the funds to areas that increase the base Operating Budget in FY13. The deposit into the Stabilization Fund does not increase the budget base. While the recommendation to increase the Town's base OPEB contribution by $253,091 in FY12 does increase the base, and put

additional pressure on future budgets, it will help the Town make its ARC sooner saving Brookline money in the long run and significantly reducing pressure to fund a liability in the future.

The committee was very comfortable with not using these funds for operating or capital expenses in the current fiscal year, with the exception of the OPEB appropriation. However, one Committee member felt strongly that at least some of this money should be reserved for capital and/or operations needs. Specifically cited by this Committee Member was a previous discussion in an Advisory Committee meeting about the Town's sidewalk paining budget and a decision in the FY11 budget to restore a position at the Brookline Senior Center against the recommendation of the Town Administrator.

COMMITTEE RECOMMENDATION:
The Committee felt comfortable with the plan the Town's Administration recommends.

Accordingly, by a vote of 21-1-0 the Advisory Committee recommends FAVORABLE ACTON on Article 3 as follows:

VOTED: That the Town:

1. Amend the FY2012 budget as shown below and in the attached Amended Tables I and II:

ITEM #	ORIGINAL BUDGET	PROPOSED CHANGE	AMENDED BUDGET
22. Schools	$75,330,344	$ 56,844	$75,387,188
23. Employee Benefits	$42,304,511	($196,248)	$42,108,263
25. Stabilization Fund	$ 0	$ 253,092	$ 253,092

XXX

FY12 AMENDED BUDGET - TABLE 1

		FY08 ACTUAL	FY09 ACTUAL	FY10 ACTUAL	FY11 BUDGET	FY12 ORIG. BUDGET	PROPOSED AMENDMENTS	FY12 AMENDED BUDGET	$$ CHANGE FROM FY11	% CHANGE FROM FY11
	REVENUES									
	Property Taxes	133,849,950	146,542,184	152,586,904	157,878,286	163,159,994		163,159,994	5,281,708	3.3%
	Local Receipts	24,524,074	22,455,149	21,038,710	19,718,475	20,525,792		20,525,792	807,317	4.1%
	State Aid	18,946,277	17,962,793	16,542,765	13,796,542	13,302,525	81,038	13,383,563	(412,979)	-3.0%
	Free Cash	3,814,792	5,954,963	7,053,295	4,590,079	5,380,264		5,380,264	790,185	17.2%
	Overlay Surplus	850,000	0	1,505,000	0	0		0	0	#DIV/0!
	Other Available Funds	7,753,612	5,986,333	5,915,039	5,059,259	6,218,966		6,218,966	1,159,708	22.9%
	TOTAL REVENUE	**189,738,706**	**198,901,422**	**204,641,712**	**201,042,641**	**208,587,542**	**81,038**	**208,668,580**	**7,625,939**	**3.8%**
	EXPENDITURES									
	DEPARTMENTAL EXPENDITURES									
	1 . Selectmen	622,009	635,977	619,934	613,806	611,303		611,303	(2,503)	-0.4%
	2 . Human Resources	478,335	457,626	513,823	503,411	527,139		527,139	23,728	4.7%
	3 . Information Technology	1,362,103	1,386,089	1,354,537	1,408,494	1,419,821		1,419,821	11,328	0.8%
	4 . Finance Department	2,934,091	3,368,994	2,982,499	2,949,759	2,951,163	0	2,951,163	1,404	0.0%
	5 . Legal Services	772,840	749,476	754,535	762,961	773,090		773,090	10,129	1.3%
	6 . Advisory Committee	21,940	17,938	15,675	19,524	19,509		19,509	(15)	-0.1%
	7 . Town Clerk	525,170	604,410	493,094	603,990	564,494		564,494	(39,495)	-6.5%
	8 . Planning and Community Development	644,375	593,156	590,488	661,128	663,720	0	663,720	2,592	0.4%
	9 . Police	13,636,806	14,680,249	14,307,709	14,690,999	14,730,072		14,730,072	39,073	0.3%
	10 . Fire	12,125,596	12,280,892	11,949,902	12,219,790	12,343,063		12,343,063	123,273	1.0%
	11 . Building	6,542,701	6,965,035	6,630,751	6,857,721	6,843,265		6,843,265	(14,456)	-0.2%
(1)	12 . Public Works	13,178,799	13,896,651	13,309,224	12,762,191	13,047,912	0	13,047,912	285,722	2.2%
	a. Administration	*868,055*	*920,805*	*968,085*	*752,606*	*757,451*		*757,451*	*4,845*	*0.6%*
	b. Engineering/Transportation	*849,680*	*929,115*	*885,700*	*937,056*	*1,055,046*		*1,055,046*	*117,990*	*12.6%*
	c. Highway	*4,723,284*	*4,710,556*	*4,640,204*	*4,896,868*	*4,774,960*		*4,774,960*	*(121,908)*	*-2.5%*
	d. Sanitation	*2,870,421*	*2,593,323*	*2,731,757*	*2,814,065*	*2,916,878*		*2,916,878*	*102,813*	*3.7%*
	e. Parks and Open Space	*2,694,138*	*3,119,380*	*3,131,708*	*2,949,300*	*3,131,022*		*3,131,022*	*181,721*	*6.2%*
	f. Snow and Ice	*1,173,221*	*1,623,472*	*951,770*	*412,294*	*412,555*		*412,555*	*261*	*0.1%*
	13 . Library	3,398,242	3,489,100	3,521,560	3,442,863	3,542,863		3,542,863	100,000	2.9%
	14 . Health	1,024,069	1,088,050	1,097,022	1,093,765	1,128,426		1,128,426	34,661	3.2%
	15 . Veterans' Services	203,829	241,303	242,235	243,681	245,409		245,409	1,727	0.7%
	16 . Council on Aging	746,900	767,625	729,713	775,359	806,952		806,952	31,593	4.1%
	17 . Human Relations	143,236	151,702	103,587	103,059	103,016		103,016	(43)	0.0%
	18 . Recreation	992,864	912,909	905,021	943,849	992,259		992,259	48,410	5.1%
(2)	19 . Energy Reserve	0	0	0	0	0		0	0	#DIV/0!
(2)	20 . Personnel Services Reserve	750,000	750,000	750,000	755,507	715,000		715,000	(40,507)	-5.4%
(2)	21 . Collective Bargaining - Town	1,600,000	3,042,804	75,000	475,000	1,175,000		1,175,000	700,000	147.4%
	Subtotal Town	*59,353,905*	*62,287,183*	*60,121,308*	*61,886,857*	*63,203,477*	*0*	*63,203,477*	*1,316,620*	*2.1%*
	22 . *Schools*	*62,924,864*	*68,000,450*	*69,323,844*	*72,043,133*	*75,330,344*	*56,844*	*75,387,188*	*3,344,055*	*4.6%*
	TOTAL DEPARTMENTAL EXPENDITURES	**122,278,769**	**130,287,633**	**129,445,152**	**133,929,990**	**138,533,821**	**56,844**	**138,590,665**	**4,660,675**	**3.5%**
	NON-DEPARTMENTAL EXPENDITURES									
(1)	23 . Employee Benefits	34,564,193	36,103,405	40,355,929	40,073,902	42,304,511	(196,248)	42,108,263	2,034,362	5.1%
(3)	*a. Pensions*	*11,256,221*	*11,686,639*	*13,253,562*	*13,999,954*	*14,612,334*		*14,612,334*	*612,380*	*4.4%*
	b. Group Health	*19,855,771*	*20,860,382*	*22,983,067*	*20,227,416*	*22,129,741*	*(449,339)*	*21,680,402*	*1,452,986*	*7.2%*
	c. Health Reimbursement Account (HRA)	*0*	*0*	*0*	*0*	*250,000*		*250,000*	*250,000*	*#DIV/0!*
(3)	*d. Retiree Group Health Trust Fund (OPEB's)*	*0*	*0*	*650,000*	*2,012,531*	*1,548,435*	*253,092*	*1,801,527*	*(211,004)*	*-10.5%*
	d. Employee Assistance Program (EAP)	*24,968*	*25,282*	*25,282*	*28,000*	*28,000*		*28,000*	*0*	*0.0%*
	f. Group Life	*151,643*	*150,971*	*128,109*	*130,000*	*130,000*		*130,000*	*0*	*0.0%*
	g. Disability Insurance	*12,813*	*13,460*	*13,536*	*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*	*1,250,000*		*1,250,000*	*(100,000)*	*-7.4%*
(3)	*i. Public Safety IOD Medical Expenses*	*250,000*	*300,000*	*300,000*	*325,000*	*300,000*		*300,000*	*(25,000)*	*-7.7%*
(3)	*j. Unemployment Compensation*	*166,000*	*166,000*	*266,000*	*400,000*	*350,000*		*350,000*	*(50,000)*	*-12.5%*
	k. Medical Disabilities	*15,718*	*9,963*	*15,507*	*30,000*	*30,000*		*30,000*	*0*	*0.0%*
	l. Medicare Coverage	*1,231,059*	*1,340,708*	*1,370,866*	*1,555,000*	*1,660,000*		*1,660,000*	*105,000*	*6.8%*
(2)	24 . Reserve Fund	774,834	1,297,947	1,392,000	1,856,956	1,877,151		1,877,151	20,195	1.1%
	25 Stabilization Fund	0	0	0	71,868	0	*253,092*	253,092	181,224	252.2%
	26 Affordable Housing					355,264		355,264	355,264	#DIV/0!
	27 . Liability/Catastrophe Fund	254,629	297,476	1,443,397	455,500	141,959		141,959	(313,540)	-68.8%
	28 . General Insurance	276,146	279,490	286,128	290,000	275,000		275,000	(15,000)	-5.2%
	29 . Audit/Professional Services	99,433	86,765	135,900	138,987	130,000		130,000	(8,987)	-6.5%
	30 . Contingency Fund	11,806	13,905	10,725	15,000	15,000		15,000	0	0.0%
	31 . Out-of-State Travel	1,979	1,076	434	3,000	3,000		3,000	0	0.0%
	32 . Printing of Warrants & Reports	14,487	17,143	16,665	20,000	20,000		20,000	0	0.0%

		FY08 ACTUAL	FY09 ACTUAL	FY10 ACTUAL	FY11 BUDGET	FY12 ORIG. BUDGET	PROPOSED AMENDMENTS	FY12 AMENDED BUDGET	$$ CHANGE FROM FY11	% CHANGE FROM FY11
	33 . MMA Dues	10,959	11,178	11,178	12,116	12,419		12,419	303	2.5%
	Subtotal General	*669,439*	*707,033*	*3,296,427*	*2,863,427*	*2,829,793*	*253,092*	*3,082,885*	*219,458*	*7.7%*
(1)	34 . Borrowing	13,824,443	12,173,327	11,886,156	9,594,781	10,404,421	0	10,404,421	809,640	8.4%
	a. Funded Debt - Principal	*9,432,797*	*8,247,516*	*7,796,867*	*7,264,649*	*7,975,489*		*7,975,489*	*710,840*	*9.8%*
	b. Funded Debt - Interest	*4,354,324*	*3,884,000*	*4,077,092*	*2,176,113*	*2,268,932*		*2,268,932*	*92,818*	*4.3%*
	c. Bond Anticipation Notes	*0*	*0*	*0*	*94,019*	*100,000*		*100,000*	*5,981*	*6.4%*
	d. Abatement Interest and Refunds	*37,322*	*41,811*	*12,197*	*60,000*	*60,000*		*60,000*	*0*	*0.0%*
	TOTAL NON-DEPARTMENTAL EXPENDITURES	**49,058,075**	**48,983,765**	**55,538,512**	**52,532,109**	**55,538,724**	**56,844**	**55,595,568**	**3,063,459**	**5.8%**
	TOTAL GENERAL APPROPRIATIONS	**171,336,844**	**179,271,398**	**184,983,664**	**186,462,099**	**194,072,545**	**113,688**	**194,186,233**	**7,724,134**	**4.1%**
	SPECIAL APPROPRIATIONS									
	35 . Technology Applications (revenue financed)					265,000		265,000		
	36 . Fire Apparatus Rehabilitation (revenue financed)					50,000		50,000		
	37 . Fire Station Renovations (revenue financed)					625,000		625,000		
	38 . Senior Center Recarpeting (revenue financed)					110,000		110,000		
	39 . Library Interior Painting / Facelift (revenue financed)					100,000		100,000		
	40 . Commercial Areas Improvements (revenue financed)					50,000		50,000		
	41 . Street Rehabilitation (revenue financed)					1,750,000		1,750,000		
	42 . Sidewalk Repair/Reconstruction (revenue financed)					270,960		270,960		
	43 . Bicycle Access Improvements (revenue financed)					48,040		48,040		
	44 . Streetlight Repair / Replacement (revenue financed)					25,000		25,000		
	45 . Parking Lot Rehabilitation (revenue financed)					45,000		45,000		
	46 . Municipal Service Center Floor Repairs (revenue financed)					25,000		25,000		
	47 . Playground Equipment, Fields, Fencing (revenue financed)					280,000		280,000		
	48 . Town/School Grounds Rehab (revenue financed)					135,000		135,000		
	49 . Tree Removal and Replacement (revenue financed)					190,000		190,000		
	50 . Billy Ward Playground (revenue financed)					630,000		630,000		
	51 . Clark Playground (revenue financed)					510,000		510,000		
	52 . Larz Anderson Park Retaining Wall (revenue financed)					50,000		50,000		
	53 . Waldstein Playground - Design (revenue financed)					80,000		80,000		
	54 . Warren Field / Playground - Design (revenue financed)					60,000		60,000		
	55 . Swimming Pool - UV Filters (revenue financed)					50,000		50,000		
	56 . Skating Rink Pavilion Floor Repalcement (revenue financed)					30,000		30,000		
	57 . Town/School Hazardous Material Removal (revenue financed)					60,000		60,000		
	58 . Town/School ADA Renovations (revenue financed)					60,000		60,000		
	59 . Town/School Building Security / Life Safety (revenue financed)					50,000		50,000		
	60 . Town/School Elevator Renovations - Study (revenue financed)					25,000		25,000		
	61 . Town/School Energy Conservation Projects (revenue financed)					125,000		125,000		
	62 . Town/School Energy Management Systems (revenue financed)					75,000		75,000		
	63 . Town/School Building Envelope Repairs (revenue financed)					250,000		250,000		
	64 . School Furniture Upgrades (revenue financed)					25,000		25,000		
	65 . School Intercom System Replacement (revenue financed)					50,000		50,000		
	66 . Unified Arts Building (UAB) Repairs/Renovations - Design (revenue financed)					130,000		130,000		
	67 . Pierce School Auditorium Renovation (revenue financed)					750,000		750,000		
	68 . Heath School Addition (bond)					8,500,000		8,500,000		
	69 . Storm Drain Improvements (enterprise bond)					500,000		500,000		
	70 . Water Main Improvements (enterprise bond)					1,000,000		1,000,000		
(4)	**TOTAL SPECIAL APPROPRIATIONS**	**5,928,000**	**8,575,748**	**9,260,572**	**7,102,000**	**6,979,000**	**0**	**6,979,000**	**(123,000)**	**-1.7%**
	TOTAL APPROPRIATED EXPENDITURES	**177,264,844**	**187,847,146**	**194,244,236**	**193,564,099**	**201,051,545**	**113,688**	**201,165,233**	**7,601,134**	**3.9%**
	NON-APPROPRIATED EXPENDITURES									
	Cherry Sheet Offsets	120,749	122,866	103,079	102,036	106,839		106,839	4,803	4.7%
	State & County Charges	5,410,405	5,493,891	5,559,230	5,556,335	5,704,158	(32,650)	5,671,508	115,173	2.1%
	Overlay	1,858,148	1,535,026	1,619,163	1,795,169	1,700,000		1,700,000	(95,169)	-5.3%
	Deficits-Judgments-Tax Titles	5,856	13,814	9,428	25,000	25,000		25,000	0	0.0%
	TOTAL NON-APPROPRIATED EXPEND.	**7,395,158**	**7,165,597**	**7,290,900**	**7,478,540**	**7,535,997**	**(32,650)**	**7,503,347**	**24,807**	**0.3%**
	TOTAL EXPENDITURES	**184,660,003**	**195,012,743**	**201,535,136**	**201,042,641**	**208,587,542**	**81,038**	**208,668,580**	**7,625,939**	**3.8%**
	SURPLUS/(DEFICIT)	**5,078,703**	**3,888,678**	**3,106,576**	**0**	**0**	**0**	**0**		

(1) Breakdown provided for informational purposes.
(2) Figures provided for informational purposes. Funds were transferred to departmental budgets for expenditure.
(3) Funds are transferred to trust funds for expenditure.
(4) Amounts appropriated. Bonded appropriations are not included in the total amount, as the debt and interest costs associated with them are funded in the Borrowing category (item #34).

FY12 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)	590,800	7,203	4,000	6,400		2,900					611,303
Human Resources Department (Human Resources Director)	267,310	218,329	8,500	30,900		2,100					527,139
Information Technology Department (Chief Information Officer)	902,376	451,791	22,336	27,550		15,769					1,419,821
Finance Department (Director of Finance)	1,901,904	978,055	38,752	17,783	2,419	12,250					2,951,163
Legal Services (Town Counsel)	535,173	128,017	2,200	104,700		3,000					773,090
Advisory Committee (Chair, Advisory Committee)	17,333	36	1,275	570		295					19,509
Town Clerk (Town Clerk)	470,972	77,273	12,350	1,400		2,500					564,494
Planning and Community Department (Plan. & Com. Dev. Dir.)	627,958	16,817	9,432	4,513		5,000					663,720
Police Department (Police Chief)	13,317,089	361,585	201,300	59,500	389,035	401,563					14,730,072
Fire Department (Fire Chief)	11,667,043	129,589	134,200	25,125	252,029	135,078					12,343,063
Public Buildings Department (Building Commissioner)	1,941,059	1,886,672	123,770	5,800	2,742,497	143,467					6,843,265
Public Works Department (Commissioner of Public Works)	6,891,903	3,131,054	722,622	36,550	1,177,394	655,833	20,000	412,555			13,047,911
Public Library Department (Library Board of Trustees)	2,477,520	173,696	526,819	4,502	308,224	52,101					3,542,863
Health Department (Health Director)	853,932	187,086	17,100	4,120	38,133	28,055					1,128,426
Veterans' Services (Veterans' Services Director)	124,948	3,086	650	116,200		525					245,409
Council on Aging (Council on Aging Director)	615,748	57,777	18,825	2,900	103,703	8,000					806,952
Human Relations/Youth Resources (Human Relations Dir.)	97,445	1,771	2,800	450		550					103,016
Recreation Department (Recreation Director)	670,746	144,908	45,330	12,400	112,495	6,380					992,259
School Department (School Committee)											75,387,188
Total Departmental Budgets	**43,971,258**	**7,954,745**	**1,892,261**	**461,363**	**5,125,928**	**1,475,365**	**20,000**	**412,555**			**136,700,664**
DEBT SERVICE											
Debt Service (Director of Finance)									10,404,421		10,404,421
Total Debt Service:									**10,404,421**		**10,404,421**
EMPLOYEE BENEFITS											
Contributory Pensions Contribution (Director of Finance)										14,442,334	14,442,334
Non-Contributory Pensions Contribution (Director of Finance)										170,000	170,000
Group Health Insurance (Human Resources Director)										21,680,402	21,680,402
Health Reimbursement Account (HRA) (Human Resources Director)										250,000	250,000
Retiree Group Health Insurance - OPEB's (Director of Finance)										1,801,527	1,801,527
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)										1,250,000	1,250,000
Public Safety IOD Medical Expenses (Human Resources Director)										300,000	300,000
Unemployment Insurance (Human Resources Director)										350,000	350,000
Ch. 41, Sec. 100B Medical Benefits (Town Counsel)										30,000	30,000
Medicare Payroll Tax (Director of Finance)										1,660,000	1,660,000
Total Employee Benefits:										**42,108,263**	**42,108,263**
GENERAL / UNCLASSIFIED											
Reserve Fund (*) (Chair, Advisory Committee)				1,877,151							1,877,151
Stabilization Fund (Director of Finance)				253,092							253,092
Liability/Catastrophe Fund (Director of Finance)				141,959							141,959
Housing Trust Fund (Planning & Community Develpoment Dir.)				355,264							355,264
General Insurance (Town Administrator)		275,000									275,000
Audit/Professional Services (Director of Finance)		130,000									130,000
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)				12,419							12,419
Town Salary Reserve (*) (Director of Finance)	1,175,000										1,175,000
Personnel Services Reserve (*) (Director of Finance)	715,000										715,000
Total General / Unclassified:	**1,890,000**	**418,000**	**10,000**	**2,654,885**							**4,972,885**
TOTAL APPROPRIATIONS	**45,861,258**	**8,372,745**	**1,902,261**	**3,116,248**	**5,125,928**	**1,475,365**	**20,000**	**412,555**	**10,404,421**	**42,108,263**	**194,186,233**

(*) 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 amend the General by-laws by adding:

SECTION 4.9 **Withholding Exemption (Federal)**
The Town of Brookline, in its capacity as Federal Withholding Agent, shall, in compliance with Title 26, § 7701(a)(16), deduct and withhold any tax from town employees under the provisions of sections:

§1441 Withholding of tax on **NONRESIDENT ALIENS**[1]
§1442 Withholding of tax on **FOREIGN** corporations[2]
§1443 **FOREIGN** tax-exempt organizations, subject to sections[3]
§1461 Liability for withheld tax[4]

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Under Title 26 U.S.C., Subtitle F, Chapter 79, § 7701 (16) of the IRS Code a

FEDERAL WITHHOLDING AGENT is defined as the
" person required to deduct and withhold any tax under the provisions of sections:

§1441 Withholding of tax on **NONRESIDENT ALIENS**
§1442 Withholding of tax on **FOREIGN** corporations
§1443 **FOREIGN** tax-exempt organizations
§1461 Section 1461. Person liable for withheld tax

SELECTMEN'S RECOMMENDATION

Although the text of Article 4 seeks to require the Town to deduct and withhold certain federal taxes from town employees, according to the petitioner, she actually proposes to restrict the Town from withholding federal income taxes from its employees. Assumably, the petitioner believes that by defining the Town's role as a federal withholding agent that the Town will somehow be limited from withholding other federal

[1] http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00001441----000-.html
[2] http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00001442----000-.html
[3] http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00001443----000-.html
[4] http://www.law.cornell.edu/uscode/26/1461.html

taxes. The Federal Tax Code, Title 26, Sub-Title C, Chapter 24, Section 3402 (A), (1) states "Except as provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary". The Town is considered an employer and a federal tax withholding agent under Title 26 of the Code. A local by-law cannot be inconsistent with or in conflict with state or federal law. Furthermore, changes to federal law cannot be accomplished by local by-law as this would exceed the Town's authority under the so-called Home Rule Amendment.

The Selectmen recommend NO ACTION, by a vote of 5-0 taken on October 4, 2011.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Warrant Article 4 seeks to amend the Town's By-Laws in order to prevent Brookline from withholding taxes from resident aliens. Ms. Allen, the petitioner of the Article, argues that Brookline lacks the statutory authority to withhold taxes citing Title 26 § 7701 (a) (16).

DISCUSSION:
The Advisory Committee heard from Mr. Cirillo, Brookline's Finance Director, and Jennifer Dopazo Gilbert, Town Counsel, that the Town is required to withhold taxes from its employees under Chapter 26 §3402 (a). Further, it was noted that adoption of this by-law would have no effect upon the Town's practices because both Federal and State law preempts local ordinances. Members of the Committee noted that nearly all employers in all sectors of the economy (government, non-profit and for profit) withhold taxes on behalf of various levels of government.

Ms. Allen was asked if she could provide any court cases or documentation that would refute the interpretation of the law provided to the Advisory Committee by both Mr. Cirillo and Mrs. Gilbert. Ms. Allen said she was aware of several cases, but that she was in the process of reviewing the holdings in these cases and was not prepared at the time of the meeting to discuss them. The Committee urged Ms. Allen to review the cases and be prepared to present them by Town Meeting as doing so would unquestionably help Town Meeting to render a more informed decision about passage of Article 4.

COMMITTEE RECOMENDATION**:**
By a vote of 22-0-0 the Advisory Committee recommends NO ACTION on Warrant Article 4.

XXX

ARTICLE 4

Explanation of Petitioner:

The United States **Revenue Act of 1913** also known as the **Tariff Act**, **Underwood Tariff**, **Underwood Tariff Act**, or **Underwood-Simmons Act** (ch. 16, 38 Stat. 114, October 3, 1913), a schedule of duties imposed by a government on imported or in some countries exported goods. It was designed to tax foreign imports not the compensation of workers.

Law of Inclusion and Exclusion

The law of inclusion, i.e., nonresident aliens, excludes other categories not mentioned. The law doesn't require a "Withholding Agent" to withhold from the wages of domestic Americans. An American employer is only a "withholding agent" if the employer has employees who are nonresident aliens. Congress tried to pass a law requiring income tax, but the Supreme Court ruled it unconstitutional in 1939, because under Article. I. Section. 2, direct taxation requires apportionment according to the census. This means a court order is required to garnish the wages or levy the property of domestic American.

W -4

The first thing most employers wants from new hires is a signed W-4. Since a refusal to complete and sign a W-4, would likely mean no job, most new employees, anxious to make a good impression, simply fill out the form and sign it. Most employers and employees don't realize this process is unwarranted and counter- productive to our country's interests.

Abuse of Authority

Due often to fear of reprisal from the IRS, employers require signed W-4 form, as a condition of employment, which the IRS simply use to "prove" domestic Americans volunteered. Mandating a signed W-4 form as a condition of employment is a direct violation of the Constitutional rights of domestic Americans under Amendment 4. Forced compliance through misrepresentation makes a withholding agent liable for conversion of property without a court order. If no liability exists under the law, why should employers risk being sued at some point by disgruntled employees? Written authorization from a bona fide government official is required before giving property belong to an employee to a third party. W-4s are required from qualified nonresident aliens, not domestic Americans.

Federal Withholding Agent.

26 USC 7701 (a)(16) requires a Withholding Agent to deduct and withhold any tax under the provisions of sections 1441, 1442, 1443, or 1461."

This applies to four, and only four, sections of the IRC: § 1441; § 1442; § 1443; and § 1461.

§ 1441. Withholding of tax on nonresident aliens.

§ 1442. Withholding of tax on foreign corporations.

§ 1443. Foreign tax-exempt organizations.

Subchapter B. – Application of Withholding Provisions

§ 1461 Liability for withholding tax.

(Clause holding the 'withholding agent' liable for the withheld funds)

Consistent with the requirement that withholding of income taxes is limited to nonresident aliens, is found in IRS Publication 515 which states: "If the owner is a U.S. person, you do not apply NRA withholding." http://www.irs.gov/publications/p515/ar02.html

In sections 6001. 6011 and 6012(a) of the IRS Code, the IRS says one must file a return or statement for any tax one is liable for.

Under Article 1, **Section. 7.**

Clause 1: All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

This means though the Secretary cannot make laws, Congress can, but there must be an entry in the Federal Register entry that is traceable to a Statute or Act of Congress for the requirement for domestic Americans to submit a signed W-4 form as a condition of their employment to have the force of law behind it. This entry does not exist in the Federal Register.

In the Kuglin case in Tennessee (USA v. Kuglin, WD Tennessee, #03-CR-201 11, August, 2003), the jury acquitted Ms. Vernice Kuglin of several criminal charges of "tax evasion", for not filing 1040's and filing "false W-4' s" with her employer, FedEx. Ms. Kuglin's defense was elegantly simple. She had repeatedly requested evidence from the IRS of the taxing statute or statutes-- which is to say the laws that imposed a tax on her, her property, or her activities, and they had failed to produce it. As mentioned before, according to the Constitution, Congress may lay direct taxes only upon States, to be collected according to the rule of apportionment. That rule requires the government to determine the total amount of the tax, and divide the amount amongst the States according to their respective shares of the nation's population.

Congress cannot tax income directly, and so it has never enacted any law that imposes a tax directly *on* income. It has, however, imposed an indirect tax on certain corporations, measured by the income produced by the licensed activity.

The failure of the IRS to produce the a statute authorizing direct taxation of domestic Americans without apportionment was fatal to the government's case against Ms. Kuglin. Thus, because the government could not identify the statutory violation the IRS claimed she had violated, the jury

had to acquit. This case sheds light on the public's right to *full disclosure* and *proper application* of the law.

In a similar case, *USA v. Lloyd Long,* in Tennessee, Eastern District- No. CR-1-93-91 October 12, 1993, the jury reached a similar verdict for the same reason. The IRS could not produce the statute which authorizes the direct taxation of domestic Americans without apportionment on request.

In *Cheek v. United States,* 498 U.S. 192 (1991), Cheek argued he *believed* that the tax laws did not apply to him exculpated him from "willful" evasion of the tax laws, and the Supreme Court agreed with him. Like Mr. Cheek, Time Magazine reports many employers have come to *believe* there are no federal tax laws that apply to domestic Americans, since in those three cases the government failed to produce the taxing statute.

In UNITED STATES OF AMERICA vs. ROBERT LAWRENCE, 5/12/06 in Peoria, Illinois, the attorney for the U.S. Department of Justice (DOJ) asked the court to dismiss all charges in federal District Court against IRS victim Robert Lawrence, The motion for dismiss resulted from Lawrence's defense attorney Oscar Stilley's raising the issue of IRS's on-going efforts to defraud the public. Stilley's claim caused the DOJ attorneys to choose to bow out quietly an ask for dismissal. Two months prior, Lawrence had been indicted by the on three counts of willful failure to file a 1040 form, and three felony counts of income tax evasion. As a result of the DOJ's motion to dismiss, the federal Judge dismissed all charges *with prejudice*. This means Lawrence cannot be charged with those crimes again.

The early remarks that come to mind demonstrate the revenue sources of this nation. During the debates in the Federal Convention of 1787 as reported by Madison, Mr. Sherman stated that "[t]he objects of the Union, he thought were few, 1. Defence against foreign danger, 2. against internal disputes and a resort to force, 3. treaties with foreign nations, 4. regulating foreign commerce, and drawing revenues from it…."

Currently, the top 1% tax the poor and middle class with high taxes, high inflation, and increasing foreclosures. Revenue collection in America was originally designed by the framers to tax foreign imports. Foreign imports were expensive and considered luxury items. Only the well to do could afford them. This indirect tax worked well because it taxed people who could afford such luxury items, instead of burdening low-paid wage earners with many mouths to feed.

Where public revenue goes:

FACTSHEET **IMF Quotas** September 13, 2011 *Quota subscriptions are a central component of the IMF's financial resources. Each member country of the IMF is assigned a quota, based broadly on its relative position in the world economy. A member country's quota determines its maximum financial commitment to the IMF, its voting power, and has a bearing on its access to IMF financing.*

*Quotas are denominated in **Special Drawing Rights (SDRs)**, the IMF's unit of account. The largest member of the IMF is the United States, with a current quota of SDR 42.1 billion (about $68 billion), and the smallest member is Tuvalu, with a current quota of SDR 1.8 million (about $2.9 million).*

Doubling of quotas and major realignment of quota shares

On December 15, 2010, the Board of Governors, the Fund's highest decision-making body, approved a package of far-reaching reforms of the Fund's quotas and governance, completing the 14th General Review of Quotas. …implemented, it will result in an unprecedented 100 percent increase in total quotas and a major realignment of quota shares to better reflect the changing relative weights of the IMF's member countries in the global economy. http://www.imf. org/external/np/exr/facts/quotas.htm

IMF ends 'concessional' lending to low-income countries. *The long-standing practice of reimbursing the IMF's budget for the cost of administering the trust fund for concessional lending to low-income countries—the PRGF-ESF Trust, will be resumed in the financial year in which the IMF adopts a decision authorizing the gold sales. This cost recovery will not affect the Fund's ability to provide concessional lending to low-income countries.*

House Banking and Currency Committee
"The course of Russian history has, indeed, been greatly affected by the operations of international bankers... The Soviet Government has been given United States Treasury funds by the Federal Reserve Board... acting through the Chase Bank. ... England has drawn money from us through the Federal Reserve Banks and has re-lent it at high rates of interest to the Soviet Government... The Dnieperstory Dam was built with funds unlawfully taken from the United States Treasury by the corrupt and dishonest Federal Reserve Board and the Federal Reserve Banks." Rep. Louis T.McFadden (D-PA) [2] http://www.xat.org/xat/worldbank.html 2.United States Congressional Record, June 15, 1934 Rep. Louis T. McFadden, **chairman of the House Banking and Currency Committee** 1920-30s

ARTICLE 5

FIFTH ARTICLE
To see if the Town will amend its General By-Laws by adding a new section 5.10 as follows:

5.10 NEIGHBORHOOD CONSERVATION DISTRICTS

5.10.1. TITLE AND PURPOSE
This by-law shall be known as and may be titled the Brookline Neighborhood Conservation District By-law. The Town of Brookline hereby establishes the category of Neighborhood Conservation District ("NCD").

This by-law is enacted for the purposes of preserving and protecting groups of buildings and their settings that are architecturally or historically significant; preserving and protecting the layout of neighborhoods or historical subdivisions of neighborhoods, vehicular and pedestrian circulation patterns, green spaces, open spaces, landscapes, and viewsheds that are historically significant or significant to the character of the town or its neighborhoods; preserving and protecting distinctive features of the architectural, cultural, economic, political or social history of the town and its neighborhoods, and limiting the detrimental effect of alterations, additions, demolitions and new construction on the character of the town and its neighborhoods. Through this by-law, alterations, additions, demolition and new construction may be reviewed for compatibility, including without limitation design, massing, topography, scale and materials, with the existing buildings, green spaces, open spaces, courtyards, landscapes, neighborhood and subdivision plans and layouts, circulation patterns, viewsheds, settings and neighborhood character. This by-law seeks to encourage the protection of the natural and built environment including without limitation buildings, viewsheds, cultural landscapes, land use patterns and neighborhood plans through regulatory review. This by-law promotes the public welfare by making the town a more attractive and desirable place in which to live and work and by preserving its distinctive history and man-made and natural characteristics for its inhabitants and its visitors.

Each NCD identified in Section 5.10.3 shall be geographically defined. Each such district shall be subject to a set of design guidelines specific to that district established as set forth herein.

5.10.2. DEFINITIONS
As used in this by-law the following terms shall have the following meanings (whether or not capitalized in text):

a. *ADDITION* - An extension or increase in gross floor area, number of stories, height or size of a building or structure.
b. *ALTER or ALTERATION* - Any change to an existing building or other structure other than repair, or other changes to a site or property set forth in the definition of "Reviewable Project" (including without limitation Sections 5.10.2.m(iv) to

5.10.2.m(ix). Alteration shall include, without limitation, the moving or complete or partial demolition of an existing building or structure (as defined in Sections 5.3.2(h) and (i) of these By-Laws, except as exempted below).

c. APPLICATION - The complete document(s) and supporting material(s) to be submitted by an applicant desiring to obtain a Certificate of Appropriateness. A complete application shall include information reasonably deemed necessary by the Commission to enable it to make a determination.

d. BUILDING - A combination of materials forming a shelter for persons, animals or property.

e. CERTIFICATE OF APPROPRIATENESS - A document granted by the Neighborhood Conservation District Commission in order to permit a Reviewable Project to proceed, including without limitation to obtain a building (including demolition) permit.

f. COMPATIBLE - A Reviewable Project that meets the design guidelines of the Neighborhood Conservation District.

g. DESIGN GUIDELINES - The guidelines applicable to each Neighborhood Conservation District and used by the Commission to determine whether the design of a proposed Reviewable Project is compatible with the district. Such guidelines are set forth in Section 5.10.3 with respect to each district created under this by-law.

h. DISTRICT - Any Neighborhood Conservation District as established in this by-law.

i. NEIGHBORHOOD CONSERVATION DISTRICT ("NCD") - A property or group of properties designated in Section 5.10.3.

j. NEIGHBORHOOD CONSERVATION DISTRICT COMMISSION ("the Commission" or "the NCD Commission") - Members of the Brookline Preservation Commission, as supplemented by any additional individuals appointed in accordance with Section 5.10.4, acting as the body making determinations under this by-law regarding applications for Certificates of Appropriateness in a particular NCD. With respect to any NCD the composition of the NCD Commission may be specific to that NCD.

k. PERSON AGGRIEVED - An applicant and any immediate abutter whether inside or outside the NCD.

l. REPAIR - The reconstruction or renewal of any part of an existing building or other structure for the purpose of its maintenance without change in material, design or dimensions.

m. REVIEWABLE PROJECT - Except to the extent that the particular design guidelines for a specific NCD set forth in section 5.10.3 of this by-law may exempt some of these activities from review within that NCD, the following shall be subject to review, regardless of whether any demolition or other building permit is required: (i) a change to a building or other structure or part thereof such as removal, construction, reconstruction, restoration, renovation, replication, rehabilitation, addition, alteration, partial or total demolition and other similar activities, or the construction of a new building or other structure or part thereof; (ii) painting of previously unpainted masonry; (iii) addition or replacement of doors and windows, or tinting or altering glass reflectivity; (iv) a change to a site that includes constructing, placing, erecting, installing, enlarging or moving a building or other structure or other similar activities; (v) the removal or addition of streets, driveways, parking areas, walkways or paved surfaces; (vi) removal of trees more than eight

inches in diameter at 56" height (d.b.h.); (vii) substantial or complete removal of areas of vegetation specifically identified in the design guidelines at or after the creation of the NCD; (viii) removal of ledge or other rock outcroppings with at least one foot exposure in height; or (ix) changes in grade elevation of more than three feet. The activities set forth in Section 5.10.6 shall be exempt from review.

n. STRUCTURE - That which is built or constructed, including buildings, walls, retaining walls, fences, walkways, driveways or parking areas, paving and curbs, street name signs, any signs larger than one square foot, swimming pools, tennis courts, freestanding HVAC equipment, and outdoor lighting that shines on any adjacent property.

o. SUBSTITUTE SIDING - Exterior building cladding such as vinyl, aluminum or cement board not original to the date of construction of that portion of the building.

p. TEMPORARY BUILDING OR STRUCTURE - A building or other structure, necessary for a specific event, incident or project, erected for a period of no more than 6 months, unless otherwise agreed to by the Commission, the installation and removal of which will cause no permanent change.

5.10.3. DISTRICTS AND GUIDELINES

a. A Neighborhood Conservation District shall encompass a geographically defined area. Additional NCDs may be added by vote of Town Meeting and each such NCD and the design guidelines for such NCD shall be set forth in part d of this Section 5.10.3, as it may be amended. The boundaries of each NCD shall be set forth on a map on file with the Town Clerk. The NCD Commission, Town Counsel or Town Clerk shall, in addition, promptly present a copy of the map and applicable by-law for filing in the Norfolk County Registry of Deeds.

b. The design of each Reviewable Project in a Neighborhood Conservation District shall be subject to the particular design guidelines set forth in this Section 5.10.3 for such district.

c. The Commission may impose dimensional requirements that further the purposes of this by-law, including without limitation preventing Reviewable Projects inconsistent with the historic or architectural aspects, scale or massing, neighborhood or subdivision plan or layout, circulation patterns, or green space, open space, landscape, vegetation or viewshed character of the NCD.

5.10.4. NEIGHBORHOOD CONSERVATION DISTRICT OVERSIGHT

a. Each Neighborhood Conservation District shall be overseen by a Neighborhood Conservation District Commission consisting of no less than five members. If deemed appropriate by the Board of Selectmen for the administration of a specific NCD after consultation with the chair of the Brookline Preservation Commission, the size of an NCD Commission may be increased to seven members. In the case of a five-member NCD Commission, three members shall be representatives of the Brookline Preservation Commission as described in Section 5.6.4 of the Town By-laws, and two members (and their alternates) shall be appointed by the Board of Selectmen. In the case of a seven-member NCD Commission, four members shall representatives of the Brookline Preservation Commission and three members (and their alternates) shall be appointed by the Board of Selectmen. The members of an NCD Commission representing the

Preservation Commission may be either regular or alternate members of the Preservation Commission, and shall be designated by the chair of the Preservation Commission to serve on a particular NCD Commission. The Selectmen's appointees shall be residents of the Town and may be, as appropriate, individuals such as residents of the NCD, residents of abutting areas, or residents of the Town with additional expertise in the issues specific to a particular NCD, such as architecture, historic landscape preservation, landscape architecture, agriculture, horticulture or forestry, urban planning or history. Such Selectmen's appointees (including alternates) shall initially be appointed to one-, two-, or three-year terms so as to minimize the number of terms that expire in the same year, and at the expiration of the initial terms, appointments shall be for three-years. Each NCD Commission shall elect a chair and vice-chair from within its own number, and a clerk from within or without its own number. In the absence of an NCD Commission member representing the Preservation Commission, the NCD Commission chair may appoint any regular or alternate Preservation Commission Member to act for that absent member. In the absence of an NCD Commission member appointed by the Selectmen, the NCD Commission chair may appoint any alternate appointed by the Selectmen to act for that absent member. Prior to the appointment by the Selectmen of the Selectmen-appointed NCD Commission members or alternates or in the event of the unavailability of such Selectmen's appointees, those positions shall be filled on an interim basis by regular or alternate members of the Preservation Commission appointed by the chair of the Preservation Commission, so that an NCD at all times has the requisite number of five (or seven, if applicable) members.

The Commission for each NCD shall exercise its powers in administering and regulating the alteration of buildings, other structures and natural and manmade elements within such NCD as set forth under the procedures and criteria established in this by-law.

The Commission for each NCD shall review all Reviewable Projects in the NCD, including without limitation new construction, demolition or alterations that affect the landscape or topography, the exterior architectural features of buildings and other structures, or the mass and siting of buildings and other structures. The authority of the Commission shall be binding except with regard to the categories of structural, landscape or architectural features exempted by Section 5.10.6 or that may be otherwise exempted by the particular design guidelines for a specific district set forth in Section 5.10.3 of this by-law.

An NCD Commission, or the Town on behalf of any such commissions, may receive and accept appropriations, grants and gifts to further the purposes of this by-law. An NCD Commission, or the Town on behalf of any such commissions, is also authorized to the extent permissible by law to require the collection of funds as part of an application to be placed in a separate account. These funds may be used to fund Town review of a Reviewable Project, including the retention of consultants or the funding of staff required to complete review of an application.

b. An NCD Commission, after a public hearing duly noticed at least 14 days in advance, may adopt, and from time to time amend, reasonable rules and regulations not inconsistent with the provisions of this by-law or other by-laws governing the Commission. Such rules and regulations shall set forth such forms and procedures as it

deems desirable and necessary for the regulation of its affairs and the conduct of its business, including requirements for the contents and form of applications for certificates, the process for collecting and utilizing funds including without limitation application fees and funds required to fund Town review, hearing procedures and other matters. Such rules and regulations may also include a set of design review standards, not inconsistent with the applicable design guidelines and exemptions contained herein under Sections 5.10.3 and 5.10.6, to refine and clarify the application of the design guidelines during the design review process. The NCD Commissions for various NCDs within the Town may adopt common rules and regulations for the conduct of their business, consistent with the specific design guidelines applicable to each NCD. The Commission promulgating any such rules and regulations shall file a copy thereof with the office of the Town Clerk.

5.10.5. PROJECTS PROHIBITED WITHOUT A CERTIFICATE

Except as this by-law provides, no building, other structure, site, property or part thereof within a Neighborhood Conservation District shall be altered (which term includes complete or partial demolition and new construction) and no other Reviewable Project may proceed unless the Commission shall first have issued a Certificate of Appropriateness. A building permit (which shall include permits for demolition) or an occupancy permit may not be issued for an altered building, structure, site or property or other Reviewable Project without the prior issuance of a Certificate of Appropriateness.

5.10.6. ALTERATIONS EXEMPT FROM COMMISSION REVIEW

a. It shall be the responsibility of the staff of the Commission, with the concurrence of the Chair of the Commission, to determine whether a proposed alteration or other project is exempt from review and they shall have ten business days to make this determination. Any alteration or project that is exempt from review shall receive a Certificate of Exemption that will permit such alteration or project to go forward without further review under the Neighborhood Conservation District By-Law.

b. Nothing herein shall be deemed to limit review to features visible from a public way unless such a limitation is set forth in the particular design guidelines for a specific district set forth in Section 5.10.3.d of this by-law.

c. The following projects or portions of Reviewable Projects are exempt from Commission review in all NCD districts:

1. Temporary buildings and structures subject to time limits (no longer than 6 months) and size limits determined by the Neighborhood Conservation District Commission.
2. One-story detached accessory structures without permanent foundations used as tool and storage sheds, playhouses, and similar uses provided the floor area does not exceed 100 square feet. This exemption shall not apply to garages, parking structures or other structures for vehicular use nor to structures to shelter or visually shield HVAC equipment.
3. Interior Alterations, including interior demolition as defined in Sections 5.3.2(h)(iii) and (iv) (such sections shall continue to be applicable to the Demolition Delay By-Law).
4. Ordinary maintenance and repair of architectural features that match the

existing conditions including materials, design and dimensions.

5. Removal of substitute siding provided, however, that any replacement siding and trim shall be reviewable.
6. Reversible changes of color (such as staining or repainting of wood siding or trim, but not work such as painting of previously unpainted masonry).
7. Removal, replacement or installation of the following exterior elements (this exemption shall not apply to replacement windows which may include storms or screens):
    a. Exterior storm windows and exterior storm doors
    b. Exterior window screens or exterior screen doors
    c. Gutters and downspouts
    d. Removable window air conditioners, but not permanently installed HVAC equipment whether as part of a building or freestanding.
    e. Satellite dishes or antennae less than 3 feet in maximum width.
8. In-kind replacement of plant material.
9. Removal of public shade trees or plant material that is severely damaged or dying due to weather-related events or natural causes.
10. Reconstruction, substantially similar in exterior design, of a building, damaged or destroyed by fire, storm or other disaster, provided such reconstruction is begun within the time period specified in Section 8.03.1 of the Zoning By-Law and carried forward with due diligence.
11. Replacement windows and doors, and windows and doors installed in an addition or new construction, whether including single-pane glass or multiple-pane insulating glass, provided that (a) the exterior appearance is consistent in size, scale and detailing with that of pre-existing windows and doors on the building and adjacent buildings, as through the use of true divided lites or exterior muntins adhered to the exterior glass surface, and (b) reflective or tinted glass is not used, unless used in the pre-existing windows and doors.

5.10.7. PROCEDURES FOR REVIEW

Any Reviewable Project not exempted above requires the submittal of an application for regulatory review by the Commission. The application shall be accompanied by a filing fee as may be determined from time to time by the Board of Selectmen. As may reasonably be deemed necessary by the Commission to enable it to make its determination on the application, the application may be required to include (a) drawings and/or photographs showing existing conditions, including existing buildings and other structures, landscape features and vegetation, open spaces and pedestrian and vehicular paths, and (b) plans, elevations, specifications, photographs, descriptions of materials and other supporting information of the proposed changes.

Within forty-five business days of the submittal of a complete application, including all required supporting information, the Commission shall hold a public hearing on the application. At least fourteen days before said public hearing, public notice shall be given. Such notice shall identify the time, place and purpose of the public hearing.

At or subsequent to the public hearing, the Commission shall determine whether the proposed alteration or other Reviewable Project, including any modification thereof agreeable to the applicant, is compatible with the specific design guidelines of the

applicable district and the purposes of this by-law. The Commission may waive or modify the application of a design guideline in a particular case if such waiver will not derogate the protections provided by this by-law to the neighborhood and abutters.

If the Commission determines that the alteration is compatible with the design guidelines for the district, the Commission shall issue a Certificate of Appropriateness. If deemed necessary to ensure that an alteration is compatible with the design guidelines, the Commission may attach appropriate conditions to the Certificate of Appropriateness. The concurring vote of a majority of Commission members, including voting alternates (i.e., not less than three votes for a five-member commission and not less than four votes for a seven-member commission) shall be required to issue a Certificate of Appropriateness.

If the Commission does not determine that the alteration is compatible with the design guidelines for the district, the Commission shall deny the Certificate of Appropriateness. The Commission shall provide the applicant with the reasoning for its denial including the manner in which the alteration does not meet the applicable design guidelines in Section 5.10.3.d or the purposes of this by-law.

The Commission may further delay or totally prohibit demolition in addition to any delay provided by the Brookline Demolition Delay By-Law. In considering an application to demolish a building or structure, the Commission shall consider the architectural or historical significance of the building, including, if any, the findings of the Preservation Commission under the Demolition Delay By-Law; the siting and significance of the building or structure in relation to its surroundings and surrounding buildings either by itself or as a component as a group of buildings or structures; and the design and siting of any replacement building or structure.

5.10.8. PROCEDURES FOR ISSUANCE AND FILING OF CERTIFICATES

Each Certificate issued by the Commission shall be dated and signed by its chairperson or such other person designated by the Commission to sign such Certificates on its behalf. The Commission shall send a copy of its Certificate or denial to the applicant and shall file a copy of the Certificate or denial with the office of the Town Clerk and the Building Commissioner. The date of issuance of a Certificate or denial shall be the date of the filing of a copy of such Certificate or denial with the office of the Town Clerk.

If the Commission should fail to make a determination within sixty business days of the filing of a complete application for a Certificate including all required supporting information, or within such further time as the applicant may allow in writing, the Commission shall thereupon issue a Certificate of Appropriateness due to failure to act.

5.10.9. ENFORCEMENT AND PENALTIES

The Commission is specifically authorized to institute any and all actions, including proceedings in law and in equity, as it deems necessary and appropriate to obtain compliance with the requirements of this by-law or to prevent a threatened violation thereof.

The Commission may designate the Building Commissioner to act on its behalf and to enforce this by-law under the direction of the Commission.

Any owner of a property subject to this by-law that has altered a building or other structure or proceeded with a Reviewable Project without first obtaining a Certificate of Appropriateness in accordance with the provisions of this by-law shall be subject to a fine of not more than Three Hundred Dollars. Each day the violation exists shall constitute a separate offense until the alteration is corrected, the addition is removed, a faithful restoration of the demolished building or structure is completed, suitable replacement trees are planted, or the property is otherwise returned to its original condition unless otherwise agreed to by the Commission.

5.10.10. APPEAL PROCEDURE

Any applicant or person aggrieved by a determination of the Commission may appeal as provided for in the Massachusetts General Laws.

5.10.11. VALIDITY AND SEPARABILITY; OTHER BY-LAWS

The provisions of this by-law shall be deemed to be separable. If any of its provisions, sections, subsections, sentences or clauses shall be held to be invalid or unconstitutional, the remainder of this by-law shall continue to be in full force and effect. Nothing in this by-law shall be construed as repealing or modifying any existing by-law or regulation of the Town, but it shall be in addition thereto. To the extent this by-law imposes greater restrictions upon a Reviewable Project than other by-laws, regulations or statutes, such greater restrictions shall prevail.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This article would establish the category of Neighborhood Conservation District (NCD) in the Town's By-Laws and permit the creation of specific NCDs in the Town through further Town Meeting action. The initiative for this article came from the Planning & Community Development Department, from abutters of Hancock Village, and from the interest in an NCD By-Law among residents of the Lawrence School neighborhood as an additional tool to supplement the new Lawrence Local Historic District. The article was largely drafted by Selectman Richard Benka with additional input from Town planning staff (including Regulatory Planning, Economic Development and Preservation), Town Counsel's office, and a member of the Massachusetts Historical Commission, Dennis DeWitt.

The establishment of the NCD mechanism in Town has been at least seven years in the making. Brookline's most recent Comprehensive Plan, published in 2004, recognized that "[z]oning alone does not always provide a sufficiently complete context for defining what kinds of changes are desirable in individual neighborhood contexts or what unique elements of a neighborhood should be preserved." *Brookline Comprehensive Plan* 2005-2015, at p. 24. The Plan also recognized the need to "[e]nhance neighborhood consultation in land use, density and design decisions." Id. at 28. The Comprehensive

Plan referred to several possible tools, including "the use of Neighborhood Conservation Districts (NCDs) in areas of Town with historic significance" in order "to minimize negative impacts to the historic character of the area." Id. at 78. At the time, Cambridge was the sole Massachusetts community listed as having NCDs.

In accordance with the suggestion of the Comprehensive Plan, the Town undertook a *Neighborhood Conservation District Study for the Town of Brookline*. The study was funded by the Massachusetts Historical Commission with the National Park Service and was completed in September 2005. The 2005 study included examples of NCD by-laws from 22 communities, including Amesbury and Lexington in Massachusetts in addition to Cambridge.

The potential utility of Neighborhood Conservation Districts was emphasized in *Preservation through Bylaws and Ordinances*, published by the Massachusetts Historical Commission (MHC) in October 2010. The MHC noted that an NCD (also referred to as an Architectural Preservation Districts or Architectural Conservation District) "protects the overall character of an area by regulating the demolition and major alteration of buildings and by assuring that new construction respects the scale, massing, street pattern, setback and materials of existing buildings." It is appropriate "where protection of the overall scale, streetscape and historic buildings is necessary." NCDs are created by "a general bylaw that requires a simple majority vote of town meeting or city council" and is "adopted pursuant to home rule authority." Id. at 25. In addition to the Cambridge NCDs, the MHC report pointed to a Boston "Protection Area" adjacent to the South End as well as to neighborhood districts in Lowell, North Andover and Northampton. In addition, Lincoln enacted a NCD by-law in 2006 and Wellesley created its first Neighborhood Conservation District in 2008.

The NCD By-Law is designed to be more neighborhood-specific than the Town's Local Historic District (LHD) By-Law. With some minor exceptions, Brookline's LHD guidelines apply uniformly to properties in all local historic districts. For example, under the universally applicable LHD guidelines, shutters should not be removed and even if the shutters are already missing, shutter hardware should be retained. Windows should be repaired, not replaced. Open porches facing the street should not be enclosed. The guidelines are written in detailed terms, and could prohibit changes, especially on front facades, even if they might seem compatible with the neighborhood. The guidelines for a particular NCD, unlike an LHD, can be focused less on preservation of the specific details of each structure in a neighborhood and more on preserving the general character of a neighborhood, by ensuring that the general scale, composition, massing and design is compatible with the site as well as other existing structures in the surrounding area.

NCDs have been adopted in Massachusetts and other states to provide cities and towns with greater flexibility in neighborhood preservation than would otherwise exist. NCDs can be fine tuned to specific neighborhoods, with each NCD having guidelines that are appropriate to the needs and characteristics of the specific neighborhood. For example, if the concern in a neighborhood is preserving the existing scale of structures, the guidelines for that NCD could focus on demolition of existing structures and the scale and massing of new buildings. In addition, because a Brookline NCD would be created under the home rule amendment of the state constitution, it can address issues beyond the scope of

M.G.L. c.40C, which underlies the Town's LHD by-law. Thus, the guidelines for an NCD could address landscape and urban issues such as protection of landscapes, open spaces, viewsheds and paving without grade changes.

As the *Neighborhood Conservation District Study for the Town of Brookline* recognized, an NCD By-Law serves another purpose: an NCD can "provide protection for areas that might not be viewed as ripe for designation" for the detailed constraints of a local historic district, "such as subdivisions dating to the post-WWII through 1975 period." Id. at 16. Again, an NCD in such a neighborhood might be less concerned with design details and more concerned with, as the MHC stated, preserving the general character of a neighborhood by ensuring that "new construction respects the scale, massing, street pattern, setback and materials of existing buildings."

Moreover, each NCD can be administered by a separate commission with particular knowledge of the concerns affecting that neighborhood, including not just members of the Preservation Commission but also residents of the NCD or surrounding areas, or individuals with expertise in issues faced by a particular NCD.

This article would add a new Section 5.10 to the Town's General By-Laws, providing the structure pursuant to which specific NCDs could be created by further Town Meeting action. The article sets forth definitions that will be applicable in all NCDs. It identifies the scope of projects that will be potentially subject to review in an NCD as well as identifying the types of design details that will never be subject to review, leaving the specific guidelines appropriate for each district to the warrant article creating each such district. The article also sets forth the procedures for creation of the NCD Commission for each district (composed of both Preservation Commission regular or alternate members and other residents of the Town) as well as the procedures that such Commission will follow in reviewing projects within an NCD.

This article, in short, provides the framework for the creation of Neighborhood Conservation Districts in the Town. While the current interest in the NCD tool is primarily related to Hancock Village, the tool also has a great deal of potential to provide another option for residents who seek to manage change in other neighborhoods.

_____

Town of Brookline
Massachusetts

MEMO

Department of Planning and Community Development

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Jeffrey R. Levine, AICP
Director

To: Board of Selectmen
From: Kara Brewton, Economic Development Director
Date: October 18, 2011
cc: Neil Wishinsky, Chair of Advisory Planning & Regulation Subcommittee
Jeff Levine, Planning & Community Development Director
Jennifer Dopazo Gilbert, Town Counsel

Re: Neighborhood Conservation District Warrant Article 5

On Monday, October 17, 2011, the Economic Development Advisory Board (EDAB) unanimously voted two motions as described below:

1. **Recommended amendment to Neighborhood Conservation District (NCD) enabling legislation, Town Meeting Warrants Article 5, to limit the application of NCDs to residential properties.**

   Since the current NCD discussion has been advocated mostly in relationship to residential neighborhoods, EDAB recommends that, at least during initial operation, the program should not apply to commercial property uses. EDAB is concerned that the potential of future NCDs encompassing commercial properties may inhibit private capital investments in our commercial areas.

   Potential Article 5 amendment language (changes indicated in bold):

   Section 5.10.3.a.: *A Neighborhood Conservation District shall encompass a geographically defined area* ***that is zoned as a residence district.***

   Section 10.2.m.: *REVIEWABLE PROJECT – Except to the extent that the particular design guidelines for a specific NCD set forth in section 5.10.3 of this by-law may exempt some of these activities from review within that NCD, the following* ***activities on any property zoned as residence*** *shall be subject to review…*

2. **Motion to request Selectmen to consider a study process prior to District designation and project compatibility review authorized on an interim basis from the time a proposed District is nominated for study.**

Discussion:

Several other municipal Neighborhood Conservation District programs in Massachusetts (Cambridge, Lincoln, Wellesley) use a process of citizen petition to the Historical Commission (what is called Preservation Commission in Brookline) to study designation of a District, with: study and written report by an appointed committee which includes among other representatives residents and/or property owners from within the proposed District; and a formal Historical/Preservation Committee vote, after considering the study report at a public hearing, whether to recommend establishment of the District to the City Council or Town Meeting.

During the pendency of such a study process, in Cambridge and Lincoln, the Historical Commission is authorized to conduct an interim review of any proposed projects that have not yet received a building permit, <u>as if the NCD under study had already been established</u>, in accordance with the boundary, guidelines and procedures that were proposed in the designation petition. The interim review authority expires a defined time period after the petition (a year in Cambridge and 18 months in Lincoln) if the contemplated District has not yet been actually adopted.

While EDAB does not have enough information to determine whether incorporating such study and interim review procedures would create a significantly better warrant article for Town Meeting, EDAB believes such a proposal is worthy of further investigation. EDAB asks the Selectmen to consider all potential ramifications in moving forward with Articles 5 and 6 as currently drafted and whether unintended consequences might be avoided with a differently structured Article 5 and an 18 month period in which to have control while a study is completed. As the interim study concept has many variables, suggestions for amendment language would be discussed following further conceptual direction from the Selectmen.

TOWN OF BROOKLINE

Massachusetts

BROOKLINE PRESERVATION COMMISSION
JAMES BATCHELOR, Chair
DAVID KING, Vice-chair
WENDY ECKER
ELTON ELPERIN
LINDA LEARY
JUDITH SELWYN
PAUL BELL, Alternate
KIRSTIN GAMBLE BRIDIER, Alternate
ROSEMARY BATTLES FOY, Alternate
Greer Hardwicke, Staff
Jean Innamorati, Staff

MEMORANDUM

TO: **AC PLANNING AND REGULATION SUBCOMMITTEE**
FROM: **PRESERVATION COMMISSION**
DATE: **OCTOBER 17, 2011**
RE: **FALL TOWN MEETING ARTICLES 5 & 6**

At its October 11, 2011 meeting the Preservation Commission voted unanimously to support passage of Article 5, establishing Neighborhood Conservation Districts in the Town, with several recommended revisions. These revisions are shown in the attached documents A and B.

Attachment A shows the changes recommended to the language of Article 5 as italicized and underlined text, on pages 2, 3, 4 and 5. Attachment B is the article with the recommended changes incorporated into the text.

The Preservation Commission voted at the same meeting to unanimously support recommending passage of Article 6, establishing a Hancock Village Neighborhood Conservation District. The Commission considers Hancock Village to be eligible for listing on the National Register of Historic Places because of the significant historical, architectural and landscape elements of the property.

Attachment C is the Preservation Commission's Certified Local Government submission form to the Massachusetts Historical Commission. Through this document the Brookline Preservation Commission expresses its opinion that Hancock Village should be considered eligible for National Register listing.

The Preservation Commission respectfully requests the Subcommittee to recommend adoption of the revised version of Article 5 for consideration by the Advisory Committee, and to recommend adoption of Article 6.

(Attachments A and C are included at the end of the this Recommendation, starting on page 5-29)

cc: Jeff Levine, Director of Planning and Community Development
Polly Selkoe, Assistant Director for Regulatory Planning
Jennifer Dopazo Gilbert, Town Counsel
Board of Selectmen and Mel Kleckner, Town Administrator

TOWN OF BROOKLINE

Massachusetts

HOUSING ADVISORY BOARD
Roger F. Blood, Chair
Steven A. Heikin
Michael H. Jacobs
Karen J. Kepler
Rita K. McNally
Rufus Phillips
Kathy A. Spiegelman

333 Washington Street
Brookline, MA 02445
(617) 730-2130
FAX (617) 730-2442

Date: October 27, 2011
To: Board of Selectmen
From: Roger Blood, Chair, Housing Advisory Board
RE: Warrant Articles 5 and 6 –
Possible Adverse Consequences for Affordable Housing

The Housing Advisory Board (HAB) wishes to express its concern regarding the potentially adverse consequences for affordable housing in Brookline that could result from adoption of Warrant Articles 5 and 6.

As written, these additions to the Town By-Laws are likely to discourage conventional new development. Beyond just the greater complexity of permitting in an existing NCD would be the uncertainty regarding the adoption of an NCD in response to a contemplated development, and thus the financial risk facing a developer who wishes to undertake development anywhere in Town. Adopting an NCD for this purpose would entail a less rigorous process and a lower threshold of approval than either re-zoning or the creation of a historic preservation district.

If we understand it correctly, the opponents of any prospective project may seek adoption of an NCD any time prior to the issuance of a building permit, by which time the developer will have committed substantial investment in acquisition, design, construction documentation and financing. Affordable housing development, in particular, requires expenditure of considerable resources "up-front", i.e., prior to the issuance of a building permit (resources which the Town sometimes fronts at its own risk). We are concerned that the risk that a project can be stopped or delayed, coming at such a late stage, will have a chilling effect on potential projects.

Further, the process of obtaining State funds, usually necessary for affordable housing development, has become increasingly competitive, and a project must be ready to proceed to a construction closing upon an award from the State. This standard requires that the project have its zoning and other public approvals in place. We are concerned that projects in Brookline would not score well since they could be halted or delayed after the award of State funds and therefore would not be considered "ready to proceed."

By reducing the development of market-rate residential multifamily projects, Article 5 could reduce or substantially eliminate the number of affordable housing units created under the Town's inclusionary zoning ordinance (77 affordable units added since 2000), as well as contributions to the Town's Housing Trust ($6.4 million contributed since 2000).

On the other hand, passage of these Articles may result in an increased reliance upon Chapter 40B (comprehensive permits) by developers otherwise not so inclined. While Chapter 40B has been an important tool for increasing affordable housing statewide, to make it the only predictable avenue for new residential development in Brookline could have the unintended consequence of reducing, rather than increasing, community control over new housing development as these Articles seek to accomplish.

SELECTMEN'S RECOMMENDATION

The Board of Selectmen will offer their Recommendation in a Supplemental Report to be issued prior to the commencement of Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 5 was placed in the warrant by the Planning and Community Development Department based on the initiative of abutters of Hancock Village and from an interest in the NCD bylaw among residents of the Lawrence School neighborhood earlier this year. The primary author of the article was Selectmen Dick Benka.

Article 5 is an attempt to add a new land use tool to the arsenal of available tools in the Brookline regulatory framework. The article adds sections to the town bylaws enabling a device called a Neighborhood Conservation District (NCD). There is no specific enabling legislation in Massachusetts for NCD's unlike zoning (MGL 40A is the enabling legislation) and LHD's (MGL 40C). NCDs are passed with the general powers accorded to a municipality's legislative body. Ordinances passed using these general powers require a majority vote of the legislative body. Also, matters regarding zoning must be regulated under the framework of MGL 40A. Therefore, an NCD cannot directly regulate matters such as setbacks and floor to area ratios (FAR) which are in the purview of zoning. Article 5 has been carefully crafted not to be zoning.

As stated, both zoning and LHD's have specific enabling legislation from the state which provides a framework and limitations for their enactment and implementation. For example, both zoning and Local Historic Districts ("LHDs") require a specific process and a 2/3 vote of Town Meeting prior to enactment. Additionally, LHDs are preservation-oriented with mostly uniform guidelines across the historic districts. These guidelines are very detailed and regulate when and how to replace windows, porches (ie., open porches facing the street cannot be enclosed) and may prohibit changes even if they seem compatible with the neighborhood.

An NCD can be more flexible than an LHD and be more focused on protecting the overall character of a neighborhood. Additionally, it does not have to be limited to the built environment. It can be neighborhood-specific with different NCDs focusing on protecting different neighborhood characteristics. The definition of "Reviewable Project" (Section 5.10.2.m) contains a list of the kinds of changes which can be subject to NCD restrictions but any particular NCD can exempt any of the change categories from review in the enabling article for new NCDs. Section 5.10.6 lists eleven categories of changes which an NCD cannot regulate. Notable in the exclusions are replacement windows and doors plus gutters.

The establishment of an NCD was mentioned in the most recent Comprehensive Plan published in 2004. At that time, Cambridge was the only community in Massachusetts listed as having NCDs. In 2005, the town undertook a Neighborhood Conservation District Study funded in part from a grant from the Mass. Historical Commission. That study summarized NCDs as follows:

> "Neighborhood Conservation Districts provide an additional regulatory tool for preserving the character of established neighborhoods and unique areas of communities from inappropriate development. Of the many NCD-type regulations around the country (NCDs are sometimes called by other names), the central shared rationale for their adoption has been to provide a more flexible and tailored approach to protecting areas not typically considered "historic."

The study reviewed the use of NCDs around the country and in Massachusetts. It explored the types of NCDs and how the flexibility inherent in the tool has been used. It suggested a few neighborhoods which the NCD device could be applied (Hancock Village was not one of the neighborhoods cited), presented various administrative and

regulatory structures, and provided a draft bylaw, portions of which have been incorporated into Article 5.

In Massachusetts, Cambridge, Wellesley and Lincoln have NCD enabling laws. NCDs have been in existence in Cambridge since the early 1980's. Boston, Lowell, North Andover and Northampton have similar structures but with different names. To the best of our knowledge, NCDs have not been challenged in court.

DISCUSSION

Comments heard by the Advisory Committee and its Planning and Regulation Subcommittee focused around a number of general areas.

1. What should the process be to establish a new NCD?

Proposed Section 5.10.3 sets forth the procedures for establishing a new NCD. Basically, a new NCD can be established by a majority vote of Town Meeting. In contrast, zoning requires a Planning Board hearing and then a 2/3 vote of Town Meeting. An LHD requires a warrant article to be filed by the Preservation Commission (which needs to follow a specific process) and then a 2/3 vote of Town Meeting.

Some commenters thought the process in the proposed bylaw was too easy. Comments included; a majority vote of Town Meeting is too low a bar, there is no specified study process in the bylaw and there is no requirement that the owners affected by the NCD have consented. Among those expressing various parts of this view in different ways were TMMs Deb Goldberg, and Cliff Brown, Joe Geller on behalf of Chestnut Hill Realty and the Planning Board in its report.

In other Massachusetts communities permitting NCDs, all ultimately establish the NCD through a majority vote of the legislative body (either City Council or Town Meeting.) and all require some study and recommendation process. Examples are:

1. In Cambridge, any 10 voters may petition the Cambridge Historical Commission to study whether an NCD should be established. If the Commission votes to accept a petition, a year long study process takes place (by a committee appointed by the City Manager) and the proposed district is protected during the study. If the study results in an NCD recommendation, the Committee makes its recommendation to the City Council who can accept it by majority vote. The Historical Commission acts as the "gatekeeper" in this framework.
2. In Wellesley, a petition of at least 80% of the affected owners must be presented to the Wellesley Historical Commission. If deemed worthy of study, a study committee is then appointed which has 1 year to complete its business. If a favorable recommendation by the study committee is made, the Planning Board and Historical Commission hold a joint public hearing. If the joint Planning Board and Historical Commission recommend approval AND if no more than 20% of the affected property owners object, the NCD is placed on the Town Meeting warrant for a majority vote. Wellesley thus has multiple gatekeepers, the Historical Commission, the study committee, the joint Planning Board and Historical Commission plus 20% of the affected homeowners.

3. Lincoln has a scheme similar to Wellesley except that agreement of 50% of the affected homeowners is required and the Planning Board has no formal role in the establishment process (the Historical Commission has a large role.)

The vast majority of commenters at the Planning and Regulation Subcommittee public hearing implored the subcommittee that the neighborhood around Hancock Village was under immediate threat and the NCD needed to be in place as soon as possible. Waiting for another Town Meeting for a statutorily mandated study process would be too late. Plus, they noted, the Preservation Commission has already studied Hancock Village and made its recommendation. Having another study will not add anything to the process except delay.

With respect to requiring a set percentage of affected homeowners to approve, a number of commenters noted that while as a general rule this would be ideal, this would not work in a situation such as Hancock Village where you have 1 owner for an entire neighborhood having absolute veto power over the NCD.

A number of commenters noted the unintended consequences of passing the legislation without specific study or homeowner acceptance requirements. Other commenters noted the consequences of putting anything in place that would delay the implementation of an NCD.

The Advisory Committee was sympathetic to requiring additional statutory process but recognizes the timing issues with respect to Hancock Village, and feels that it is important to get the NCD enabling legislation in place now. In fact, during the vetting process for this article, a requirement that the Preservation Commission study and make a recommendation prior to Town Meeting consideration of an NCD was proposed. Representatives of Chestnut Hill Reality, the owners of Hancock Village, pointed out that should that language be in the legislation, the Preservation Commission will not actually have the authority to study and recommend until the legislation actually passed and thus no NCD could be designated in this Town Meeting. We also note that every warrant article goes through an extensive vetting process which includes the Selectmen, the Advisory Committee and various boards, commissions and sometimes other committees depending on the subject matter. This article was vetted by the Preservation Commission and the Planning Board even though there was no statutory mandate for those boards to review this article.

We note that any perceived flaws can be fixed in a subsequent Town Meeting. That said, in considering Article 6, we hope that Town Meeting considers the recommendation of the Preservation Commission and ensures that the NCD has broad acceptance in the affected neighborhood as has been the tradition with LHDs in the past. In a typical situation, there will be many affected owners but the Hancock Village situation is unusual in that there is 1 owner for an entire neighborhood. The Planning Board and others have noted that this should be considered when the boundaries of a proposed NCD are drawn.

2. Should an NCD include Commercial Properties?

Both the Economic Development Advisory Board (EDAB) and the Planning Board felt that commercial properties should be excluded. Both were concerned that the potential of future NCDs encompassing commercial areas may inhibit private capital investment in our commercial areas. The Advisory Committee agrees that commercial areas should be excluded at this time since NCDs have been advanced to protect primarily residential areas. More study is required on whether to apply NCDs to commercial districts and if so, how. Both the Planning Board and EDAB offered language. We felt that EDAB's language was clearer and easier to administer.

3. What should be the composition of the commission which administers NCDs

As proposed, a 5 or 7 member NCD Commission would be established for each NCD centered around 3 or 4 members of the Preservation Commission. Other members would be appointed by the Selectmen to fill out the commission to include residents of the NCD or abutting areas plus members with additional expertise which may be specific to a particular NCD. Alternate members could also be appointed.

Members of the Preservation Commission were concerned with the additional workload of having so many Preservation Commission members on an NCD Commission. The Preservation Commission offered language that allows for between 1 and 3 (or 4 for a 7 member NCD Commission) with the remaining members appointed by the Selectmen plus having the ability to have concurrent membership in multiple NCD Commissions which would allow for flexibility for common NCD Commission membership for multiple NCDs.

The Planning Board felt that there should be a 5 member commission with 1 Preservation Commission member, 1 Planning Board member, 1 owner from the NCD and 2 selectmen appointees with no alternates. As stated in their report, the Planning Board has experience with land use matters so they are used to performing that function plus the use of alternates will impede uniform application of NCD guidelines.

A number of commenters thought that if there are multiple NCDs in the future, that there should be a standing NCD Commission for all NCD similar to the standing Preservation Commission which administers all LHDs.

The Advisory Committee adopted much of the Preservation Commission language on NCD composition. The potential workload of volunteer Preservation Commission members is a real concern. Plus we need to be mindful that the Selectmen have had trouble attracting qualified applicants to the Planning Board and Preservation Commission, so there needs to be flexibility. Also, since an NCD can deal with open space, landscaping and viewsheds, it may not be essential to have Planning Board membership on all NCD Commissions. So the language offered by the Advisory Committee mandates only 1 member of the Preservation Commission and then provides flexibility to appoint members of other boards and commissions (including Planning and Conservation), abutters and/or residents of the district plus others with expertise in the issues specific to that NCD.

We specifically note that the Planning Board suggestion that 1of the seats be reserved for an owner in the NCD (without an alternative) is unworkable for the NCD proposed in Article 6 in that there is only one owner in the proposed NCD and that would give them review authority over their own proposal; an obvious conflict of interest.

Lastly, we note that both the Zoning Board of Appeals and the Preservation Commission operate with alternates with no problems.

4. Additional Comments

The Planning Board recommended that an intermediate appeal to the Selectmen be permitted prior to an appeal to the courts. The Planning and Regulation Subcommittee heard from Town Counsel and others that this may politicize the process. We note that the Zoning Board of Appeals and Preservation Commission decisions are appealed directly to the courts. For most matters, Planning Board decisions are not binding but are advisory to the Zoning Board of Appeals so there is no need to appeal their decisions. (The Planning Board-ZBA relationship is similar to the relationship between the Advisory Committee and Town Meeting. In most matters, Advisory Committee votes result in non-binding recommendations to Town Meeting.) The Advisory Committee agreed that the appeal should be to the courts. A commenter pointed out that Transportation Board decisions are appealable to the Selectmen. However, those decisions mostly affect usage of public ways as opposed to private property.

Representatives of Chestnut Hill Realty commented on lack of landowner participation in the Article 5 construction, lack of transparency in the vetting, lack of mandatory participation of the Planning Board, unintended consequences, lack of analysis of the costs of implementation, lack of a required study, lack of a 2/3 vote of Town Meeting and lack of consideration on the effect on commercial districts. Joe Geller, on behalf of Chestnut Hill Reality, asked what kind of message will this send to future developers in the Town of Brookline?

<u>RECOMMENDATION</u>
The Advisory Committee recognizes some of the flaws in this proposed legislation and has attempted to address those flaws as much as possible. We have added language to exclude commercial districts as recommended by EDAB and the Planning Board. We have added flexibility to the composition of the NCD Commission and have made other technical changes as recommended by attendees at our public hearings. We did not substantively change the procedures to establish an NCD given the timing issues presented by Article 6. A future Town Meeting can and should consider changing the NCD creation procedure to formally add a study process.

The Advisory Committee by a 18-4-1 vote recommends FAVORABLE ACTION on the following language (the redline language denotes changes from the original warrant language as a result of the vetting process):

VOTED: that the Town amend its General By-Laws by adding a new section 5.10 as follows:

This by-law shall be known as and may be titled the Brookline Neighborhood Conservation District By-law. The Town of Brookline hereby establishes the category of Neighborhood Conservation District ("NCD").

This by-law is enacted for the purposes of preserving and protecting groups of buildings and their settings that are architecturally or historically significant; preserving and protecting the layout of neighborhoods or historical subdivisions of neighborhoods, vehicular and pedestrian circulation patterns, green spaces, open spaces, landscapes, and viewsheds that are historically significant or significant to the character of the town or its neighborhoods; preserving and protecting distinctive features of the architectural, environmental, cultural, economic, political or social history of the town and its neighborhoods, and limiting the detrimental effect of alterations, additions, demolitions and new construction on the character of the town and its neighborhoods. Through this by-law, alterations, additions, demolition and new construction may be reviewed for compatibility, including without limitation design, massing, topography, scale and materials, with the existing buildings, green spaces, open spaces, courtyards, landscapes, neighborhood and subdivision plans and layouts, circulation patterns, viewsheds, settings and neighborhood character. This by-law seeks to encourage the protection of the natural and built environment including without limitation buildings, viewsheds, cultural landscapes, land use patterns and neighborhood plans through regulatory review. ~~This by-law promotes the public welfare by making the town a more attractive and desirable place in which to live and work and by preserving its distinctive history and man-made and natural characteristics for its inhabitants and its visitors~~. This by-law promotes the public welfare by making the town a more attractive and desirable place in which to live and work by preserving the distinctive history and character of its built, landscaped and natural environment.

Each NCD identified in Section 5.10.3 shall be geographically defined. Each such district shall be subject to a set of design guidelines specific to that district established as set forth herein.

5.10.2. DEFINITIONS

As used in this by-law the following terms shall have the following meanings (whether or not capitalized in text):

a. *ADDITION* - An extension or increase in gross floor area, number of stories, height or size of a building or structure.

b. *ALTER or ALTERATION* - Any change to an existing building or other structure other than repair, or other changes to a site or property set forth in the definition of "Reviewable Project" (including without limitation Sections 5.10.2.m(iv) to 5.10.2.m(ix). Alteration shall include, without limitation, the moving or complete or partial demolition of an existing building or structure (as defined in Sections 5.3.2(h) and (i) of these By-Laws, except as exempted below).

c. *APPLICATION* - The complete document(s) and supporting material(s) to be submitted by an applicant desiring to obtain a Certificate of Appropriateness. A

complete application shall include information reasonably deemed necessary by the Commission to enable it to make a determination.

d. BUILDING - A combination of materials forming a shelter for persons, animals or property.

e. CERTIFICATE OF APPROPRIATENESS - A document granted by the Neighborhood Conservation District Commission in order to permit a Reviewable Project to proceed, including without limitation to obtain a building (including demolition) permit.

f. COMPATIBLE - A Reviewable Project that meets the design guidelines of the Neighborhood Conservation District.

g. DESIGN GUIDELINES - The guidelines applicable to each Neighborhood Conservation District and used by the Commission to determine whether the design of a proposed Reviewable Project is compatible with the district. Such guidelines are set forth in Section 5.10.3 with respect to each district created under this by-law.

h. DISTRICT - Any Neighborhood Conservation District as established in this by-law.

i. NEIGHBORHOOD CONSERVATION DISTRICT ("NCD") - A property or group of properties designated in Section 5.10.3.

j. NEIGHBORHOOD CONSERVATION DISTRICT COMMISSION ("the Commission" or "the NCD Commission") - *A member or m*~~M~~embers of the Brookline Preservation Commission, as supplemented by any additional individuals appointed in accordance with Section 5.10.4, acting as the body making determinations under this by-law regarding applications for Certificates of Appropriateness in a particular NCD. With respect to any NCD the composition of the NCD Commission may be specific to that NCD.

k. PERSON AGGRIEVED - An applicant and any immediate abutter whether inside or outside the NCD.

l. REPAIR - The reconstruction or renewal of any part of an existing building or other structure for the purpose of its maintenance without change in material, design or dimensions.

m. REVIEWABLE PROJECT - Except to the extent that the particular design guidelines for a specific NCD set forth in section 5.10.3 of this by-law may exempt some of these activities from review within that NCD, the following shall be subject to review, regardless of whether any demolition or other building permit is required: (i) a change to a building or other structure or part thereof such as removal, construction, reconstruction, restoration, renovation, replication, rehabilitation, addition, alteration, partial or total demolition and other similar activities, or the construction of a new building or other structure or part thereof; (ii) painting of previously unpainted masonry; (iii) addition or replacement of doors and windows, or tinting or altering glass reflectivity unless excluded in Section 5.10.6.c.11**;** (iv) a change to a site that includes constructing, placing, erecting, installing, enlarging or moving a building or other structure or other similar activities; (v) the removal or addition of streets, driveways, parking areas, walkways or paved surfaces; (vi) removal of trees more than eight inches in diameter at 56" height (d.b.h.); (vii) substantial or complete removal of areas of vegetation specifically identified in the design guidelines at or after the creation of the NCD; (viii) removal of ledge or other rock outcroppings with at least one foot exposure in height; or (ix) changes in grade elevation of more than three feet. The activities set forth in Section 5.10.6 shall be

exempt from review.

n. STRUCTURE - That which is built or constructed, including buildings, walls, retaining walls, fences, walkways, driveways or parking areas, paving and curbs, street name signs, any signs larger than one square foot, swimming pools, tennis courts, freestanding HVAC equipment, and outdoor lighting that shines on any adjacent property.

o. SUBSTITUTE SIDING - Exterior building cladding such as vinyl, aluminum or cement board not original to the date of construction of that portion of the building.

p. TEMPORARY BUILDING OR STRUCTURE - A building or other structure, necessary for a specific event, incident or project, erected for a period of no more than 6 months, unless otherwise agreed to by the Commission, the installation and removal of which will cause no permanent change.

5.10.3. DISTRICTS AND GUIDELINES

a. A Neighborhood Conservation District shall encompass a geographically defined area, ***that, at the time of its establishment, is located in its entirety within one or more residence ~~residential~~ districts as defined in section 3.01.1 of the Zoning Bylaw.***~~.~~ Additional NCDs may be added by majority vote of Town Meeting and each such NCD and the design guidelines for such NCD shall be set forth in part d of this Section 5.10.3, as it may be amended. The boundaries of each NCD shall be set forth on a map on file with the Town Clerk. The NCD Commission, Town Counsel or Town Clerk shall, in addition, promptly present a copy of the map and applicable by-law for filing in the Norfolk County Registry of Deeds.

b. The design of each Reviewable Project in a Neighborhood Conservation District shall be subject to the particular design guidelines set forth in this Section 5.10.3 for such district.

c. The Commission may impose dimensional requirements that further the purposes of this by-law, including without limitation preventing Reviewable Projects inconsistent with the historic or architectural aspects, scale or massing, neighborhood or subdivision plan or layout, circulation patterns, or green space, open space, landscape, vegetation or viewshed character of the NCD.

5.10.4. NEIGHBORHOOD CONSERVATION DISTRICT OVERSIGHT

a. Each Neighborhood Conservation District shall be overseen by a Neighborhood Conservation District Commission consisting of no less than five members, *which shall not preclude overlapping membership in whole or in part between commissions for various NCDs if appropriate to provide consistency, continuity, economy or other benefits in NCD administration Town-wide.* If deemed appropriate by the Board of Selectmen for the administration of a specific NCD after consultation with the chair of the Brookline Preservation Commission, the size of an NCD Commission may be increased to seven members *and the specific membership shall be determined within the limits set forth below*. In the case of a five-member NCD Commission, *up to* three members *but no less than one member* shall be representatives of the Brookline Preservation Commission as described in Section 5.6.4 of the Town By-laws, and ~~at least two members~~*the remaining members* (and their alternates) shall be appointed by the Board of Selectmen. In the case of a seven-member NCD Commission, *up to* four

members *but no less than one member* shall *be* representatives of the Brookline Preservation Commission and *the remaining members*~~and *at least* three members~~ (and their alternates) shall be appointed by the Board of Selectmen. The *member or* members of an NCD Commission representing the Preservation Commission may be either regular or alternate members of the Preservation Commission, and shall be designated by the chair of the Preservation Commission to serve on a particular NCD Commission. The Selectmen's appointees shall be residents of the Town and may be, as appropriate, individuals such as members of other Boards and Commissions, residents and/or property owners within ~~of~~ the NCD, residents of abutting areas, or residents of the Town with additional expertise in the issues specific to a particular NCD, such as architecture, historic landscape preservation, landscape architecture, agriculture, horticulture or forestry, urban planning or history. Such Selectmen's appointees (including alternates) shall initially be appointed to one-, two-, or three-year terms so as to minimize the number of terms that expire in the same year, and at the expiration of the initial terms, appointments shall be for three-years. Each NCD Commission shall elect a chair and vice-chair from within its own number, and a clerk from within or without its own number. In the absence of an NCD Commission member representing the Preservation Commission, the NCD Commission chair may appoint any regular or alternate Preservation Commission Member to act for that absent member. In the absence of an NCD Commission member appointed by the Selectmen, the NCD Commission chair may appoint any alternate appointed by the Selectmen to act for that absent member. Prior to the appointment by the Selectmen of the Selectmen-appointed NCD Commission members or alternates or in the event of the unavailability of such Selectmen's appointees, those positions shall be filled on an interim basis by regular or alternate members of the Preservation Commission appointed by the chair of the Preservation Commission, so that an NCD at all times has the requisite number of five (or seven, if applicable) members.

The Commission for each NCD shall exercise its powers in administering and regulating the alteration of buildings, other structures and natural and manmade elements within such NCD as set forth under the procedures and criteria established in this by-law.

The Commission for each NCD shall review all Reviewable Projects in the NCD, including without limitation new construction, demolition or alterations that affect the landscape or topography, the exterior architectural features of buildings and other structures, or the mass and siting of buildings and other structures. The authority of the Commission shall be binding except with regard to the categories of structural, landscape or architectural features exempted by Section 5.10.6 or that may be otherwise exempted by the particular design guidelines for a specific district set forth in Section 5.10.3 of this by-law.

An NCD Commission, or the Town on behalf of any such commissions, may receive and accept appropriations, grants and gifts to further the purposes of this by-law. An NCD Commission, or the Town on behalf of any such commissions, is also authorized to the extent permissible by law to require the collection of funds as part of an application to be placed in a separate account. These funds may be used to fund Town review of a Reviewable Project, including the retention of consultants or the funding of staff required to complete review of an application.

b. An NCD Commission, after a public hearing duly noticed at least 14 days in advance, may adopt, and from time to time amend, reasonable rules and regulations not inconsistent with the provisions of this by-law or other by-laws governing the Commission. Such rules and regulations shall set forth such forms and procedures as it deems desirable and necessary for the regulation of its affairs and the conduct of its business, including requirements for the contents and form of applications for certificates, the process for collecting and utilizing funds including without limitation application fees and funds required to fund Town review, hearing procedures and other matters. Such rules and regulations may also include a set of design review standards, not inconsistent with the applicable design guidelines and exemptions contained herein under Sections 5.10.3 and 5.10.6, to refine and clarify the application of the design guidelines during the design review process. The NCD Commissions for various NCDs within the Town may adopt common rules and regulations for the conduct of their business, consistent with the specific design guidelines applicable to each NCD, *including coordinating or integrating procedures for review of applications*. The Commission promulgating any such rules and regulations shall file a copy thereof with the office of the Town Clerk.

5.10.5. PROJECTS PROHIBITED WITHOUT A CERTIFICATE

Except as this by-law provides, no building, other structure, site, property or part thereof within a Neighborhood Conservation District shall be altered (which term includes complete or partial demolition and new construction) and no other Reviewable Project may proceed unless the Commission shall first have issued a Certificate of Appropriateness. A building permit (which shall include permits for demolition) or an occupancy permit may not be issued for an altered building, structure, site or property or other Reviewable Project without the prior issuance of a Certificate of Appropriateness.

5.10.6. ALTERATIONS EXEMPT FROM COMMISSION REVIEW

a. It shall be the responsibility of the staff of the Commission, with the concurrence of the Chair of the Commission, to determine whether a proposed alteration or other project is exempt from review and they shall have ten business days to make this determination. Any alteration or project that is exempt from review shall receive a Certificate of Exemption that will permit such alteration or project to go forward without further review under the Neighborhood Conservation District By-Law. *The Commission may establish regulations to define projects that are of insufficient significance to warrant Commission review, and Commission staff may issue a Certificate of Exemption for such a project.*

b. Nothing herein shall be deemed to limit review to features visible from a public way unless such a limitation is set forth in the particular design guidelines for a specific district set forth in Section 5.10.3.d of this by-law.

c. The following projects or portions of Reviewable Projects are exempt from Commission review in all NCD districts:

1. Temporary buildings and structures subject to time limits (no longer than 6 months) and size limits determined by the Neighborhood Conservation District Commission.
2. One-story detached accessory structures without permanent foundations used as

tool and storage sheds, playhouses, and similar uses provided the floor area does not exceed 100 square feet. This exemption shall not apply to garages, parking structures or other structures for vehicular use nor to structures to shelter or visually shield HVAC equipment.

3. Interior Alterations, including interior demolition as defined in Sections 5.3.2(h)(iii) and (iv) (such sections shall continue to be applicable to the Demolition Delay By-Law).
4. Ordinary maintenance and repair of architectural features that match the existing conditions including materials, design and dimensions.
5. Removal of substitute siding provided, however, that any replacement siding and trim shall be reviewable.
6. Reversible changes of color (such as staining or repainting of wood siding or trim, but not work such as painting of previously unpainted masonry).
7. Removal, replacement or installation of the following exterior elements (this exemption shall not apply to replacement windows which may include storms or screens):
    a. Exterior storm windows and exterior storm doors
    b. Exterior window screens or exterior screen doors
    c. Gutters and downspouts
    d. Removable window air conditioners, but not permanently installed HVAC equipment whether as part of a building or freestanding.
    e. Satellite dishes or antennae less than 3 feet in maximum width.
8. In-kind replacement of plant material.
9. Removal of public shade trees or removal of plant material that is severely damaged or dying due to weather-related events or natural causes.
10. Reconstruction, substantially similar in exterior design, of a building, damaged or destroyed by fire, storm or other disaster, provided such reconstruction is begun within the time period specified in Section 8.03.1 of the Zoning By-Law and carried forward with due diligence.
11. Replacement windows and doors, and windows and doors installed in an addition or new construction, whether including single-pane glass or multiple-pane insulating glass, provided that (a) the exterior appearance is consistent in size, scale and detailing with that of pre-existing windows and doors on the building and adjacent buildings, as through the use of true divided lites or exterior muntins adhered to the exterior glass surface, and (b) reflective or tinted glass is not used, unless used in the pre-existing windows and doors.

5.10.7. PROCEDURES FOR REVIEW

Any Reviewable Project not exempted above requires the submittal of an application for regulatory review by the Commission. The application shall be accompanied by a filing fee as may be determined from time to time by the Board of Selectmen. As may reasonably be deemed necessary by the Commission to enable it to make its determination on the application, the application may be required to include (a) drawings and/or photographs showing existing conditions, including existing buildings and other structures, landscape features and vegetation, open spaces and pedestrian and vehicular paths, and (b) plans, elevations, specifications, photographs, descriptions of materials and other supporting information of the proposed changes.

Within forty-five business days of the submittal of a complete application, including all required supporting information, the Commission shall hold a public hearing on the application. At least fourteen days before said public hearing, public notice shall be given. Such notice shall identify the time, place and purpose of the public hearing.

At or subsequent to the public hearing, the Commission shall determine whether the proposed alteration or other Reviewable Project, including any modification thereof agreeable to the applicant, is compatible with the specific design guidelines of the applicable district and the purposes of this by-law. The Commission may waive or modify the application of a design guideline in a particular case if such waiver will not derogate the protections provided by this by-law to the neighborhood and abutters.

If the Commission determines that the alteration is compatible with the design guidelines for the district, the Commission shall issue a Certificate of Appropriateness. If deemed necessary to ensure that an alteration is compatible with the design guidelines, the Commission may attach appropriate conditions to the Certificate of Appropriateness. The concurring vote of a majority of Commission members, including voting alternates (i.e., not less than three votes for a five-member commission and not less than four votes for a seven-member commission) shall be required to issue a Certificate of Appropriateness.

If the Commission does not determine that the alteration is compatible with the design guidelines for the district, the Commission shall deny the Certificate of Appropriateness. The Commission shall provide the applicant with the reasoning for its denial including the manner in which the alteration does not meet the applicable design guidelines in Section 5.10.3.d or the purposes of this by-law.

The Commission may further delay or totally prohibit demolition in addition to any delay provided by the Brookline Demolition Delay By-Law. In considering an application to demolish a building or structure, the Commission shall consider the architectural or historical significance of the building, including, if any, the findings of the Preservation Commission under the Demolition Delay By-Law; the siting and significance of the building or structure in relation to its surroundings and surrounding buildings either by itself or as a component as a group of buildings or structures; and the design and siting of any replacement building or structure.

5.10.8. PROCEDURES FOR ISSUANCE AND FILING OF CERTIFICATES

Each Certificate issued by the Commission shall be dated and signed by its chairperson or such other person designated by the Commission to sign such Certificates on its behalf. The Commission shall send a copy of its Certificate or denial to the applicant and shall file a copy of the Certificate or denial with the office of the Town Clerk and the Building Commissioner. The date of issuance of a Certificate or denial shall be the date of the filing of a copy of such Certificate or denial with the office of the Town Clerk.

If the Commission should fail to make a determination within sixty business days of the filing of a complete application for a Certificate including all required supporting information, or within such further time as the applicant may allow in writing, the Commission shall thereupon issue a Certificate of Appropriateness due to failure to act.

5.10.9. ENFORCEMENT AND PENALTIES

The Commission is specifically authorized to institute any and all actions, including proceedings in law and in equity, as it deems necessary and appropriate to obtain compliance with the requirements of this by-law or to prevent a threatened violation thereof.

The Commission may designate the Building Commissioner to act on its behalf and to enforce this by-law under the direction of the Commission.

Any owner of a property subject to this by-law that has altered a building or other structure or proceeded with a Reviewable Project without first obtaining a Certificate of Appropriateness in accordance with the provisions of this by-law shall be subject to a fine of not more than Three Hundred Dollars. Each day the violation exists shall constitute a separate offense until the alteration is corrected, the addition is removed, a faithful restoration of the demolished building or structure is completed, suitable replacement trees are planted, or the property is otherwise returned to its original condition unless otherwise agreed to by the Commission.

5.10.10. APPEAL PROCEDURE

Any applicant or person aggrieved by a determination of the Commission may appeal as provided for in the Massachusetts General Laws.

5.10.11. VALIDITY AND SEPARABILITY; OTHER BY-LAWS

The provisions of this by-law shall be deemed to be separable. If any of its provisions, sections, subsections, sentences or clauses shall be held to be invalid or unconstitutional, the remainder of this by-law shall continue to be in full force and effect. Nothing in this by-law shall be construed as repealing or modifying any existing by-law or regulation of the Town, but it shall be in addition thereto. To the extent this by-law imposes greater restrictions upon a Reviewable Project than other by-laws, regulations or statutes, such greater restrictions shall prevail.

XXX

ATTACHMENT A OF PRESERVATION COMMISSION REPORT

ARTICLE XX

To see if the Town will amend its General By-Laws by adding a new section 5.10 as follows:

5.10 NEIGHBORHOOD CONSERVATION DISTRICTS

5.10.1. TITLE AND PURPOSE

This by-law shall be known as and may be titled the Brookline Neighborhood Conservation District By-law. The Town of Brookline hereby establishes the category of Neighborhood Conservation District ("NCD").

This by-law is enacted for the purposes of preserving and protecting groups of buildings and their settings that are architecturally or historically significant; preserving and protecting the layout of neighborhoods or historical subdivisions of neighborhoods, vehicular and pedestrian circulation patterns, green spaces, open spaces, landscapes, and viewsheds that are historically significant or significant to the character of the town or its neighborhoods; preserving and protecting distinctive features of the architectural, cultural, economic, political or social history of the town and its neighborhoods, and limiting the detrimental effect of alterations, additions, demolitions and new construction on the character of the town and its neighborhoods. Through this by-law, alterations, additions, demolition and new construction may be reviewed for compatibility, including without limitation design, massing, topography, scale and materials, with the existing buildings, green spaces, open spaces, courtyards, landscapes, neighborhood and subdivision plans and layouts, circulation patterns, viewsheds, settings and neighborhood character. This by-law seeks to encourage the protection of the natural and built environment including without limitation buildings, viewsheds, cultural landscapes, land use patterns and neighborhood plans through regulatory review. This by-law promotes the public welfare by making the town a more attractive and desirable place in which to live and work and by preserving its distinctive history and man-made and natural characteristics for its inhabitants and its visitors.

Each NCD identified in Section 5.10.3 shall be geographically defined. Each such district shall be subject to a set of design guidelines specific to that district established as set forth herein.

5.10.2. DEFINITIONS

As used in this by-law the following terms shall have the following meanings (whether or not capitalized in text):

a. ADDITION - An extension or increase in gross floor area, number of stories, height or size of a building or structure.

b. ALTER or ALTERATION - Any change to an existing building or other structure other than repair, or other changes to a site or property set forth in the definition of

"Reviewable Project" (including without limitation Sections 5.10.2.m(iv) to 5.10.2.m(ix). Alteration shall include, without limitation, the moving or complete or partial demolition of an existing building or structure (as defined in Sections 5.3.2(h) and (i) of these By-Laws, except as exempted below).

c. APPLICATION - The complete document(s) and supporting material(s) to be submitted by an applicant desiring to obtain a Certificate of Appropriateness. A complete application shall include information reasonably deemed necessary by the Commission to enable it to make a determination.

d. BUILDING - A combination of materials forming a shelter for persons, animals or property.

e. CERTIFICATE OF APPROPRIATENESS - A document granted by the Neighborhood Conservation District Commission in order to permit a Reviewable Project to proceed, including without limitation to obtain a building (including demolition) permit.

f. COMPATIBLE - A Reviewable Project that meets the design guidelines of the Neighborhood Conservation District.

g. DESIGN GUIDELINES - The guidelines applicable to each Neighborhood Conservation District and used by the Commission to determine whether the design of a proposed Reviewable Project is compatible with the district. Such guidelines are set forth in Section 5.10.3 with respect to each district created under this by-law.

h. DISTRICT - Any Neighborhood Conservation District as established in this bylaw.

i. NEIGHBORHOOD CONSERVATION DISTRICT ("NCD") - A property or group of properties designated in Section 5.10.3.

j. NEIGHBORHOOD CONSERVATION DISTRICT COMMISSION ("the Commission" or "the NCD Commission") – *A member or m*Members of the Brookline Preservation Commission, as supplemented by any additional individuals appointed in accordance with Section 5.10.4, acting as the body making determinations under this by-law regarding applications for Certificates of Appropriateness in a particular NCD. With respect to any NCD the composition of the NCD Commission may be specific to that NCD.

k. PERSON AGGRIEVED - An applicant and any immediate abutter whether inside or outside the NCD.

l. REPAIR - The reconstruction or renewal of any part of an existing building or other structure for the purpose of its maintenance without change in material, design or dimensions.

m. REVIEWABLE PROJECT - Except to the extent that the particular design guidelines for a specific NCD set forth in section 5.10.3 of this by-law may exempt some of these activities from review within that NCD, the following shall be subject to review, regardless of whether any demolition or other building permit is required: (i) a change to a building or other structure or part thereof such as removal, construction, reconstruction, restoration, renovation, replication, rehabilitation, addition, alteration, partial or total demolition and other similar activities, or the construction of a new building or other structure or part thereof; (ii) painting of previously unpainted masonry; (iii) addition or replacement of doors and windows, or tinting or altering glass reflectivity; (iv) a change to a site that includes constructing, placing, erecting, installing, enlarging or moving a building or other structure or other similar activities; (v) the removal or addition of streets, driveways,

parking areas, walkways or paved surfaces; (vi) removal of trees more than eight inches in diameter at 56" height (d.b.h.); (vii) substantial or complete removal of areas of vegetation specifically identified in the design guidelines at or after the creation of the NCD; (viii) removal of ledge or other rock outcroppings with at least one foot exposure in height; or (ix) changes in grade elevation of more than three feet. The activities set forth in Section 5.10.6 shall be exempt from review.

n. STRUCTURE - That which is built or constructed, including buildings, walls, retaining walls, fences, walkways, driveways or parking areas, paving and curbs, street name signs, any signs larger than one square foot, swimming pools, tennis courts, freestanding HVAC equipment, and outdoor lighting that shines on any adjacent property.

o. SUBSTITUTE SIDING - Exterior building cladding such as vinyl, aluminum or cement board not original to the date of construction of that portion of the building.

p. TEMPORARY BUILDING OR STRUCTURE - A building or other structure, necessary for a specific event, incident or project, erected for a period of no more than 6 months, unless otherwise agreed to by the Commission, the installation and removal of which will cause no permanent change.

5.10.3. DISTRICTS AND GUIDELINES

a. A Neighborhood Conservation District shall encompass a geographically defined area. Additional NCDs may be added by vote of Town Meeting and each such NCD and the design guidelines for such NCD shall be set forth in part d of this Section 5.10.3, as it may be amended. The boundaries of each NCD shall be set forth on a map on file with the Town Clerk. The NCD Commission, Town Counsel or Town Clerk shall, in addition, promptly present a copy of the map and applicable by-law for filing in the Norfolk County Registry of Deeds.

b. The design of each Reviewable Project in a Neighborhood Conservation District shall be subject to the particular design guidelines set forth in this Section 5.10.3 for such district.

c. The Commission may impose dimensional requirements that further the purposes of this by-law, including without limitation preventing Reviewable Projects inconsistent with the historic or architectural aspects, scale or massing, neighborhood or subdivision plan or layout, circulation patterns, or green space, open space, landscape, vegetation or viewshed character of the NCD.

5.10.4. NEIGHBORHOOD CONSERVATION DISTRICT OVERSIGHT

a. Each Neighborhood Conservation District shall be overseen by a Neighborhood Conservation District Commission consisting of no less than five members, *which shall not preclude overlapping membership in whole or in part between commissions for various NCDs if appropriate to provide consistency, continuity, economy or other benefits in NCD administration Town-wide*. If deemed appropriate by the Board of Selectmen for the administration of a specific NCD after consultation with the chair of the Brookline Preservation Commission, the size of an NCD Commission may be increased to seven members *and the specific membership shall be determined within the limits set forth below*. In the case of a five-member NCD Commission, *up to* three members *but no less than one member* shall be representatives of the Brookline

Preservation Commission as described in Section 5.6.4 of the Town By-laws, and *at least* two members (and their alternates) shall be appointed by the Board of Selectmen. In the case of a seven-member NCD Commission, *up to* four members *but no less than one member* shall *be* representatives of the Brookline Preservation Commission and *at least* three members (and their alternates) shall be appointed by the Board of Selectmen. The *member or* members of an NCD Commission representing the Preservation Commission may be either regular or alternate members of the Preservation Commission, and shall be designated by the chair of the Preservation Commission to serve on a particular NCD Commission. The Selectmen's appointees shall be residents of the Town and may be, as appropriate, individuals such as residents of the NCD, residents of abutting areas, or residents of the Town with additional expertise in the issues specific to a particular NCD, such as architecture, historic landscape preservation, landscape architecture, agriculture, horticulture or forestry, urban planning or history. Such Selectmen's appointees (including alternates) shall initially be appointed to one-, two-, or three-year terms so as to minimize the number of terms that expire in the same year, and at the expiration of the initial terms, appointments shall be for three-years. Each NCD Commission shall elect a chair and vice-chair from within its own number, and a clerk from within or without its own number. In the absence of an NCD Commission member representing the Preservation Commission, the NCD Commission chair may appoint any regular or alternate Preservation Commission Member to act for that absent member. In the absence of an NCD Commission member appointed by the Selectmen, the NCD Commission chair may appoint any alternate appointed by the Selectmen to act for that absent member. Prior to the appointment by the Selectmen of the Selectmen-appointed NCD Commission members or alternates or in the event of the unavailability of such Selectmen's appointees, those positions shall be filled on an interim basis by regular or alternate members of the Preservation Commission appointed by the chair of the Preservation Commission, so that an NCD at all times has the requisite number of five (or seven, if applicable) members.

The Commission for each NCD shall exercise its powers in administering and regulating the alteration of buildings, other structures and natural and manmade elements within such NCD as set forth under the procedures and criteria established in this by-law.

The Commission for each NCD shall review all Reviewable Projects in the NCD, including without limitation new construction, demolition or alterations that affect the landscape or topography, the exterior architectural features of buildings and other structures, or the mass and siting of buildings and other structures. The authority of the Commission shall be binding except with regard to the categories of structural, landscape or architectural features exempted by Section 5.10.6 or that may be otherwise exempted by the particular design guidelines for a specific district set forth in Section 5.10.3 of this by-law.

An NCD Commission, or the Town on behalf of any such commissions, may receive and accept appropriations, grants and gifts to further the purposes of this by-law. An NCD Commission, or the Town on behalf of any such commissions, is also authorized to the extent permissible by law to require the collection of funds as part of an application to be placed in a separate account. These funds may be used to fund Town review of a

Reviewable Project, including the retention of consultants or the funding of staff required to complete review of an application.

b. An NCD Commission, after a public hearing duly noticed at least 14 days in advance, may adopt, and from time to time amend, reasonable rules and regulations not inconsistent with the provisions of this by-law or other by-laws governing the Commission. Such rules and regulations shall set forth such forms and procedures as it deems desirable and necessary for the regulation of its affairs and the conduct of its business, including requirements for the contents and form of applications for certificates, the process for collecting and utilizing funds including without limitation application fees and funds required to fund Town review, hearing procedures and other matters. Such rules and regulations may also include a set of design review standards, not inconsistent with the applicable design guidelines and exemptions contained herein under Sections 5.10.3 and 5.10.6, to refine and clarify the application of the design guidelines during the design review process. The NCD Commissions for various NCDs within the Town may adopt common rules and regulations for the conduct of their business, consistent with the specific design guidelines applicable to each NCD, *including coordinating or integrating procedures for review of applications*. The Commission promulgating any such rules and regulations shall file a copy thereof with the office of the Town Clerk.

5.10.5. PROJECTS PROHIBITED WITHOUT A CERTIFICATE

Except as this by-law provides, no building, other structure, site, property or part thereof within a Neighborhood Conservation District shall be altered (which term includes complete or partial demolition and new construction) and no other Reviewable Project may proceed unless the Commission shall first have issued a Certificate of Appropriateness. A building permit (which shall include permits for demolition) or an occupancy permit may not be issued for an altered building, structure, site or property or other Reviewable Project without the prior issuance of a Certificate of Appropriateness.

5.10.6. ALTERATIONS EXEMPT FROM COMMISSION REVIEW

a. It shall be the responsibility of the staff of the Commission, with the concurrence of the Chair of the Commission, to determine whether a proposed alteration or other project is exempt from review and they shall have ten business days to make this determination. Any alteration or project that is exempt from review shall receive a Certificate of Exemption that will permit such alteration or project to go forward without further review under the Neighborhood Conservation District By-Law. *The Commission may establish regulations to define projects that are of insufficient significance to warrant Commission review, and Commission staff may issue a Certificate of Exemption for such a project.*

b. Nothing herein shall be deemed to limit review to features visible from a public way unless such a limitation is set forth in the particular design guidelines for a specific district set forth in Section 5.10.3.d of this by-law.

c. The following projects or portions of Reviewable Projects are exempt from Commission review in all NCD districts:

1. Temporary buildings and structures subject to time limits (no longer than 6 months) and size limits determined by the Neighborhood Conservation District Commission.

2. One-story detached accessory structures without permanent foundations used as tool and storage sheds, playhouses, and similar uses provided the floor area does not exceed 100 square feet. This exemption shall not apply to garages, parking structures or other structures for vehicular use nor to structures to shelter or visually shield HVAC equipment.
3. Interior Alterations, including interior demolition as defined in Sections 5.3.2(h)(iii) and (iv) (such sections shall continue to be applicable to the Demolition Delay By-Law).
4. Ordinary maintenance and repair of architectural features that match the existing conditions including materials, design and dimensions.
5. Removal of substitute siding provided, however, that any replacement siding and trim shall be reviewable.
6. Reversible changes of color (such as staining or repainting of wood siding or trim, but not work such as painting of previously unpainted masonry).
7. Removal, replacement or installation of the following exterior elements (this exemption shall not apply to replacement windows which may include storms or screens):
   a. Exterior storm windows and exterior storm doors
   b. Exterior window screens or exterior screen doors
   c. Gutters and downspouts
   d. Removable window air conditioners, but not permanently installed HVAC equipment whether as part of a building or freestanding.
   e. Satellite dishes or antennae less than 3 feet in maximum width.
8. In-kind replacement of plant material.
9. Removal of public shade trees or plant material that is severely damaged or dying due to weather-related events or natural causes.
10. Reconstruction, substantially similar in exterior design, of a building, damaged or destroyed by fire, storm or other disaster, provided such reconstruction is begun within the time period specified in Section 8.03.1 of the Zoning By-Law and carried forward with due diligence.
11. Replacement windows and doors, and windows and doors installed in an addition or new construction, whether including single-pane glass or multiplepane insulating glass, provided that (a) the exterior appearance is consistent in size, scale and detailing with that of pre-existing windows and doors on the building and adjacent buildings, as through the use of true divided lites or exterior muntins adhered to the exterior glass surface, and (b) reflective or tinted glass is not used, unless used in the pre-existing windows and doors.

5.10.7. PROCEDURES FOR REVIEW

Any Reviewable Project not exempted above requires the submittal of an application for regulatory review by the Commission. The application shall be accompanied by a filinG fee as may be determined from time to time by the Board of Selectmen. As may reasonably be deemed necessary by the Commission to enable it to make its determination on the application, the application may be required to include (a) drawings and/or photographs showing existing conditions, including existing buildings and other structures, landscape features and vegetation, open spaces and pedestrian and vehicular paths, and (b) plans, elevations, specifications, photographs, descriptions of materials and other supporting information of the proposed changes.

Within forty-five business days of the submittal of a complete application, including all required supporting information, the Commission shall hold a public hearing on the application. At least fourteen days before said public hearing, public notice shall be given. Such notice shall identify the time, place and purpose of the public hearing.

At or subsequent to the public hearing, the Commission shall determine whether the proposed alteration or other Reviewable Project, including any modification thereof agreeable to the applicant, is compatible with the specific design guidelines of the applicable district and the purposes of this by-law. The Commission may waive or modify the application of a design guideline in a particular case if such waiver will not derogate the protections provided by this by-law to the neighborhood and abutters.

If the Commission determines that the alteration is compatible with the design guidelines for the district, the Commission shall issue a Certificate of Appropriateness. If deemed necessary to ensure that an alteration is compatible with the design guidelines, the Commission may attach appropriate conditions to the Certificate of Appropriateness. The concurring vote of a majority of Commission members, including voting alternates (i.e., not less than three votes for a five-member commission and not less than four votes for a seven-member commission) shall be required to issue a Certificate of Appropriateness.

If the Commission does not determine that the alteration is compatible with the design guidelines for the district, the Commission shall deny the Certificate of Appropriateness. The Commission shall provide the applicant with the reasoning for its denial including the manner in which the alteration does not meet the applicable design guidelines in Section 5.10.3.d or the purposes of this by-law.

The Commission may further delay or totally prohibit demolition in addition to any delay provided by the Brookline Demolition Delay By-Law. In considering an application to demolish a building or structure, the Commission shall consider the architectural or historical significance of the building, including, if any, the findings of the Preservation Commission under the Demolition Delay By-Law; the siting and significance of the building or structure in relation to its surroundings and surrounding buildings either by itself or as a component as a group of buildings or structures; and the design and siting of any replacement building or structure.

5.10.8. PROCEDURES FOR ISSUANCE AND FILING OF CERTIFICATES

Each Certificate issued by the Commission shall be dated and signed by its chairperson or such other person designated by the Commission to sign such Certificates on its behalf. The Commission shall send a copy of its Certificate or denial to the applicant and shall file a copy of the Certificate or denial with the office of the Town Clerk and the Building Commissioner. The date of issuance of a Certificate or denial shall be the date of the filing of a copy of such Certificate or denial with the office of the Town Clerk. If the Commission should fail to make a determination within sixty business days of the filing of a complete application for a Certificate including all required supporting information, or within such further time as the applicant may allow in writing, the Commission shall thereupon issue a Certificate of Appropriateness due to failure to act.

5.10.9. ENFORCEMENT AND PENALTIES

The Commission is specifically authorized to institute any and all actions, including proceedings in law and in equity, as it deems necessary and appropriate to obtain compliance with the requirements of this by-law or to prevent a threatened violation thereof.

The Commission may designate the Building Commissioner to act on its behalf and to enforce this by-law under the direction of the Commission.

Any owner of a property subject to this by-law that has altered a building or other structure or proceeded with a Reviewable Project without first obtaining a Certificate of Appropriateness in accordance with the provisions of this by-law shall be subject to a fine of not more than Three Hundred Dollars. Each day the violation exists shall constitute a separate offense until the alteration is corrected, the addition is removed, a faithful restoration of the demolished building or structure is completed, suitable replacement trees are planted, or the property is otherwise returned to its original condition unless otherwise agreed to by the Commission.

5.10.10. APPEAL PROCEDURE
Any applicant or person aggrieved by a determination of the Commission may appeal as provided for in the Massachusetts General Laws.

5.10.11. VALIDITY AND SEPARABILITY; OTHER BY-LAWS
The provisions of this by-law shall be deemed to be separable. If any of its provisions, sections, subsections, sentences or clauses shall be held to be invalid or unconstitutional, the remainder of this by-law shall continue to be in full force and effect. Nothing in this by-law shall be construed as repealing or modifying any existing by-law or regulation of the Town, but it shall be in addition thereto. To the extent this by-law imposes greater restrictions upon a Reviewable Project than other by-laws, regulations or statutes, such greater restrictions shall prevail.

or act on anything relative thereto.

ATTACHMENT C OF PRESERVATION COMMISSION REPORT

Historical Significance of Hancock Village

AERIAL VIEW HANCOCK VILLAGE

Hancock Village (1946-1949) is significant as the earliest documented project of its kind in Massachusetts. A collaboration between the Town of Brookline and the Boston-based John Hancock Mutual Life Insurance Company, the project provided housing for returning World War II veterans and their families. The housing complex represents an important convergence of Garden City planning ideals, Federal Housing Authority (FHA) principles and practices of the 1930s and 1940s and the then newly allowed ability of insurance companies to own and develop real estate. Nationally prominent in their fields, project manager Gustave Ring, architect Louis Justement and Olmsted Associates of Brookline played key roles in the housing development project.

Hancock Village straddles the Brookline-Boston line and consists of 789 two-story attached townhouses arranged in superblocks, interspersed with open lawns and access roads. A majority of the housing units are located in Brookline. A shopping center complex, developed at the same time as the housing, is located entirely in Boston. The original commercial area included a management office, a medical clinic, stores and a motion picture theatre. There were also several rental garages and laundry buildings scattered through the development.

Working in Washington D.C. for much of his career, Gustave Ring was instrumental in codifying centralized planning and development practices using the Garden City prototype. His early 1930s apartment complexes in Virginia, Colonial Village and Arlington Village (both listed in the National Register of Historic Places) established the garden village model for affordable middle class rental apartments nationwide. Louis Justement was a prominent D.C. architect specializing in the design of apartment housing and the author of *New Cities for Old.* He designed Falkland Village, the first FHA-funded rental housing complex in Maryland. It opened in 1938 with Eleanor Roosevelt officiating at the ribbon cutting. Justement served as chair of the AIA's Committee on Urban Planning from 1946 to 1949.

Development of Hancock Village was facilitated by new methods of real estate financing available after WWII. Previously insurance companies were restricted from owning real estate, but after changes in state legislatures across the country, the insurance industry became involved in large-scale residential and commercial development. Hancock Village is the first and largest garden village housing development in Brookline. It also demonstrates the commitments of Brookline, Boston and the Hancock Mutual Life Insurance Company to house the families of returning WWII soldiers in an attractive and welcoming environment.

Paul F. Clark, president of the Hancock Mutual Life Insurance Company, described the overall design concept of Hancock Village as follows:

> "The architectural treatment was consistent with local preference. Low land coverage, allotting only ten families to the acre, leaves generous exposure to sunshine and the four winds. A modified interpretation of colonial motives and simple proportions produce on this irregular site, pleasant effects in mass and color."

Olmsted Associates of Brookline, led by Frederick Law Olmsted, Jr., the nationally prominent successor firm founded by his father, designed the landscape plan, an integral part of the complex as a whole. Nearly half the land was not suitable for construction due to soil conditions and ledge, leaving large sections preserved as woodland or parkland. Existing trees were retained and the U-shaped apartment blocks were sited to take advantage of views and grade changes. The plan allowed for open space courts behind and in front of the buildings. Parking was placed at street edges to avoid large parking lots or parking in front of the residences.

The overall plan continued the Garden City tradition of residential blocks with separation of pedestrian and vehicular uses. This scheme also allowed for living areas and bedrooms of every townhouse to look out onto greenspace.

Hancock Village possesses a high degree of integrity of location, design, setting, materials, workmanship, feeling and association. The Hancock Village Area meets several criteria for listing in the National Register of Historic Places at the state (if not national) level.

Prepared by the Department of Planning and Community Development

FOR MHC USE ONLY	
Original (pink) form to CLG file	
One copy to the following:	
Eligibility file	
Inventory form	
Town *file (with correspondence)*	
MACRIS Coordinator	
National Register Director	

Community:	Brookline

CLG OPINION: ELIGIBILITY FOR NATIONAL REGISTER

Date Received:		**Date Due:**		**Date Reviewed:**	10.11.11
Type:	Individual	Yes/No	District (attach map indicating boundaries)		Yes/No
Property Name	Hancock Village			**MHC Inv Form #:**	**BA**
Prop. Address	South Brookline				

Action	**Honor**	Yes/No	**ITC**	Yes/No	**Grant**	Yes/No
	CLGC initiated	Yes/No			**Other**	

INDIVIDUAL PROPERTIES		**DISTRICTS**	
Eligible	Yes/No	Eligible	Yes/No
Eligible, also in a district	Yes/No	Ineligible	Yes/No
Eligible only in a district	Yes/No	More Information Needed	Yes/No
Ineligible	Yes/No		
More Information Needed	Yes/No		

CRITERIA:	A-Yes/No	B-Yes/No	C-Yes/No	D-Yes/No
LEVEL:	Local-Yes/No	State-Yes/No	National-Yes/No	

STATEMENT OF SIGNIFICANCE by:

(Refer to criteria cited above in statement of significance. If more information is needed, use space to describe what is needed to finish eligibility opinion)

The first and largest garden village housing development in Brookline, Hancock Village (1946-1949) is significant as a collaboration between the Town of Brookline and the Boston-based John Hancock Mutual Life Insurance Company to provide both housing and employment for returning World War II veterans. The housing complex represents an important convergence of garden city planning ideals, FHA housing principles and practices of the 1930s and 1940s and the newly allowed ability of insurance companies to own and develop real estate. Several nationally-prominent designers and firms were involved in the project, among them project manager Gustave Ring, architect Louis Justement, Olmsted Associates, the John Hancock Mutual Life Insurance Company, as well as the Town of Brookline.

Use reverse side if necessary

MHC STAFF OPINION

Date Received:		**Date Reviewed:**	
Opinion:	**Concur**	**Disagree**	**More Information Needed**
Use Reverse for Comments			

Community:	Brookline

STATEMENT OF SIGNIFICANCE (continued)

The garden village development, which straddles the Brookline-Boston line, consists of 789 two-story attached town houses in superblocks interspersed with open lawns and access roads, the majority of which are located in Brookline. A shopping center complex, developed at the same time as the housing complex, is located entirely in Boston.

Hancock Village was a post-war continuation of the housing development formula established by the Federal Housing Administration for insurance mortgaged properties. Two of the men involved had deep roots in Washington, D.C.: Gustave Ring, developer of Colonial Village and Arlington Village garden apartment complexes, both in Arlington, Virginia and both NR listed, and Louis Justement, a prominent architect specializing in the design of apartment housing and author of *New Cities for Old*. Ring's complexes in Virginia had established the model for rental apartment-garden village apartments starting in the 1930s. Justement's firm, Justement & Koening , worked on many large-scale residential projects around the country and he served as chair of the AIA's Committee on Urban Planning from 1946 to 1949.

The development of Hancock Village reflects the new method of real estate financing after WWII. Previously, insurance companies were restricted from owning real estate, but after changes in state legislatures across the country, insurance companies became involved in large-scale development. Hancock Village is the earliest documented project of its kind in Massachusetts. It also represents the commitment of the town and the Hancock Mutual Life Insurance Company to house returning WWII veterans in an attractive and welcoming environment. The overall design concept was described as follows by Paul F. Clark, president of the Hancock Mutual Life Insurance Company:

"The architectural treatment was consistent with local preference. Low land coverage, allotting only ten families to the acre, leaves generous exposure to sunshine and the four winds. A modified interpretation of colonial motives and simple proportions produce on this irregular site, pleasant effects in mass and color."

Olmsted Associates of Brookline, led by Frederick Law Olmsted, Jr., the nationally prominent successor firm founded by his father, was responsible for the landscape plan, an integral part of the complex as a whole. Nearly half the land was not suitable for construction due to soil conditions and ledge, leaving large section preserved as woodland or parkland. Existing trees were retained and the apartment blocks were sited to take advantage of views and grade changes.

Retaining a high-degree of integrity of location, design, setting, materials, workmanship, feeling and association, the Hancock Village Area meets Criteria A, B and C of the National Register at the state (if not national) level. The development also included a shopping center built between 1948 and 1949. The commercial complex does not retain a high degree of architectural integrity; it has been extensively remodeled.

INVENTORY FORM A CONTINUATION SHEET

BROOKLINE Hancock Village

MASSACHUSETTS HISTORICAL COMMISSION
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area Letter	Form Nos.
BA	See data sheet

ARTICLE 5

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

Article 5 would add a new Section 5.10 to the Town's General By-Laws, establishing the framework for the creation of Neighborhood Conservation Districts("NCDs") in the Town.

NCDs should be distinguished from Local Historic Districts ("LHDs"), six of which (Chestnut Hill North, Cottage Farm, Graffam-McKay, Harvard Avenue, Lawrence, and Pill Hill) already exist in the Town. LHDs are governed by a single set of Town-wide rules and regulations. NCD guidelines can, in contrast, be "tailored" for each NCD, so that the guidelines established for an NCD address the particular attributes of a neighborhood critical to preserving that neighborhood's character. Thus, Section 5.10.2.m sets forth the projects potentially subject to review within an NCD, but Section 5.10.3 makes clear that the specific guidelines are to be crafted as appropriate for each NCD.

Section 5.10.6 also sets forth the projects that can never be subject to review within an NCD. For example, the section makes clear that NCDs (unlike LHDs) cannot prohibit window replacement as long as the new windows are consistent with the character of the pre-existing windows, thus removing one of the issues that has been the most contentious within LHDs. Conversely, when the landscaped or natural environment is significant to the character of a particular NCD, Article 5 authorizes tailored NCD guidelines protecting against significant changes to that environment, including the destruction of trees, green spaces, viewsheds and other natural features, issues that are not directly governed by LHDs.

Section 5.10 also establishes the framework for the oversight of projects within NCDs. It provides for the creation of a Neighborhood Conservation District Commission (NCD Commission) to oversee each NCD. Because preservation issues are likely to be paramount in most NCDs, at least one member of the NCD Commission must be a regular or alternate member of the Preservation Commission. At the suggestion of the Preservation Commission, Section 5.10.4 has been amended to permit the creation of a single Town-wide NCD Commission (rather than separate commissions for each NCD). This would, for example, be appropriate if it were determined from experience that similar issues cut across multiple NCDs, such that consistency and economy dictated resolution by a single Commission.

In addition, Section 5.10.7 and 5.10.8 set out the procedures for granting a Certificate of Appropriateness within an NCD; these include time limits for Commission action to ensure that reviewable projects are not hampered by undue delay. The By-Law also provides that the NCD Commission may waive or modify the application of a design

guideline in a particular case if such waiver will not derogate the protections that would otherwise be provided under the by-law (Section 5.10.7), and, as amended by the Board of Selectmen (BOS) and Advisory Committee (AC), permits the Commission to create regulations identifying projects that are too insignificant to require Commission review, and that can be exempted by staff (Section 5.10.4).

Sections 5.10.5 and 5.10.9 provide for various enforcement mechanisms to ensure that reviewable projects do not go forward without the required Certificate of Appropriateness, including a per diem fine of up to $300, court action, and the denial of building permits and occupancy permits.

The BOS was aware of a variety of concerns about the creation of NCDs, but unanimously believes that the Town would be well served by making NCDs a reality in the Town.

For example, the Housing Advisory Board argued that an NCD could restrict the development of affordable housing in the Town. The BOS notes that NCDs do not prevent development nor do they restrict the use of buildings (e.g., by requiring "market rate" as opposed to "affordable" housing). To the contrary, NCDs are simply designed to ensure that development (whatever the target market) is compatible with existing buildings, open spaces and other aspects of the natural and built environment that are so important to our neighborhoods, an entirely appropriate goal.

The Housing Advisory Board also argued that in some cases the restrictions of an NCD could result in a comprehensive permit being pursued under Chapter 40B. This argument suggests that the Town should never pass any by-law that a developer might want to circumvent, including zoning or local historic district designations.

It was also argued that Article 5 should include greater "process" or "hurdles" prior to the potential creation of an NCD – e.g., that there should be required "studies," that the consent of a majority of residents and/or property owners should be mandated in the statute, that a 2/3 vote of Town Meeting should be required (Town Counsel believes such a requirement would require special legislation), and so on. The BOS notes that any NCD will be subject to the full-blown examination that any warrant article undergoes, and then some. Those familiar with the Town Meeting process understand that filing a warrant article is a far cry from securing favorable action by Town Meeting. For example, even without a specific statutory mandate, Articles 5 and 6 were considered by the Preservation Commission, the Planning Board, the Conservation Commission, and the Economic Development Advisory Board in addition to the Planning and Regulation Subcommittee of the Advisory Committee, the full Advisory Committee, and the Board of Selectmen. The BOS is confident that Town Meeting will not run amok, and that a disgruntled minority of residents in a neighborhood will not be able to persuade Town Meeting to act irresponsibly.

The Economic Development Advisory Board argued that the mere potential for an NCD to be created would chill commercial development. Both the BOS and the AC have

responded to this concern by amending Section 5.10.3 to include only residential districts.

The Board of Selectmen and the Advisory Committee differ (as of this writing) on just two issues.

First, the BOS would exempt all School and Town properties from the application of NCD guidelines (Section 5.10.6.c.12 of the BOS vote), while the AC would not provide an across-the-board exemption for such properties. Although the AC noted that such properties could be excluded in setting the boundaries and guidelines for any future NCD, the BOS believes that critical municipal projects, even without the potential application of NCD review, already undergo substantial public process. It is therefore inappropriate and unnecessary to permit the potential application of NCD oversight to municipal properties.

Second, the BOS would include an amendment that would require each NCD Commission, within one year after the creation of an NCD, to report and to make recommendations to Town Meeting on the operation of the particular guidelines applicable to that NCD (Section 5.10.4.c of the BOS vote). The BOS notes that this sort of reevaluation is already part of the fabric of the Town's process (that is, by-laws are continually being reviewed and modified as experience is gained), and that it is particularly appropriate with a new category such as NCDs.

The Board of Selectmen believes that the creation of Neighborhood Conservation Districts will provide a new tool to protect the overall character of our neighborhoods, including those that might not qualify for Local Historic District designation.

The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on November 8, 2011, on the vote offered by the Advisory Committee below starting on page 5-6[1], with the following amendments:

1. By adding in Section 5.10.6 c. a paragraph 12. as follows:

> Any public project(s), including but not limited to demolition, alteration, renovation, new construction and/or landscaping changes to Town or School properties.

2. The Gladstone amendment, which adds Section 5.10.4(c) as follows:

> Section 5.10.4 (c): Within one year after the Commission has been formed for each NCD, the Commission shall issue a written report to Town Meeting to report on the appropriateness of the design guidelines governing the NCD in 5.10.3 and

[1] The Advisory Committee's vote in this Supplement is identical to the vote starting on page 5-21 of the Combined Reports with the exception of a technical correction that added section headings at the beginning of the motion.

to make recommendations of any revisions to such guidelines that the Commission deems to be better suited to achieve the purpose of the NCD.

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

At its November 8 meeting, the Advisory Committee voted unanimously to fix the inadvertent omission of the section headings at the beginning of the proposed bylaw. (The original vote was 18-4-1). The full corrected motion is at the end of this supplement.

Proposed Amendment for a report within a year after an NCD is established
TMM Scott Gladstone has proposed an amendment as follows:

> Add Section 5.10.4(c) as follows
>
> Section 5.10.4 (c): Within one year after the Commission has been formed for each NCD, the Commission shall issue a written report to Town Meeting to report on the appropriateness of the design guidelines governing the NCD in 5.10.3 and to make recommendations of any revisions to such guidelines that the Commission deems to be better suited to achieve the purpose of the NCD.

The Advisory Committee considered this amendment and is recommending not to include the language in the motion. The Committee thought the periodic evaluation of this and other bylaws is a good idea. However, the committee felt that one year was insufficient time to gather enough information to determine whether a new NCD was working or needed adjustment. We considered other time periods and even a general proscription to report to Town Meeting as it deemed necessary. But in the end, the committee felt that while this amendment might make us feel good, it is, in reality an empty gesture. Brookline residents and Town Meeting Members have never been shy or reluctant to express a view that a bylaw isn't working and the ability to amend or repeal bylaws is the ultimate check and balance. By a 2-17-3 the Advisory Committee recommends NO ACTION on this amendment.

Amendments to exclude public schools or all town facilities from NCDs

Town Counsel recommended that one of the following 2 possible additional exclusions from NCDs be included in the proposed bylaw:

> By adding in Section 5.10.6 c. a paragraph 12. as follows:
>
> 12. Any public school and/or school grounds projects, including but not limited to demolition, alteration, renovation, new construction and/or landscaping changes.

OR:

12. Any public project(s), including but not limited to demolition, alteration, renovation, new construction and/or landscaping changes to Town or School properties.

The first proposal excludes only public schools from future NCDs. The second would exclude all town or school properties from NCDs. The Selectmen are recommending the second proposal to exclude all town and school properties.

The Committee felt that we should not, as a matter of policy, have a blanket exclusion of town properties. All NCDs will need to come before Town Meeting which will be able to evaluate the proposed map. If the map includes a town property, Town Meeting should have the opportunity, on a case by case basis, to decide whether inclusion of the property is appropriate for that particular NCD.

Town Counsel pointed out that many school projects are on tight timeframes imposed by the state in order to obtain reimbursement of a portion of the costs. Even the possibility of having a school building within an NCD could slow the project down jeopardizing the funding. For example, in anticipation of a school project, a warrant article could be filed proposing that the school be included in an NCD. While the warrant article is pending, the state could take the position that the project is not ready for reimbursement eligibility because the warrant article creates an inability to determine whether a building permit can be issued while it is pending.

Members of the committee pointed out that even if this language where adopted, a warrant article could be filed to repeal the town/school exclusion and cover the school building leaving us in the same placed whether or not we adopt the exclusion now. The committee saw this, too, as an empty gesture and prefers to make the policy statement, up front, that town and school properties should be considered for inclusion in an NCD on a case by case basis.

We note that should a warrant article be filed and should its timing potentially jeopardize state school building assistance, the Selectmen always have the option of calling an earlier Special Town Meeting to speed the process up.

By votes of 5-16-1 and 5-15-2, respectively, the Advisory Committee recommends NO ACTION on the additional exclusions.

The full Advisory Committee recommended motion follows:

MOVED: that the Town amend its General By-Laws by adding a new section 5.10 as follows:

5.10 NEIGHBORHOOD CONSERVATION DISTRICTS

5.10.1. TITLE AND PURPOSE

This by-law shall be known as and may be titled the Brookline Neighborhood Conservation District By-law. The Town of Brookline hereby establishes the category of Neighborhood Conservation District ("NCD").

This by-law is enacted for the purposes of preserving and protecting groups of buildings and their settings that are architecturally or historically significant; preserving and protecting the layout of neighborhoods or historical subdivisions of neighborhoods, vehicular and pedestrian circulation patterns, green spaces, open spaces, landscapes, and viewsheds that are historically significant or significant to the character of the town or its neighborhoods; preserving and protecting distinctive features of the architectural, environmental, cultural, economic, political or social history of the town and its neighborhoods, and limiting the detrimental effect of alterations, additions, demolitions and new construction on the character of the town and its neighborhoods. Through this by-law, alterations, additions, demolition and new construction may be reviewed for compatibility, including without limitation design, massing, topography, scale and materials, with the existing buildings, green spaces, open spaces, courtyards, landscapes, neighborhood and subdivision plans and layouts, circulation patterns, viewsheds, settings and neighborhood character. This by-law seeks to encourage the protection of the natural and built environment including without limitation buildings, viewsheds, cultural landscapes, land use patterns and neighborhood plans through regulatory review. ~~This by-law promotes the public welfare by making the town a more attractive and desirable place in which to live and work and by preserving its distinctive history and man-made and natural characteristics for its inhabitants and its visitors~~. This by-law promotes the public welfare by making the town a more attractive and desirable place in which to live and work by preserving the distinctive history and character of its built, landscaped and natural environment.

Each NCD identified in Section 5.10.3 shall be geographically defined. Each such district shall be subject to a set of design guidelines specific to that district established as set forth herein.

5.10.2. DEFINITIONS

As used in this by-law the following terms shall have the following meanings (whether or not capitalized in text):

a. *ADDITION* - An extension or increase in gross floor area, number of stories, height or size of a building or structure.

b. *ALTER or ALTERATION* - Any change to an existing building or other structure other than repair, or other changes to a site or property set forth in the definition of "Reviewable Project" (including without limitation Sections 5.10.2.m(iv) to

5.10.2.m(ix). Alteration shall include, without limitation, the moving or complete or partial demolition of an existing building or structure (as defined in Sections 5.3.2(h) and (i) of these By-Laws, except as exempted below).

c. APPLICATION - The complete document(s) and supporting material(s) to be submitted by an applicant desiring to obtain a Certificate of Appropriateness. A complete application shall include information reasonably deemed necessary by the Commission to enable it to make a determination.

d. BUILDING - A combination of materials forming a shelter for persons, animals or property.

e. CERTIFICATE OF APPROPRIATENESS - A document granted by the Neighborhood Conservation District Commission in order to permit a Reviewable Project to proceed, including without limitation to obtain a building (including demolition) permit.

f. COMPATIBLE - A Reviewable Project that meets the design guidelines of the Neighborhood Conservation District.

g. DESIGN GUIDELINES - The guidelines applicable to each Neighborhood Conservation District and used by the Commission to determine whether the design of a proposed Reviewable Project is compatible with the district. Such guidelines are set forth in Section 5.10.3 with respect to each district created under this by-law.

h. DISTRICT - Any Neighborhood Conservation District as established in this by-law.

i. NEIGHBORHOOD CONSERVATION DISTRICT ("NCD") - A property or group of properties designated in Section 5.10.3.

j. NEIGHBORHOOD CONSERVATION DISTRICT COMMISSION ("the Commission" or "the NCD Commission") - A member or m~~M~~embers of the Brookline Preservation Commission, as supplemented by any additional individuals appointed in accordance with Section 5.10.4, acting as the body making determinations under this by-law regarding applications for Certificates of Appropriateness in a particular NCD. With respect to any NCD the composition of the NCD Commission may be specific to that NCD.

k. PERSON AGGRIEVED - An applicant and any immediate abutter whether inside or outside the NCD.

l. REPAIR - The reconstruction or renewal of any part of an existing building or other structure for the purpose of its maintenance without change in material, design or dimensions.

m. REVIEWABLE PROJECT - Except to the extent that the particular design guidelines for a specific NCD set forth in section 5.10.3 of this by-law may exempt some of these activities from review within that NCD, the following shall be subject to review, regardless of whether any demolition or other building permit is required: (i) a change to a building or other structure or part thereof such as removal, construction, reconstruction, restoration, renovation, replication, rehabilitation, addition, alteration, partial or total demolition and other similar activities, or the construction of a new building or other structure or part thereof; (ii) painting of previously unpainted masonry; (iii) addition or replacement of doors and windows, or tinting or altering glass reflectivity unless excluded in Section 5.10.6.c.11**;** (iv) a change to a site that includes constructing, placing, erecting, installing, enlarging or

moving a building or other structure or other similar activities; (v) the removal or addition of streets, driveways, parking areas, walkways or paved surfaces; (vi) removal of trees more than eight inches in diameter at 56" height (d.b.h.); (vii) substantial or complete removal of areas of vegetation specifically identified in the design guidelines at or after the creation of the NCD; (viii) removal of ledge or other rock outcroppings with at least one foot exposure in height; or (ix) changes in grade elevation of more than three feet. The activities set forth in Section 5.10.6 shall be exempt from review.

n. STRUCTURE - That which is built or constructed, including buildings, walls, retaining walls, fences, walkways, driveways or parking areas, paving and curbs, street name signs, any signs larger than one square foot, swimming pools, tennis courts, freestanding HVAC equipment, and outdoor lighting that shines on any adjacent property.

o. SUBSTITUTE SIDING - Exterior building cladding such as vinyl, aluminum or cement board not original to the date of construction of that portion of the building.

p. TEMPORARY BUILDING OR STRUCTURE - A building or other structure, necessary for a specific event, incident or project, erected for a period of no more than 6 months, unless otherwise agreed to by the Commission, the installation and removal of which will cause no permanent change.

5.10.3. DISTRICTS AND GUIDELINES

a. A Neighborhood Conservation District shall encompass a geographically defined area, ***that, at the time of its establishment, is located in its entirety within one or more residence ~~residential~~ districts as defined in section 3.01.1 of the Zoning Bylaw.***. Additional NCDs may be added by majority vote of Town Meeting and each such NCD and the design guidelines for such NCD shall be set forth in part d of this Section 5.10.3, as it may be amended. The boundaries of each NCD shall be set forth on a map on file with the Town Clerk. The NCD Commission, Town Counsel or Town Clerk shall, in addition, promptly present a copy of the map and applicable by-law for filing in the Norfolk County Registry of Deeds.

b. The design of each Reviewable Project in a Neighborhood Conservation District shall be subject to the particular design guidelines set forth in this Section 5.10.3 for such district.

c. The Commission may impose dimensional requirements that further the purposes of this by-law, including without limitation preventing Reviewable Projects inconsistent with the historic or architectural aspects, scale or massing, neighborhood or subdivision plan or layout, circulation patterns, or green space, open space, landscape, vegetation or viewshed character of the NCD.

5.10.4. NEIGHBORHOOD CONSERVATION DISTRICT OVERSIGHT

a. Each Neighborhood Conservation District shall be overseen by a Neighborhood Conservation District Commission consisting of no less than five members, *which shall not preclude overlapping membership in whole or in part between commissions for various NCDs if appropriate to provide consistency, continuity, economy or other*

benefits in NCD administration Town-wide. If deemed appropriate by the Board of Selectmen for the administration of a specific NCD after consultation with the chair of the Brookline Preservation Commission, the size of an NCD Commission may be increased to seven members *and the specific membership shall be determined within the limits set forth below*. In the case of a five-member NCD Commission, *up to* three members *but no less than one member* shall be representatives of the Brookline Preservation Commission as described in Section 5.6.4 of the Town By-laws, and ~~*at least* two members~~*the remaining members* (and their alternates) shall be appointed by the Board of Selectmen. In the case of a seven-member NCD Commission, *up to* four members *but no less than one member* shall *be* representatives of the Brookline Preservation Commission and *the remaining members*~~and *at least* three members~~ (and their alternates) shall be appointed by the Board of Selectmen. The *member or* members of an NCD Commission representing the Preservation Commission may be either regular or alternate members of the Preservation Commission, and shall be designated by the chair of the Preservation Commission to serve on a particular NCD Commission. The Selectmen's appointees shall be residents of the Town and may be, as appropriate, individuals such as members of other Boards and Commissions, residents and/or property owners within ~~of~~ the NCD, residents of abutting areas, or residents of the Town with additional expertise in the issues specific to a particular NCD, such as architecture, historic landscape preservation, landscape architecture, agriculture, horticulture or forestry, urban planning or history. Such Selectmen's appointees (including alternates) shall initially be appointed to one-, two-, or three-year terms so as to minimize the number of terms that expire in the same year, and at the expiration of the initial terms, appointments shall be for three-years. Each NCD Commission shall elect a chair and vice-chair from within its own number, and a clerk from within or without its own number. In the absence of an NCD Commission member representing the Preservation Commission, the NCD Commission chair may appoint any regular or alternate Preservation Commission Member to act for that absent member. In the absence of an NCD Commission member appointed by the Selectmen, the NCD Commission chair may appoint any alternate appointed by the Selectmen to act for that absent member. Prior to the appointment by the Selectmen of the Selectmen-appointed NCD Commission members or alternates or in the event of the unavailability of such Selectmen's appointees, those positions shall be filled on an interim basis by regular or alternate members of the Preservation Commission appointed by the chair of the Preservation Commission, so that an NCD at all times has the requisite number of five (or seven, if applicable) members.

The Commission for each NCD shall exercise its powers in administering and regulating the alteration of buildings, other structures and natural and manmade elements within such NCD as set forth under the procedures and criteria established in this by-law.

The Commission for each NCD shall review all Reviewable Projects in the NCD, including without limitation new construction, demolition or alterations that affect the landscape or topography, the exterior architectural features of buildings and other structures, or the mass and siting of buildings and other structures. The authority of the Commission shall be binding except with regard to the categories of structural, landscape

or architectural features exempted by Section 5.10.6 or that may be otherwise exempted by the particular design guidelines for a specific district set forth in Section 5.10.3 of this by-law.

An NCD Commission, or the Town on behalf of any such commissions, may receive and accept appropriations, grants and gifts to further the purposes of this by-law. An NCD Commission, or the Town on behalf of any such commissions, is also authorized to the extent permissible by law to require the collection of funds as part of an application to be placed in a separate account. These funds may be used to fund Town review of a Reviewable Project, including the retention of consultants or the funding of staff required to complete review of an application.

b. An NCD Commission, after a public hearing duly noticed at least 14 days in advance, may adopt, and from time to time amend, reasonable rules and regulations not inconsistent with the provisions of this by-law or other by-laws governing the Commission. Such rules and regulations shall set forth such forms and procedures as it deems desirable and necessary for the regulation of its affairs and the conduct of its business, including requirements for the contents and form of applications for certificates, the process for collecting and utilizing funds including without limitation application fees and funds required to fund Town review, hearing procedures and other matters. Such rules and regulations may also include a set of design review standards, not inconsistent with the applicable design guidelines and exemptions contained herein under Sections 5.10.3 and 5.10.6, to refine and clarify the application of the design guidelines during the design review process. The NCD Commissions for various NCDs within the Town may adopt common rules and regulations for the conduct of their business, consistent with the specific design guidelines applicable to each NCD, *including coordinating or integrating procedures for review of applications*. The Commission promulgating any such rules and regulations shall file a copy thereof with the office of the Town Clerk.

5.10.5. PROJECTS PROHIBITED WITHOUT A CERTIFICATE

Except as this by-law provides, no building, other structure, site, property or part thereof within a Neighborhood Conservation District shall be altered (which term includes complete or partial demolition and new construction) and no other Reviewable Project may proceed unless the Commission shall first have issued a Certificate of Appropriateness. A building permit (which shall include permits for demolition) or an occupancy permit may not be issued for an altered building, structure, site or property or other Reviewable Project without the prior issuance of a Certificate of Appropriateness.

5.10.6. ALTERATIONS EXEMPT FROM COMMISSION REVIEW

a. It shall be the responsibility of the staff of the Commission, with the concurrence of the Chair of the Commission, to determine whether a proposed alteration or other project is exempt from review and they shall have ten business days to make this determination. Any alteration or project that is exempt from review shall receive a Certificate of Exemption that will permit such alteration or project to go forward without further review under the Neighborhood Conservation District By-Law. *The Commission may establish regulations to define projects that are of insufficient significance to warrant Commission*

review, and Commission staff may issue a Certificate of Exemption for such a project.
.

b. Nothing herein shall be deemed to limit review to features visible from a public way unless such a limitation is set forth in the particular design guidelines for a specific district set forth in Section 5.10.3.d of this by-law.

c. The following projects or portions of Reviewable Projects are exempt from Commission review in all NCD districts:

1. Temporary buildings and structures subject to time limits (no longer than 6 months) and size limits determined by the Neighborhood Conservation District Commission.
2. One-story detached accessory structures without permanent foundations used as tool and storage sheds, playhouses, and similar uses provided the floor area does not exceed 100 square feet. This exemption shall not apply to garages, parking structures or other structures for vehicular use nor to structures to shelter or visually shield HVAC equipment.
3. Interior Alterations, including interior demolition as defined in Sections 5.3.2(h)(iii) and (iv) (such sections shall continue to be applicable to the Demolition Delay By-Law).
4. Ordinary maintenance and repair of architectural features that match the existing conditions including materials, design and dimensions.
5. Removal of substitute siding provided, however, that any replacement siding and trim shall be reviewable.
6. Reversible changes of color (such as staining or repainting of wood siding or trim, but not work such as painting of previously unpainted masonry).
7. Removal, replacement or installation of the following exterior elements (this exemption shall not apply to replacement windows which may include storms or screens):
    a. Exterior storm windows and exterior storm doors
    b. Exterior window screens or exterior screen doors
    c. Gutters and downspouts
    d. Removable window air conditioners, but not permanently installed HVAC equipment whether as part of a building or freestanding.
    e. Satellite dishes or antennae less than 3 feet in maximum width.
8. In-kind replacement of plant material.
9. Removal of public shade trees or removal of plant material that is severely damaged or dying due to weather-related events or natural causes.
10. Reconstruction, substantially similar in exterior design, of a building, damaged or destroyed by fire, storm or other disaster, provided such reconstruction is begun within the time period specified in Section 8.03.1 of the Zoning By-Law and carried forward with due diligence.
11. Replacement windows and doors, and windows and doors installed in an addition or new construction, whether including single-pane glass or multiple-pane insulating glass, provided that (a) the exterior appearance is consistent in

size, scale and detailing with that of pre-existing windows and doors on the building and adjacent buildings, as through the use of true divided lites or exterior muntins adhered to the exterior glass surface, and (b) reflective or tinted glass is not used, unless used in the pre-existing windows and doors.

5.10.7. PROCEDURES FOR REVIEW

Any Reviewable Project not exempted above requires the submittal of an application for regulatory review by the Commission. The application shall be accompanied by a filing fee as may be determined from time to time by the Board of Selectmen. As may reasonably be deemed necessary by the Commission to enable it to make its determination on the application, the application may be required to include (a) drawings and/or photographs showing existing conditions, including existing buildings and other structures, landscape features and vegetation, open spaces and pedestrian and vehicular paths, and (b) plans, elevations, specifications, photographs, descriptions of materials and other supporting information of the proposed changes.

Within forty-five business days of the submittal of a complete application, including all required supporting information, the Commission shall hold a public hearing on the application. At least fourteen days before said public hearing, public notice shall be given. Such notice shall identify the time, place and purpose of the public hearing.

At or subsequent to the public hearing, the Commission shall determine whether the proposed alteration or other Reviewable Project, including any modification thereof agreeable to the applicant, is compatible with the specific design guidelines of the applicable district and the purposes of this by-law. The Commission may waive or modify the application of a design guideline in a particular case if such waiver will not derogate the protections provided by this by-law to the neighborhood and abutters.

If the Commission determines that the alteration is compatible with the design guidelines for the district, the Commission shall issue a Certificate of Appropriateness. If deemed necessary to ensure that an alteration is compatible with the design guidelines, the Commission may attach appropriate conditions to the Certificate of Appropriateness. The concurring vote of a majority of Commission members, including voting alternates (i.e., not less than three votes for a five-member commission and not less than four votes for a seven-member commission) shall be required to issue a Certificate of Appropriateness.

If the Commission does not determine that the alteration is compatible with the design guidelines for the district, the Commission shall deny the Certificate of Appropriateness. The Commission shall provide the applicant with the reasoning for its denial including the manner in which the alteration does not meet the applicable design guidelines in Section 5.10.3.d or the purposes of this by-law.

The Commission may further delay or totally prohibit demolition in addition to any delay provided by the Brookline Demolition Delay By-Law. In considering an application to demolish a building or structure, the Commission shall consider the architectural or

historical significance of the building, including, if any, the findings of the Preservation Commission under the Demolition Delay By-Law; the siting and significance of the building or structure in relation to its surroundings and surrounding buildings either by itself or as a component as a group of buildings or structures; and the design and siting of any replacement building or structure.

5.10.8. PROCEDURES FOR ISSUANCE AND FILING OF CERTIFICATES

Each Certificate issued by the Commission shall be dated and signed by its chairperson or such other person designated by the Commission to sign such Certificates on its behalf. The Commission shall send a copy of its Certificate or denial to the applicant and shall file a copy of the Certificate or denial with the office of the Town Clerk and the Building Commissioner. The date of issuance of a Certificate or denial shall be the date of the filing of a copy of such Certificate or denial with the office of the Town Clerk.

If the Commission should fail to make a determination within sixty business days of the filing of a complete application for a Certificate including all required supporting information, or within such further time as the applicant may allow in writing, the Commission shall thereupon issue a Certificate of Appropriateness due to failure to act.

5.10.9. ENFORCEMENT AND PENALTIES

The Commission is specifically authorized to institute any and all actions, including proceedings in law and in equity, as it deems necessary and appropriate to obtain compliance with the requirements of this by-law or to prevent a threatened violation thereof.

The Commission may designate the Building Commissioner to act on its behalf and to enforce this by-law under the direction of the Commission.

Any owner of a property subject to this by-law that has altered a building or other structure or proceeded with a Reviewable Project without first obtaining a Certificate of Appropriateness in accordance with the provisions of this by-law shall be subject to a fine of not more than Three Hundred Dollars. Each day the violation exists shall constitute a separate offense until the alteration is corrected, the addition is removed, a faithful restoration of the demolished building or structure is completed, suitable replacement trees are planted, or the property is otherwise returned to its original condition unless otherwise agreed to by the Commission.

5.10.10. APPEAL PROCEDURE

Any applicant or person aggrieved by a determination of the Commission may appeal as provided for in the Massachusetts General Laws.

5.10.11. VALIDITY AND SEPARABILITY; OTHER BY-LAWS

The provisions of this by-law shall be deemed to be separable. If any of its provisions, sections, subsections, sentences or clauses shall be held to be invalid or unconstitutional, the remainder of this by-law shall continue to be in full force and effect. Nothing in this by-law shall be construed as repealing or modifying any existing by-law or regulation of

the Town, but it shall be in addition thereto. To the extent this by-law imposes greater restrictions upon a Reviewable Project than other by-laws, regulations or statutes, such greater restrictions shall prevail.

ARTICLE 5

Amendment offered by Scott Gladstone, TMM-16

Amend Article 5 by inserting a new Section 5.10.4 (c):

Section 5.10.4 (c): Within one year after the Commission has been formed for each NCD, the Commission shall issue a written report to Town Meeting to report on the appropriateness of the design guidelines governing the NCD in 5.10.3 and to make recommendations of any revisions to such guidelines that the Commission deems to be better suited to achieve the purpose of the NCD.

ARTICLE 5

Revised Amendment offered by Gary Jones, TMM-3
[Changed sections underlined]

Amend Article 5 by adding the following as a new section 5.10.3 a(ii), and renumbering the existing text of section 5.10.3 a as section 5.10.3 a(i):

> The Brookline Preservation Commission shall hold an informational public Hearing within the proposed NCD, if possible, otherwise said hearing shall be in an accessible location outside the proposed NCD. Said public hearing shall be held on or before twenty-one days from the date of publication of a warrant containing an article proposing a new NCD. The public hearing shall include representatives of the Brookline Planning Board and Preservation Commission who shall present information concerning the scope of what a NCD means for the property owners within such a district. The Brookline Preservation Commission shall notify all property owners within the proposed NCD of the filing of the NCD proposal and its substance as well as the time and place of such public hearing by first class mail at least ten days before such hearing.

Explanation:
The purpose of this amendment is to ensure all home owners within a proposed NCD are informed in a timely way at the beginning of an action of town meeting which would put significant restrictions on their homes. If adopted as written article five provides for no notification at all or opportunities for information to be presented to the homeowners. It's not enough to say the article creating the NCD goes through the town meeting process and that's process enough. We live in a town where many of our citizens think they live in a city and simply do not follow the local media and local issues. Unlike a Historic District which requires 80% of the homeowner's approval for its creation there is no means to determine the number and per cent of homeowners that may or not want their homes included in an NCD therefore there is the danger a majority may not want to be included.

The danger to leaving article five as it stands opens a neighborhood to being thrown into an NCD against the will of a majority of homeowners within it. A minority of politically astute activists who present their petition to the selectmen, advisory board, and town meeting can move a NCD forward without any opportunity by any town board to give those homeowners affected an opportunity to have the facts presented to them in an impartial manner.

The adoption of this amendment corrects this oversight of not giving the homeowners within such proposed district any opportunity first to be informed such a process has

begun and secondly recieving information from an impartial source so they can make an informed decision of whether they truly want to be included in an NCD.

For many of our homeowners their home is their biggest asset and to set in motion a political process which has the potential to put significant and even unknown restrictions on their homes without any means of informing them and educating them is simply not due process. This amendment rectifies that oversight. Let's be sure our neighbors have an opportunity to fully understand a NCD.

ARTICLE 6

SIXTH ARTICLE

(A) To see if the Town will amend its General By-Laws to establish the Hancock Village Neighborhood Conservation District, defined by the map attached hereto, by adding a new section 5.10.3.d as follows:

d. Specific districts and guidelines.

1. There shall be a Neighborhood Conservation District, to be entitled the "Hancock Village Neighborhood Conservation District", the boundaries of which are shown on the map entitled "Hancock Village Neighborhood Conservation District", a copy of which is on file with the Town Clerk's office, which is hereby declared to be part of this By-law.

The first and largest garden city apartment complex in Brookline, Hancock Village (1946-1949) is significant as a far-sighted, historically important collaboration between the town of Brookline and the Boston-based John Hancock Mutual Life Insurance Company to provide both employment and housing for returning World War II veterans. The development, which straddles the Brookline-Boston line, consists of 789 two-story attached townhouses, most of which are located in Brookline. In consideration of a zoning change by the Town which allowed the development to proceed, the development was designed and built as a high-quality development in the "garden village" style, meaning that each dwelling unit had a separate entrance to the exterior; the units were town-homes of two stories with peaked roofs; there was substantial open space; and there was a "greenbelt" serving as a buffer between the development and adjacent single-family homes. Such elements were embodied in commitments made on behalf of John Hancock Insurance by its president Paul F. Clark, including an agreement with the Town of Brookline executed March 11, 1946. The landscape design was by Olmsted Associates, a Brookline firm with international experience and reputation. Significantly, Hancock Village remains the quality housing development conceived in those commitments and original design, and therefore remains internally coherent in design and compatible in scale, siting and impact with the adjacent neighborhood of single-family homes and with the D. Blakely Hoar Wildlife Sanctuary, especially due to the retention in Hancock Village of open lawns, courtyards and common areas, pedestrian paths, consistent town-house style buildings of modest scale, unobstructed sky planes, buffer zones, and significant landscape features such as puddingstone outcrops. Retaining integrity of location, design, setting, materials, workmanship, feeling, and association, the Hancock Village Neighborhood has as such remained an important historic property in Brookline and a compatible part of the fabric of the community and the adjacent neighborhood.

The Hancock Village Neighborhood Conservation District shall be governed by the following design guidelines. Any further development shall be compatible with the existing development of the district and its relationship to the adjacent neighborhood:

i. Architectural style and character. The architectural design and building

materials of any proposed Reviewable Project shall be compatible with the existing garden-village town-house architecture within the district, with, for example, each dwelling unit having a separate entrance to the exterior.

ii. Building size, height and massing. The size, height and massing of a building or other structure which is part of any proposed Reviewable Project shall be compatible with existing buildings and other structures within the district and the adjacent neighborhood, and the elements considered shall include but not be limited to the volume and dimensions of any buildings or other structure; the scale, clustering and massing of any building or other structure in relation to its surroundings, including existing buildings and other structures and nearby landscape and other open spaces; and compatibility of design and materials with existing buildings and other structures. Compatible building size, height and massing shall include, not be limited to limited to:

a. No building over 2 ½ stories in height, measured from the highest point of the finished grade of each unit, shall be constructed.

b. In relation to any abutting single-family, detached homes, any new single-family homes shall be similarly oriented, have similar rear yard depths, and similar distance between dwelling units.

iii. Façade. The number, size and location and design of windows, doors and solid elements, trim work, piers, pilasters, soffits, cornices, decks, porches and canopies, and the design of window and door details, including trim, muntins, mullion and sills, need not replicate but shall be compatible with the existing buildings within the district. Alterations necessary for handicap accessibility shall be compatible to the extent reasonably feasible.

iv. Roof treatment. The shape, pitch, style, and type of surfacing of roof areas shall be compatible with those of buildings within the district. Including buildings in any Reviewable Project, buildings with flat or approximately flat roofs will not exceed 25% of the total number of buildings in the entire NCD.

v. Streetscape, topography and landscape. Any proposed Reviewable Project (including demolition, removal, new construction or other alteration) shall maintain the spatial organization of the district and shall not have a significant negative impact on historic architectural or landscape elements, including structures, open spaces, green spaces, topography, walls and fences, circulation patterns including pedestrian circulation separated from vehicular traffic, viewsheds, park areas, play areas, courtyards and other landscaped areas previously accessible and usable in common, significant trees as defined in this by-law, and buffer areas. The existing spatial organization and land patterns of the landscape shall be preserved, including the curvilinear circulation patterns and views from roads, sidewalks, pathways and buildings. Significant negative impacts shall include, but not be limited to:

a. Removal or alteration of rock outcroppings greater than 200 square feet in contiguous area;

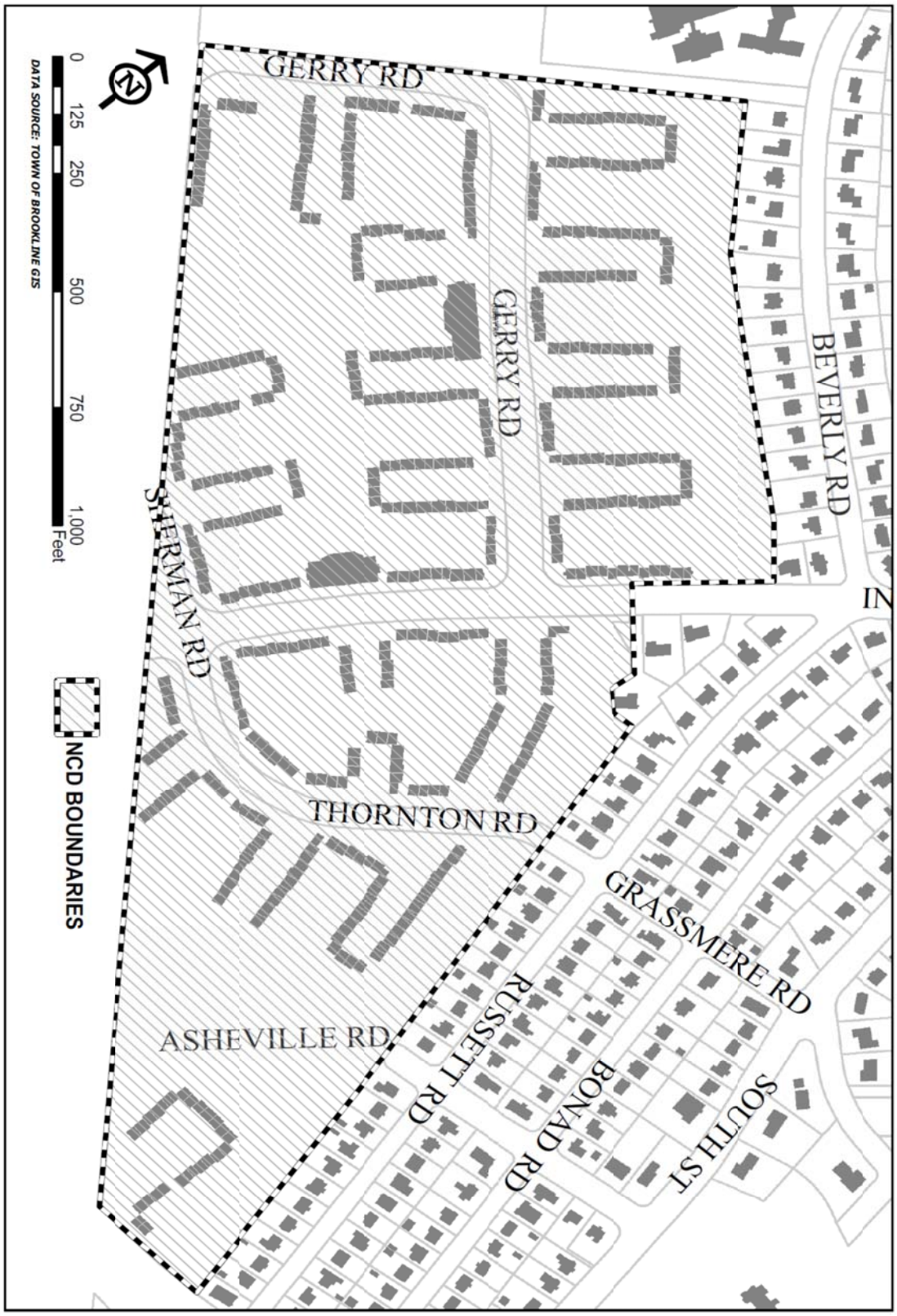
b. Alteration of existing grades by more than three feet in vertical height;

c. Removal of existing pedestrian paths that separate pedestrians from vehicular traffic;

d. Addition of new impervious surfaces within 100 feet of abutting properties, including the Hoar Sanctuary or single-family homes; and

e. Loss of open space through building coverage exceeding 20% of the area of the district or through loss of the "greenbelt" now serving as a buffer to the abutting single-family detached homes.

Nothing in this Section 5.10.3.d.1 shall be construed as repealing or modifying any existing by-law or regulation of the Town, but it shall be in addition thereto. To the extent this Section 5.10.3.d.1 imposes greater restrictions upon a Reviewable Project than other by-laws, regulations or statutes, such greater restrictions shall prevail. The provisions of this Section 5.10.3.d.1 shall be deemed to be separable. If any of its provisions, subsections, sentences or clauses shall be held to be invalid or unconstitutional, the remainder shall continue to be in full force and effect.



or act on anything relative thereto.

_____

PETITIONER'S ARTICLE DESCRIPTION

This article would designate the Hancock Village neighborhood as a Neighborhood Conservation District. The initiative for this article came from numerous neighbors, and the article was largely drafted by Selectman Richard Benka with additional input from the staff of the Planning & Community Department (including Regulatory Planning, Economic Development and Preservation), Town Counsel's office, and a member of the Massachusetts Historical Commission, Dennis DeWitt.

The *Neighborhood Conservation District Study for the Town of Brookline*, published in September 2005, recognized that Neighborhood Conservation District designation could "provide protection for areas that might not be viewed as ripe for designation" for the detailed constraints of a local historic district, "such as subdivisions dating to the post-WWII through 1975 period." Id. at 16.

Hancock Village is just such a district. It was developed between 1946 and 1949 as the first and largest garden city apartment complex in Brookline and is one of the most important developments of that type in New England. It is significant as a far-sighted, historically important collaboration between the town of Brookline and the Boston-based John Hancock Mutual Life Insurance Company to provide both employment and housing for returning World War II veterans. Recommended for listing in the National Register of Historic Places in 2008 by the Brookline Preservation Commission, Hancock Village combined housing for families with extensive preservation of green space and natural landscape features. The Brookline Planning Board in 1946 described the "Garden Village" development as "one of the most attractive of all types [of developments] because the units are well-separated, with an attractive variety of architectural features, … [and] fine landscaping," and that "Brookline should be proud to have, in its area, the first [such] development."

The development, which straddles the Brookline-Boston line, consists of 789 two-story attached townhouses, most of which are located in Brookline. In consideration of a zoning change by the Town which allowed the development to proceed, the development was designed and built as a high-quality development "garden village" style. The model for garden city apartments consisted of low-density, low-scale multi-family housing, based on precedents from the English garden city ideal and the development of vehicle-free superblocks with separate pedestrian circulation in Germany in the early years of the twentieth century. Hancock Village reflected the most advanced garden city apartment complex planning and landscape design principles of its time, meaning that each dwelling unit had a separate entrance to the exterior; the units were town-homes of two stories with peaked roofs; there was substantial common area open space; there was a separation of pedestrian and vehicular circulation; natural landscape features, such as prominent outcroppings of puddingstone, were preserved; and there was a "greenbelt" established around its perimeter. Such elements were embodied in commitments made on behalf of John Hancock Insurance by its president Paul F. Clark, including an agreement with the Town of Brookline executed March 11, 1946. That agreement stated:

A. That any development … of said area will be of a high-grade garden village type of housing development;
B. That horizontally divided family dwelling units will not exceed 25% of the total number of family units to be constructed in said area;
C. That dwellings with flat or approximately flat roofs will not exceed 25% of the total number of such buildings to be constructed in said area;
D. That building coverage shall not exceed 20% of said area; and
E. That no building over 2½ stories in height, measured from the highest point of the finished grade of each unit, will be constructed in such area.

In addition, as suggested by the Planning Board, see minutes of January 11, 1946, and as confirmed by Mr. Clark, "[i]t was agreed that we would preserve a 'buffer strip' in [the] single family zone along the side of the land toward Russett and Beverly Roads." See History of Hancock Village, by President Paul F. Clark, May 1951, Proceedings of the Brookline Historical Society. Mr. Clark described the overall design concept: "The architectural treatment was consistent with local preference. Low land coverage, allotting only ten families to the acre, leaves generous exposure to sunshine and the four winds. A modified interpretation of colonial moti[f]s and simple proportions produce … pleasant effects in mass and color."

Hancock Insurance hired developer Gustave Ring, who had worked in the Washington, D.C. area on garden apartment complexes that became models for the Federal Housing Authority. Louis Justement was the architect, and the landscape design was by Olmsted Associates, a Brookline-based landscape architecture firm with international experience and prestige.

Significantly, Hancock Village remains the quality housing environment envisioned in those commitments and in its original design, and therefore remains internally coherent in design and compatible in its scale, siting and impact with the surrounding community of which it is a part and with the D. Blakely Hoar Wildlife Sanctuary. This is especially true due to the retention in Hancock Village of open lawns, courtyards and common areas, pedestrian paths, consistent town-house style buildings of modest scale, unobstructed sky planes, buffer zones, and significant landscape features such as its prominent puddingstone outcrops. Retaining integrity of location, design, setting, materials, workmanship, feeling, and association, the Hancock Village Neighborhood has as such remained an important historic area in Brookline and a compatible part of the fabric of the community and the adjacent neighborhood.

The warrant article would preserve that integrity into the future. It is designed to ensure compatibility of any alterations on the site (including without limitation demolitions, additions, or new construction) with the existing neighborhood and abutting properties. It is further designed to ensure the preservation of the building scale and siting, pedestrian paths, rock outcroppings, courtyards, viewsheds and other open spaces that define the character of Hancock Village.

TOWN OF BROOKLINE

Massachusetts

BROOKLINE PRESERVATION COMMISSION
JAMES BATCHELOR, Chair
DAVID KING, Vice-chair
WENDY ECKER
ELTON ELPERIN
LINDA LEARY
JUDITH SELWYN
PAUL BELL, Alternate
KIRSTIN GAMBLE BRIDIER, Alternate
ROSEMARY BATTLES FOY, Alternate
Greer Hardwicke, Staff
Jean Innamorati, Staff

MEMORANDUM

TO: **AC PLANNING AND REGULATION SUBCOMMITTEE**
FROM: **PRESERVATION COMMISSION**
DATE: **OCTOBER 17, 2011**
RE: **FALL TOWN MEETING ARTICLES 5 & 6**

At its October 11, 2011 meeting the Preservation Commission voted unanimously to support passage of Article 5, establishing Neighborhood Conservation Districts in the Town, with several recommended revisions. These revisions are shown in the attached documents A and B.

Attachment A shows the changes recommended to the language of Article 5 as italicized and underlined text, on pages 2, 3, 4 and 5. Attachment B is the article with the recommended changes incorporated into the text.

The Preservation Commission voted at the same meeting to unanimously support recommending passage of Article 6, establishing a Hancock Village Neighborhood Conservation District. The Commission considers Hancock Village to be eligible for listing on the National Register of Historic Places because of the significant historical, architectural and landscape elements of the property.

Attachment C is the Preservation Commission's Certified Local Government submission form to the Massachusetts Historical Commission. Through this document the Brookline Preservation Commission expresses its opinion that Hancock Village should be considered eligible for National Register listing.

The Preservation Commission respectfully requests the Subcommittee to recommend adoption of the revised version of Article 5 for consideration by the Advisory Committee, and to recommend adoption of Article 6.

(Attachments A and C are included at the end of the Recommendation for Article 5)

cc: Jeff Levine, Director of Planning and Community Development
Polly Selkoe, Assistant Director for Regulatory Planning
Jennifer Dopazo Gilbert, Town Counsel
Board of Selectmen and Mel Kleckner, Town Administrator

Hancock Village Planning Committee Report
June 2011

The Hancock Village Planning Committee ("Committee") was formed by the Town of Brookline in order to review proposals by Chestnut Hill Realty ("CHR") to expand the housing units at Hancock Village by approximately 460 units and to facilitate a forum for community input and reaction to that proposal.

Part of the Committee's charge was to explore the possibility of recommending changes to the zoning that would accommodate the placement of more density closer to the Boston side of the development, which could have necessitated a change in allowed height and in the parking requirement. The other part of the charge was to make a judgment about the acceptability of the proposed expansion and under what conditions such expansion might be deemed acceptable by the Town and the abutting neighborhood.

The Committee first met on March 4, 2009 and has held 7 meetings and a well-attended site walk. All of these meetings were publicly noticed and opened to the public and each was very well attended by the public.

The Committee came to identify a number of concerns expressed nearly unanimously by the public comments, including the following:

1. School population impact on already overcrowded schools and other negative fiscal impacts to the Town;
2. Preservation of open space, particularly immediately to the west of Beverly and Russett Roads;
3. Exacerbation of drainage problems west of Beverly and ongoing water quality issues from outflow into the Hoar Sanctuary;
4. Increased traffic along Grove-Independence-West Roxbury Parkway and Newton Streets.

These items will each be discussed in turn:

1. School and fiscal impact:

(a) The current conditions:
By some calculations, the current Hancock Village development produces a net revenue loss of $2,000,000 per year to the Town. This is because the real estate taxes paid by

CHR for Hancock Village to Brookline is more than offset by the cost of municipal services provided, especially when it comes to educating the school children that reside in the development. The average cost to educate a child in Brookline is approximately $16,000 annually. Of the over 670 children that attend the Baker School, the Commit-tee understands that about 40% come from Hancock Village. Hancock Village is advertised, at least by word of mouth, around the globe as the perfect setting for families coming to Boston for medical area jobs, fellowships or education. Moreover, the Committee learned that the size of the incoming kindergartens over the past few years has grown substantially town-wide and the trend shows no signs of abating. This has put a great deal of pressure on both the existing school buildings and budget. The Runkle and Heath Schools are currently being expanded to accommodate the existing student population. Given the difficulty of accommodating the currently growing school population with the existing housing stock, there is real concern that adding an appreciable number of additional school-aged children from an expanded Hancock Village will have a devastating fiscal impact on the entire Town.

Besides the fiscal impact of an expanded school age population from Hancock Village, there is concern about the effect on the Baker School and the South Brookline school age family community. Under current conditions, the Baker School is not large enough to accommodate all of the households in South Brookline which historically have sent children to the Baker School. In 2001, due in large part to the influx of families with children into Hancock Village, the School Committee found it necessary to turn about 2/3 of the prior core district for Baker school into buffer zones. Given the geography and traffic patterns South of Route 9, these neighborhoods are not adjacent to any sin-gle other school. As a consequence, the buffer parts of the neighborhood are assigned to one of four schools depending on space availability. An expanded Hancock Village school population will push more children from the buffer zones to schools outside of the neighborhood and it may require the expansion of current buffer zones to facilitate the displacement of more school children to schools outside of South Brookline. There has been talk of adding a ninth k-8 school in South Brookline, but those suggestions remain only ideas given the enormous cost of building a new school and then maintain-ing the facility and the staffing every year.

(b) senior housing:
CHR has proposed limiting the proposed high-rise portion of its expansion to senior housing. The Committee has learned that this could take the form of either a 55 and over community in which at least 80% of the units must have one family member who is 55 or a 62 and over community in which everyone in the development must be 62 or over. The inclusion of an age-restricted housing component was explored by the developer as a way of reducing the number of school-aged children generated by the development. The idea was that doing so might mitigate against what both fiscal impact analyses projected – a net revenue loss to the Town – mostly attributable to the costs of educating additional school children. The effectiveness of these proposals in reducing or eliminating additional school children is questionable.

First, CHR is not proposing that all of its additional units would be senior housing restricted, leaving approximately half of the proposed new 460 units without any restrictions.

Second, CHR has expressed a preference for 55 and older house, not 62 and older. This would not adequately address the problem as 20% of the units in the high-rise would still be open to families. Also, for those units that do require a person who is 55 and older, the Committee has observed that there are three-generation families in Han-cock Village already, as well as a current parent body at Baker School that includes many families with at least one parent over 55.

Third, with respect to both 62 and over and 55 and over developments, there are a number of questions concerning the enforceability of such limitations and their durability. Town Counsel has explained some of the pros and cons concerning imposing these restrictions by zoning change, special permit conditions and by deed restrictions. The Committee is not satisfied that any of these methods will provide the mechanism needed to adequately control the expansion of the school age population from Hancock Village.

On a related note, even if the 62 and over or 55 and over schemes could be effective in restricting school aged children in the impacted units, the Committee is still concerned about the resulting echo effect. New senior friendly apartments will be attractive for residents currently living in Hancock Village, which will then create vacancies in non-restricted units, which will then likely be filled with families with school-aged children. Moreover, CHR has expressed its intent to advertise within South Brookline and the rest of Town that the new apartments are a great place to age in place. There again, such moves will create vacancies in other housing units in Town, which will again likely be filled by the most common new buyer demographic – families with school aged children.

(c) flats and single bedrooms
CHR has argued that the flat design, rather than a 2-story townhouse design, particular-ly with single bedrooms, will not be attractive to families. The Committee does not find this persuasive. Hancock Village pulls families from Buenos Aires, Tel Aviv, Haifa, Seoul and other big cities with Universities in which high rise apartment living is typical for families. With respect to the single-bedrooms, this is a small percentage of the pro-posed expansion. Moreover, the proposed single bedroom units are huge and may even include “loft” space that would easily accommodate a child’s bed room.

(d) commercial use
Some members of the community suggested granting a zoning change that would accommodate commercial uses, including a hotel, a nursing home, or a retail strip along Independence. No one idea received complete support by all members of the Commit-tee. Regardless, none of these ideas were seriously pursued as CHR expressed no interest in adding commercial uses to this site.

2. Preservation of open space
In every iteration of CHR's plans, it places housing in the currently large open green space west of Russett Rd and Beverly Rd. This is one of the most frustrating issues for area residents. No matter how many times or how loudly the neighborhood has asked CHR not to develop this open green space, the plans never wavered from the existing plan to cover these areas in asphalt and housing. It is unclear to the Committee whether there is a restriction that remains in force that would preclude CHR from building on these open spaces, which are zoned S7, in contrast to the rest of Hancock Village, in order to provide a buffer zone. On the other hand, the Committee understands that these parcels will not qualify for cluster housing in the format proposed by Chestnut Hill Realty and that there is not enough room to include a necessary access road to accommodate S7 sized lots. Nonetheless, even if these restrictions did not render this open space unbuildable, it is the Committee's opinion that CHR should not be seeking to build parking or housing in this space. CHR has received a great deal of benefit from Brookline and the immediate neighborhood and CHR has, in the Committee's estimation, an obligation to be respectful of the community's strong desire to maintain this open green space, which abuts and affects the Hoar sanctuary north of Independence Drive.

3. Drainage problems - water quality in the Hoar Sanctuary
There is currently a drainage issues for the houses along the west side of Beverly due to poor drainage and run off from Hancock Village. Moreover, there are ongoing water-quality problems with the run-off from Hancock Village into the stream that runs through the Hoar sanctuary. The Committee is concerned that increased development, particularly the addition of impermeable surfaces in the green open space, will exacerbate and contribute to additional drainage and water quality issues.

4. Increased traffic:
While the Committee understands that there are many parking spaces that remain empty in Hancock Village, the Committee remains concerned that a large number of additional units will certainly bring with it a large number of additional cars. Moreover the continuing dearth of public transportation increases the chances that those additional vehicles will be used on a regular basis. Under current conditions, Independence and Grove are already a commuter highway for cars traveling to the medical area from the southern suburbs. The addition of more cars emanating from within the neighborhood can only make matters worse. The Committee is particularly sensitive to this issue giv-en the recent devastating accident involving a car traveling on Grove/Independence striking a 6th grade boy from Baker School causing severe injuries.

Conclusion
The Committee expressed a number of concerns to CHR that needed to be overcome if it was to support plans for a significantly expanded Hancock Village. While the Committee was willing to entertain zoning changes in order to accommodate a smarter design that met the Town's and neighborhood's concerns, CHR has not presented any plans that satisfy those concerns. In particular, CHR has never reduced the number of units that it wishes to build. Consequently, the Committee cannot support the proposals that CHR has put forward. Moreover, the Committee has not been able to come up with any alternative that would accommodate CHR's desire to expand to anything near the numbers it has proposed while still addressing the concerns set out above. If CHR wishes to radically

change its proposal in a way that will address these concerns, then the Committee would be happy to consider it.

In addition, the Committee wishes to note its conclusion that, despite initial statements by the developer, there is very little development that he can do "by right" on this site. Any development of more than three units will require design review under Section 5.09 of the zoning bylaw, and any development of six units or more will require a special permit for inclusionary housing. In addition, any development of any significant size may require a special permit for relief from the height or other requirements of the zoning by-law.

Any additional development on this site might well fail to qualify for a special permit. In the judgment of the committee, contrary to the requirements of Section 9.05 of the Zoning By-law, the proposed use would adversely affect the neighborhood. If a variance is required, the more stringent basis for a variance also does not appear to have been shown.

The Committee urges that, as part of any special permit process, consideration of the concerns noted during this process should be factored in to the deliberations.

TOWN OF BROOKLINE

Massachusetts

HOUSING ADVISORY BOARD
Roger F. Blood, Chair
Steven A. Heikin
Michael H. Jacobs
Karen J. Kepler
Rita K. McNally
Rufus Phillips
Kathy A. Spiegelman

333 Washington Street
Brookline, MA 02445
(617) 730-2130
FAX (617) 730-2442

Date: October 27, 2011
To: Board of Selectmen
From: Roger Blood, Chair, Housing Advisory Board
RE: Warrant Articles 5 and 6 –
Possible Adverse Consequences for Affordable Housing

The Housing Advisory Board (HAB) wishes to express its concern regarding the potentially adverse consequences for affordable housing in Brookline that could result from adoption of Warrant Articles 5 and 6.

As written, these additions to the Town By-Laws are likely to discourage conventional new development. Beyond just the greater complexity of permitting in an existing NCD would be the uncertainty regarding the adoption of an NCD in response to a contemplated development, and thus the financial risk facing a developer who wishes to undertake development anywhere in Town. Adopting an NCD for this purpose would entail a less rigorous process and a lower threshold of approval than either re-zoning or the creation of a historic preservation district.

If we understand it correctly, the opponents of any prospective project may seek adoption of an NCD any time prior to the issuance of a building permit, by which time the developer will have committed substantial investment in acquisition, design, construction documentation and financing. Affordable housing development, in particular, requires expenditure of considerable resources "up-front", i.e., prior to the issuance of a building permit (resources which the Town sometimes fronts at its own risk). We are concerned that the risk that a project can be stopped or delayed, coming at such a late stage, will have a chilling effect on potential projects.

Further, the process of obtaining State funds, usually necessary for affordable housing development, has become increasingly competitive, and a project must be ready to proceed to a construction closing upon an award from the State. This standard requires that the project have its zoning and other public approvals in place. We are concerned that projects in Brookline would not score well since they could be halted or delayed after the award of State funds and therefore would not be considered "ready to proceed."

By reducing the development of market-rate residential multifamily projects, Article 5 could reduce or substantially eliminate the number of affordable housing units created under the Town's inclusionary zoning ordinance (77 affordable units added since 2000), as well as contributions to the Town's Housing Trust ($6.4 million contributed since 2000).

On the other hand, passage of these Articles may result in an increased reliance upon Chapter 40B (comprehensive permits) by developers otherwise not so inclined. While Chapter 40B has been an important tool for increasing affordable housing statewide, to make it the only predictable avenue for new residential development in Brookline could have the unintended consequence of reducing, rather than increasing, community control over new housing development as these Articles seek to accomplish.

SELECTMEN'S RECOMMENDATION

The Board of Selectmen will offer their Recommendation in a Supplemental Report to be issued prior to the commencement of Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 6 would designate the Hancock Village neighborhood as a Neighborhood Conservation District. Residents of the area near Hancock Village have advocated measures to preserve the neighborhood. The article was largely drafted by Selectman Richard Benka with additional input from the staff of the Planning and Community Department (including Regulatory Planning, Economic Development, and Preservation), Town Counsel's office, and a member of the Massachusetts Historical Commission, Dennis DeWitt.

The impetus for the article comes from proposals by Chestnut Hill Realty to add as many as 466 new housing units to Hancock Village, which currently has 530 rental units in Brookline. Chestnut Hill Reality subsequently has offered various other proposals. Chestnut Hill Realty's most recent proposal (August 2011) is a major impact project that includes approximately 30 detached single-family houses and 162 units in a multi-family building. The Planning Board, Building Commissioner, Preservation Commission, Department of Public Works (Traffic and Engineering), and Housing Advisory Board all have begun to review the 2011 proposal. Chestnut Hill Realty may modify that proposal during the review process.

Note that Town Meeting would not be able to vote favorable action on Article 6 if it does not first vote favorable action on Article 5, which would create the legal basis for establishing Neighborhood Conservation Districts in Brookline.

DISCUSSION

The Case for Preserving Hancock Village

Brookline has relied on the establishment of Local Historic Districts, as well as existing zoning, to preserve the character of neighborhoods or other designated districts. The September 2005 *Neighborhood Conservation District Study for the Town of Brookline* considered whether Brookline should adopt an additional tool for neighborhood preservation: the Neighborhood Conservation District (NCD). According to the 2005 study (p. 16), an NCD designation could "provide protection for areas that might not be viewed as ripe for designation" for the detailed constraints of a local historic district, "such as subdivisions dating to the post-WWII through 1975 period." An NCD also might be appropriate in areas in which residents wanted to preserve the character of the neighborhood without imposing the restrictions and review process of a local historic district. For a more complete discussion of issues related to the role of NCDs in Brookline, see the report on Article 5.

The proponents of Article 6 argue that Hancock Village is an appropriate area for an NCD. Hancock Village is a prime example of the 20th century "garden city" movement in architecture and urban planning. There are many other surviving garden apartment complexes in the United States, including some designed by the architect responsible for Hancock Village, but Hancock Village was the first and largest such complex in Brookline. Built between 1946 and 1949, it was intended to house returning veterans of World War II. The John Hancock Mutual Life Insurance Company and the Town of Brookline collaborated to create Hancock Village. The Town changed the area's zoning to allow for increased density. On March 11, 1946, the John Hancock Company signed an agreement governing how Hancock Village would be developed. Paul Clark, then president of the company described it as follows: "The architectural treatment was consistent with local preference. Low land coverage, allotting only ten families to the acre, leaves generous exposure to sunshine and the four winds. A modified interpretation of colonial moti[f]s and simple proportions produce on this irregular site, pleasant effects in mass and color." Among other things, the agreement specified that "building coverage shall not exceed 20% of said area" and that buildings would not exceed 2 ½ stories in height. The John Hancock Company also agreed to preserve a "buffer strip" of greenbelt between the Hancock Village buildings and Russett and Beverly Roads. (Whether the agreement was properly recorded or remains in effect is a source of dispute, but Town Counsel informed the Advisory Committee that such restrictions remain in effect for no more than 30 years.)

The landscape, which was planned by Olmsted Associates under the guidance of Frederick Law Olmsted, Jr., retains many natural features such as trees and rock outcrops. Much of the area is woodland and parkland, with pedestrian paths and views that are not obstructed by the existing residential buildings.

The Preservation Commission has recognized the significance of Hancock Village and has recommended it for inclusion on the National Register. In making this recommendation to the Massachusetts Historical Commission, the Preservation Commission noted that Hancock Village retains "integrity of location, design, setting, materials, workmanship, feeling, and association."

Article 6 is intended to ensure that any alterations on the site (including without limitation demolitions, additions, or new construction) are compatible with the existing neighborhood and abutting properties. It includes design guidelines that are intended preserve the scale of Hancock Village's buildings, landscaping, and open space. For example, any new buildings could not be more than 2 ½ stories tall and would have to be built in a style similar to that of the existing buildings.

Neighborhood Support and Owner Opposition

The Advisory Committee's Subcommittee on Planning and Regulation heard from dozens of residents of the area surrounding Hancock Village—particularly Russett, Bonad, and Beverly Roads. Many spoke at one or both of the public hearings. Others sent emails to the subcommittee and the full Advisory Committee. Their support for the establishment of a Hancock Village NCD was virtually unanimous. They argued that the

developer's proposals for Hancock Village would radically change the character of the area.

The entire proposed Hancock Village NCD currently has only one owner: Chestnut Hill Realty. That owner does not support the establishment of a Hancock Village NCD.

The Advisory Committee considered whether an NCD should be established over the opposition of the area's owner. In its report on Article 6, a majority of the Planning Board expressed reservations about establishing an NCD that was opposed by the single owner of the entire district. Four of the seven members of the board suggested that the proposed Hancock Village NCD could be enlarged to cover a larger area. Including more of the adjacent single-family residences in the NCD would make it possible for the NCD to have majority support from the property owners within its boundaries. Enlargement also would avoid the precedent-setting step of having an NCD that was opposed by all property owners within its boundaries. Others present at the hearing argued that Hancock Village has a very distinctive character and that the proposed NCD should not be enlarged. Regardless of the merits of the arguments on both sides of the issue, any enlargement of the potential NCD would be beyond the scope of Article 6 and could only be considered at a future Town Meeting. The map included with Article 6 delineates the maximum boundaries of any NCD that could be established at the November Town Meeting.

Should Town Meeting Postpone Action on Hancock Village?

The Advisory Committee noted that the Planning Board voted 4–3 to recommend No Action on Article 6 and that the majority of that Board argued that the article should be vetted more closely and then considered at the spring 2012 Town Meeting. In their opinion, the delay would not have any negative effects, because any proposed development at Hancock Village would not be approved prior to spring Town Meeting. The review process for a Major Impact Project such as Hancock Village involves the Planning Board, Zoning Board of Appeals, and a Design Advisory Team. During this process, there would be time for further study of the issues raised by Article 6.

The minority of the Planning Board supported Favorable Action on Article 6, arguing that the matter should not postponed until the spring Town Meeting, because "there is no assurance that a Board of Appeals decision would not be rendered before that time." These members of the Planning Board also noted that there has been significant study and discussion of the significance and design consistency of Hancock Village, the type of development that would be appropriate for the area, and the role of the proposed NCD in providing "an additional layer of protection for existing residents of Hancock Village and its immediate surroundings."

The Advisory Committee agreed with the arguments of the minority of Planning Board. In particular, after receiving public input at two subcommittee hearings and in multiple emails, the Advisory Committee recognized that Article 6 has overwhelming support from many Brookline residents, including those who would be most affected by any development at Hancock Village. The Advisory Committee noted, however, that little, if

any, of this input has come from residents of Hancock Village, who may be reluctant to take a public position against their landlord's development proposal.

Fiscal Implications

Because Article 6 is intended to create design guidelines that would preserve the character of Hancock Village, the Advisory Committee focused on preservation questions and did not conduct an independent analysis of the fiscal implications of various Hancock Village development scenarios. One analysis has suggested that the proposed development at Hancock Village would produce a net revenue loss to the Town of Brookline of $937,400 in FY2022, when it is projected that all the new residential units proposed by Chestnut Hill Realty would have been built. (New units would generate new revenues, but such revenues would be offset by increased costs, particularly for educating children. See Community Opportunities Group, Inc., *Hancock Village Fiscal Analysis*, May 2010, Table 12, p. 31.) If such analyses are correct, an additional consequence of establishing a Hancock Village NCD would be to reduce future growth in the budget of the Public Schools of Brookline. Other analyses reach different conclusions. Chestnut Hill Realty has prepared a report that concludes that adding units to Hancock Village would create a net fiscal benefit of $731,000. Note that all such analyses have a high degree of uncertainty. It is not clear how many new units will be built at Hancock Village and whether they are likely to house school-age children. Projecting school enrollment has been particularly difficult in Brookline in recent years. The number of school-age children in any additional units at Hancock Village also would depend on whether any units were restricted to residents over 55 and whether such restrictions were effective.

RECOMMENDATION

By a vote of 20–3, the Advisory Committee recommends FAVORABLE ACTION on Article 6.

VOTED: that the Town amend its General By-Laws to establish the Hancock Village Neighborhood Conservation District, defined by the map attached hereto, by adding a new section 5.10.3.d as follows:

d. Specific districts and guidelines.

1. There shall be a Neighborhood Conservation District, to be entitled the "Hancock Village Neighborhood Conservation District", the boundaries of which are shown on the map entitled "Hancock Village Neighborhood Conservation District", a copy of which is on file with the Town Clerk's office, which is hereby declared to be part of this By-law.

The first and largest garden city apartment complex in Brookline, Hancock Village (1946-1949) is significant as a far-sighted, historically important collaboration between the town of Brookline and the Boston-based John Hancock Mutual Life Insurance Company to provide both employment and housing for returning World War II veterans. The development, which straddles the Brookline-Boston line, consists of 789 two-story attached townhouses, most of which are located in Brookline. In

consideration of a zoning change by the Town which allowed the development to proceed, the development was designed and built as a high-quality development in the "garden village" style, meaning that each dwelling unit had a separate entrance to the exterior; the units were town-homes of two stories with peaked roofs; there was substantial open space; and there was a "greenbelt" serving as a buffer between the development and adjacent single-family homes. Such elements were embodied in commitments made on behalf of John Hancock Insurance by its president Paul F. Clark, including an agreement with the Town of Brookline executed March 11, 1946. The landscape design was by Olmsted Associates, a Brookline firm with international experience and reputation. Significantly, Hancock Village remains the quality housing development conceived in those commitments and original design, and therefore remains internally coherent in design and compatible in scale, siting and impact with the adjacent neighborhood of single-family homes and with the D. Blakely Hoar Wildlife Sanctuary, especially due to the retention in Hancock Village of open lawns, courtyards and common areas, pedestrian paths, consistent town-house style buildings of modest scale, unobstructed sky planes, buffer zones, and significant landscape features such as puddingstone outcrops. Retaining integrity of location, design, setting, materials, workmanship, feeling, and association, the Hancock Village Neighborhood has as such remained an important historic property in Brookline and a compatible part of the fabric of the community and the adjacent neighborhood.

The Hancock Village Neighborhood Conservation District shall be governed by the following design guidelines. Any further development shall be compatible with the existing development of the district and its relationship to the adjacent neighborhood:

i. Architectural style and character. The architectural design and building materials of any proposed Reviewable Project shall be compatible with the existing garden-village town-house architecture within the district, with, for example, each dwelling unit having a separate entrance to the exterior.

ii. Building size, height and massing. The size, height and massing of a building or other structure which is part of any proposed Reviewable Project shall be compatible with existing buildings and other structures within the district and the adjacent neighborhood, and the elements considered shall include but not be limited to the volume and dimensions of any buildings or other structure; the scale, clustering and massing of any building or other structure in relation to its surroundings, including existing buildings and other structures and nearby landscape and other open spaces; and compatibility of design and materials with existing buildings and other structures. Compatible building size, height and massing shall include, not be limited to limited to:

    a. No building over 2 ½ stories in height, measured from the highest point of the finished grade of each unit, shall be constructed.

    b. In relation to any abutting single-family, detached homes, any new single-family homes shall be similarly oriented, have similar rear yard depths, and similar distance between dwelling units.

iii. Façade. The number, size and location and design of windows, doors and solid elements, trim work, piers, pilasters, soffits, cornices, decks, porches and canopies, and the design of window and door details, including trim, muntins, mullion and sills, need not replicate but shall be compatible with the existing buildings within the district. Alterations necessary for handicap accessibility shall be compatible to the extent reasonably feasible.

iv. Roof treatment. The shape, pitch, style, and type of surfacing of roof areas shall be compatible with those of buildings within the district. Including buildings in any Reviewable Project, buildings with flat or approximately flat roofs will not exceed 25% of the total number of buildings in the entire NCD.

v. Streetscape, topography and landscape. Any proposed Reviewable Project (including demolition, removal, new construction or other alteration) shall maintain the spatial organization of the district and shall not have a significant negative impact on historic architectural or landscape elements, including structures, open spaces, green spaces, topography, walls and fences, circulation patterns including pedestrian circulation separated from vehicular traffic, viewsheds, park areas, play areas, courtyards and other landscaped areas previously accessible and usable in common, significant trees as defined in this by-law, and buffer areas. The existing spatial organization and land patterns of the landscape shall be preserved, including the curvilinear circulation patterns and views from roads, sidewalks, pathways and buildings. Significant negative impacts shall include, but not be limited to:

a. Removal or alteration of rock outcroppings greater than 200 square feet in contiguous area;

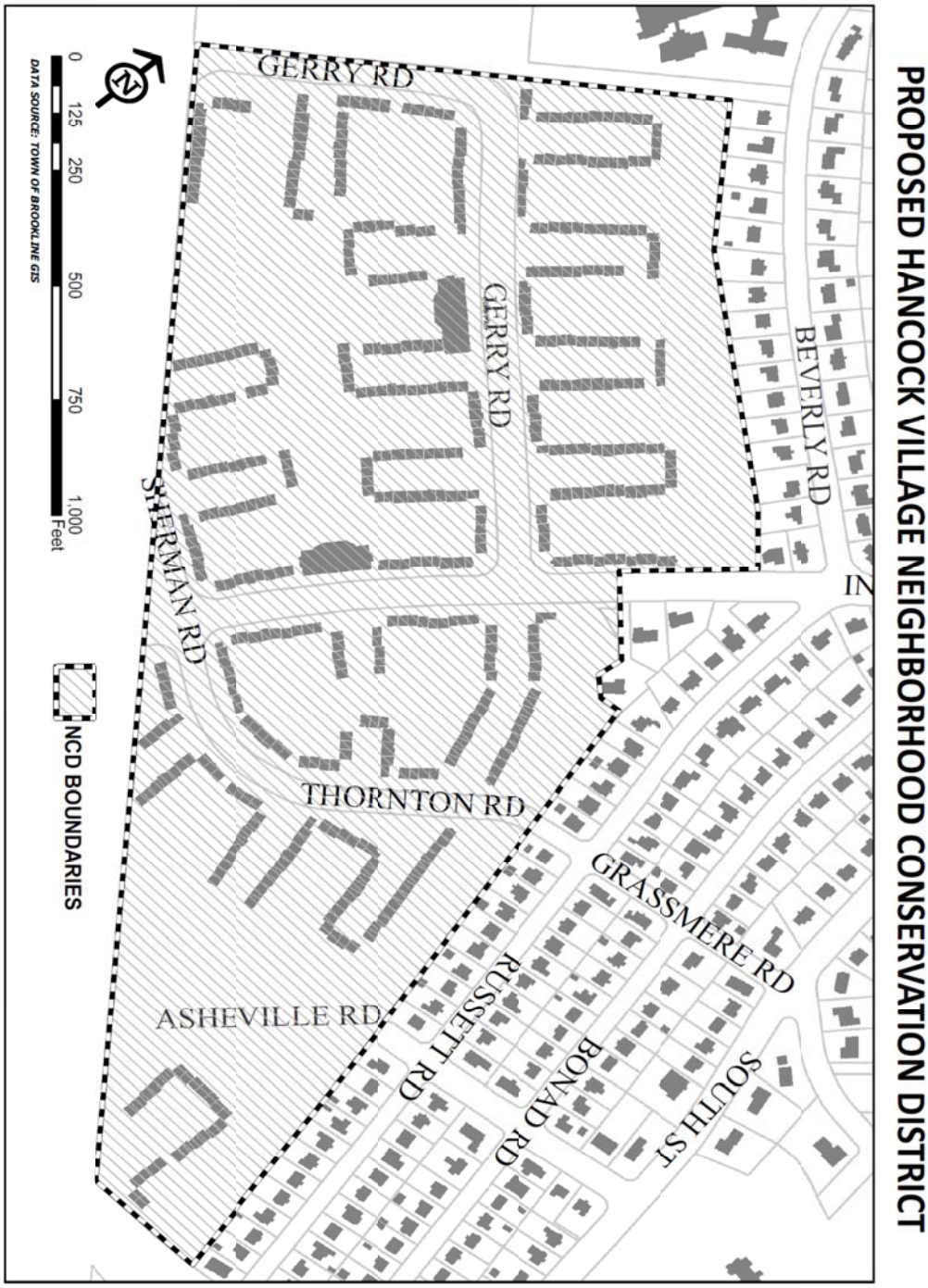
b. Alteration of existing grades by more than three feet in vertical height;

c. Removal of existing pedestrian paths that separate pedestrians from vehicular traffic;

d. Addition of new impervious surfaces within 100 feet of abutting properties, including the Hoar Sanctuary or single-family homes; and

e. Loss of open space through building coverage exceeding 20% of the area of the district or through loss of the “greenbelt” now serving as a buffer to the abutting single-family detached homes.

Nothing in this Section 5.10.3.d.1 shall be construed as repealing or modifying any existing by-law or regulation of the Town, but it shall be in addition thereto. To the extent this Section 5.10.3.d.1 imposes greater restrictions upon a Reviewable Project than other by-laws, regulations or statutes, such greater restrictions shall prevail. The provisions of this Section 5.10.3.d.1 shall be deemed to be separable. If any of its provisions, subsections, sentences or clauses shall be held to be invalid or unconstitutional, the remainder shall continue to be in full force and effect.


PROPOSED HANCOCK VILLAGE NEIGHBORHOOD CONSERVATION DISTRICT
BEVERLY RD
GERRY RD
GERRY RD
SHERMAN RD
THORNTON RD
ASHEVILLE RD
GRASSMERE RD
RUSSETT RD
BONAD RD
SOUTH ST
0 125 250 500 750 1,000 Feet
DATA SOURCE: TOWN OF BROOKLINE GIS
NCD BOUNDARIES

XXX

ARTICLE 6

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

Article 6 would establish a Neighborhood Conservation District ("NCD") for the Hancock Village neighborhood, an area shown on the map on page 6-20 of the Combined Reports. Town Meeting can take favorable action on Article 6 only if Article 5 has passed.

The Hancock Village Neighborhood Conservation District would be the first NCD created in the Town, and it is an area appropriate for NCD designation. As noted in the 2005 *Neighborhood Conservation District Study for the Town of Brookline*, NCD designation could "provide protection for areas that might not be viewed as ripe" for the detailed constraints of a Local Historic District, "such as subdivisions dating to the post-WWII through 1975 period." Hancock Village, which was developed between 1946 and 1949, is such a neighborhood.

Hancock Village was designed and constructed in accordance with commitments made by the developer, John Hancock Insurance Company, including not only a commitment that there would be a buffer strip along the side of the land facing Russett and Beverly Roads but also an agreement that the area would be a "garden village type of housing" development, with horizontally divided (as opposed to vertically divided town-house type units) not exceeding 25% of the units, with flat roofs not exceeding 25% of the buildings, with building coverage not exceeding 20% of the area, and with no building over 2 stories in height.

More than six decades later, Hancock Village remains the garden village development that was originally envisioned and has become part of the fabric of the neighborhood. It is consistent in design and scale. It is respectful of the surrounding community, including abutting residential districts and the Hoar Sanctuary. The "garden village" plan remains, with courtyards, common areas, open lawns, pedestrian paths separated from vehicular traffic, unobstructed skyplanes, and vertically divided townhouse style buildings. Additional significant natural and landscape features have also been preserved, including buffer zones and prominent rock outcroppings.

The Board of Selectmen is not persuaded by objections to Article 6.

It has been argued that the owner of Hancock Village should be allowed to veto or "opt out" of the establishment of an NCD. The Board is aware of no such legal requirement, and notes that where warranted by the common good, other by-laws, including zoning changes and local historic districts, do not exempt property owners who might disfavor the application of regulations to their properties.

It has also been argued that a single-owner NCD should not be created and that other properties in the adjoining areas should have been included in the NCD. This would, of course, impermissibly expand the scope of the Article. Moreover, Hancock Village and the adjoining areas would not reasonably be governed by the same NCD guidelines. As the Preservation Commission stated when it determined that Hancock Village was eligible for the National Register of Historic Places (page 5-37 to 5-38 of the Combined Reports), Hancock Village is a development with a history that embodies significant design and city planning principles, particularly "garden city planning ideals." The project manager for the Hancock Village development was Gustave Ring, whose developments "had established the model for rental apartment-garden village apartments;" the architect was Louis Justement, then the chair of the American Institute of Architects Committee on Urban Planning; and the landscape architects were the internationally known firm of Olmsted Associates. The surrounding neighborhood does not share the same history or design principles.

It was, finally, argued that the creation of an NCD could lead to a Chapter 40B application for a comprehensive permit and/or to litigation. The same argument could be made regarding any regulatory change opposed by a developer and, if carried to its logical conclusion, would mean that the Town would never enact zoning changes, local historic districts, neighborhood conservation districts, or any other form of regulation that an affected property owner might oppose. Moreover, to the extent that existing zoning presents obstacles that the proposed development cannot overcome, there is the threat of a Chapter 40B application even without action on Article 6.

The design guidelines in Article 6 are intended to ensure that development and alterations within the Hancock Village area are compatible with the existing neighborhood and abutting properties, and, as stated on Page6-16 of the Comprehensive Reports, to provide "an additional layer of protection for existing residents of Hancock Village and its immediate surroundings."

The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on November 8, 2011, on the vote set forth on pages 6-17 to 6-20 of the Combined Reports.

ARTICLE 7

SEVENTH ARTICLE

To see if the Town will amend the General By-Laws Article 8.23, Tobacco Control as follows:

First, by adding a new Section 8.23.1 as follows:

Section 8.23.1 PURPOSE

In order to protect the health, safety and welfare of the inhabitants of the Town of Brookline, including but not limited to its younger population, by restricting the sale of tobacco products know known to be related to various and serious health conditions such as cancer, this by-law shall limit and restrict the sale of Tobacco Products within the Town of Brookline.

Second, amend Section 8.23.1, DEFINITIONS by changing the Section No. to 8.23.2 and renumbering the remaining sections accordingly and by adding the following definitions to said section:

k. Health Care Institution - An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Health under M.G.L. c. 112. Health care institution includes hospitals, clinics, health centers, pharmacies, drug stores and doctors' and dentists' offices.

l. Entity - any single individual, group of individuals, corporation, partnership, institution, employer, association, firm or any other legal entity whether public or private.

m. educational Institution - any public or private college, normal school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

n. Retail Establishment - any store that sells goods or articles of personal services to the
public.

Third, amend Section 8.23.4, SALE AND DISTRIBUTION OF TOBACCO PRODUCTS by amending the existing paragraph a. (language to be deleted is underlined and new language appears in bold) and further by adding the following paragraphs f, g. and h. to said section:

a. Permit – No Entity person, firm, corporation, establishment or agency otherwise permitted to sell tobacco products shall sell such tobacco products within the Town of Brookline without a valid tobacco sales permit issued by the Director of Public Health. Permits must be posted in a manner conspicuous to the public. Tobacco sales permits shall be renewed annually by June 1st, at a fee set forth in the Department's Schedule of Fees and Charges.

f. Prohibition Against the Sale of Tobacco Products by Health Care Institutions - No health care institution located in the Town of Brookline shall sell or cause to be sold tobacco products. Additionally, no retail establishment that operates or has a health care institution within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco products.

g. Prohibition Against the Sale of Tobacco Products by Educational Institutions - No educational institution located in the Town of Brookline shall sell or cause to be sold tobacco products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

Fourth, amend Section 8.23.5, VIOLATIONS AND PENALTIES, by deleting Section 8.23.5(c) and replacing it with the following section:

c. Any entity violating any other section of this by-law shall receive a fine of three hundred dollars ($300.00) for each offense.

Fifth, by further amending Section 8.23.5 by adding the following language:

f. Each calendar day an entity operates in violation of any provision of this regulation shall be deemed a separate violation.

g. No provision, clause or sentence of this section of this regulation shall be interpreted as prohibiting the Brookline Health Department or a Town department or Board from suspending, or revoking any license or permit issued by and within the jurisdiction of such departments or Board for repeated violations of this regulation.

Sixth, to amend Article 10.3, NON-CRIMINAL DISPOSITION, Table of Specific Penalties Under Article 10.3 by deleting the language under the heading Article 8.23, Tobacco Control and replacing it with the following language:

Section 8.23.5 Violations and Penalties

For each violation under Article 8.23 – three hundred ($300.00)

Or act on anything relative thereto.

_____

PETITIONER'S ARTICLE DESCRIPTION

This Warrant Article would prohibit the sale of tobacco products on the property of any educational institution or health care provider. Tobacco use is the leading cause of preventable disease, disability, and death in the U.S., causing approximately 443,000 Americans to die prematurely each year[1]. In fact, tobacco is the only legal product that kills half its consumers when used as recommended by manufacturers[2]. Because health care providers and educational institutions have trusted roles in our society, it is appropriate to hold those entities to a higher standard with respect to such dangerous products.

In many ways, the local educational institution acts in the place of the parent within Brookline, i.e., *in loco parentis*. Students look to their college for guidance on a myriad of complex social issues, and we expect the schools to provide that guidance, including with regard to substance abuse. Local universities have sought a strong relationship with Brookline government in an effort to provide a safe experience for students. Data suggest that college students are members of a cohort with increased risk of smoking initiation as well as increased risk into regular patterns of use[34]. Allowing for the sale of tobacco products on campus is diametric to providing that safe experience, both for the college students and for the children at numerous summer camps or K-12 courses provided by these educational institutions.

The Boston Public Health Commission banned tobacco sales at educational institutions in late 2008. Since then, no educational institution within the City of Boston has sold tobacco products in their bookstores or convenience stores on campus, nor have independent retailers situated on campus been permitted to sell tobacco products. Needham, Fall River, Wellesley, and Worcester have followed Boston's lead.

With the same stoke of pen, Boston prohibited the sale of tobacco in health care institutions, including pharmacies. Fifteen other communities within Massachusetts have followed suit. Chronologically, Boston, Needham, Newton, Everett, Walpole, Lancaster, Southboro, Oxford, Fall River, Wakefield, Westford, Worcester, Wellesley, Somerville, Westwood, and Chatham have all enacted the ban; this list includes 20% of the population of the Commonwealth. A total of 197 establishments are affected by the ban in those communities, with a high of 88 in Boston and a low of 0 in Lancaster. Eight of

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[1] Center for Disease Control and Prevention. Smoking-attributable mortality, years of potential life lost, and productivity losses—United States, 2000-2004. MMWR Morb Mortal Wkly Rep. 2008; 57(45):1226-8.
[2] Luiza da Costa e Silva, Vera. Regulatory challenges regarding the ISO/FTC standards on tobacco products testing. WSC high-level workshop on international standards for medical technologies. Conference presentation. February 2004. http://www.iso.org/iso/wsc-medtech_9_Da_Costa_e_Silva.pdf
[3] Bachman, J.G., Wadsworth, K.N., O'Malley, P.M., Johnston, L.D., Schulenberg, J.S. Smoking, Drinking, and Drug Use in Young Adulthood: The Impacts of New Freedoms and New Responsibilities. 1997.
[4] Chassin, L., Presson, C.C., Sherman, S.J., Edwards, D.A., The natural history of cigarette smoking and young adult social roles. Journal of Health and Social Behavior. 1992. 33,328-347.

eleven provinces in Canada prohibit the sale of tobacco in pharmacies, and legislators in eight American states have proposed prohibitions.

This by-law would rectify the inherent conflict of interest where cigarettes are sold by health care providers in the front of the store while pharmaceuticals needed to treat tobacco-caused illnesses such as chronic obstructive pulmonary disease (COPD) and emphysema are sold in the back of the store[5]. Pharmacists and pharmacy school students don't believe it's appropriate for pharmacies to sell tobacco by overwhelming margins[6]. Many independent pharmacies agree; no independent pharmacies in Brookline sell tobacco products at this time. Most pharmacy consumers are indifferent to sales of cigarettes, but of those who expressed an opinion, almost 5:1 claimed that they would shop at the drugstore more often if tobacco products were no longer sold there[7].

None of the Massachusetts communities that have passed this ban have been sued. San Francisco has been sued multiple times. When the dust settled, the ban in San Francisco wasn't unscathed: it was expanded[8].

Regulations prohibiting the sale of tobacco in pharmacies are supported by the American Academy of Pediatrics, the American Lung Association in New York, the American Medical Association, the American Pharmacists Association, the American Thoracic Society, the George Washington University Medical Faculty Associates, the Massachusetts Medical Society, and the University of San Francisco School of Pharmacy.

RECOMMENDATION OF THE ADVISORY COUNCIL ON PUBLIC HEALTH

The Advisory Council on Public Health unanimously supports Warrant Article 7 which would ban tobacco product sales by health care institutions and educational institutions. The Council noted that tobacco is the leading cause of death and disability in the U.S. Removing this product from sale at drug stores and in educational institutions represents one part of a multidimensional approach to reduce tobacco use, particularly among youth.

Having tobacco products in plain view and for sale in pharmacies tends to normalize the use of the products, particularly among youth who are exposed often in drug stores. Sale of tobacco at pharmacies is universally opposed by pharmacists who work in these settings. They point to the duplicity of selling a deadly product at one end of the store while they try to treat tobacco-related diseases at the other end of the store.

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[5] Wilson, DJ. Communities Mull Drugstore Ban. The Beacon. March 2011.
[6] Suchanek Hudman, K., Fenlon, C.M., Corelli, R.L., Prokhorov, A.V., Schroeder, S.A. Tobacco sales in pharmacies: time to quit. Tobacco Control. February 2006. 15(1): 35-38.
[7] Ibid.
[8] Judge tosses Safeway lawsuit over S.F. tobacco ban. San Francisco Chronicle. July 16, 2011.

We also agree that keeping tobacco products inaccessible at campuses would likely reduce tobacco use, and therefore feel this is an important component of the warrant article.

Our neighboring communities of Boston, Newton, Wellesley, and Needham have already adopted this ban. Passing this warrant article would bring Brookline in line with these and a number of other adjacent communities.
The Council noted that in every case where a drug store would be precluded from selling tobacco, there is another venue close by to purchase the products. We further noted that non-liquor store retailers are available close by to all affected drug stores, and this could be especially important for individuals in recovery or who may be codependent on alcohol and tobacco.

In conclusion, the Advisory Council on Public Health strongly urges Town Meeting to support Warrant Article 7.

BRUCE COHEN PhD – Chair
ANTHONY SCHLAFF MD, MPH
ROBERTA GIANFORTONI, MA
MILLY KRAKOW, PhD
CHERYL LEFMAN, MA
PAT MAHER, RN/NP, MA/MS

SELECTMEN'S RECOMMENDATION

Article 7 is a petitioned article that would amend the Town's general by-laws by prohibiting the sale of tobacco products on the property of any educational institution or health care provider. It is modeled after Boston's ordinance, which was also used as a basis for the ordinance / by-law enacted by Needham, Fall River, Wellesley, Newton and Worcester.

Having a health care provider such as a pharmacy selling tobacco products down the aisle from where they sell medication for emphysema, a lung disease caused by cigarette smoking, is the height of hypocrisy . In addition, selling tobacco products in places like pharmacies and educational institutions normalizes cigarettes and makes it appear to youngsters that it is acceptable behavior. Because of these public health issues, San Francisco became the first U.S. city to adopt a tobacco-free pharmacy law in 2008. Boston and Needham followed suit in 2009.

As referenced in the Petitioner's Article Description, data suggests that college students are members of a cohort who are at increased risk of smoking initiation as well as increased risk of adopting regular patterns of tobacco use. In 2010 the FDA prohibited the sale of cigarettes or smokeless tobacco to people under 18. It is totally inconsistent for health care and educational institutions to offer unsafe and unhealthy tobacco products to

people who are vulnerable and should be protected. Tobacco products continue to be available in other outlets.

The Board expressed concern about potential legal action by those impacted by the ban, but was reassured by the fact that none of the Massachusetts municipalities with the ordinance / by-law has been sued. In addition, while San Francisco has been sued, they prevailed. The Board commends the petitioner for bringing the article forward and also thanks the Advisory Council on Public Health for their support of this important issue. The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 18, 2011, on the following:

VOTED: that the Town amend the General By-Laws Article 8.23, Tobacco Control as follows:

First, by adding a new Section 8.23.1 as follows:

Section 8.23.1 PURPOSE

In order to protect the health, safety and welfare of the inhabitants of the Town of Brookline, including but not limited to its younger population, by restricting the sale of tobacco products known to be related to various and serious health conditions such as cancer, this by-law shall limit and restrict the sale of Tobacco Products within the Town of Brookline.

Second, amend Section 8.23.1, DEFINITIONS by changing the Section No. to 8.23.2 and renumbering the remaining sections accordingly and by adding the following definitions to said section:

k. Health Care Institution - An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Health under M.G.L. c. 112. Health care institution includes hospitals, clinics, health centers, pharmacies, drug stores and doctors' and dentists' offices.

l. Entity - any single individual, group of individuals, corporation, partnership, institution, employer, association, firm or any other legal entity whether public or private.

m. Educational Institution - any public or private college, normal school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

n. Retail Establishment - any store that sells goods or articles of personal services to the
public.

Third, amend Section 8.23.4, SALE AND DISTRIBUTION OF TOBACCO PRODUCTS by amending the existing paragraph a. (language to be deleted is ~~struck through~~ and new language appears in **bold**) and further by adding the following paragraphs f. and g. to said section:

a. Permit – No **Entity** ~~person, firm, corporation, establishment or agency~~ **otherwise permitted to sell tobacco products** shall sell **such** ~~tobacco~~ products within the Town of Brookline without a valid tobacco sales permit issued by the Director of Public Health. Permits must be posted in a manner conspicuous to the public. Tobacco sales permits shall be renewed annually by June 1st, at a fee set forth in the Department's Schedule of Fees and Charges.

f. Prohibition Against the Sale of Tobacco Products by Health Care Institutions - No health care institution located in the Town of Brookline shall sell or cause to be sold tobacco products. Additionally, no retail establishment that operates or has a health care institution within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco products.

g. Prohibition Against the Sale of Tobacco Products by Educational Institutions - No educational institution located in the Town of Brookline shall sell or cause to be sold tobacco products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

Fourth, amend Section 8.23.5, VIOLATIONS AND PENALTIES, by deleting Section 8.23.5(c) and replacing it with the following section:

c. Any entity violating any other section of this by-law shall receive a fine of three hundred dollars ($300.00) for each offense.

Fifth, by further amending Section 8.23.5 by adding the following language:

f. Each calendar day an entity operates in violation of any provision of this regulation shall be deemed a separate violation.

g. No provision, clause or sentence of this section of this regulation shall be interpreted as prohibiting the Brookline Health Department or a Town department or Board from suspending, or revoking any license or permit issued by and within the jurisdiction of such departments or Board for repeated violations of this regulation.

Sixth, to amend Article 10.3, NON-CRIMINAL DISPOSITION, Table of Specific Penalties Under Article 10.3 by deleting the language under the heading Article 8.23, Tobacco Control and replacing it with the following language:

Section 8.23.5 Violations and Penalties
For each violation under Article 8.23 – three hundred ($300.00)

ADVISORY COMMITTEE'S RECOMMENDATION

This Warrant Article proposes a bylaw change to prohibit the sale of tobacco products on the property of any educational institution or health care provider including establishments that have pharmacies. ("Blunt wraps" (legally called cigar wrappers) are exempted since at this time there is litigation concerning these products.)

This Warrant Article would include a fine of $300 for each infraction for any entity violating any section of this by-law.

BACKGROUND - HISTORY

1. Sir Richard Doll M.D. M.R.C.P. (British Medical Journal Sept 30 1950) was one of the first to show the correlation of smoking and cancer of the lung. One statistic in this study stated 0.3% of 649 men with lung cancer were non-smokers.

2. Bedquemin et al. (British Medical journal August 2010) were able to re-suspend smoke particles on furniture, clothes etc the day after smoking.

3. Marin et al (Ther.Drug Monit Feb2011) were able to show that mothers who smoked in the third trimester of pregnancy had nicotine and tobacco metabolites in umbilical cord tissue and meconium specimens.

4. In 1966 the first cigarette warnings were on cigarette packages

5. On June 22, 2010, new FDA regulations restricting the sale and distribution of cigarettes and smokeless tobacco to protect children and adolescents took effect.

Article 7 EFFECTS ON THREE COHORTS:

1. People who have never smoked
2. People who now smoke
3. Alcoholics and alcoholics in recovery who smoke

1. The hope for this cohort is that people, mainly students and young people who do not smoke, would benefit from a ban on tobacco products sold in stores with pharmacies. The article would eliminate the normalcy of cigarettes in such stores and the ease of access. It would not send a message that pharmacists who are now considered part of the health team approve tobacco products. It would eliminate any message that tobacco products that cause health problems and are sold in the front of a store could easily be treated with prescriptions sold in the rear of the store. Students

from Brookline High School have stated that students and young people buy many other products in these stores and the ban would eliminate any visual cue.

2. People who now smoke could just buy cigarettes in a nearby store. Therefore this article may be neutral for this cohort. The article does not address increasing the age of people to whom tobacco products can be sold. At 18 many seniors in High School are qualified to buy tobacco products.

3. Alcoholics and alcoholics in recovery who smoke might be adversely affected, since many wine and liquor stores sell tobacco products in close proximity to stores with pharmacies. The fear is they may go to a wine and liquor store to buy their tobacco products when these products are banned in a store with a pharmacy and be too easily tempted by the availability of alcohol. One scientific paper states that the cue of alcohol could be deleterious to the recovery for alcoholics. Many papers have stated that between 80 to 97 % of alcoholics and recovering alcoholics smoke and 70% are heavy smokers.

During the Committee's discussion it was noted that cigarette smokers, for the most part, harm themselves. Alcoholics, on the other hand, are at a higher risk of hurting others. A concern was voiced that this article did not address that issue. While this is an important issue, it is beyond the scope of this warrant article to consider that in the proposed bylaw.

DISCUSSION:

Since the passage of The Family Smoking Prevention and Tobacco Control Act is so recent (June 2010) there is no published hard data available with which to assess the impacts.

There are NO restrictions on the number of permits to sell tobacco products the Department of Public Health can issue. It was theorized that a limitation on permits could be addressed in a future Article. However there is a limit on the number of establishments that can sell alcohol.

This Article would affect 6 out of 37 stores that now have tobacco permits in Brookline.
There is a 1.5 to 3% profit from tobacco sales in stores with pharmacies in this area.

The Family Smoking Prevention and Tobacco Control Act states that tobacco products cannot be sold to people under the age of 18 (in MA the State law states that no one under the age of 18 can be sold or given cigarettes *unless* from a Parent or Guardian).
However, the Act does allow States and Local Government to have more restrictive age requirements. In Needham MA the minimum age is 21. Likely, this measure was passed to eliminate high school students from buying tobacco products and also match the age that you can buy alcohol. Minimum age is beyond the scope of this article. The hope is that this proposed bylaw will reduce the ease of access for students, particularly those who have not started smoking.

The Article as presented does not have any legal issues. However if we tried to limit "view" of cigarettes in stores Town Counsel advised that we would be sued. We do not know the outcome. This measure does not attempt to do that.

The language of the Article is closest to Boston's. It is not known if there has been a decrease in tobacco sales in Boston due to the new bylaw. The only data is that there are fewer tobacco permits.

At this time there are no Pharmacies within Supermarkets, but if there were some in the future they would be subject to this By-law as well.

It was reiterated there is not yet data of the effectiveness of such restrictive bylaws. However there was discussion that you need to start somewhere. There is some data from the year 2009 that indicates that 4.5% of cigarettes sold were in stores with pharmacies and that is 1.45% increase since 2005. No data was given on the closing of other stores that sold tobacco during this period. Prevalence of smokers could decrease, but consumption could remain the same due to increased addiction levels, so even the data might not accurately illustrate success.

RECOMMENDATION:
By a vote of 14 in favor, 1 opposed and 6 abstentions, the Advisory Committee recommends FAVORABLE ACTION on the vote offered by the Selectmen.

XXX

ARTICLE 8

EIGHTH ARTICLE

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

ARTICLE 8.30 FINGERPRINT-BASED CRIMINAL RECORD BACKGROUND CHECKS

Section 8.30.1 Purpose/Authorization

In order to protect the health, safety, and welfare of the inhabitants of the Town of Brookline, and as authorized by chapter 256 of the Acts of 2010, this by-law shall require a) applicants for certain Town licenses permitting the engagement in specific occupational activities within the Town as enumerated in Section 8.30.2 below to submit to fingerprinting by the Brookline Police Department, b) the Police Department to conduct criminal record background checks based on such fingerprints, and c) the Town to consider the results of such background checks in determining whether or not to grant a license.

The Town authorizes the Massachusetts State Police, the Massachusetts Department of Criminal Justice Information Systems (DCJIS), and the Federal Bureau of Investigation (FBI) as may be applicable to conduct on the behalf of the Town and its Police Department fingerprint-based state and national criminal record background checks, including of FBI records, consistent with this by-law. The Town authorizes the Police Department to receive and utilize FBI records in connection with such background checks, consistent with this by-law.

Section 8.30.2 Applicant's Submission to Fingerprinting by the Brookline Police Department

Any applicant for a license to engage in any of the following occupational activities within the Town shall submit a full set of fingerprints taken by the Brookline Police Department within ten (10) days of the date of the application for a license for the purpose of conducting a state and national criminal record background check to determine the suitability of the applicant for the license:

Liquor Licensee
Manager or Alternate Manager of a Liquor Licensee
Hawker and Peddler
Hackney Carriage (Taxi) Operator
Door-to-Door Solicitor
Second-Hand Dealer
Automobile Dealer
Ice Cream Truck Vendor

At the time of fingerprinting, the Police Department shall notify the individuals fingerprinted that the fingerprints will be used to check the individual's FBI criminal history records.

Section 8.30.3 Police Department Processing of Fingerprint-Based Criminal Record Background Checks and Communication of Results

The Police Department shall transmit fingerprints it has obtained pursuant to Section 8.30.2 of this by-law to the Identification Section of the Massachusetts State Police, DCJIS, and/or the FBI as may be necessary for the purpose of conducting fingerprint-based state and national criminal records background checks of license applicants specified in Section 8.30.2.

As further detailed in the Town's policy applicable to Town licensing-related criminal record background checks, the Police Department shall provide the applicant with a copy of the results of his or her fingerprint-based criminal record background check and supply the applicant the opportunity to complete, or challenge the accuracy of, the information contained in it, including in the FBI identification record. The Police Department shall also supply applicants with information regarding the procedures for obtaining a change, correction, or updating of a criminal record, including a copy of 28 C.F.R. Part 16.34 pertaining to FBI identification records. In no event shall the Police Department render a suitability evaluation pursuant to the paragraph below until it has taken the steps detailed in this paragraph and otherwise complied with the Town's policy applicable to Town licensing-related criminal record background checks.

The Police Department shall communicate the results of fingerprint-based criminal record background checks to the applicable licensing authority within the Town. The Police Department shall in addition render to the licensing authority its evaluation of the applicant's suitability for the proposed occupational activity based upon the results of the criminal records background check and any other relevant information known to it. In rendering its evaluation, the Police Department shall consider all applicable laws, regulations and Town policies bearing on an applicant's suitability. The Police Department shall indicate whether the applicant has been convicted of, or is under pending indictment for, a crime that bears upon his or her suitability, or any felony or misdemeanor that involved force or threat of force, controlled substances or a sex-related offense.

Section 8.30.4 Reliance on Results of Fingerprint-Based Criminal Record Background Checks

Licensing authorities of the Town shall utilize the results of fingerprint-based criminal record background checks for the sole purpose of determining the suitability of the subjects of the checks in connection with the license applications specified in Section 8.30.2. A Town licensing authority may deny an application for a license on the basis of the results of a fingerprint-based criminal record background check if it determines that the results of the check render the subject unsuitable for the proposed occupational activity. The licensing authority shall consider all applicable laws, regulations and Town policies bearing on an applicant's suitability in making this determination. The licensing

authority shall not deny a license based on information in a criminal record unless the applicant has been afforded a reasonable time to correct or complete the record or has declined to do so.

Section 8.30.5 Compliance with Law, Regulation, and Town Policy

Implementation of this by-law and the conducting of fingerprint-based criminal record background checks by the Town shall be in accordance with all applicable laws, regulations, and Town policies, including, but not limited to, the Town's policy applicable to licensing-related criminal record background checks. The Town shall not disseminate the results of fingerprint-based criminal background checks except as may be provided by law, regulation, and Town policy. The Town shall not disseminate criminal record information received from the FBI to unauthorized persons or entities.

Section 8.30.6 Fees

The fee charged by the Police Department for the purpose of conducting fingerprint-based criminal record background checks shall be set by the Board of Selectmen pursuant to G.L.c.40, s.22F. A portion of the fee, as specified in Mass. Gen. Laws Chapter 6, Section 172B ½, shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund, and the remainder of the fee may be retained by the Town for costs associated with the administration of the fingerprinting system.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

For public safety reasons, there is a need to conduct criminal record background checks of persons seeking a Town license to conduct certain occupational activities within the Town. Liquor licensees and their managers, hawkers and peddlers, taxi cab operators, door-to-door solicitors, second-hand dealers, automobile dealers, and ice cream truck vendors hold a position of trust with children, elderly people and other people at risk, gain possession of another person's property, and/or assume control of premises selling alcoholic beverages. State law requires municipal licensing authorities to conduct criminal record background checks of liquor license applicants and their proposed managers and of ice cream truck vendor license applicants,[1] and permits municipal

[1] *See* Mass. Gen. Laws ch. 138, §§ 12 (requiring that applicants for pouring licenses be of character satisfactory to the licensing authority and disqualifying applicants with a federal or state narcotics drug law conviction), 15 (requiring that applicants for package store licenses be of character satisfactory to the licensing authority and disqualifying applicants who have been convicted of a felony), and 26 (requiring that managers be of character satisfactory to the licensing authority); 2010 Mass. Acts ch. 256, § 122 (amending Chapter 270 to add Section 25 requiring that applications for an ice cream vending license be accompanying by applicant's fingerprints, requiring licensing authority to conduct criminal history background check of applicant, effective February 6, 2012).

licensing authorities to conduct such background checks of the other occupational license applicants addressed by this proposed by-law.[2]

Until now, the method of criminal record background checks permitted by law has been a name-based check that only searches a person's name within the Commonwealth of Massachusetts's probation records. The results of such searches include only Massachusetts criminal records; they do not include the criminal records of other states or pertaining to federal crimes. In addition, name-only-based checks do not include crimes where the subject used a false name at the time of the arrest. Thus, name-based checks could lead to license approvals of unsuitable persons who pose a risk to the public. Moreover, some experts believe that name-based checks carry a high error rate. For that reason, they could lead to false accusations against innocent people having names similar to wrongdoers. For these reasons, biometrically-based criminal record background checks such as those based on fingerprints are considered to be more reliable than name-based checks.

Federal law permits the FBI to assist with national criminal record background checks for municipal licensing purposes only when based on fingerprints and only for municipalities that have enacted a local law authorizing the FBI to do so. On August 5, 2010, as part of the CORI reform law ("CORI" stands for "criminal offender record information), the Governor signed legislation (codified at Chapter 6, Section 172B ½ of the Massachusetts General Laws) providing municipalities with the authority to pass ordinances and by-laws that would authorize and permit the FBI to assist with fingerprint-based national criminal record background checks in connection with such professional or occupational licensing as the municipality may specify in its ordinance or by-law. This provision of the CORI reform law takes effect on May 6, 2012; the by-law, if passed, would not be implemented until then.

SELECTMEN'S RECOMMENDATION

Article 8 was filed by the Police Chief in an effort to enhance the safety of the residents of Brookline. If approved, it will allow the Police Department, as part of its background investigation into applicants for certain licenses, to run fingerprint-based criminal record checks. Currently, the type of background check permitted by state law is name-based and only searches a person's name within the State's probation records. The results of the searches include only Massachusetts criminal records; they do not include the criminal records of other states or pertaining to federal crimes. In addition, name-only-based checks do not include crimes where the subject used a false name at the time of the arrest. As a result, name-based checks could lead to license approvals of individuals who pose a risk to the public.

Federal law permits the FBI to assist with national criminal record background checks for municipal licensing purposes only when based on fingerprints and only for municipalities

[2] *See* "General Grants" of authority to conduct criminal history background checks of municipal licensees issued by DCJIS.

that have enacted a local law authorizing the FBI to do so. In August, 2010, the Governor signed legislation that reformed the CORI statute. Part of the new law gives municipalities the authority to pass ordinances/by-laws that authorize and permit the FBI to assist with fingerprint-based national criminal record background checks in connection with a municipality's professional or occupational licensing process. This provision takes effect on May 6, 2012 and the Town would like to be prepared to take advantage of this public safety tool. If approved by Town Meeting, the proposed by-law will go into effect on May 6, 2012 and would impact the following licenses:

- Liquor Licensee
- Manager or Alternate Manager of a Liquor Licensee
- Hawker and Peddler
- Hackney Carriage (Taxi) Operator
- Solicitors and Canvassers
- Dealers in Junk, Second-Hand Articles and Antiques
- Second-Hand Motor Vehicle Dealers
- Ice Cream Truck Vendor

The Board was concerned about privacy / civil liberties and discussed this matter. The Police Department has already adopted a policy on protection of privacy for surveillance cameras and is very aware of the issues. The Board ultimately supported the article because the license applicants were seeking roles that require a significant element of public trust. Unlike surveillance cameras or the license plate scanners, which collect information on any person / plate in public view, the only people who would be fingerprinted would be those who are applying for the specific licenses outlined in the article. Applicants would be aware that fingerprinting is part of the process, and also have a mechanism for appealing any results after the prints are run. Applicants are already put through a criminal background check limited to a person's history in Massachusetts. The addition of a fingerprint check provides a more comprehensive review to what already exists. We live in a mobile society, and a Massachusetts-only check has the potential to be incomplete.

The Board recommends FAVORABLE ACTION, by a vote of 4-0 taken on October 11, 2011, on the following:

VOTED: That the Town amend the General By-Laws by adding the following article:

ARTICLE 8.30 FINGERPRINT-BASED CRIMINAL RECORD BACKGROUND CHECKS

Section 8.30.1 Purpose/Authorization

In order to protect the health, safety, and welfare of the inhabitants of the Town of Brookline, and as authorized by chapter 256 of the Acts of 2010, this by-law shall require

a) applicants for certain Town licenses permitting the engagement in specific occupational activities within the Town as enumerated in Section 8.30.2 below to submit to fingerprinting by the Brookline Police Department, b) the Police Department to conduct criminal record background checks based on such fingerprints, and c) the Town to consider the results of such background checks in determining whether or not to grant a license.

The Town authorizes the Massachusetts State Police, the Massachusetts Department of Criminal Justice Information Systems (DCJIS), and the Federal Bureau of Investigation (FBI) as may be applicable to conduct on the behalf of the Town and its Police Department fingerprint-based state and national criminal record background checks, including of FBI records, consistent with this by-law. The Town authorizes the Police Department to receive and utilize FBI records in connection with such background checks, consistent with this by-law.

Section 8.30.2 Applicant's Submission to Fingerprinting by the Brookline Police Department

Any applicant for a license to engage in any of the following occupational activities within the Town shall submit a full set of fingerprints taken by the Brookline Police Department within ten (10) days of the date of the application for a license for the purpose of conducting a state and national criminal record background check to determine the suitability of the applicant for the license:

Liquor Licensee
Manager or Alternate Manager of a Liquor Licensee
Hawker and Peddler
Hackney Carriage (Taxi) Operator
Solicitors and Canvassers
Dealers in Junk, Second-Hand Articles and Antiques
Second-Hand Motor Vehicle Dealers
Ice Cream Truck Vendor

At the time of fingerprinting, the Police Department shall notify the individuals fingerprinted that the fingerprints will be used to check the individual's FBI criminal history records.

Section 8.30.3 Police Department Processing of Fingerprint-Based Criminal Record Background Checks and Communication of Results

The Police Department shall transmit fingerprints it has obtained pursuant to Section 8.30.2 of this by-law to the Identification Section of the Massachusetts State Police, DCJIS, and/or the FBI as may be necessary for the purpose of conducting fingerprint-based state and national criminal records background checks of license applicants specified in Section 8.30.2.

As further detailed in the Town's policy applicable to Town licensing-related criminal record background checks, the Police Department shall provide the applicant with a copy

of the results of his or her fingerprint-based criminal record background check and supply the applicant the opportunity to complete, or challenge the accuracy of, the information contained in it, including in the FBI identification record. The Police Department shall also supply applicants with information regarding the procedures for obtaining a change, correction, or updating of a criminal record, including a copy of 28 C.F.R. Part 16.34 pertaining to FBI identification records. In no event shall the Police Department render a suitability evaluation pursuant to the paragraph below until it has taken the steps detailed in this paragraph and otherwise complied with the Town's policy applicable to Town licensing-related criminal record background checks.

The Police Department shall communicate the results of fingerprint-based criminal record background checks to the applicable licensing authority within the Town. The Police Department shall in addition render to the licensing authority its evaluation of the applicant's suitability for the proposed occupational activity based upon the results of the criminal records background check and any other relevant information known to it. In rendering its evaluation, the Police Department shall consider all applicable laws, regulations and Town policies bearing on an applicant's suitability. The Police Department shall indicate whether the applicant has been convicted of, or is under pending indictment for, a crime that bears upon his or her suitability, or any felony or misdemeanor that involved force or threat of force, controlled substances or a sex-related offense.

Section 8.30.4 Reliance on Results of Fingerprint-Based Criminal Record Background Checks

Licensing authorities of the Town shall utilize the results of fingerprint-based criminal record background checks for the sole purpose of determining the suitability of the subjects of the checks in connection with the license applications specified in Section 8.30.2. A Town licensing authority may deny an application for a license on the basis of the results of a fingerprint-based criminal record background check if it determines that the results of the check render the subject unsuitable for the proposed occupational activity. The licensing authority shall consider all applicable laws, regulations and Town policies bearing on an applicant's suitability in making this determination. The licensing authority shall not deny a license based on information in a criminal record unless the applicant has been afforded a reasonable time to correct or complete the record or has declined to do so.

Section 8.30.5 Compliance with Law, Regulation, and Town Policy

Implementation of this by-law and the conducting of fingerprint-based criminal record background checks by the Town shall be in accordance with all applicable laws, regulations, and Town policies, including, but not limited to, the Town's policy applicable to licensing-related criminal record background checks. The Town shall not disseminate the results of fingerprint-based criminal background checks except as may be provided by law, regulation, and Town policy. The Town shall not disseminate criminal record information received from the FBI to unauthorized persons or entities.

Section 8.30.6 Fees

The fee charged by the Police Department for the purpose of conducting fingerprint-based criminal record background checks shall be set by the Board of Selectmen pursuant to G.L.c.40, s.22F. A portion of the fee, as specified in Mass. Gen. Laws Chapter 6, Section 172B ½, shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund, and the remainder of the fee may be retained by the Town for costs associated with the administration of the fingerprinting system.

ROLL CALL VOTE:
Favorable Action
DeWitt
Daly
Mermell
Goldstein

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Article 8 seeks to amend our by-laws to allow fingerprint-based, national criminal background checks on certain categories of license applicants as allowed under Chapter 256 of the Acts of 2010. FBI policy requires that towns utilizing the national criminal records database explicitly adopt local by-laws authorizing such access. If enacted, this by-law would take effect on May 6, 2012 in conjunction with the state CORI reforms. Boston passed a similar ordinance on May 4 of this year.

DISCUSSION:
The article petitioner, Chief O'Leary, proposed this legislation in light of upcoming changes in state CORI laws. One of the department's responsibilities is to provide character recommendations on applicants for certain Town licenses. The department is currently able to conduct a Massachusetts criminal record check on name, date of birth, and social security number. The new law allows for fingerprint-based state and national criminal record checks for certain license applicants. A major goal of the law is to greatly reduce the errors and misinformation inherent in name-based checks. The fingerprint approach will eliminate many of these errors and also allow for search of the national records. The new approach will provide much better information allowing the department to be more comfortable making recommendations. In the Chief's view it's not a "collecting" strategy, but a "checking" strategy, with a goal to improve public safety.

Ice cream vendor requirement. This by-law will also allow Brookline to comply with a new requirement under state law, effective February 6, 2012, requiring fingerprint-based criminal checks on applicants for ice cream vendor licenses. Ice cream vendor applicants with a sex offender conviction must be denied the license under the new statute. Due to FBI policy, Brookline would not be able to adhere to this requirement without local authorizing legislation.

Comparison to current practices; scope of impacted businesses. Right now the police department conducts CORI checks for hackneys and door-to-door solicitors, while the Selectmen's office processes checks for other licenses, such as liquor licenses. The Police Department checks provide more information, such as prior arrests, than the checks done by the Selectmen's office. In this regard, the fingerprint registration will not provide new Massachusetts information in a Police check, just potentially better accuracy. The new provision will, however, allow the Police to collect, now unavailable, out-of-state criminal records. The department does background checks on other licensees too (second hand dealers), but not criminal checks. Today, CORI data is limited to convictions and pending cases. For example, if the department is giving a recommendation for a liquor license, under today's model they wouldn't get DUI cases that had been settled. Under the proposed approach, the department would conduct the checks for all specified licenses. The department uses its best judgment in the evaluations, and doesn't hold everything against applicants; it promises to continue its approach of using "collective judgment."

In terms of criminal checks, ice cream vendors are a new category which currently does not require a check; however this will change in February under the new statute. All other categories require some type of check in our current procedures. In the new system the national checks will give us a better view. For example, today we would not see Rhode Island convictions for a hackney applicant, but this would show up with a national check.

The enabling statute requires that our local by-law specify the categories of licenses for which fingerprint-based criminal checks may be conducted. The included categories are defined in our by-laws, and the language of the article has been amended to reflect our existing by-law license categories. Hawker and peddler licenses are defined in our by-laws. The definition currently applies to transient peddlers such as those selling items at Flag Day or the Boston Marathon. Local by-law 8.12 pertains to fruit and fish peddlers, and is somewhat antiquated. Some licenses are issued by the state under the Division of Standards, but local police chiefs conduct background checks to provide "character recommendations" as part of the approval process. The license categories listed in the proposed by-law are allowed under the statute.

The solicitor category does <u>not</u> include religious, non-profit, or political activity. It would, however, cover magazine subscription solicitors, many of whom come from out of state and blanket the area each spring. This by-law would require them to come in and be licensed. By-law 8.21 provides a "good character" rule allowing the department some leeway in determining who can go door-to-door in our neighborhoods.
Secondhand dealers are defined under section 8.14 of our by-laws, and include junk, antique, and secondhand article dealers, and require a license under our by-laws. We currently do background checks on these applicants. Clothing dealers are <u>not</u> included in this category.

The proposed by-law will only be for new license applicants as of May 6, 2012, not for renewals of existing license holders. This addresses a major concern of the business community, as expressed by the Chamber of Commerce. The Town may explore

whether existing hackney license holders applying for the new taxi medallion system can be required to undergo a fingerprint-based check.

Processes, procedures, cost. For purposes of this by-law, the department will take the fingerprints digitally on a scanner device. The prints are then submitted to the state police who put them in a civil database. Searches for matches are done against the state's criminal fingerprint database and are also sent to the FBI for a check against its national criminal database. According to the FBI, it does not keep copies of civil fingerprints. The INS database is not searched, so this check will also not pick up immigration status issues.

The Chief expects the largest volume to be for hackney licenses (400). There are only 11 secondhand dealers in town. The liquor licenses do change over, with change of ownership or management. We get a number of solicitors each spring.

The statute requires that $30 of any fee be given to the state (the Town is billed for each transaction) to be added to the Firearms Fingerprint Identity Verification Trust Fund, the remainder of any fee can be used to cover the town's cost of the fingerprinting system and services. The Chief expects that applicants will pay a fee at the time the prints are taken. Information about these fees will be provided to applicants up front as part of the process.

Civil liberties. Concerns were raised about the effect on civil liberties of this proposal: what happens to the fingerprint data after the criminal check, does the criminal check itself violate state employment statutes, will inaccurate information prevent applicants from getting a license, and is it worth capturing fingerprint data for license applicants if we haven't had any issues with regard to criminal activity from license holders.

The Town and license applicants should rightly be concerned about what happens to biometric data such as scanned fingerprints once it is submitted to the state, and then to the federal government. According to the National Focus Group on the Retention of Civil Fingerprints by Criminal History Record Repositories many states routinely try to match unidentified latent crime scene prints against their civil databases, match new arrest prints against their civil databases, and notify the agency or organization that submitted the prints to any match as part of a "rap back / hit notice". While Massachusetts does not currently search its civil database, the system is new and does not have any documented retention or use policy. This is a serious deficiency that should be corrected. While the FBI policy states that it does not track civil prints, ultimately we don't really have any control over what happens to the prints once they leave Brookline.

Another concern is that any criminal check may conflict with state law prohibiting asking job applicants about prior arrests. The license applicants are applying for a license, not a job, so there is no conflict created (except maybe in the spirit of the law). For example, you may need to obtain a drivers license to operate a car or truck, but the license itself is not a job.

One other issue is the accuracy of criminal records and the effect of those errors on the outcome of an application. According to Chief O'Leary, the department will provide the

records to the applicant and he can dispute any errors. One of the major goals of the fingerprint-based check is to eliminate many of the errors in today's system which uses only name and date-of-birth which can be inaccurate due to many factors, such as suspect misstatements. The fingerprint is much more accurate, and fingerprint data goes through the system right along with the criminal records. Names are much less accurate: anyone can use a name, and names are not unique. For example, sometimes suspects use a roommate's name or an alias rather than their own name.

The new CORI law doesn't really require us to adopt this policy, and we should be cautious about instituting such a policy if we have not had any problems with licensees who have later been found to have criminal backgrounds. The retention and search of civil prints seems to conflict with the notion of innocent until proven guilty.

Efficacy. According to the Chief, the vast majority of applicants are "good" (90%) while there are occasional "bad apples". Just because there are criminal records doesn't mean people will be denied a license; this is not true today and won't be true after this by-law is in place. There is at least one instance for which—by law—the town cannot provide a license: ice cream vendor applicants with a sex offender record must be denied a license when the new statute goes into effect in May.

The Chief said that without the by-law we only get limited information. The first time the department was allowed to do nation-wide checks was during the Democratic National Convention; the DNC wanted record checks on all hackneys. A handful of those were found to have out-of-state criminal records. The department continued doing these checks afterward, but eventually the FBI audited the department and told us we were against their policy requiring local by-law authorization, hence the submission of this article.

Summary. The new by-law does not really change who we do background checks on. It does allow us a look over state borders for a different, more complete view which should improve the department recommendations for licensees. The checks will also be more accurate using fingerprints rather than names. Ice cream vendors are different due to state legislation requiring a national check. The state civil database is a bit unsettling and the state should put appropriate policies in place regarding use and retention, and these policies should be made available to all license applicants.

RECOMMENDATION:
By a vote of 16 to 3 with 1 abstention, the Advisory Committee recommends FAVORABLE ACTION on Warrant Article 8 as recommended by the Selectmen, which includes the following amendments to license categories:

- "Solicitors and Canvassers" replaces "Door-to-Door Solicitor"
- "Dealers in Junk, Second-Hand Articles and Antiques" replaces "Second-Hand Dealer"
- "Second-Hand Motor Vehicle Dealers" replaces "Automobile Dealer"

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ARTICLE 9

NINTH ARTICLE

To see if the town will amend the General By-Laws by adding in Part VIII Public Health and Safety a new Article 8.30 -- as follows:

Article 8. -- Leaf Blowers

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

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

Section 8.---.2: USE REGULATIONS

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

2. Limitations on Use.

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

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

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

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

3. *Fees.*

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

4. *Regulations.*

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

5. *Enforcement and Penalties*

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

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

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

6. *Effective Date*.

The provisions of this Leaf Blower By-Law shall be effective in accordance with the provisions of G.L.c.40, s.32.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Three years ago, in the November 2008 Town Meeting, an article to limit moderately the use of power leaf blowers was narrowly voted no action. The strongest argument against the article was that there were provisions in the newly revised town noise ordinance voted into effect at the same Town Meeting, and a number of Town Meeting members deferred to the new noise ordinance, to give it a chance to control the abuse and excessive noise and use of power leaf blowers. Three years have passed and the noise ordinance has had little noticeable effect at all upon the abuse of power leaf blowers. Thus Town Meeting should revisit a reasonable limitation on the abuse of power leaf blowers.

Leaf blowers are not just a source of offensive noise but are a usually wholly unnecessary source of air pollutants, including carbon dioxide (CO2), particulate matter (PM10), fine particulate matter (PM2.5), carbon monoxide (CO), mono-nitrogen oxides NO and NO2 (NOx), and sulfur dioxide (SO2). These emissions contribute to climate change, regional haze, acid rain and ground level ozone. Furthermore, these emissions contribute to heart disease, lung disease, asthma attacks and other medical problems. At a time when we seek to reduce our carbon footprint and our dependence on foreign oil, we see too many instances where a landscape employee powers up a gas powered leaf blower to blow a few grass clippings off a walkway or where apartment maintenance staff cleans dust off the sidewalk and entryway with a power leaf-blower instead of using a broom. This is an unnecessary use of oil and the kind of behavior we need to eliminate if we are to battle global warming and our dependence on foreign oil.

While some would ban leaf blowers altogether, this article provides a reasonable regulatory balance, still allowing homeowners to use leaf blowers for their intended use,

to gather leaves up in the spring and fall, but limiting the excessive use where inappropriate.

MOTION TO BE OFFERED BY THE PETITIONER

Moved: that the Town amend the General By-Laws by adding in Part VIII Public Health and Safety a new Article 8.30 -- as follows:

By-Law

Article 8. -- Leaf Blowers

Section 8.---.1: STATEMENT OF PURPOSE
Reducing the use of gasoline and oil fuels and reducing carbon emissions into the environment are public purpose of the Town and the reduction of noise and emissions of particulate matter resulting from the use of leaf blowers are public purposes in protecting the health, welfare and environment of the Town. Therefore, this by-law shall limit and regulate the use of leaf blowers as defined and set forth herein.

Section 8.---.2: USE REGULATIONS

1. Leaf blower. Leaf blowers are defined as any portable gasoline powered machine used to blow leaves, dirt and other debris off lawns, sidewalks, driveways, and other horizontal surfaces.
2. Limitations on Use.
a. Leaf blowers shall not be operated except between March 15 and May 15 and between September 15 and December 15 in each year. The provisions of this subsection do not apply to the use of leaf blowers by the Town and its contractors. The provisions of this section also do not apply ~~or~~ to~~for other~~ non-residential~~institutional~~ property owners but only with respect to parcels that contain at least five acres of open space. ~~for operations in municipal such properties of this size containing parks or open space.~~ ~~, or~~ The provisions of this subsection also shall not apply to the use of leaf blowers by the Town or its designees for performing emergency operations and clean-up associated with storms, hurricanes and the like.
~~b. The use of leaf blowers is permitted only between the hours of 7:00 a.m. and 7:00 p.m. Mondays through Fridays and 9:00 a.m. and 6:00 p.m. on Saturdays, Sundays and holidays~~.
~~c. The sound emitted from any leaf blower shall be no greater than 67 decibels (dBA) when measured at 50 (fifty) feet from the leaf blower.~~
~~d. On parcels of 10,000 square feet or less, only one leaf blower at a time may be used, and on parcels larger than 10,000 square feet, only one leaf blower may be used within each 10,000 square foot area~~
~~3. *Fees.*~~
~~A fee for the Town to recover all costs connected with sound testing and enforcement may be charged in an amount set by the Board of Selectmen.~~
~~4.~~ 3. *Regulations.*

Comment [TOB1]: Not sure what you mean by "institutional". It may be clearer to use "non-residential".

Comment [TOB2]: Idon't think you need this language, but call me if you think I'm not understanding the intent of your changes.

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

~~5.~~ 4. *Enforcement and Penalties*

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

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

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

6. *Effective Date.*

The provisions of this Leaf Blower By-Law shall be effective in accordance with the provisions of G.L.c.40, s.32.

SELECTMEN'S RECOMMENDATION

The Board of Selectmen will offer their Recommendation in a Supplemental Report to be issued prior to the commencement of Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

The Advisory Committee will offer their Recommendation in a Supplemental Report to be issued prior to the commencement of Town Meeting.

XXX

ARTICLE 9

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

Article 9 is a petitioned article that seeks to amend the Town's by-laws by restricting the months when leaf blowers can be used. The petitioner expressed his concerns regarding the noise they make and the greenhouse gases they emit. Under his Motion, leaf blowers could only be used between March 15 and May 15 and between September 15 and December 15. However, Town and its contractors would be exempt, as would property owners of parcels that contain at least five acres of open space.

The Board had a number of concerns with the article as originally submitted, including that it would be hypocritical to exempt the Town and large landowners. It would have treated small property owners one way while treating large property owners another. The Selectmen were of the belief that the original article, as a by-law amendment, offered the wrong solution to the problem of leaf blowers.

The proposed resolution recognizes the concerns about noise and air quality issues, and also recognizes that leaf blowers serve a useful purpose and can improve efficiencies for users of the equipment. The Board has already begun to increase education and enforcement of the current noise control by-law. In that vein, the Department of Public Works will be including language in their Fall newsletter regarding the noise by-law and how it relates to leaf blowers and the Police Department will be performing outreach efforts. By a vote of 5-0 taken on November 1, 2011, the Board recommends FAVORABLE ACTION on the following resolution.

VOTED: that the Town adopt the following resolution:

Whereas Town Meeting has been made aware of the aversion that some members of the public have to the noise generated by the operation of leaf blowers in their neighborhoods and also to emissions and air quality impacts caused by leaf blowers and other similar equipment; and

Whereas Town Meeting has been made aware of their belief that leaf blowers should be operated only in a manner consistent with their original purpose; and

Whereas Town Meeting has been made aware of their objections to the operation of leaf blowers during summer and winter months; and

Whereas Town Meeting has also been made aware by other members of the public that leaf blowers are used year-round for other purposes and save time and increase productivity; and

Whereas Town Meeting believes that members of the community should be considerate of and sensitive to one another's concerns;

NOW, THEREFORE, BE IT RESOLVED THAT: Town Meeting urges, to the extent reasonably possible, that Town residents and their contractors, in maintaining private property, and Town employees and Town contractors, in maintaining Town property, avoid utilizing leaf blowers in the performance of such property maintenance during the periods each year from May 15 to September 15 and from December 15 to March 15.

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

Article 9 is a petitioned article that asks Town Meeting to amend the Town By-Laws by creating a new article prohibiting the operation of leaf blowers in the Town except during the periods of March 15 to May 15 and September 15 to December 15. As originally presented, the Article exempted only the Town's division of Parks and Open Space (or its contractors) from the specified seasonal restrictions. Additional exemptions, including a waiver for 1) non-residential properties of 5 acres or more, 2) commercial properties of 1 acre or more, and if "extensively used by the public," 3) clean-ups after a major weather-event (wind storm, hurricane), 4) efforts to address public health issues, and 5) non gasoline-powered leaf blowers, were added during the vetting process.

The stated purpose of Article 9 is to reduce the use of gasoline and oil fuels, to reduce carbon emissions into the environment, and to reduce noise and emissions of particulate matter resulting from the use of leaf blowers.

Background

The operation of leaf blowers in Brookline has come before Town Meeting on numerous occasions, most recently in 2008. Three years ago, Town Meeting discussed and rejected an article containing provisions similar to the original version of this year's Article 9. At the same Town Meeting, it approved a major revision of the Town's Noise by-law that contained several sections pertaining to leaf blowers, including:

- Section 8.1.5.6(a) states that all electric and internal engine devices employed in yard and garden maintenance and repair may be operated only between 8 a.m. and 8 p.m. Monday through Friday and between 9 a.m. and 8 p.m. on Saturdays, Sundays and holidays. (This restriction does not apply to maintenance equipment employed in the maintenance of golf courses).

- Section 8.1.5.6(f) imposed a 67 dBA noise limit on leafblowers, to be enforced by mandatory pre-certification and labeling by the manufacturer or the Town, rather than by requiring on-site noise level testing at the time of an alleged violation.

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

Labeling requirements for leaf blowers have been in effect since January 1, 2010. As part of its enforcement responsibilities, the Police Department notified a group of landscape contractors working in the Town as well suppliers of landscaping material of these requirements. Additionally, when a noise complaint relating to leaf blowers is received, the responding officer has advised the landscaper(s) of the Town's by-law.

From March 20, 2010 through May 28, 2011, the Police Department received and responded to 43 calls relating to leaf blowers. During that time, six operators were deemed "in compliance." Of those, however, two were actually working in Boston, two were using equipment other than a leaf blower, (e.g., a hedge trimmer), and two were operating leaf blowers that complied with the by-law. In 20 instances, the operators were gone upon the arrival of the officer, and in 17 instances, the operators were advised to get their leaf blowers tested. During the 13-month period, no fines were imposed and no written warnings were issued.

Discussion

Article 9 generated a range of responses at the Capital Subcommittee's public hearing (October 4), at a BNA/TMMA informational session on Warrant articles (October 24), and at two meetings of the full Advisory Committee (October 9 and 27). Written comments, including two e-mails from Town Meeting members (support), a letter from the Executive Director of the Brookline Housing Authority (opposed), a memo from the Director of the Town's division of Parks and Open Space (informational), and a

statement from a real estate management and maintenance firm (opposed) were also received.

Article 9's principle petitioner spoke of the community's – and society's – need to reduce its dependence on foreign oil and to eliminate non-essential mechanisms that increase its carbon footprint. He stated that operators "abuse" power leaf blowers by using them for purposes other than blowing leaves, and noted that Article 9 represents a compromise, insofar as it allows leaf blowers to be operated for their intended purpose in spring and fall but limits their "inappropriate" use during other times of the year. He believes that Article 9 gives Brookline the opportunity to play a leadership role in the Green Community and to make a statement as to how we as a community relate to each other and to the environment.

Other proponents:

- Emphasized the "excessive" noise generated by leaf blowers, particularly in densely developed neighborhoods that include multi-family residential buildings whose height and building material (brick, concrete, etc.) compound the noise problem.

- Deplored the gasoline fumes and the dust generated by leaf blowers

- Asserted that leaf blowers should be used only for their original intent: blowing leaves.

- Noted that some landscape firms blow leaves and grass clippings into the public street, leaving "a mess" for the Town to clean up.

- Stated that the existing Noise By-law has not been well publicized and is difficult to enforce. When approached by neighbors, leaf blower operators appear to be ignorant of regulations, and quite often by the time police arrive in response to a leaf blower complaint, the leaf blower operators have finished their work. A seasonal ban would be easier to enforce.

Opponents:

- Objected to excluding the Town's Parks and Open Space division of DPW from the proposed regulations, noting that such an exemption was hypocritical.

- Noted that the Town's Highway division currently uses leaf blowers on the sidewalks in the Town's commercial areas. The Highway division, if not exempted from the proposed regulations, would either have to incur greater maintenance costs by increasing personnel, divert personnel from performing other operations, or lower its maintenance standards.

- Stated that if private contractors used rakes and brooms it would take 3-4 times

longer than using leaf blowers, increasing costs to the companies and/or their customers. Increased costs could mean unkempt yards and unswept sidewalks (since private contractors often care for the tree lawns and sidewalks abutting a property). It could also force small companies to go out of business – or at least out of Brookline.

- Expressed concern that restricting leaf blower use could lower maintenance standards and "shabbify" private properties.

- Questioned whether the proposed ban ignores the whim of Mother Nature. A late, wet spring might mean that landscape maintenance firms or homeowners would not be able to complete their seasonal clean-ups by mid-May. Final roof gutter clean-outs must often wait until mid to late December to ensure that all fallen leaves and pine needles have been disposed of and are unlikely to be blown into gutters by winter winds.

In an effort to respond to some of the criticisms directed at the original proposal, the petitioner responded with a number of amendments, including, for example:

- An exemption for non-residential property owners whose parcels contain at least five acres of land.

- An exemption for commercially zoned properties greater than 1 contiguous acre in size and with "extensive use by the public."

- Permission to use leaf blowers for performing emergency operations and clean-ups associated with weather events (hurricanes, snowfall, etc.) for 72 hours after the event.

- Permission to use leaf blowers for a one hour period once a week during the prohibited period if it can be demonstrated that such a use is necessary for a public health issue.

- An exemption for non-gasoline-powered leaf blowers.

Although the Advisory Committee expressed its appreciation for the efforts of the petitioner to address some of the concerns expressed by leaf blower users through subsequent amendments, a majority of the Committee believed that the revised proposal would complicate enforcement by, for example, making exemptions dependent on zoning district boundaries, precise lot size, and a determination of whether a property was "extensively used" by the public. Members further believed that the exemptions would actually exacerbate inequities since there were no clear guidelines to indicate how the exemption categories were determined. Finally, increasing the number of exemptions seemed to undermine the purpose and justification of the article.

Recommendation
Rather than a vote of No Action on Article 9, a very substantial majority of Advisory Committee members recommends the Resolution found at the end of this report.

The Resolution recognizes that there are some members of the public who find the noise of leaf blowers objectionable and a major intrusion into the quiet of their homes and their neighborhoods. They also resent the dust and fumes that improper leaf blower use can generate. On the other hand, there are others who depend on leaf blowers to maintain the standards they have set for taking care of their yards, their sidewalks, their campuses, and the property surrounding their apartment and condominium complexes. The Resolution also recognizes that as members of a community, we have a responsibility to be considerate and respectful of each other's concerns. Both the Parks and Open Space and Highway divisions of the Town's Department of Public Works need to be similarly considerate when maintaining public spaces, and not use leaf blowers unnecessarily in instances where other tools would be as efficient.

In the course of researching and discussing the issues surrounding Article 9, the Advisory Committee recognized the need to develop and implement a plan of "outreach, education, and enforcement" of the Town's Noise By-law that address leaf blower use. Although not specifically set forth in the resolution, the Committee strongly recommends that the Board of Selectmen, as the Town's Police Commissioners, implement a more proactive approach to this matter. That approach should include better promulgation to property owners and landscape contractors of the current Noise By-Law requirement that all portable leaf blowers be certified and labeled as compliant with the 67 dBA limit, and, thereafter, enforcing the requirement of the By-Law that fines be assessed for the use of non-compliant leaf blowers.

By a vote of 22-1, the Advisory Committee recommends FAVORABLE ACTION on the vote offered by the Selectmen.

MOTION TO BE OFFERED BY THE PETITIONER

Moved: that the Town amend the General By-Laws by adding in Part VIII Public Health and Safety a new Article 8.30 -- as follows:

By-Law

Article 8. -- Leaf Blowers

Section 8.---.1: STATEMENT OF PURPOSE
Reducing the use of gasoline and oil fuels and reducing carbon emissions into the environment are public purpose of the Town and the reduction of noise and emissions of

particulate matter resulting from the use of leaf blowers are public purposes in protecting the health, welfare and environment of the Town. Therefore, this by-law shall limit and regulate the use of leaf blowers as defined and set forth herein.

Section 8.---.2: USE REGULATIONS

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

2. Limitations on Use.
a. Leaf blowers shall not be operated except between March 15 and May 15 and between September 15 and December 15 in each year. The provisions of this subsection do not apply to the use of leaf blowers by the Town and its contractors. The provisions of this section also do not apply to non-residential property owners but only with respect to parcels that contain at least five acres of open space. The provisions of this subsection also shall not apply to the use of leaf blowers by the Town or its designees for performing emergency operations and clean-up associated with storms, hurricanes and the like.

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

4. *Enforcement and Penalties*
a. This bylaw may be enforced in accordance with Articles 10.1, 10.2 and/or 10.3 of the General By-Laws by a police officer, the Building Commissioner or his/her designee, the Commissioner of Public Works or his/her designee and/or the Director of Public Health or his/her designee.
b. For the purposes of this section "person" shall be defined as any individual, company, occupant, real property owner, or agent in control of real property. Each violation shall be subject to fines according to the following schedule:

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

5. *Effective Date.*
The provisions of this Leaf Blower By-Law shall be effective in accordance with the provisions of G.L.c.40, s.32.

ARTICLE 10

TENTH 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 CREATE A TAXI MEDALLION FUND

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. Chapter 51 of the acts of 2010 is hereby amended by striking out section 6 and inserting in place thereof the following: "SECTION 6. Chapter 317 of the acts of 1974 is hereby amended by inserting after section 4 the following section:--

> Section 4A. Notwithstanding chapter 30B or section 3 of chapter 40 of the General Laws or any other general or special law to the contrary, the board of selectmen shall have the exclusive authority to sell taxi licenses by public auction, public sale, sealed bid or other competitive process established by regulations promulgated by the board after public hearing. The board of selectmen may entrust to the transportation board broad discretion to take actions necessary to implement this section and to sell taxi licenses, including, but not limited to, determining the number of licenses that shall be sold, the timing of the sales, and any conditions and limitations pertaining to the sales, including the power to revoke, suspend, renew and assign the licenses, except that the board of selectmen shall approve sales prices and execute sales contracts. Proceeds from the sales of licenses shall be paid to the collector-treasurer of the town of Brookline for deposit into a Taxi Medallion Fund, which is hereby created under this section, to be appropriated pursuant to section 5 of chapter 40 of the General Laws. The board of selectmen may direct the board that in taking any action the board considers necessary to implement this section and to sell taxi licenses, including the adoption, alteration or repeal of rules and regulations after public hearing, the board may balance, in its discretion, the interest of Brookline residents in the continuity of existing Brookline taxi businesses, the interest of existing license holders in their investment in their businesses, the interest of the town in augmenting the portion of the taxi fleet serving the town that meets the needs of its elderly and disabled residents and that minimizes the fleet's detrimental impact on the town's air quality and on the level of the town's carbon emissions as a whole, and the town's interest in maximizing revenue generated from sales of taxi licenses. The board of selectmen may consider these factors in determining whether to agree to a taxi license sales price. Any appeal from the board of selectmen's sale of a taxi license shall be to a court of competent jurisdiction.

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

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

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

As originally drafted, the legislation that authorized Brookline to sell taxi medallions (which the legislature enacted in March 2010 as 2010 Mass. Acts Ch. 51) directed the proceeds from the sale of medallions to the General Fund. Since the legislation's enactment, the Town has worked closely with a consultant and it appears that the preferred auction process will be one that is done in phases. As a result, the Town may receive the proceeds during multiple fiscal years, complicating the process of accounting for and developing a spending plan for the revenue. This warrant article amends the legislation so that a separate Taxi Medallion Fund can be established on the books of the Town, with all proceeds from the sale of medallions to be deposited into the fund. Any and all expenditures would still require Town Meeting approval. This is purely a technical change that will allow for a clearer accounting and understanding of all revenues derived from the sale of taxi medallions and of the expenditures of those revenues.

SELECTMEN'S RECOMMENDATION

Article 10 proposes an amendment to the Special Act that was approved by the State in March, 2010 relative to the Town's ability to move to a taxi medallion system. Quite simply, this article changes the fund into which the proceeds from the sale of the medallions are deposited from the General Fund to a Taxi Medallion Fund. The reason this is being proposed is to allow for a clearer accounting and understanding of all revenues derived from the sale of taxi medallions and of the expenditures of those revenues. With the proceeds being deposited into a segregated fund, Town Meeting will have the ability to act on a single spending proposal instead being presented with plans in at least two fiscal years or through a convoluted process involving the reconciliation and

use of Free Cash. Town Meeting will remain the only body that can appropriate funds from the sale of medallions.

The Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 4, 2011, on the following vote:

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

AN ACT AMENDING CHAPTER 51 OF THE ACTS OF 2010 TO CREATE A TAXI MEDALLION FUND

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. Chapter 51 of the acts of 2010 is hereby amended by striking out section 6 and inserting in place thereof the following: "SECTION 6. Chapter 317 of the acts of 1974 is hereby amended by inserting after section 4 the following section:--

> Section 4A. Notwithstanding chapter 30B or section 3 of chapter 40 of the General Laws or any other general or special law to the contrary, the board of selectmen shall have the exclusive authority to sell taxi licenses by public auction, public sale, sealed bid or other competitive process established by regulations promulgated by the board after public hearing. The board of selectmen may entrust to the transportation board broad discretion to take actions necessary to implement this section and to sell taxi licenses, including, but not limited to, determining the number of licenses that shall be sold, the timing of the sales, and any conditions and limitations pertaining to the sales, including the power to revoke, suspend, renew and assign the licenses, except that the board of selectmen shall approve sales prices and execute sales contracts. Proceeds from the sales of licenses shall be paid to the collector-treasurer of the town of Brookline for deposit into a Taxi Medallion Fund, which is hereby created under this section, to be appropriated pursuant to section 5 of chapter 40 of the General Laws. The board of selectmen may direct the board that in taking any action the board considers necessary to implement this section and to sell taxi licenses, including the adoption, alteration or repeal of rules and regulations after public hearing, the board may balance, in its discretion, the interest of Brookline residents in the continuity of existing Brookline taxi businesses, the interest of existing license holders in their investment in their businesses, the interest of the town in augmenting the portion of the taxi fleet serving the town that meets the needs of its elderly and disabled residents and that minimizes the fleet's detrimental impact on the town's air quality and on the level of the town's carbon emissions as a whole, and the town's interest in maximizing revenue generated from sales of taxi licenses. The board of selectmen may consider these factors in determining whether to agree to a taxi license sales price. Any appeal from

the board of selectmen's sale of a taxi license shall be to a court of competent jurisdiction.

This section shall not apply to a license issued and outstanding on the effective date of this act.

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

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

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Warrant Article 10 seeks Town Meeting approval to file a Home Rule Petition with the Legislature to amend the legislation allowing Brookline to sell taxi medallions (Ch. 51 of the Act of 2010). The enabling legislation provides for the proceeds of the sale of medallions to go into Brookline's General Fund. Since passage of Chapter 51, Brookline has been working with a consultant and has been advised that a phased auction process would yield more desirable results. A phased auction process would mean the receipt of auction proceeds over several fiscal years; thereby creating the potential for accounting confusion, an undesirable prospect at a time when the Town's rating agencies are carefully reviewing the Town's books. Article 10 seeks to amend Chapter 51 so that a separate Taxi Medallion Fund would be established on the books of the Town as a repository for all medallion sale proceeds. The motivation obviously being to simplify the accounting for auction receipts received over several successive fiscal years. It should be noted that any expenditure of these funds would still require Town Meeting approval. The amendment sought is technical in nature and is only meant to simplify the accounting process.

DISCUSSION:
The proposed change to the enabling legislation made sense to all Committee members. The Committee engaged in a brief discussion about what a phased auction process might look like. It should be stressed that the Town is still awaiting the consultant's final recommendation, so the discussion was purely theoretical and speculative.

COMMITTEE RECOMMENDATION:
By a vote of 22-0-1 the Advisory Committee recommends FAVORABLE ACTION on the vote offered by the Selectmen.

XXX

ARTICLE 11

ELEVENTH ARTICLE

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

> AN ACT THAT REMOVES THE TOWN OF BROOKLINE AS A MEMBER COMMUNITY IN NORFOLK COUNTY.
>
> SECTION 1. Notwithstanding any general or special law to the contrary, the town of Brookline shall, on the first day of July, in the year two thousand and twelve, cease to be a member community in Norfolk County.
> SECTION 2. Notwithstanding the provisions in SECTION 1., above, the town of Brookline shall continue to be in the Norfolk Registry District, court system and penal system.
> SECTION 3. This act shall take effect upon its passage;

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

[Petitioner is also contemporaneously filing a separate and companion warrant article in the form of a resolution, asking that the Board of Selectmen petition the Legislature to abolish the Norfolk County government. The Explanation provided here is also intended to supplement the Explanation for the companion warrant article.]

With county governments seen as outmoded and inefficient, in 1997 and 1998 the Massachusetts Legislature abolished most county governments in the Commonwealth (Berkshire, Essex, Franklin, Hampden, Hampshire, Middlesex, Suffolk, and Worcester Counties), with the result that most Massachusetts counties currently exist only as geographic regions having no county government (such as a county council or commissioners). Many of the duties of the former county offices were transferred to state offices. For example, the duties of the Registries of Deeds all now come under the Office of the Secretary of State while the Sheriffs (who are still elected locally to perform duties within the county region) and jails come under the Executive Office of Public Safety. However, several counties in southeastern Massachusetts remained untouched, including Norfolk County.

The Town of Brookline has been a part of Norfolk County since Norfolk County broke away from Suffolk County in 1793. (Interestingly, "In 1795, Brookline petitioned the Supreme Judicial Court to "change its allegiance" back to Suffolk County; the court however, ignored the petition".[1]) Brookline became an island of Norfolk County

[1] See the Secretary of State's web site at www.sec.state.ma.us/cis/cisctlist/ctlistidx.htm

(meaning it is completely non-contiguous to the rest of the County) when several former towns in Norfolk County, including West Roxbury, were annexed by the City of Boston. Brookline is therefore contiguous to Middlesex County (Newton) and Suffolk County (Boston).

Because Norfolk County's government was not abolished, Brookline continues to pay mandatory assessments to the County. (These assessments are taken out of the Town's portion of State aid and distributed to the County.) For Fiscal Year 2012, the County assessment for Brookline is nearly $700,000, which is an increase of more than 9% over the prior year. (While the County assessment to all cities and towns is capped at 2½%, there is no cap on an individual town's assessment increase.) Further, because mandated payments to the County are based on property tax assessments, Brookline's financial contribution is disproportionate to its population. For Fiscal 2012, Brookline is the largest contributor, accounting for 13.2% of the total tax levy of all 28 contributing communities. On the other hand, cities and towns, in counties not having a county government, pay no county assessments, such as, for example, Boston, Cambridge and Newton.

One may well question what the citizens of Brookline get for $700,000 and most residents would be hard pressed to even name what services Norfolk County provides. While Brookline does benefit from the provision of some minimal surveying services from the County (which arguably could be provided in house), the County Agricultural high school and reduced fees at the Presidents Golf Course in Wollaston are conspicuous examples of county services which provide virtually no benefit for Brookline.

At the 2011 Spring Town Meeting, a warrant article was filed seeking to remove Brookline as a member community in Norfolk County, i.e., as a member of the Norfolk County government community. During that debate, the main argument raised in opposition to removal was that it was likely that the Brookline District Court (the State leases the courthouse from Norfolk County) would be closed if Brookline were to seek removal from Norfolk County government. The thrust of the argument was that Brookline derives a great benefit from a public safety perspective from the hearing of criminal cases in Brookline, principally from ease of access to the court. It was argued that if the court were closed police would be used to transport suspects and defendants to courthouses in other communities at a cost and inconvenience to Brookline. As a result of the debate, the warrant article was substantially modified. The home rule petition was removed and Town Meeting adopted a resolution authorizing and requesting that the Board of Selectmen:

> 1. To communicate with other Norfolk County municipalities about the inequities inherent in the current county government system and to coordinate with other Norfolk County communities who seek a remedy.
>
> 2. To petition the Town's legislative delegation to study the inequitable status, structure and assessment mechanism of remaining county governments.
>
> 3. To issue a written report on the progress made on or before September 15, 2011 and to report further in this regard at the next Town Meeting.

Although no written progress report has yet been issued, it is Petitioner's understanding that no significant progress to date has been made. Because the deadline for the filing of warrant articles for the 2011 Fall Town Meeting is September 1, 2011, Petitioner is not in a position to wait until September 15, 2011 before filing this warrant article, as well as a companion warrant article (see below) that is being filed contemporaneously.

In any event, in July 2011, State judicial officials, in an effort to cut costs, announced the relocation of 12 courthouses, including the Brookline District Court (with 101 courthouses, Massachusetts has more courthouses than any other state in the Country). Under the proposed action, for which the official 90 day notice was given in August 2011, criminal and civil cases will no longer be heard in the Brookline District Court, which would be reserved solely for juvenile cases, thereby removing any meaningful argument for Brookline's continued participation in Norfolk County government. As a consequence, Petitioner is now once again seeking a home rule petition to remove Brookline as a member community in Norfolk County.

Contemporaneously, and as a second avenue to reach the same result, Petitioner is also filing a separate and companion warrant article in the form of a resolution asking that the Board of Selectmen request that the Town's legislative delegation petition the Legislature to abolish the Norfolk County government. It is important to understand that the requested action in the companion warrant article is not to abolish Norfolk County as a geographical/political region, only the county government overlay. Most Massachusetts counties no longer have county governments – they have previously been abolished by the State Legislature. These counties still remain as geographic and political entities, except that the county government functions have been put under the direction of state offices.

We believe it is time to act. Brookline's annual assessment has grown from $572,000 in Fiscal 2005 to nearly $700,000 in Fiscal 2012. During that period, Brookline has paid Norfolk County well in excess of $3 million in assessments.

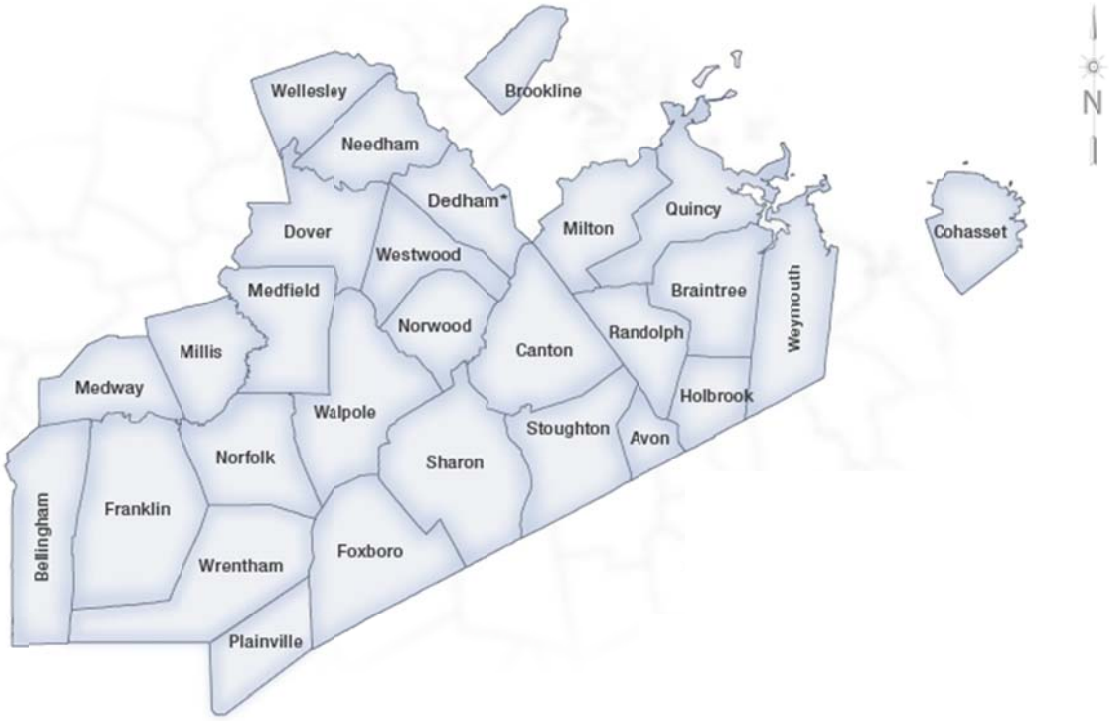
SELECTMEN'S RECOMMENDATION

Article 11 is a petitioned article that seeks Home Rule legislation to remove Brookline as a member community of Norfolk County. This issue was before Town Meeting twice before: in May, 2011(Article 21) and May, 2005 (Article 21). The core of the issue is the Town's annual assessment, which is nearly $700,000. The petitioner argues that these funds, which are not even approved by Town Meeting (they are so-called "Non-Appropriated Expenses"), could be applied directly to Town needs.

NORFOLK COUNTY

Norfolk County consists of 28 eastern Massachusetts communities, located to the South and West of Boston. The County was incorporated as a regional governmental entity in 1793, and has its county seat at the town of Dedham. A map is shown on the following page. Brookline is not contiguous with Norfolk County because it resisted annexation by

Boston (Suffolk County), which abuts Brookline on three sides. Newton (Middlesex County) forms the fourth side.



The executive authority of Norfolk County is vested in the County Commissioners, who are popularly elected by its residents. The three Commissioners are elected for a four-year term with only one permitted from any one city or town.

The county provides regional services, including the following:

- Superior, probate and trial courthouses
- Norfolk County Agricultural High School
- President's Golf Course in Quincy
- Registry of Deeds
- Sheriff's Department
- Engineering Services for Communities
- Retirement Board Administration

Since the County is without a popularly elected legislative authority, it is therefore dependent upon its Advisory Board and the General Court for its budgetary appropriations and capital outlay proposals, which require borrowing. The Advisory Board is composed of a representative from each Norfolk County municipality. The executive authority (Selectman, Mayor, Manager, etc.) of each municipality appoints its own representative annually. Each municipality and their representative's vote on the Advisory Board is weighted in accordance with the valuation of the assessment of the

combined land values in that community. In Brookline's case, its Advisory Board member's vote accounts for 13% of the total vote.

County revenues are derived from the Registry of Deeds, a tax on the cities and towns of Norfolk County based on their land values (the "County Tax"), the Commonwealth of Massachusetts, and various grants. The County Tax totals $5.3 million in FY12, with Brookline providing $698,333 for the County, or 13.2% of the total tax. The total tax levy, per the provisions of MGL Ch 35, Sec.31, cannot increase by more than 2½ % each year; however, individual tax assessments can increase more or less than that, since the formula is based on equalized valuation (property value), and that value changes every two years.

COUNTY ABOLITION

In 1997 and 1998, the State abolished eight of the 14 counties. The six remaining counties are Barnstable, Bristol, Dukes, Nantucket, Norfolk and Plymouth. Of the eight abolished counties, only one (Worcester) continues to pay a county tax, and it is frozen at FY98 levels. Municipalities in the other counties pay no county tax. When a county was abolished, the State absorbed both the assets and liabilities of the county, and if assets exceeded liabilities, the county tax was eliminated. If liabilities exceeded assets, the county tax remained until the outstanding liability was paid off.

ARTICLE 11

As proposed, and if the State legislature acted according to the warrant article, Brookline as a municipality would no longer be a member of Norfolk County as of July 1, 2012. However, for purposes of the registry district, court system, and penal system, Brookline residents and businesses would utilize regional services located in Norfolk County. This means that Brookline individuals and businesses would continue to use, and pay for, the Registry of Deeds; have legal matters heard in the County Court; and have the services of the Norfolk County jail, which is funded by a combination of State funding and Registry of Deeds revenue (again, which Brookline pays for on a fee for service basis). In addition, Brookline is legally obligated for a share of non-discretionary liabilities such as pension funding and debt.

There is virtually no chance that the State legislature would pass this legislation, particularly since it benefits only Brookline and would burden the other Norfolk County communities who would be left to bear County obligations without Brookline's share. A bill has been proposed by the Norfolk County Commissioners that would effectively eliminate the County Tax by increasing County funding from real estate tax excise. This bill has widespread support among the Norfolk County communities, all of whom would benefit, and therefore a somewhat better chance of success.

Further, a major concern is the continuing operation of the Brookline District Court if the Town of Brookline were not paying the County tax. The pure judicial function (e.g., judges, court security officers, stenographers) is funded by the State. but However, the courthouse is owned by the County which pays for operational aspects (e.g., custodial services, management and maintenance. An argument could be made that with Brookline paying no county tax, the other 27 communities within the county could choose not to support the maintenance of the courthouse, since the court is used for Brookline cases.

The Selectmen believe the District Court is valuable to the community and that there would be substantial costs as well as harm to local residents if it were no longer located in Town, especially from losing the availability of the Juvenile Court.

CONCLUSION

It is quite evident that Brookline does not make use of the services the County offers. That is not the fault of the County; rather, it is due to the extremely professional operation run by the Town. For example, the Town has a full-service Engineering Division, so it does not use the county engineering services as much as communities with a small engineering staff. Similarly, with its own Retirement Board, the Town is not part of the County's retirement system. Brookline has its own municipal golf course, with which the County's course in Quincy actually competes.

The Board believes that petitioning the State legislature to have Brookline leave Norfolk County on its own is not the proper course to take at this time. It would send the wrong message to the other Norfolk County communities, perhaps reduce needed support from other legislators in the county for any special legislation the Town may have before the General Court, denigrate from support for the County Commissioner's bill, and, most important, could result in the closing of the Brookline Municipal Court.

However, the Board does support changes to the formula used to determine the amount of the county tax. It makes little sense to have Brookline, which barely utilizes the services offered by the County, pay the largest portion of the tax simply because it has the largest equalized valuation. That is why, at the 2011 Annual Town Meeting, the Board supported a resolution under Article 21 that urged certain actions regarding the formula. Specifically, it requested the Board of Selectmen:

1. To communicate with other Norfolk County municipalities about the inequities inherent in the current county government system and to coordinate with other Norfolk County communities who seek a remedy.
2. To petition the Town's legislative delegation to study the inequitable status, structure and assessment mechanism of remaining county governments.
3. To petition the Town's legislative delegation to enact legislation to dissolve Norfolk County government or provide another remedy which will correct such inequities so that all municipalities within the Commonwealth, regardless of their geographical county, receive similar services at fair and similar costs.
4. To petition the Town's legislative delegation to enact legislation which, if Norfolk County government is to continue, will correct such inequities so that the Town of Brookline, and other similar municipalities within Norfolk County, pay county assessment proportional to the benefits derived.
5. To issue a written report on the progress made on or before September 15, 2011 and to report further in this regard at the next Town Meeting.

To date, the Board has taken various actions to effect a change to the inequitable financial structure of Norfolk County. Selectman Goldstein has been appointed to the Norfolk County Advisory Board. At meetings of the Board, he has addressed the issue publicly.

In private conversations with County Commissioners, County Administrator, and other citizen advisory board members, he has solicited support for the cause. He has also met with members of the legislative delegation in this regard. A report of activities is available on the Town's website at http://www.brooklinema.gov/index.php?option=com_content&view=article&id=16&Itemid=269. Further activity has occurred since that time, including sending a survey to all Norfolk County communities.

A majority of the Board agrees with the concerns raised by the Petitioner, but disagrees with the approach. For the time being, a majority of the Board believes that the way to rectify the inequality is to advocate for the bill filed by the County that would eliminate the County Tax. Since passing this article and/or Article 12 could alienate other communities, the prudent course of action is to see if their bill gains any traction over the next six months. Therefore, the Board recommends NO ACTION, by a vote of 3-1 taken on October 11, 2011, on Article 11.

ROLL CALL VOTE:

No Action	Favorable Action
DeWitt	Daly
Mermell	
Goldstein	

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

The Town of Brookline was originally part of Suffolk County, became part of Norfolk Country in 1793, had second thoughts in 1795, and petitioned the Supreme Judicial Court to "change its allegiance" back to Suffolk County. The petition was ignored.

In 1997 and 1998 the Massachusetts Legislature abolished Suffolk County, along with most other county governments in the Commonwealth, and many of the duties of the former county offices were transferred to state offices. For example, the duties of the Registries of Deeds are administered by the Office of the Secretary of State, while those of the sheriffs and jails are the responsibility of the Executive Office of Public Safety. However, several counties in southeastern Massachusetts remained untouched, including Norfolk County. Later, when several towns formerly in Norfolk County, including West Roxbury, were annexed by the City of Boston, Brookline became an island, non-contiguous to the rest of Norfolk County.

In 2005, the Town's County assessment was nearly $600,000, and a warrant article, calling for removal of the Town of Brookline from Norfolk County, was proposed. Town

Meeting voted to have a Moderator's Committee appointed "to consider a variety of possibilities, including Brookline's removal from the County, more extensive use of County services, a funding formula more favorable to Brookline, and encouragement to the County to provide services that are more responsive to Brookline's needs."

The following information is taken from two documents: the 2008 report of the Moderator's Committee (1), and the Selectmen's Interim Report issued on September 15, 2011(2).

Norfolk County consists of 28 municipalities. Three elected commissioners operate or maintain the following county services or facilities:

- Superior, probate and trial courthouse
- Registry of Deeds
- The Norfolk County Agricultural High School in Walpole
- Engineering services available to member municipalities
- the Presidents Golf Course in Quincy
- Retirement Board Administration.

Budgetary appropriations and capital outlay proposals are made by an Advisory Board composed of representatives appointed annually—one for each Norfolk County municipality. Members' votes on county appropriations and capital proposals are weighted in proportion to their assessment, and each municipality's assessment is based on its property values. Brookline's assessment for fiscal year 2012 was nearly $700,000 (up from $604,000 in 2009), the highest of Norfolk County communities, or 13% of the total assessed all communities. The next highest assessment is Quincy, at 10%. (2)

The following functions are overseen by the state, and access would not automatically terminate if Brookline left Norfolk County:

- Residents would continue to file all land records at the Norfolk County Registry of deeds, and to vote for the County Registrar
- Although the Brookline Courthouse is owned by the County, the State pays for rent and maintenance and the exclusive right to use the building.
- Since the Norfolk County Sheriff is supervised by the State, there would likely be no impact on Brookline police access to the jail or prison. (1)

On the other hand, the Town would lose:

- Free tuition at the Agricultural High School. 53% of the school's students live outside Norfolk County and pay annual tuition of $22,000 each; currently one Brookline student is enrolled.
- Reduced fees for use of the Golf Course (but Brookline has its own golf course).
- County engineering services. Brookline employs its own engineers, whose areas of expertise are broader than those available from the County, and rarely uses the County engineers.
- Purchasing, transportation and pension management services of the County, but the Town can obtain the same services at a similar or lower cost on its own. (1)

In 2008, the Moderator's Committee recommended that the Town:

- Attempt to change the County assessment methodology to one based on population rather than on property valuation, or on the municipality's use of County services, or on some hybrid of these approaches.
- Attempt to cap or reduce the County budget. (Although some communities might be willing to pay a larger portion of the County budget, such a change might adversely affect some communities with smaller assessments who receive substantial services from the County.)
- Work to finish the process begun 15 years ago and eliminate the remaining county governments in Massachusetts, in concert with the League of Women Voters, members of the Legislature, and other officials. (1)

Last spring a resolution by Town Meeting asked that the Selectmen

- communicate with other Norfolk County municipalities that there are inequities inherent in the current system and, in coordination with them, to seek a remedy
- Petition the Town's legislative delegation to study inequitable structure and assessment mechanism of remaining county governments
- Issue a written report on or before September 15, 2011, on progress made, and to report further in this regard at the next Town Meeting. (1)

The Selectmen's Interim Report (September 15, 2011) states that "for a number of reasons, the recommendations outlined in the 2008 Committee report were not accomplished", but they list the following "Activities in Progress:

- Selectman Goldstein has been designated as the Town's official representative on the Norfolk County Advisory Board, and he has begun meeting with county and municipal officials about state and county finances and with state legislators to assure that they are aware of Brookline's dissatisfaction with the present county structure.
- County Commissioners feel the legislation they are drafting for proposal to the State legislature in January, 2012, will accomplish Brookline's objectives, not by a comprehensive state takeover of county operations but by reducing the county assessment by half over the next five years, with a goal of eventually eliminating it. This would be accomplished by increasing the County's current 10% share of Registry revenue to 34%. In addition, for any period in which Registry revenues exceed by 10% or more the amount previously brought in by the county assessment, the excess funds would be deposited to cover the benefit liability for retired county employees, which is currently unfunded.
- The Chief Administrative Justice of the Trial Court announced a plan to consolidate the operation of several courthouses statewide, including relocating criminal and civil trials from the Brookline District Court, while maintaining an expanded juvenile court there, a change vigorously opposed by the Selectmen. Although this issue seems unrelated to the warrant articles under consideration, the Selectmen are concerned that unilateral efforts by Brookline to withdraw from Norfolk County at this time may adversely influence the decision regarding use of the Courthouse.

DISCUSSION:

Petitioners and proponents offered (i) the following reasons for supporting the warrant articles, and (ii) recommendations of action plans as discussed herein:

- as noted above, with the closure of most other county governments in 1997 and 1998, the need for such a structure has long been demonstrably obsolete.
- regardless of position on the articles, all of the interested parties who represent the Town's best interests have concluded that the Town receives no significant benefits from the County's services.
- the sooner the Town can remove itself from the County, or the County is disbanded, the monies now being consumed by the annual assessment can be redeployed to provide value to the Town.
- the Town's proportionate obligation for the County's "off balance sheet" pension and retiree health benefits will be lessened, although no plan of action has been identified. Brookline would likely still be responsible for legacy costs (pensions and healthcare), but would not incur more future obligations. In the earlier county closures, the state assumed responsibility for the unfunded obligations. It is highly unlikely Brookline would benefit from such an arrangement, however.
    - neither the State nor County Government sets aside funds to cover pension and other benefit liability for retired county employees, so those are paid out of current assessments and continue to grow.
- it is prudent to take the fastest course of action to ameliorate the financial burdens associated with Brookline's inclusion in Norfolk County:
    - the Town should act decisively on the recommendations of the 2008 Moderators Committee.
    - arguments to delay action on these articles for six months are not persuasive.
        - Since it is virtually certain that the County Commission's financing proposal will not be enacted within that time, Brookline-specific actions are necessary at this time, nor does it address the issue of this unnecessary government structure
        - our legislative representatives, representing the best interests of the Town, should be strongly encouraged to support these warrant articles.
- 89% of Norfolk County revenues are returned to the State government, making it unlikely that the State would be willing to reduce its share as would be requested in the draft proposal referred to above
- Norfolk County's budget is $25 Million, $5 Million of which is assessed to the county's member municipalities;
- Brookline, although not the largest municipality in population, pays the largest amount--13% of the $5 Million assessment—
- Opportunity costs: in the 8 years since the Town first compared the cost of County membership to value received, Brookline has paid nearly $5 Million in assessments, and in the next 5 years it will pay more than an additional $3 Million.
- As evinced by the recent action of the Trial Court, increased costs resulting from closure of the courthouse is unrelated to the continuity of Norfolk County. An informal estimate places those costs at about $250,000 annually.

  - It is unlikely that an overall decision about court closings can be made in 6 months—the process requires hearings, signing of sponsors, and other time-consuming actions. To insure that the Town's issues are addressed in a timely fashion, the Town should support these warrant articles and urge our legislators to freeze the elimination of any courts for a specified time, take the power to close courts from administrative judges, and choose a civilian administrator to decide court closings.
- Brookline is one of the few Norfolk County communities whose property values have increased, rather than declined over the past few years. Although municipalities cannot impose increases in property taxes in excess of 2 ½% without an override, no such limit applies to County assessments, since it bases its assessments on the increase in property values. Thus, if overall property values in other Norfolk municipalities have decreased, not only will the dollar cost of Brookline's assessment grow, but Brookline's share of the total Norfolk assessment will also increase.
- Town residents pay twice: first they pay disproportionately through the Town's assessment for services provided to Norfolk County members but little used by Brookline; and then, through State taxes, they pay for the services the State provides for municipalities who are not part of any county (and thus, subject to no county assessment).

Opponents of the articles gave the following reasons for their opposition:

- There is unanimous agreement among opponents that Brookline pays an unfair County assessment, but it will take time to address County deficiencies
- Concern that pursuing these warrant articles might impede the success of the efforts to reduce and ultimately replace Norfolk County assessment by increasing the share of Registry revenue retained by the County
- Concern that pursuing either of the objectives in the articles at this time might have a negative effect on the Town's efforts to maintain the functions of the Brookline Court, since closing or relocating some court functions would result in diminished service to residents and increased cost to the Town. In the proposed State Supplemental Budget, there is language to freeze courthouse closures and to assign the decision about changes to a civilian body, but this has not been agreed to by the Senate. If the matter were assigned to a planning commission, it might take 3-5 years to implement
- The actions contemplated in the warrant articles cannot be accomplished within a few months, since one of the elements required is the support of our legislative representatives and we are not yet certain of that support.
- Efforts at secession by Brookline now will merely pass the problems on to those remaining in the county. What is likely to be more productive in meeting Brookline's needs is to find areas of agreement between Brookline and other County municipalities and to work toward change through legislation, while keeping the court open.
- Unilateral action by Brookline may serve to alienate other communities – communities whose help we may need in the future.

RECOMMENDATION:
The Advisory Committee recommends FAVORABLE ACTION, by a vote 16 in Favor, 5 Opposed on Article 11:

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 THAT REMOVES THE TOWN OF BROOKLINE AS A MEMBER COMMUNITY IN NORFOLK COUNTY.

SECTION 1. Notwithstanding any general or special law to the contrary, the town of Brookline shall, on the first day of July, in the year two thousand and twelve, cease to be a member community in Norfolk County.
SECTION 2. Notwithstanding the provisions in SECTION 1., above, the town of Brookline shall continue to be in the Norfolk Registry District, court system and penal system.
SECTION 3. This act shall take effect upon its passage;

NOTES (documents referred to in this write-up and available on-line):
(1) "Report of the Moderator's Committee on Participation of the Town of Brookline in Norfolk County", November 14, 2008.
(2) "An Interim Report of Norfolk County Finances", September 15, 2011

XXX

ARTICLE 12

TWELFTH ARTICLE

To see if the Town will adopt the following Resolution:

Resolution in Support of Abolishing Norfolk County Government

WHEREAS, county governments are seen as outmoded and inefficient and in 1997 and 1998 the General Court of the Commonwealth of Massachusetts dissolved most county governments (Berkshire, Essex, Franklin, Hampden, Hampshire, Middlesex, Suffolk, and Worcester Counties);

WHEREAS, most of the functions, services and duties of the dissolved county governments were transferred to state offices. For example, the duties of the Registries of Deeds all now come under the Office of the Secretary of State while the Sheriffs and jails come under the Executive Office of Public Safety;

WHEREAS, in dissolving most county governments the Commonwealth took on liability for continuing liabilities associated with the dissolved county governments such as pensions and other post-employment benefits;

WHEREAS, Norfolk County and several other county governments in southeastern Massachusetts remain;

WHEREAS, the Town of Brookline continues to pay mandatory assessments to Norfolk County government;

WHEREAS, for Fiscal Year 2012, the Norfolk County assessment for the Town of Brookline is nearly $700,000, which is an increase of more than 9% over the prior year;

WHEREAS, municipalities which are located in counties where the county government has been dissolved receive essentially the same services from the Commonwealth as those formerly provided by the county but pay no mandatory assessment to a county government;

WHEREAS, municipalities which are located in counties where the county government has been dissolved do not contribute toward the continuing liabilities of the former county government;

WHEREAS, it is unfair and inequitable that Brookline, and other similar municipalities, should be saddled with large county government assessments while municipalities located in counties where county government has been dissolved receive essentially the same services without paying an assessment;

WHEREAS, assessments paid by municipalities to the county government are based on the municipality's property tax assessments and, therefore, the Town of Brookline's

financial contribution to Norfolk County government is dramatically disproportionate to its population and to the benefits the Town receives;

WHEREAS, except for the hearing of criminal cases in the Brookline District Court, the Town of Brookline derives minimal benefit from Norfolk County government and the few benefits which are derived could easily be provided for in an alternative and more cost efficient means;

WHEREAS, state judicial officials have recently announced that criminal and civil cases will no longer be heard in the Brookline District Court, and have given formal notice to that effect; and

WHEREAS, it is unfair and inequitable that the Town of Brookline should pay a disproportionate share of the Norfolk County government assessment relative to the benefits received by the Town of Brookline.

NOW IT IS, THEREFORE, RESOLVED, that the Board of Selectman are requested to petition the Town's legislative delegation to file a petition with the General Court to abolish the Norfolk County Government.

or act on anything relative thereto

PETITIONER'S ARTICLE DESCRIPTION

Petitioner is also contemporaneously filing a separate and companion warrant article requesting that the Selectmen file a home rule petition to remove Brookline as a member community in Norfolk County. Reference is made to the Explanation for that warrant article to supplement and explain further the basis for this warrant article.

SELECTMEN'S RECOMMENDATION

Article 11 is a petitioned resolution calling for the Board of Selectman to petition the Town's legislative delegation to file a petition with the General Court to abolish the Norfolk County Government. Please see the Selectmen's Recommendation under Article 11, which also deals with the issue of Norfolk County government, for a detailed explanation as to why the Board recommends NO ACTION, by a vote of 3-1 taken on October 11, 2011.

ROLL CALL VOTE:

No Action	Favorable Action
DeWitt	Daly
Mermell	
Goldstein	

ADVISORY COMMITTEE'S RECOMMENDATION

Please see the Advisory Committee's Recommendation under Article 11, which also deals with the issue of Norfolk County government, for a detailed explanation as to why the Committee recommends FAVORABLE ACTION, by a vote of 17 in Favor, 4 Opposed on Article 12.

VOTED: that the Town adopt the following Resolution:

Resolution in Support of Abolishing Norfolk County Government

WHEREAS, county governments are seen as outmoded and inefficient and in 1997 and 1998 the General Court of the Commonwealth of Massachusetts dissolved most county governments (Berkshire, Essex, Franklin, Hampden, Hampshire, Middlesex, Suffolk, and Worcester Counties);

WHEREAS, most of the functions, services and duties of the dissolved county governments were transferred to state offices. For example, the duties of the Registries of Deeds all now come under the Office of the Secretary of State while the Sheriffs and jails come under the Executive Office of Public Safety;

WHEREAS, in dissolving most county governments the Commonwealth took on liability for continuing liabilities associated with the dissolved county governments such as pensions and other post-employment benefits;

WHEREAS, Norfolk County and several other county governments in southeastern Massachusetts remain;

WHEREAS, the Town of Brookline continues to pay mandatory assessments to Norfolk County government;

WHEREAS, for Fiscal Year 2012, the Norfolk County assessment for the Town of Brookline is nearly $700,000, which is an increase of more than 9% over the prior year;

WHEREAS, municipalities which are located in counties where the county government has been dissolved receive essentially the same services from the Commonwealth as those formerly provided by the county but pay no mandatory assessment to a county government;

WHEREAS, municipalities which are located in counties where the county government has been dissolved do not contribute toward the continuing liabilities of the former county government;

WHEREAS, it is unfair and inequitable that Brookline, and other similar municipalities, should be saddled with large county government assessments while municipalities located in counties where county government has been dissolved receive essentially the same services without paying an assessment;

WHEREAS, assessments paid by municipalities to the county government are based on the municipality's property tax assessments and, therefore, the Town of Brookline's financial contribution to Norfolk County government is dramatically disproportionate to its population and to the benefits the Town receives;

WHEREAS, except for the hearing of criminal cases in the Brookline District Court, the Town of Brookline derives minimal benefit from Norfolk County government and the few benefits which are derived could easily be provided for in an alternative and more cost efficient means;

WHEREAS, state judicial officials have recently announced that criminal and civil cases will no longer be heard in the Brookline District Court, and have given formal notice to that effect; and

WHEREAS, it is unfair and inequitable that the Town of Brookline should pay a disproportionate share of the Norfolk County government assessment relative to the benefits received by the Town of Brookline.

NOW IT IS, THEREFORE, RESOLVED, that the Board of Selectman are requested to petition the Town's legislative delegation to file a petition with the General Court to abolish the Norfolk County Government.

XXX

ARTICLE 13

THIRTEENTH ARTICLE

To see if the Town will approve the following Resolution:

WHEREAS traffic congestion along Harvard Street near the Beacon Street intersection impacts Beacon Street traffic flow and causes significant delays for commuters, makes life more difficult for local residents whether driving, biking or walking, and is harmful to local businesses by discouraging travel to Coolidge Corner, and

WHEREAS an important contributing factor to this traffic congestion is the fact that traffic along Harvard Street must come to a complete halt when pedestrians cross Harvard Street at the Green Street crosswalk randomly and frequently, especially at times when a green light at the nearby Beacon Street traffic signal would otherwise allow Harvard Street traffic to flow more smoothly through Coolidge Corner, helping to ease traffic congestion,

NOW, THEREFORE BE IT RESOLVED THAT: Town Meeting requests relevant Town officials including members of the Planning Department, the Engineering and Transportation Divisions of the Department of Public Works, the Finance Department, and others with relevant expertise and responsibilities, prepare cost estimates for the design, installation, and operation of a pedestrian-activated crossing signal at the Green Street crosswalk on Harvard Street, said signal to be coordinated with the Beacon Street traffic signal so as minimize the impact of pedestrian crossing on traffic flow along Harvard Street; and further to prepare a line item for a Special Appropriation for such a walk signal to be included in the FY2013 Appropriation Article in the Warrant for the 2012 Annual Town Meeting.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This resolution is seeking a walk signal designed so that pedestrians crossing Harvard St. at the Green St. crosswalk do at times when the flow of traffic along Harvard St. will be minimally impacted and traffic congestion thereby reduced. Moreover, by stopping Harvard St. traffic with a red light, such a traffic control signal will enhance pedestrian safety. Pedestrians are already accustomed to and accepting of the existence of walk signals that limit opportunities for pedestrian crossing at established crosswalks along Harvard Street, including nearby crosswalks at Beacon St., Babcock St., Stedman/Williams Sts. and Fuller St., and the heavily used crosswalk at Green Street is rather unique in having no such control device, being situated as it is so close to busy Coolidge Corner. By discouraging pedestrian crossing at times when the resultant halting of Harvard St. traffic would most interfere with traffic flow through Coolidge Corner, a pedestrian-activated crossing signal appropriately coordinated with the timing of the

Beacon Street traffic signal would help alleviate traffic congestion and thus be beneficial to commuters, local residents and Coolidge Corner businesses.

SELECTMEN'S RECOMMENDATION

As originally submitted, Article 13 is a proposed resolution requesting the Transportation Board to prepare cost estimates for the design, installation, and operation of a pedestrian-activated crossing signal at the Green Street crosswalk on Harvard Street. A key component of the study would be to make sure that the signal is coordinated with the Beacon St. traffic signal so as to minimize the impact of pedestrian crossing on traffic flow along Harvard St.

Currently, traffic congestion along Harvard St. near the Beacon St. intersection negatively impacts Beacon St. traffic. A contributing factor to the congestion is the fact that traffic along Harvard St. comes to a halt when pedestrians cross Harvard St. at the Green St. crosswalk, especially at times when a green light at the nearby Beacon St. traffic signal would otherwise allow Harvard St. traffic to flow more smoothly through Coolidge Corner, helping to ease traffic congestion.

In recognition of this, the Board amended the petitioner's article to have the Town's traffic and planning professionals study the area and develop alternatives that would improve the current situation, which is different from the original article and its singular focus on the pedestrian-activated crossing signal at the Green St. crosswalk on Harvard St. Since the vote of FAVORABLE ACTION on the motion below was taken on October 25, 2011 by a vote of 5-0, the Moderator has opined that the language expands the scope of the referral motion and therefore is not permissible. Therefore, the Board will take up the language voted by the Advisory Committee at a future meeting and will prepare a Supplemental Recommendation prior to the commencement of Town Meeting.

VOTED: that the Town adopt the following Resolution:

WHEREAS traffic congestion along Harvard Street near the Beacon Street intersection impacts Beacon Street traffic flow and causes significant delays for commuters, makes life more difficult for local residents whether driving, biking or walking, and is harmful to local businesses by discouraging travel to Coolidge Corner, and

WHEREAS a contributing factor to this traffic congestion is the fact that traffic along Harvard Street must come to a complete halt when pedestrians cross Harvard Street at the Green Street crosswalk randomly and frequently, especially at times when a green light at the nearby Beacon Street traffic signal would otherwise allow Harvard Street traffic to flow more smoothly through Coolidge Corner, helping to ease traffic congestion,

NOW, THEREFORE BE IT RESOLVED THAT: Town Meeting requests the Transportation Board, in collaboration with the Engineering and Transportation Divisions of the Department of Public Works, the Planning Department, the Selectmen's staff, and others with relevant expertise and responsibilities, to study *possible ways to improve the crossing at Green Street and Harvard Street, including* the feasibility and the potential costs and benefits of a pedestrian-activated crossing signal at the Green Street crosswalk on Harvard Street, said signal to be coordinated with the Beacon Street traffic signal so as to minimize the impact of pedestrian crossing on traffic flow along Harvard Street; and further if warranted and affordable to the Town, to recommend that the cost of such an improvement be included, time permitting, in the FY2013 Appropriation Article in the Warrant for the 2012 Annual Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

This article follows up on observations made in a 2009 study by VHB **(**Vanasse Hangen Brustlin, Inc.) analyzing traffic congestion in Coolidge Corner**.** As initially presented, the article requested Town Meeting approve a resolution for cost estimates for the design, installation, and operations of a pedestrian-activated crossing signal at the Greet Street crosswalk on Harvard Street, coordinating it with the Beacon Street traffic signal. The initial language also asked that a line item for a Special Appropriation for the walk signal be included in the FY2013 Appropriation Article in the Warrant for the 2012 Annual Town Meeting.

The article has been amended to request a feasibility study and cost estimates for a pedestrian activated light at Green Street, to be followed by a line item in the FY 2013 Appropriation Article for the crossing signal if the study deemed the project to be beneficial and affordable to the Town and if time permits including the proposal in the FY 13 Appropriations article.

BACKGROUND

In the fall of 2009 the Town of Brookline hired transportation service consultant VHB to review traffic flow at two locations, one of which was Beacon Street at Harvard Street (Coolidge Corner). The specific concerns in Coolidge Corner included northbound traffic along Harvard Street, between Beacon and Babcock Streets. VHB identified four primary factors contributing to the congestion in the northbound Harvard/Beacon intersection:

1. limited use of the two-lane northbound Harvard Street approach from Beacon due to a narrow departure width (somewhat narrower than two lanes);
2. high turnover of the on-street parking and high activity at the cab stands;
3. pedestrian activity at the Green Street crosswalk; and
4. Harvard Street/Babcock Street signal operations, including signal overrides due to fire house emergency activity.

VHB indicated the most significant issue was the signal timing and phasing at the Harvard Street/Babcock Street intersection, which had: a phase for Babcock traffic to

pass; an exclusive pedestrian phase; a designated southbound left-turn phase; and signal overrides due to fire house emergency activity.

Based on their observations VHB recommended the following changes:

- Re-stripe Harvard Street northbound, between Beacon Street and Green Street, to allow for smoother 2-to-1 lane transition.
- Revise signal phasing at Babcock to 3-phase operations (versus the 4-phase operation) by making the pedestrian cycle concurrent with the Babcock Street traffic cycle, and by optimizing signal timing to maximize northbound processing capacity.
- Implement signal coordination along Harvard Street (between Beacon Street and Babcock Street).
- Implement 4-second pedestrian leadtimes for both phases of traffic at all crossings.
- Increase walk times at Beacon Street and Harvard Street to better (but not completely) allow the opportunity to cross the entirety of Beacon Street in one movement.
- Revise vehicle phase times based on updated traffic counts from 2009. (Counts were last done in 1996, and have been projected through 2006.)

As a result of the study, the Transportation Department implemented all of the suggested changes, which included removing six parking spaces and three cab stands between Beacon Street and Green Street.

VHB remarked that the implementation of the suggested changes along Harvard Street from Beacon to Babcock would be somewhat diminished by the Green Street crosswalk and pre-emption calls from the Fire Station. They recommended against any changes to the Green Street intersection, however, for three reasons:

1. The “free-flow” walking mall character of the area.
2. The habit of pedestrians to cross at-will at that intersection.
3. The cost of installing a light (approximately $150-200K) compared to other recommended, low-cost adjustments.

VHB summarized their findings on the Green Street crosswalk as follows:

“While friction from the Green Street crosswalk does impact vehicle progression in both directions along Harvard Street, it did not seem to be the dominant issue in creating backups. VHB feels the recommendations provided…have a great possibility of addressing the issues highlighted. If future observations reveal that the Green Street crosswalk is having a greater impact than observed as part of these efforts, some consideration could be made to signalize the crossing and implement in a coordinate system with the traffic signals at Beacon Street and Babcock Street. However, it does not appear that the cost related to such a treatment would be justified at this time by its potential benefit.”

Note: There was a separate study commissioned by the Planning Department in 2007. The purpose of that study was to examine all transportation modes and parking management in Coolidge Corner. Traffic Solutions, the firm that conducted the study, suggested both short and long term improvements. The study wrongly suggested there was already a pedestrian activated light 30 feet north of the Harvard/Beacon intersection. Their recommendation was to coordinate the (non-existent) pedestrian activated light with the light at the Harvard/Beacon intersection.

DISCUSSION

There was general acknowledgement that traffic congestion in Coolidge Corner is still an issue, despite recent improvements which have come about since the Transportation Department implemented the VHB-recommended adjustments.

The Transportation Department generally commissions traffic studies approximately every ten years. Consequently, the Department is unlikely to revise the traffic flow further or study it again for some time unless it is asked to do so by Town Meeting. Without additional study, there is no way to know if a pedestrian walk signal at Green Street would negatively impact traffic flow or improve current conditions and pedestrian safety.

By adding conditions to the article calling for a feasibility study directed by the Transportation Board and other relevant bodies, and by calling for a review of the costs and benefits of a new pedestrian-light signal, Article 13 as amended appears to be a reasonable next step in addressing the remaining traffic issues in Coolidge Corner.

With the prescriptive language calling for the installation of a pedestrian activated light removed, there was some concern that the scope of the feasibility study for the Green Street light might be too narrow, missing the opportunity to identify related or impacted areas, should there be a pedestrian-activated light at Green Street; however, the Advisory Committee believes that the Transportation Board, identified in the petitioner's amended article, would play the lead role in this undertaking and could and would expand the parameters of the area under consideration, should it see fit to do so.

RECOMMENDATION

By a vote of 21-0-0, the Advisory Committee recommends FAVORABLE ACTION on the following:

VOTED: that the Town adopt the following Resolution:

WHEREAS traffic congestion along Harvard Street near the Beacon Street intersection impacts Beacon Street traffic flow and causes significant delays for commuters, makes life more difficult for local residents whether driving, biking or walking, and is harmful to local businesses by discouraging travel to Coolidge Corner, and

WHEREAS a contributing factor to this traffic congestion is the fact that traffic along Harvard Street must come to a complete halt when pedestrians cross Harvard Street at the Green Street crosswalk randomly and frequently, especially at times when a green light at

the nearby Beacon Street traffic signal would otherwise allow Harvard Street traffic to flow more smoothly through Coolidge Corner, helping to ease traffic congestion,

NOW, THEREFORE BE IT RESOLVED THAT: Town Meeting requests the Transportation Board, in collaboration with the Engineering and Transportation Divisions of the Department of Public Works, the Planning Department, the Selectmen's staff, and others with relevant expertise and responsibilities, to study the feasibility and the potential costs and benefits of a pedestrian-activated crossing signal at the Green Street crosswalk on Harvard Street, said signal to be coordinated with the Beacon Street traffic signal so as to minimize the impact of pedestrian crossing on traffic flow along Harvard Street; and further if warranted and affordable to the Town, to recommend that the cost of such an improvement be included, time permitting, in the FY2013 Appropriation Article in the Warrant for the 2012 Annual Town Meeting.

XXX

ARTICLE 13

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

As noted in the Selectmen's Recommendation under Article 13 in the Combined Reports, the Moderator opined that the language originally voted by the Board expanded the scope of the referral motion and therefore was not permissible. Therefore, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on November 1, 2011, on the resolution offered by the Advisory Committee on page 13-5 of the Combined Reports.

ARTICLE 13

Report of the Transportation Board

Town of Brookline

Massachusetts

Department of Public Works

Engineering & Transportation Division

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

November 1, 2011

Dear Town Meeting Member,

After significant planning, public process, design-engineering, and applications for state and federal transportation dollars, from 2006 to 2009 the Massachusetts Department of Transportation oversaw the full reconstruction of Beacon Street from Cleveland Circle to St. Mary's Street. The project included the installation of enhancements to recapture the historic landscape and the multi-modal transportation features envisioned for Brookline by the original designer Frederick Law Olmsted. The project also included transportation and safety improvements such as new sidewalks, ADA compliant wheelchair ramps, bicycle accommodations, and a new coordinated traffic signal system to manage vehicular, MBTA, and pedestrian crossing movements throughout the 2 mile corridor.

Following the completion of the project, as a result of changing traffic volumes and the resulting congestion at the intersection of Beacon and Harvard Streets, the Department of Public Works retained the services of Vanasse Hangen Brustlin (VHB) to study the causes of the traffic congestion. VHB was also to recommend mitigating actions that the Town could take to minimize the congestion. The report issued by VHB in October 2009 identified 4 causes of the
traffic congestion leading to the blocking of the Beacon Street intersection: (1) limited use of the two-lane northbound Harvard street approach to Beacon Street due to a narrowed departure width, (2) high turnover of the on-street parking and high activity

related to the cab stands, (3) Green Street crosswalk activity, and (4) Harvard Street at Babcock Street traffic signal operations and emergency vehicle pre-emption. The VHB report recommended a series of actions to mitigate three of the four identified causes. The Board and staff implemented the recommendations in addition to others recommended by in house Transportation Division staff members.

In terms of the Green Street crossing, VHB stated "while friction from the Green Street crosswalk does impact vehicle progression in both directions….it did not seem to be the dominant issue in creating backups" and "if future observations reveal that the Green Street crosswalk is having a greater impact than observed…some consideration could be made to signalize the crossing and implement in a coordinated system…However it does not appear that the cost related to such a treatment would be justified at this time by its potential benefits."

The official language of the resolution on Warrant Article 13 calls for a limited study of the feasibility and the potential costs and benefits of a pedestrian-activated crossing signal at the Green Street crosswalk on Harvard Street and, if warranted and affordable to the Town, to recommend that the cost of such an improvement be included, time permitting, in the FY2013 Appropriation Article in the Warrant for the 2012 Annual Town Meeting.

Our experience along with the experience of the Department of Public Works staff is that for a coordinated traffic signal system any study undertaken should be comprehensive in scope. Therefore should Town Meeting act favorably on Warrant Article 13, the Transportation Board and Department of Public Works staff will undertake a more comprehensive study of the causes of the traffic congestion in Coolidge Corner. We will seek solutions that may or may not include the signalization of the Green Street pedestrian crosswalk.

Sincerely,

Joshua D. Safer, Chairman
Brookline Transportation Board

ARTICLE 14

FOURTEENTH ARTICLE

To see if the Town will take the following action:

"Resolved, that the Town replace all new multi-space parking meters with single space mechanical or electronic meters or, at a minimum, substantially modify or retrofit the new multi-space meters to make them easier to operate and function more efficiently.

or act on anything relative thereto

PETITIONER'S ARTICLE DESCRIPTION

The new multi-space electronic parking meters that have been installed in the Town, replacing existing single space mechanical meters, have been a dismal failure.

The new meters are difficult to operate and understand and, in many instances, have malfunctioned in a variety of ways, including simply running out of paper, and the electronic screen is difficult to read in direct sunlight. They also require people to walk excessively long distances. This is especially burdensome in the rain or snow, when you have to stand in line while other people in front of you struggle with the new meters, and then you have to walk back to your car. These difficulties work against the elderly, people with disabilities and a parent alone with children.

There are also enforcement issues: The required placement of parking receipts on the dash board means that the receipts cannot be seen in the snow or other inclement weather, making it difficult to enforce the parking regulations.

Furthermore, there is a general perception that the new meters discourage shopping in our commercial districts. The old meters permitted people to park quickly, and now many people just say why bother – it's easier to go elsewhere, and that means, in many cases, going out of Brookline.

Sometimes it is important for the Town to acknowledge that it has made a mistake. This is one of those instances – even if it may be expensive to reverse or to fix.

By far, the best solution in terms of ease of operation and convenience to the user is the single space meter. Brookline may be able to acquire mechanical meters at a relatively low cost to replace the ones that have been removed and, in the process, add new technology. In Montgomery County, Maryland, there are over 4,500 single space mechanical meters that have been retrofitted with cell phone technology at very little cost. With these meters payment can be made by depositing coins, which many people still prefer, or by using your cell phone.

Alternatively, there are electronic single space meters on the market which provide high functionality and that are easy to operate – for example, meters made by IPS, one of the leading manufacturers of electronic parking meters: http://www.ipsgroupinc.com/parking-meters/

At a minimum, the Town should be looking at modifying or retrofitting our existing multi-space meters to make them more user friendly and function more efficiently.

SELECTMEN'S RECOMMENDATION

Article 14 is a petitioned resolution concerning the new multi-space meters the Town has installed. Specifically, it calls on the Town to "replace all new multi-space parking meters with single space mechanical or electronic meters or, at a minimum, substantially modify or retrofit the new multi-space meters to make them easier to operate and function more efficiently."

In May, 2010, Town Meeting approved $1.4 million for a complete overhaul of the Town's approximately 2,500 single-space parking meters. This was an important undertaking for the Town, since not only are parking meters a significant revenue generator, but they are a major component of the Town's parking management system. With Brookline having urban characteristics in parts of town, managing parking and traffic flow is critical and parking meters play a major role in that. At the time of the appropriation, the existing meters were between 10-12 years old. Because of their age, they were more susceptible to breaking down and replacement parts were becoming harder to locate. In addition, the mechanisms inside the meter used out-dated technology, to the point that they could no longer read the new parking cards produced by manufacturers. (The existing meter cards were no longer being produced and their replacement was not compatible with the existing meter mechanisms.) Because of all of these factors, the meters need to be replaced.

The primary goals of the meter system replacement project were to replace aging single space meters and the obsolete parkcard system with a new system that would do the following:

- Encourage regular turnover through adaptive parking technology
- Maximize revenue generated from our parking meter system
- Reduce "downtime" and maintenance costs
- Realize efficiencies in Town operations
- Offer multiple forms of payments (e.g., coin, cash, credit card)

Multi-space meters were investigated because they met all of the above goals and they offered the following benefits:

- mirrored Boston, Cambridge, Wellesley and other nearby communities that were utilizing multi-space meters

- improved aesthetics
- made snow removal on sidewalks and in lots easier
- allowed for remote programming

The Town chose to undertake a pilot program in two lots (Babcock St and Kent St.). A Request for Proposal (RFP) was developed and Digital Payment Corporation's "Luke" machine was chosen for the pilot. The RFP was constructed so that if the pilot was successful, the Town could purchase additional machines from Digital. A number of factors went into choosing the Luke machine, including the following:

- it offered multiple payment options (cash, coin, credit card, parkcard)
- it could be programmed for variable rate structures (i.e., Red Sox parking)
- it could be programmed in multiple languages
- it could utilize the Town's wi-fi network for communication instead of a costly cell-based system
- it improved the aesthetic streetscape
- it offered a PCI-compliant secure credit card system
- it could both program and monitor the meters remotely
- it had the most adaptive capability, including the options of utilizing pay and display, pay by space, pay by license plate, and pay by cell
- it could issue receipts
- it had a strong history of success in colder climates
- it allowed for the purchase of Guest Overnight Parking at the machine in the lot instead of having to go to the Police station

A number of positive features became evident during the pilot, which lasted for more than 2 years (November, 2008 – April, 2011), including the following:

- multiple pay options improved convenience for users
- the number of repairs made by DPW was been reduced, and
- revenue increased.

Based on this, the Town developed a plan to replace approximately 850 single-space meters with 90 multi-space meters in certain areas including Town-owned parking lots. The remaining 1,550 single-space meters would have the mechanisms replaced and remain single-space meters.

Once rolled out in April, 2011, a number of issues arose that led to a large volume of complaints about the multi-space meters, chief among them being that they were difficult to use. Transportation Division staff made some changes that improved them, but the issue of being too difficult/confusing to use remained. As a result, the Town Administrator formed a 15-member Parking Meter Task Force consisting of the following representatives:

> Town Staff: Town Administrator, DPW Commissioner, Police Chief, CIO, Director of Planning and Community Development

Commercial Representatives: Chamber of Commerce, Brookline Booksmith, Eureka Puzzles, Coolidge Corner Merchants Association, FastFrames

Citizens At-Large: Brian Kane, Stanley Spiegel, Shari Gershenfeld, Fred Levitan, Cathy Kaplan

A direct outcome of the Task Force's work was the reprogramming of the multi-space meters in September to a more in intuitive format. The response from users was positive. While the issue some have of having to walk to the machine and back to their car with the receipt did not go away (by default, a pay-and-display system requires that), the feedback the Task Force received was that they were easier to use, transaction time decreased, and, as a result, the initial displeasure with the machines dissipated. The Task Force continues to look at ways to improve the new meters, including taking steps to reduce the distance required to walk to a machine and back to the car in certain locations.

The Board commends and thanks the Task Force for their time and efforts. Because of the improvements, a majority of the Board sees no reason to support the resolution. In fact, the language in the article calling for the Town to "substantially modify or retrofit the new multi-space meters to make them easier to operate and function more efficiently" has been accomplished courtesy of the work of the Task Force. The Board also views the possibility of replacing "all new multi-space parking meters with single space mechanical or electronic meters" as a non-starter. While there certainly were issues with the meters when initially rolled out, the meters have been improved and are meeting the goals originally established when planning for the replacement of the 2,500 meters. For example:

- nearly 50% of the revenue into the multi-space meters comes from credit cards, proof of the convenience of multiple pay options. In addition, more cash than coin is being used.
- revenue from Guest Overnight Parking is up significantly. The estimate for FY12 is more than $260,000, an amount that would be an 85% over the previous high. This speaks to both revenue maximization and convenience (can pay at the lot instead of at the Police station).
- the amount of "downtime" has been reduced since DPW employees are notified via text message if the machines are down or even about to go down because of running out of paper.

The Board also believes that there has not been enough time to evaluate the newly programmed meters; more time must pass so that the evaluation process can continue. Therefore, the Selectmen NO ACTION, by a vote of 3-1 taken on October 11, 2011, on Article 14.

ROLL CALL VOTE:

No Action	Favorable Action
DeWitt	Goldstein
Daly	
Mermell	

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Article 14 is a resolution requesting that the Town replace the multi-space parking meters with single space mechanical or electronic meters, or at a minimum, make the existing meters easier to use and more efficient for residents.

DISCUSSION:
The petitioner brought this article forward to help accelerate the town's response to issues surrounding multi-space parking meters. He believes that problems with these meters reflect poorly on the town due to the high use of these meters in our commercial areas and overnight lots. Many residents are complaining. We made the problem and we need to fix it. It is his hope that a vote from Town Meeting will help give voice to the many residents having difficulty with the meters, will expand people's knowledge and bring the topic to a broader audience, and provide support for the efforts already underway by the Town Administrator in addressing multi-space meters issues. He believes the meters should be fixed or replaced.

Issues with the multi-space meters. The petitioner enumerated issues with the multi-space meters as deployed in Brookline, and other issues were identified during review of the article:

- The purchase interaction sequence has recently changed on the meters dramatically improving their ease of use and responsiveness, but the instruction placard on the devices is for the old software version, causing confusion.
- The display is unreadable in bright sunlight. The meters support an alternate reverse color scheme with a blue background and white foreground. The Town should investigate if this feature will improve visibility under bright conditions, or address the issue in another way.
- The slot behind the credit card is manufactured by a third party, lacking primary vendor support; it doesn't work—or has difficulty with—the new Brookline Card.
- The machine has a thermal printer which will print more slowly in the winter, causing a longer wait at the meters.
- Some residents have received parking tickets while using the machines. Parking enforcement personnel did not check for people paying at the meters. Other residents noted similar experiences but were able to stop the issuing of the ticket in time. The root issue is that you have to walk back and forth from car to meter to car to shop. In Boston on Newbury Street, most people are under 50. In Brookline we have more elderly residents using our commercial areas. Walking back and forth is a burden for them or anyone with mobility difficulty. It is also difficult for parents with young children in tow. These problems are exacerbated in the winter when there are snow piles on the curbs.
- Enforcement personnel have been instructed to issue parking violations if the ticket receipt is not in the right spot on the dashboard. However, the dashboard location is inconsistent, with spaces within lots requiring ticket placement on the

driver-side dashboard, and spaces on the street requiring them on the passenger side. This is confusing for residents.

- There have been complaints from people who put money in without a ticket coming out (possibly out of paper).
- There have been complaints about the readability of the font size on the ticket receipts.
- There have been complaints of the machines not accepting currency/dollar bills.
- The meters are inconvenient in certain commercial areas where trips tend to be quick, such as pick up and drop off.
- The signage near the meters should be improved for visibility of the meter location, hours for parking, and should be more visible at night.

There are some solutions that the petitioner thought should be considered:

- If the Town adopts a numbered-space approach, then a third party makes a way to load real-time parking information into a meter maid device that shows who's paid. This could greatly increase the efficiency and accuracy of enforcement, which has become more cumbersome with the new meters.
- A numbered-space approach, supported by the current meters, could eliminate walking back and forth between car and meter, and could eliminate the "getting a ticket" while in line issue.
- Some meters can be programmed to generate a text message when you're running out of time as a convenience to residents.

Financial. The Town acquired 90 machines as part of a $1.4 million capital project. $1.02 million of this is for the multi-space meters, $380K for single-space meters. The meters require ongoing operational costs budgeted at $100,000 for credit card fees and $54,000 for data storage fees, as well as DPW and Police costs for maintenance, collections, and enforcement. The cost benefit analysis included these costs as well as increases in parking revenue and Red Sox parking.

The additional Red Sox revenue, which was targeted to bring in approximately $50,000, actually came in slightly below target. This revenue may increase in the future after the MWRA project on lower Beacon completes, as the public becomes more aware of this parking option, and when, hopefully, the Red Sox play further into the season.

Overnight parking revenue has more than doubled after the introduction of the new meters:

	FY08	FY09	FY10	FY12*
Actual	100,327	139,226	76,596	**260,000**
Target				100,000

*projected

The town sold our old single head meters to the Town of Beverly. In the unlikely event that the Town determines the meters must be replaced, the town could sell these new meters as well, so if we decide to change meters again it won't be a catastrophic financial loss.

Benefits. 51% of transactions on the new meters are via credit card, and a significant portion is via currency. Residents clearly gain a significant benefit having this payment flexibility over the previous coin meters. The large increase in overnight parking revenue attests to the convenience of obtaining overnight parking permits directly at the parking lots, providing a win-win for both the Town and residents.

In general, the meters tend to work well in our commercial parking lots. The meters also provide a visual improvement on our streets and parking lots due to the removal of the many single-space meters.

The specific multi-space meters chosen by the town provide significant flexibility and cost savings compared to similar technologies. The units provide a number of features such as pay-by-space (numbered spaces), pay by dashboard receipt (how they are configured now), and Wi-Fi data communications, which saves monthly data charges per meter leveraging our town network for maintenance and communications. The meters also have a good track record in cold climates.

Progress to date. Town Administrator Mel Kleckner agrees with the petitioner in that when the Town makes a mistake we should fix it. He created a task force to help him deal with the meters. It's not a committee, but rather a task force made up of town staff, representatives of the commercial areas and citizens. Every idea and option has been vetted through the group. Several software changes to the meters have already been deployed, dramatically improving the ease of use and responsiveness of the meters. While the premise of walking back and forth to the car remains the same, the confusion level has been greatly relieved. The task force has also talked about policy changes. The Town must be more engaged in this process and that's why he created the task force. The situation with the meters is a nightmare and hurting the credibility of the town, but we're not quite ready to claim the experiment is over; we should know what we're going to do with them before changing anything. We're not the first ones who've used multi-space meters; Philadelphia and New York now rely on multi-space meters as well.

Mel Kleckner has said the task force is looking at stickers for putting on the car window, which is what Boston uses. They are also exploring the pay-by-space option which would eliminate walking back and forth from car to meter and make enforcement much more efficient. The Town acknowledges that we have a lot of issues. No changes will be made in the next few weeks, but the Town Administrator is looking at major changes in policy to send to the BOS and Transportation Board.

Discussion. The wording of the resolution is flexible. If there are places where the meters are useful and convenient, such as for overnight parking, we can deploy them in those situations. The meters can be also improved for use in other situations such as at curbside in the commercial areas, and we have seen recent changes to the meters that have improved the situation. If the Town does determine the meters shouldn't be used in certain situations, those meters should be deployed to some of the lots which could benefit from additional meters to prevent lines in foul weather, and to shorten the distance from space to meter.

There is broad consensus that a mistake was made and that the situation should be corrected. The Advisory Committee is appreciative of the efforts of the Town Administrator in driving this process forward and seeking input from all constituencies, and is grateful to the petitioner for bringing this issue to Town Meeting.

While the initial trials of the meters were in remote locations, changes to the meters should be tested in areas that can flesh out any issues. The task force should explore using bulk transactions to speed things up at the meters; the bundling of transactions to reduce costs has already been implemented. Another important issue to address is enforcement, which is cumbersome with the dashboard receipt approach, given the small font on the tickets as well as fogged or icy windshields in winter.

The receipt-based approach should be reviewed carefully given the burden it places on the elderly, or those with mobility issues, especially in the winter.

Despite some of the significant issues, which still need to be addressed, residents have greatly benefited by the convenience of pay by cash or credit card instead of change, as evidenced by the high percentage of credit card transactions. The increase in overnight parking revenue is also very significant.

Given the usefulness of the meters in certain situations, and the progress already made by the Town Administrator, the Advisory Committee recommends amending the language of the resolution to emphasize improving and/or relocating the meters as opposed to eliminating them, which should only be considered as a last resort.

The Advisory Committee supports this resolution as a public act of Town Meeting, giving voice to the many residents who have been frustrated by the meters, and to support the Town Administrator's efforts to improve them. Franklin D. Roosevelt once said, "I agree with you, I want to do it, now make me do it." The article provides a means for broadening the conversation to the town as a whole, and giving input to the Town to improve the meters. It also serves to educate a wider audience as to the difficulties of the meters and opportunities for improving them.

RECOMMENDATION:
By a vote of 21-1 with no abstentions, the Advisory Committee recommends FAVORABLE ACTION on Warrant Article 14 as amended:

VOTED: that the Town adopt the following resolution:

Resolved, that the Town substantially modify, relocate or retrofit the new multi-space meters to make them easier to operate and function more efficiently and if it is not possible to satisfactorily solve the operational problems, then replace some or all multi-space meters with single-space mechanical or electronic meters.

XXX

ARTICLE 15

FIFTEENTH ARTICLE

Resolution to Regulate the Use of Town Parks and Playgrounds by licensed Group Day Care Centers and or Private Early Education Programs

Whereas the State Department of Early Education and Care has granted 11 Group Center licenses within ½ mile of Town Hall; and

Whereas these centers have multiple groups of children with a collective population of approximately 450 children between the ages of 3 months and five years with required staff ratios for Toddlers at 2:9 and Preschool and Pre-kindergarten children at 1:10; and

Whereas these centers are required by state law to provide one hour of physical activity each day, and many, not having their own out door play space, bring their children to nearby playgrounds; and

Whereas the introduction of too many children at one time into a playground or on any play element threatens the safe use of the parks by members of the public; and

Whereas the town has not yet measured its play elements and posted signage recommending safe use; and

Whereas the state requires a minimum of 75 square feet per child for an outside play area to be deemed safe,

Therefore, Be It Hereby Resolved That: Town Meeting urges the Brookline Parks and Recreation Commission to establish Rules and Regulations for the Safe Use of its Parks and Playgrounds by licensed Day Care Centers and or Private Early Education Programs including, but not limited to the following:

1. A master schedule set by the Director of Recreation which permits only one licensed Group Center or Early Education Program at a time, with a maximum of 20 children, into a designated playground for a period of no longer than 40 minutes

2. Issuance of a hand held permit that designates playground, hour of use and can be seen upon request

3. Posted signage indicating Group Day Center and or Private Early Educational Program staff carry permits designating playground, hour of use, and can be seen upon request.

4. Posted signage on every play element, based on the state's mandated 75 sq. ft. per child ratio, recommending maximum capacity. These numbers shall guide staff in selecting available play elements or open green space.

5. Staff supervision of children with in 6 feet of play element or closer depending on age.

6. Required group dress or identification bracelets appropriately sized to not hinder safe play.

7. Required name-face attendance sheets completed before leaving park and reviewed by Health Department during regular inspections.

8. Required pick –up and delivery of children from the Group Day Care Center and or Early Education Program facility.

9. Required staff training of rules and regulations for safe use of playgrounds.

10. And to recommend to the Board of Selectmen, an annual fee, determined by hours scheduled, to support maintenance of the grounds, improvement of equipment and to fund enforcement of the rules and regulations, with said fees to go to the Recreation Revolving Fund.

11. Or act on anything relative there to……

PETITIONER'S ARTICLE DESCRIPTION

The purpose of this resolution is to urge the Brookline Parks and Recreation Commission to establish rules and regulations for the safe use of its parks and playgrounds by licensed group day care centers and/or private early education programs.

SELECTMEN'S RECOMMENDATION

The Board of Selectmen will offer their Recommendation in a Supplemental Report to be issued prior to the commencement of Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

Article 15 urges the Brookline Parks and Recreation Commission to establish rules and regulations for the safe use of its parks and playgrounds by licensed group day care centers and/or private early education programs.

BACKGROUND:

Many day care centers have been established in the Brookline Village area. Increased use of playgrounds by large day care center classes, combined with increased use of abutters

of the parks, have increased concerns about safety as well as conflicts between users. Large Day Care Centers would bring 30 children to the park at times when the park was already crowded. Concerns about proper supervision around playground equipment and settling arguments between children were of special concern.

Brookline's Parks and Open Space Division manages over 100 sites, most playgrounds are heavily used and particularly North Brookline sees a denser use of parks. The Parks and Open Space Division received complaints about crowding and unsafe supervision, generally coming from North Brookline Playgrounds. Last year acting on the initiative of the Brookline Public Health Department, a master schedule for playground use was developed, resulting in a sharp decrease in complaints relating to overcrowding and /or safety concerns. Brookline is the only community in the state that is delegated to monitor and inspect day care centers. The standards for safety in day care are higher in Brookline than elsewhere. Safety issues in day care are monitored on an ongoing basis, both on site and in the parks by the Brookline Public Health department's licensor. Currently use of playgrounds is scheduled according to the number of children from each school. Staff is trained in first aid and CPR and staff members have business cards to pass out in the event a citizen wishes to address issues and contact the program. Last year calls to the Parks and Recreation Department about concerns of overcrowding dropped from 20 to 3 calls.

DISCUSSION:

Many families, daycare providers and daycare administrators participated in discussing article 15 through e-mails, phone calls, letters and attending meetings. A proposed fee in the original warrant article was seen as discriminating against parents who need to use day care versus parents who can afford to hire a nanny. In the five day care centers in the Village 301 children (out of 336) are from Brookline families. These Brookline families feel that paying a fee for park use is taxing them twice, also that it is extremely unfair to hold day care centers to other park use standards than groups of mothers or groups of nannies assembling in the park. Families equated proposing the proposal of this fee as a kind of "Green Child" program, similar to the "Green Dog" program.

Concern about overcrowding and feeling at times forced out by the day care centers was a concern and it was noted that "Some of the day care centers are very responsible; others are less vigilant, causing difficult situations when small children behave in an unsafe manner such as throwing sand and tussle over toys"

CONCLUSION:

State regulations already address many concerns listed in article 15. The Master schedule has decreased many concerns, however there is still a great need to continue to examine this issue. All who participated in these discussions care deeply about the wellbeing of all children in our community and suggestions were made to continue a dialogue on playground use between parents, family day care providers and large group day care centers. The Early Childhood Advisory Committee was recommended as a group that might provide a forum for continued discussion. Posting the master schedule for playground use on the Brookline Website may be beneficial.

To address the need to continue to look at the heavy use of the parks in Brookline Village (in particular the Billy Ward Playground) the Advisory Committee amended article 15 and voted FAVORABLE ACTION on article 15 as amended (19-1-1):

VOTED: that the Town adopt the following resolution:

Resolution to Encourage Coordination of Use of Town Parks and Playgrounds by Licensed Group Day and Care Centers and or Private Early Education Programs

Whereas the State Department of Early Education and Care has granted 11 Group Center licenses within ½ mile of Town Hall;

Whereas these centers have multiple groups of children with a collective population of approximately 450 children between the ages of 3 months and five years with required staff ratios for Toddlers at 2:9 and Preschool and Pre-kindergarten children at 1:10;

Whereas these centers are required by state law to provide one hour of physical activity each day, and many, not having their own outdoor play space, bring their children to nearby playgrounds;

Whereas the number of children in daycare centers in Brookline is growing;

Whereas the Town of Brookline's Parks offer attractive, well-equipped playgrounds;

Whereas the introduction of too many children at one time into a playground or on any play element threatens the safe and enjoyable use of the playgrounds; and

Whereas the Department of Public Health is currently coordinating use of playgrounds by day care centers to prevent overcrowding;

Therefore, be It hereby resolved that Town Meeting urges the Department of Health to continue coordination of use of playgrounds by day care centers. Further, Town Meeting urges the Brookline Parks and Recreation Commission to continue monitoring use of playgrounds by day care centers and to develop appropriate policies to address any systemic problems that are observed. Finally, Town Meeting urges continuing discussion regarding coordination of use of public playgrounds among all of the stakeholders including the Brookline Parks and Open Space Division, the Brookline Department of Public Health, the Brookline Recreation Department, operators of day care centers, family day care providers, and parents whose children use the playgrounds.

XXX

ARTICLE 15

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

Article 15 is a petitioned resolution that, as originally proposed, urged the Brookline Parks and Recreation Commission to establish rules and regulations for the safe use of the Town's parks and playgrounds by licensed day care centers and or private early education programs. The use of town parks/playgrounds by day cares/early education programs has become an issue with the recent influx of these facilities in Brookline Village. Specifically, the issue is overcrowded parks/playgrounds, which bring with it safety concerns and potential conflicts between user groups.

The original article focused on 10 specific rules/regulations, including required group dress or identification bracelets; issuance of a hand held permit that designates playground hours of use; a master schedule set by the Director of Recreation that permits only one licensed group center or early education program at a time, with a maximum of 20 children, into a designated playground for a period of no longer than 40 minutes; and an annual fee to support the maintenance of the grounds, improvement of equipment, and to fund enforcement of the rules and regulations. State regulations already address some of the proposals listed in article 15. For this and other reasons the Board felt that the original language was not necessary. In addition, the Board objected to the proposal to establish a fee for use of parks/playgrounds, especially with the vast majority of the children in these programs being residents of Brookline.

It was clear from the meetings held by the Selectmen on Article 15 that the issues brought forward by the petitioner were festering and there were tensions between certain groups. However, the Board believes that the amended resolution offered by the Advisory Committee on page 15-4 of the Combined Reports addresses the concerns in a more appropriate manner than the original article. Therefore, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on November 1, 2011 on the motion of the Advisory Committee.

ARTICLE 15

Amendment offered by Maya French, TMM-8

Motion: to amend the vote of the Advisory Committee by replacing the "Now Therefore Be It Resolved" clause with the following:

NOW THEREFORE BE IT RESOLVED THAT: the Town Moderator appoint a Committee to research proper coordination of public playgrounds and open spaces used by private early education centers in Town on a regular basis to ensure safety and fair business use.

Said Committee to include early education center representatives, parents and Town Departments, including the Town Building Department.

Be it further resolved that the Parks and Recreation Department, and the Department of Public Health, establish a mechanism for tracking complaints and any unsafe use of public playgrounds and public spaces by early education centers, and provide reports related to compliance with State regulations related to playground use and supervision.

Said recommendations related to policies and playground use to be provided at the November 2012 Special Town Meeting.

Explanation:
The proposed amendment will create a mechanism for further study of the problem that was raised and create a mechanism for the Committee to report back to Town Meeting Members. I believe this would achieve one of the implied components of the original article: examining whether public parks are safe for very young children when they are de facto playgrounds for private pre-schools that don't have outdoor play space that has been approved according to State standards.

ARTICLE 16

SIXTEENTH ARTICLE
To see if the Town will adopt the following resolution:

Resolution to Change the Scheduling of Town Meetings

WHEREAS Town Meeting has historically met on Tuesday, Wednesday, and Thursday evenings until it has concluded its business; and

WHEREAS an experiment in the spring of 2011 to hold Town Meeting on non-consecutive evenings was well-received and appreciated by many Town Meeting Members; and

WHEREAS a number of Town Meeting Members prefer a schedule of non-consecutive evenings; and

WHEREAS other Town Meeting Members prefer to meet on consecutive evenings,

NOW THEREFORE BE IT RESOLVED that Town Meeting intends that the spring Annual Town Meeting, shall be held on two non-consecutive evenings per week and that the fall Special Town Meeting shall be held on up to three consecutive evenings per week and asks the Selectmen and the Moderator to schedule accordingly. Such schedule shall remain in effect as permanent or for such lesser period of time as Town Meeting shall determine in voting this article.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This warrant article asks the Board of Selectmen and Moderator to schedule future Town Meetings in a way that will accommodate the greatest number of current and future Town Meeting Members.

This warrant article recognizes that there is a diversity of experience and perspective among Town Meeting members.

- Personal and professional responsibilities lead some Town Meeting Members to favor consolidating Town Meeting sessions on consecutive evenings.
- The same considerations lead other Town Meeting Members to find it easier to participate if there is a schedule of non-consecutive evenings.

In order to best meet the diverse needs of Town Meeting Members, this warrant article proposes an annual schedule that includes Town Meetings scheduled both ways. Since

the Annual (spring) Town Meeting agenda tends to be more full and often runs for three or four evenings, it would be scheduled for non-consecutive evenings and occur over two weeks. The Fall Town Meeting, which can sometimes be completed in two sessions, would be held on consecutive evenings and could be expected to be completed in one week.

Historic Schedule – Advantages and Disadvantages

The historic 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 in between meetings for Town Meeting Members to caucus or negotiate informally between sessions.

Proposed Schedule – Feedback from One-Time Experiment in Spring 2011

In spring 2011, at the request of Town Meeting members, the Board of Selectmen and Moderator scheduled the Annual Town Meeting with non-consecutive sessions as a one-time experiment. This experiment provided the following data:

- Numerous Town Meeting Members, many who self-identified as parents of young children or people with full-time jobs, voiced enthusiasm for this schedule on the Town Meeting Member listserve.

- Some Town Meeting Members strongly prefer the traditional schedule of consecutive evenings.

- Some Town Meeting Members who prefer the traditional schedule acknowledged that it is important to schedule Town Meeting in a way that encourages participation from a diverse group of residents.

- The 2011 Annual Town Meeting included a warrant article with complex procedural issues (Article 19, on the Transportation Board review process). Having more time between sessions of Town Meeting allowed the interested parties to resolve numerous complex issues via email and telephone before the article came to Town Meeting. As a result, the discussion on the floor of Town Meeting was orderly and efficient, despite the complex procedural issues involved.

- Anecdotal evidence suggests that some prospective Town Meeting Members are discouraged from running for Town Meeting when it is scheduled on three

consecutive evenings and would be more likely to run if the proposed schedule were adopted.

Summary
Our town benefits when a wide variety of residents can participate in town governance. The greater the diversity of volunteers engaged in local government, the stronger our town will be. The proposed new schedule will encourage participation in Town Meeting from a wider variety of residents and make it easier for residents with a wide range of personal and professional situations to engage in this important form of public life.

SELECTMEN'S RECOMMENDATION

Article 16 is a proposed resolution that asks the Selectmen and the Moderator to schedule Annual Town Meetings so that they are held on two non-consecutive evenings per week as opposed to the traditional practice of having Town Meeting convene on consecutive nights between Tuesday – Thursday. Article 19 of the 2010 Fall Town Meeting involved the same subject matter and passed narrowly. As a result, the 2011 Annual Town Meeting was held on a Tuesday-Thursday-Tuesday schedule. Reaction to that schedule was mixed.

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 2011 experiment of non-consecutive nights at the Annual Town Meeting continues or we revert back to the consecutive evening schedule. While the Selectmen recommend NO ACTION, by a vote of 3-1-1 taken on October 1, 2011, on Article 16, we look forward to getting a better sense of Town Meeting's preferred future meeting schedule.

ROLL CALL VOTE:

No Action	Favorable Action	Abstain
Daly	DeWitt	Benka
Mermell		
Goldstein		

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Several months ago, some TMM's requested that the Annual Town Meeting planned for May, 2011, be scheduled on non-consecutive evenings. There were considerable conversations about this issue among TMMs and the Board of Selectmen and the

Moderator agreed to try a non-consecutive schedule for the Spring 2011 Town Meeting as a one-time experiment.

Subsequently, Article 16, a resolution concerning the scheduling of Town Meeting, was drafted for the fall Town Meeting warrant by four TMMs: Rebecca Plaut Mautner, Brian Kane, Andrew Fischer and A. Joseph Ross. The Petitioners believe that the experimental scheduling in the spring suited many TMM's and ask that such scheduling continue for the Annual Town Meeting, but that the Fall Special Town Meeting be scheduled on consecutive nights, as it has in the past.

DISCUSSION:

The Petitioners cite several reasons for their request that the Annual Town Meeting be held on non-consecutive evenings:

1. Many people, especially parents of young or school age children, find a consecutive schedule difficult and burdensome. Petitioners contend that a non-consecutive schedule would ease the constraints that some citizens feel when deciding whether to seek a Town Meeting seat.
2. A schedule with non-consecutive meetings allows busy TMMs more time to read emails and TM materials handed out on the first evening of TM.
3. A schedule with non-consecutive meetings allows those on opposite sides of an issue to negotiate and work out compromises.
4. Two of the petitioners also remarked that they feel more fatigued after a week of 3 consecutive evening meetings, than they did after the Spring Town Meeting when the meetings were non-consecutive.

The Petitioners recognize that there are still many TMMs who prefer the consecutive schedule for different reasons:

1. For those who travel for professional or personal reasons, a consecutive schedule is more manageable.
2. Some TMMs prefer the consecutive schedule because it consolidates meetings into a single week and is therefore, easier to schedule in their busy lives.

The Petitioners recognize that many TMMs prefer the traditional consecutive schedule while many others prefer the non-consecutive schedule. In the warrant article, Petitioners have recognized both preferences by proposing that the Annual Town Meeting, which usually has more warrant articles and issues to be discussed be scheduled non-consecutively, while the Fall Town Meeting be scheduled according to a consecutive schedule because it is usually shorter and because it is so close to the Thanksgiving holiday.

The Advisory Committee focused on the language of the resolve clause, and members expressed concern that a resolution could not bind future Town Meetings. Accordingly, the Advisory Committee struck the last sentence of Petitioners' motion and made other word deletions or substitutions.

It was noted that the contention by Petitioners that others in the community will run for Town Meeting if there is a non-consecutive schedule is based on anecdotal evidence.

The sentiment was expressed that this resolution is a fair and reasonable compromise that recognizes the different preferences of TMMs.

Accordingly, the Advisory Committee recommends Favorable Action, by a vote of 13 in favor, 6 opposed, and 3 abstentions, on an amended version of the article as follows:

VOTED: that the Town adopt the following resolution:

Resolution to Change the Scheduling of Town Meetings

WHEREAS Town Meeting has historically met on Tuesday, Wednesday, and Thursday evenings until it has concluded its business; and

WHEREAS an experiment in the spring of 2011 to hold Town Meeting on non-consecutive evenings was well-received and appreciated by many Town Meeting Members; and

WHEREAS a number of Town Meeting Members prefer a schedule of non-consecutive evenings; and

WHEREAS other Town Meeting Members prefer to meet on consecutive evenings,

NOW THEREFORE BE IT RESOLVED that Town Meeting desires that the spring Annual Town Meeting be held on two non-consecutive evenings per week and that the fall Special Town Meeting be held on up to three consecutive evenings per week and asks the Selectmen and the Moderator to schedule accordingly.

XXX

ARTICLE 17

SEVENTEENTH ARTICLE
Resolution: Classroom Pledge of Allegiance is Bad for Education, Diversity, & Patriotism

To see if the Town will adopt the following Resolution:

1. Whereas: Brookline has proud traditions cherishing not only educational excellence, but also diversity, *e.g.*, for families of varied nationalities, cultures, religions, beliefs, and (dis)abilities;

2. Whereas: Our School Committee in 2011 made more "uniform" its prior but unevenly enforced "policy," to now mandate that each principal include at least weekly in her/his morning announcements in all classrooms a purportedly "voluntary" Pledge of Allegiance recitation, without clearly (or at all) guiding teachers, students, and/or parents as to how to proceed – a futile goal anyway, resulting in the opposite of "uniform" behavior, not unifying, but dividing, a near-spectacle that is even a disservice to "patriotism";

3. Whereas: The 2011 policy was based on a pre-existing one, in turn based on a moribund and toothless 1978 law, M.G.L. c.71, §69, passed after our SJC and AG Bellotti had each ruled it unconstitutional, and Gov. Dukakis' had therefore courageously vetoed it – because it compels teachers to lead a religiously-tinged Pledge, as does the 2011 policy for principals;

4. Whereas: For numerous Brookline parents the Pledge's overall thrust and/or specific content – when recited in kids' classrooms, "captive" settings, under auspices of the school's principal authority figure – even if purportedly "voluntary," is ill-advised for various heartfelt reasons:

A. Some parents' disagree with some or many of its specific pronouncements, *e.g.*, religious beliefs (offensive in secular schools, anyway); in essence "my country right or wrong"; insensitivity to non-US-citizen families; seeming satisfaction about our accomplishments, like "liberty & justice for all," rather than stating them as aspirational ideals;

B. It is literally and psychologically a "loyalty-oath" [see *www.answers.com/topic/loyalty-oath*], reminiscent of McCarthyism or some horrific totalitarian regimes. During principals' announcements in classrooms, a purportedly "voluntary" Pledge is an oxymoron, a difficult "Hobson's Choice," especially for kids as young as six. It is inherently coercive, especially for younger kids. Groups like ACLU & ADL have urged that classroom Pledging has a "coercive effect, ... plac[ing] students in the untenable position of choosing between participating in an exercise with religious content or protesting";

C. Daily classroom Pledging even has "bullying" parallels. Brookline's new "*Bullying Prevention-Intervention Plan*" begins, "[I]n keeping with [our] core value of respect for human differences ...," and says, "'bullying' includes "verbal ...

expression ... that ... causes ... emotional harm ... [or] creates a hostile ... environment ...”; and, “[we] will treat each other in a civil manner, respect[ing] differences ... and support[ing] vulnerable populations”;

D. One prominent School Committee member publicly acknowledges that “rote recitation of the Pledge advances nothing for learning or for civic values.” Indeed, it is educationally un-sound – since it discourages “critical thinking” and in some ways teaches kids how *not* to be a good citizen in a diverse republic; and

5. Whereas: With divisiveness and nationwide media spotlight, from 1983 to 1992 Town Meeting annually rejected an allegedly “voluntary” Pledge as an official ritual, eventually in 1992 adopting a very successful compromise – offering a Pledge opportunity before convening,

Now, Therefore Be It Resolved: Town Meeting urges our School Committee to:

A. preferably, rescind its Pledge of Allegiance policy, and stop its recital in mandatory settings, it being neither legally required nor good for education, tolerance, or patriotism;

B. or, if a Pledge opportunity for purportedly “voluntary” kids – and parents – is nonetheless deemed educationally necessary and important, which Town Meeting disputes, then do it only in periodic *GROUP ASSEMBLIES*, which are less frequent and less coercive due to a lesser spotlight effect – and possibly adding a “patriotic” song (as does Town Meeting).

,or act on anything relative thereto.

PETITIONER’S ARTICLE DESCRIPTION

Hopefully the Whereas clauses are self-explanatory. Though numerous civic leaders – *e.g.*, a state Representative, some former School Committee members, some TMM’s, and Brookline PAX – strenuously objected, the School Committee only slightly revised its former policy, now more firmly mandating at least weekly a purportedly “voluntary” classroom Pledge recitation. They cite no educational value, and held no public hearing to weigh community sentiment.

SELECTMEN’S RECOMMENDATION

First, brief background. The Pledge of Allegiance was written by Francis Bellamy, a Christian socialist, and cousin of Edward Bellamy who wrote the utopian novel *Looking Backward*. The pledge was written in 1892 and published in *The Youth’s Companion*, a periodical based in Boston, whose editor and publisher lived in Brookline. The Pledge was part of a national promotional campaign to have flags in public schools in celebration of the 400th anniversary of the discovery of America by Christopher Columbus—and, incidentally, to sell magazines to students. It was timed for October 12, 1892. The language of the Pledge was modified three times, adding “***to*** the flag of the ***United States of America***” before being officially adopted by Congress in 1942. In 1954 Congress

amended the Flag Code, adding the words "***under God***". The Supreme Court has ruled that public school students and teachers are not required either to recite or to stand for the Pledge. Lower court decisions have delivered additional, sometimes contradictory rulings on the phrase "under God".

The Board of Selectmen believes that the current School Committee policy strikes the proper balance between the requirements of state law that mandate recitation of the Pledge and court cases that have determined it unconstitutional for any student or staff person to be compelled to recite the Pledge. The School Committee debated the issues raised under Article 17 in a series of public meetings during 2011. The current policy was adopted as recently as last April. The School Committee's public process took into consideration all of the public policy issues raised by the petitioners and others. The adopted policy balances respect for the constitution, the flag, and other patriotic emblems of our democracy and respect for the diversity of beliefs in the community. We believe that the elected School Committee, not School Principals as designated by the Resolution, are the most appropriate and accountable body to determine the procedures for reciting the Pledge.

While the Board respects the Petitioners' motivations, they disagree that recitation of the Pledge is equivalent to a "loyalty oath" to a government. Rather, the Pledge is an acknowledgment that the flag is a symbol that represents the ideals of democracy and the Constitution of the United States, including "liberty and justice for all".

The Board of Selectmen recommends that Town Meeting vote NO ACTION, by a vote of 5-0 taken on October 25, 2011 on the Resolution under Article 17.

ADVISORY COMMITTEE'S RECOMMENDATION

PREFACE:
Prior to the Advisory Committee's discussion of Article 17, the following reminder was offered.
The Pledge of Allegiance can bring out strong emotions, but we are a nation with a long history of questioning authority and questioning ourselves. Regardless of one's feelings on this issue, it should be noted that the process of Town Meeting consideration and debate is one of the most fundamental exercises in American democracy. Contrary to the notion that Brookline should be in anyway embarrassed to consider such a deeply engrained tradition, we should be proud that in our community we feel secure enough in our liberties to have a free, fair, open and respectful debate - of this or any issue. It is this spirit and this exercise that is at the heart of being "American".

BACKGROUND:
The original article as presented in the warrant was driven by the petitioners' belief that there is a need for greater protection for those who dissent from reciting the Pledge of Allegiance. That article urged the Brookline School Committee to:

- rescind its Pledge of Allegiance Policy, and stop its recital in mandatory settings, or

- if considered educationally necessary by the committee, that the Pledge be recited in group assemblies
- Prior to the Advisory Committee's ad hoc subcommittee hearing on this matter, the petitioners presented an amended article that:
- removed the rescission language (the resolution no longer asks the School Committee to rescind the recitation of the Pledge of Allegiance)
- urged the School Committee to amend its policy with suggestions that the petitioners believe lessen the negative consequences of dissent:
    - grant greater control of Pledge policy and practice to the school building leader (principal/headmaster or designee)
    - make the recitation an opt-in choice in a larger, more public, more impersonal environment
    - enhance the curriculum to provide history and context

The petitioners' amended article was further amended by the Advisory Committee after considering the issues presented at its meeting on Article 17, and appears in the vote of the Advisory Committee.

<u>DISCUSSION:</u>
Petitioners' viewpoints:

- the Pledge of Allegiance is a loyalty oath that divides more than unites, creating dissent rather than a welcoming and tolerant environment
    - the reasons for dissent include political beliefs, nationality, culture, ethnicity and religion
- dissent contributes to a number of negative consequences for those who choose not to participate, or feel compelled to participate regardless of their preference for dissent, including:
    - being ostracized or teased
    - being bullied or coerced
    - feeling stigmatized by peer pressure
    - uncomfortable at school because of being different
- they question the appropriateness of the setting, i.e, the Brookline public schools classrooms, for the voluntary, public, opt-out recital of the Pledge of Allegiance, preferring an assembly environment to one characterized as a "fish bowl"
- they question who should have decision-making authority regarding the Pledge, offering that principals are a preferable choice

Brookline School Committee Policy and Practice:
The Brookline School Committee's policy establishes that there is educational value in the Pledge of Allegiance.

Its Policy Manual, amended on April 28, 2011, establishes its commitment "…to honoring longstanding civic tradition and practice, which is for Brookline students to learn and have an opportunity to recite the Pledge of Allegiance in school". This amended policy recognizes the judicial determination that Massachusetts law requiring recitation of the Pledge is unconstitutional. In summary, the amended policy provides that:

- building leaders will allow recitation once a week during morning announcements
- there will be observance of respect for human differences

The manual also says the School Committee "believes the most important lessons to be drawn from the Pledge of Allegiance are best learned in the context of the regular curriculum and therefore supports Brookline Learning Expectations that promote age- and grade-appropriate discussion of the Pledge, its historical practice and significance, and the debates around compulsory recitation in schools".

By and large, the Pledge is not taught as a specific subject, but is embedded in the broader curriculum; it is most discrete in grades K -2, where students learn about national holidays, major historical events, civics and aspects of the Pledge.

The implementation and execution of the foregoing policy is now consistent throughout the K-8 schools, and is expected to be implemented in the near future at the high school.

The Brookline School Committee met five times in 2011 to deliberate on the topic. It adopted the current policy on the Pledge of Allegiance on April 28, 2011. The petitioners stated that, at the time, they felt their concerns were not heeded, although others recalled that there was not much pushback by the community. Rebecca Stone, School Committee Chair, has said "We heard from many members of the parent community and broader community during those meetings and in letters/emails surrounding the meetings. The opinions and various ideas for potential action expressed by the public then are similar in tone, substance, and diversity of viewpoint to those that have been expressed in the public response to the warrant article."

Negative Consequences of Dissent:
Much of the discussion focused on the negative issues identified above, with reference to direct personal experience and belief, as well as the experiences of others. These comments were largely anecdotal and subjective. Discussion also revolved around the potentially coercive nature of students standing with an authority figure (teacher, principal) to publically recite the Pledge; especially in the confines of a classroom.

There are certainly many other matters and situations that can generate similar behavior and impact, and they cannot be addressed and satisfied through action on the Pledge alone. The school district has a bullying policy, and bullying is not widely reported. It was noted that the recitation of the Pledge in class was not identified in the School Department's recent town-wide bullying survey results. There was unequivocal

agreement that these consequences are experienced, but the petitioners' stated that they did not want bullying to be the sole focus of this article.

There are also situations where participation in the recital of the Pledge can lead to the negative consequences so often associated with dissent. And while the article focuses on students, teachers too are impacted by the conflicts presented by the Pledge, both as a personal matter, and in their professional roles.

It was also noted that students who *chose* to recite the Pledge could potentially be an equal target of ridicule for being "un-cool" or "geeky". The feeling of being ostracized can run in either direction. Bullying, slights and coercion are often subtle, but harmful acts, not always picked up on by those not closely involved.

School Committee Directive vs. Building Leader:
Each of these alternatives has a variety of positive and negative aspects. The School Committee's decision to direct that the Pledge be recited weekly weighted the importance of insulating each principal from local community pressure. Allowing the principals autonomy and discretion, as offered by the petitioners, could allow a principal to, among other possibilities, exercise her (his) personal beliefs, ignore the wishes of families, and capitulate to one or two strong voices. Some Advisory Committee members felt it was important for the individual schools to have some control, and that principals are best equipped to understand the subtleties of their schools and students. This is precisely why they are given the position of principal.

The Advisory Committee, in its amended language, maintained the petitioner's language suggesting this autonomy – a distinction from the current School Committee policy.

Classroom vs. Assembly:
There was discussion regarding the petitioners' recommendation that a larger, more public, more impersonal environment for recital would ease the decision to not participate compared to the smaller, classroom recital environment. The Advisory Committee, in its amended language, maintained the petitioner's language suggesting the larger environment was preferable.

Curriculum:
Members noted there can be confusion and conflict about recital of the Pledge. Of most concern is the age at which children have an appreciation for and understanding of the underlying issues. Implicit in the creation of greater understanding is the role of the school curriculum and parental involvement. Both the School Committee Policy Manual and the amended Article 17 address that the curriculum provides context for the recitation of the Pledge. The policy manual specifies "age- and grade-appropriate discussion".
The Advisory Committee, in its amended language, encouraged faithful implementation of the existing School Committee policy as regards curriculum.

Referral:
There was discussion that the issues presented by the article were the purview of the Brookline School Committee, and, as such, the article should be referred to that committee. The motion for referral did not carry. Most felt that Town Meeting should be free to formalize its feelings about this community issue as well.

Final Thoughts:
The Pledge of Allegiance is viewed by many as an important symbolic gesture. Others view it as an oath of blind allegiance. Most important, of course, are those inherent values it is meant to affirm. Among which are the freedom of speech and the freedom to dissent.

In the end, the choices presented in this amended article, regardless of position, are designed to promote greater tolerance and respect for individual choice. They represent a series of value judgments that leave room for disagreement, but not lack of diligent thought. A minority of Advisory Committee members felt this resolution simply mimicked much of the current School Committee policy, which seeks to strike a fair balance among a diverse population, and that the resolution was a distinction without a difference. A majority of members, however, felt this resolution was distinctly different with regards to individual principal authority and the venue and manner of recitation – specifically options for larger assemblies or in the lobby just prior to school.

The Advisory Committee believes a positive expression by Town Meeting affirming one's right to participate, or not, in the recitation of the Pledge in a non-threatening and educationally enhancing environment is appropriate. The Committee also feels there is merit in recognizing and encouraging the steps already taken by the School Department to further this goal.

As such, the Advisory Committee recommends favorable action on the resolution as worded below.

<u>RECOMMENDATION</u>
By a vote of 14 in Favor and 11 Opposed, the Advisory Committee recommends FAVORABLE ACTION on Article 17, as amended below:

VOTED: that the Town adopt the following resolution:

Whereas: Respect for human differences is a core value of Brookline's Schools and citizens;

Whereas: Some Brookline students and/or parents object to reciting the Pledge of Allegiance for religious or other reasons, or because they are foreign nationals temporarily residing here ;

Whereas: Some Brookline students and/or their parents believe that it is important that students be given the opportunity to express patriotic sentiments in the schools;

Whereas: Through its 2010 policy on "bullying' the School Committee recognized that we must work pro-actively to minimize it, and recent personal experience of some Brookline residents proves that dissenting from expressions of patriotism can trigger ostracism or other nasty recriminations. But, in any event we must go further than merely minimizing practices that high-light differences and can cause recriminations; we need practices that affirmatively encourage tolerance and respect for differences, in spirit as well as in actions;

Whereas: The Supreme Court requirement that Pledging Allegiance be "voluntary," is psychologically unrealistic – especially (a) for very young children, (b) in the "fishbowl" of the classroom, and (c) with the imprimatur of the principal, the chief authority figure; and ;

Whereas: Building-based leaders (principals and the BHS headmaster) have front-line responsibility for their schools, so should determine the effect on their school communities of different ways to express patriotism in various school settings; and

Whereas: M.G.L. c.71, §69, was long ago ruled unconstitutional because it compels teachers to lead a religiously-tinged Pledge, and the recently adopted School Committee policy may also be unconstitutional because it imposes a similar requirement on principals during their P.A. announcements – by either them or their designees;

Now, Therefore Be It Resolved: Town Meeting supports a Pledge of Allegiance policy that includes:

(1) granting control over Pledge of Allegiance practices to building leaders; but also

(2) recognizing that: (a) Pledge of Allegiance recitation in larger, more anonymous, settings – such as assemblies – is noticeably more respectful of our cultural diversity than in close-knit ("fishbowl") classrooms, and (b) singing of the National Anthem is equally as patriotic as reciting the Pledge but is less troublesome for some in our community, so should be considered as an alternative, as Town Meeting voted in 1983; and (c) Pledge of Allegiance recitation, led by a principal/headmaster or her/his designee in the school's front lobby immediately prior to the school day, open to anyone choosing to attend, would be a truly "voluntary" expression of patriotism, but better honoring the diversity and/or dissent of those preferring not to recite the Pledge of Allegiance; and

Be it further resolved, Town Meeting encourages faithful implementation of the School Committee's policy of encouraging the staff to incorporate discussions and lessons where students and faculty lead discussions on the Pledge's overall concept and history, as well as its wording.

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SECTION K
SCHOOL/COMMUNITY RELATIONS
7. Flag Protocol and Pledge of Allegiance (Voted 4/28/11, #11-30)

Definitions
Flag: The Flag of the United States of America.

Pledge of Allegiance: "I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation, under God, indivisible, with liberty and justice for all." (*Public Law 829, Chapter 806, Section 7, as amended June 14, 1954)*.

Recitation: Aloud, verbatim repetition of the Pledge of Allegiance.

Opportunity: A regular, planned time when all members of a school community present in school have equal chance to participate in saying the Pledge.

Active acknowledgment: Co-recitation, standing, and/or use of hand gestures (e.g., a salute or placement of hand over heart) that accompanies recitation of the Pledge.

Flag Protocol[1]

Display of the Flag of the United States
The Flag must be displayed, weather permitting, on school buildings or grounds on every school day and on every legal holiday or day proclaimed by the Governor of the Commonwealth of Massachusetts or the President of the United States for special observance.

Display Inside the Building
A Flag must be displayed in the assembly hall or other room where opening exercises/announcements on each school day are held as well as in every classroom.

Flag Code for Buildings
The Public Schools of Brookline (PSB) shall observe the flag protocols for raising and lowering the flag, including designation of full mast or half mast, pursuant to MGL Chapter 71, Section 69 and/or as followed by other public buildings in the Town of Brookline.

Amendment Passed by the Board of Selectmen on May 18, 1970
"Flags are to be flown on such other occasions of local, state or national significance as may from time to time be determined by the Executive Secretary to the Board of Selectmen upon receipt of a specific request and recommendation from a Board, Committee or Commission, or from its duly authorized representative(s)."

[1] Flag protocol based on 1966 Manual of Administration

K 7 a. Lowering the Flag: (Voted 6/4/73, #73-174; amended 4/28/11, #11-30)
It is the policy of the Brookline School Committee (BSC) that the American Flag at all PSB buildings shall be lowered to half mast in the event of a death of a presently enrolled student.

Pledge of Allegiance to the Flag

While Massachusetts General Laws c. 71, s. 69 requires teachers to lead their classes in a daily recital of the Pledge of Allegiance to the Flag, the Courts have determined that it is unconstitutional for any student or staff to be compelled to participate in the Pledge.
Therefore, we believe that no member of the school community can be compelled by policy to recite or lead a recitation of the Pledge of Allegiance.

The BSC is committed, however, to honoring longstanding civic tradition and practice, which is for Brookline students to learn and have an opportunity to recite the Pledge of Allegiance in school. The following, therefore, will guide all PSB schools regarding recitation of the Pledge of Allegiance.

Learning/Recitation of the Pledge in Schools
A PSB Principal/Headmaster (or his/her designee) shall allow a member of the school community an opportunity to recite the Pledge of Allegiance once a week as a part of school-wide morning announcements.

Non-Coercive Environment
Respect for Human Differences, a Core Value of the PSB, will be observed. Public recitation of the Pledge will be received with respectful silence, as would be the norm for all school-wide announcements. Any individual in the school may choose to recite the Pledge along with the public recitation.

No staff member or student shall cause or encourage any other individual in a school to recite the Pledge of Allegiance or establish in any way a norm of active acknowledgment.

No staff member or student may prevent, prohibit, or demean active acknowledgment (or absence of acknowledgment) of the Pledge by another student or staff member.

Pedagogical Context and Learning
The BSC believes the most important lessons to be drawn from the Pledge of Allegiance are best learned in the context of the regular curriculum and therefore supports Brookline Learning Expectations that promote age- and grade-appropriate discussion of the Pledge, its historical practice and significance, and the debates around compulsory recitation in schools.

Nothing in this policy shall be construed as requiring recitation of the Pledge of Allegiance in the Public Schools of Brookline.

ARTICLE 18

EIGHTEENTH ARTICLE
To see if the town will adopt the following resolution:

A Resolution Concerning the Use of Robocalls in Political Campaigns

Whereas, the Do-Not-Call Implementation Act of 2003 has provided to Americans an opportunity to refuse to accept commercial telemarketing calls;

Whereas, Senator Diane Feinstein (D-CA) introduced a Federal Robocall Privacy Act (S. 2624) to the 110th Congress in February 2008;

Whereas, Citizens for Civil Discourse (CCD), a non-profit, non-partisan organization, is attempting to get politicians to follow the wishes of those citizens who have signed up for their National Political Do Not Contact Registry; and

Whereas, many Americans, including residents of Brookline, find political robocalls to be intrusive and disruptive;

NOW, THEREFORE, BE IT RESOLVED THAT this Town Meeting urges all political candidates for state and federal offices running in Massachusetts to be judicious and sparing in the combined use of computerized autodialers and pre-recorded messages in political campaigns; and

Be it Further Resolved, that, within two weeks of its adoption and afterwards for newly announced candidates and committees, the Town Clerk send notice of the adoption of this resolution to the campaign offices of all registered state and federal office political candidates whose names will appear on primary and general ballots in Brookline, as well as all committees advocating positions on questions that will appear on the general ballots in Brookline

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Although the federal government has passed legislation over the years regulating telephone solicitations, such legislation has exempted political candidates from following the wishes of consumers who have signed up with the National Do Not Call Registry. During recent election seasons—in particular the special election for senate that was held in December 2009 and January 2010—many residents of Massachusetts reported an excessive number of political robocalls coming from the campaigns of the various candidates. Political robocalls only serve to annoy the electorate and are mostly ineffective as a campaign tool. This article would ask candidates for state and federal offices running in Massachusetts to be judicious and sparing in their use of robocalls. It

would not affect the right of political campaigns to have volunteers or even candidates call up citizens personally to speak with them.

Summary: This article would ask all political candidates for state and federal offices running in Massachusetts to be judicious and sparing in the combined use of computerized autodialers and pre-recorded messages in political campaigns.

SELECTMEN'S RECOMMENDATION

Article 18 is a petitioned resolution that urges all political candidates for state and federal offices running in Massachusetts to be sparing in the combined use of computerized autodialers and pre-recorded messages in political campaigns. It also resolves to have the Town Clerk give notice of the resolution's adoption to the residential address or campaign web address of candidates for federal, state, district, and county offices.

The matter of robocalls was discussed this past May at the Annual Town Meeting under Article 20, when a resolution was proposed by the same petitioner. That resolution was different than the one proposed under this Article 18 in that it asked Brookline's representatives in the Massachusetts Legislature and the United States Congress to pass legislation banning political robocalls whereas this version asks candidates for state and federal offices running in Massachusetts to be judicious in its use of robocalls. The Board supports the resolution's message that robocalls should be used with caution by candidates seeking public office, while still allowing for free speech in the political realm. Therefore, the Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 18, 2011, on the following:

VOTED: that the Town adopt the following resolution:

A Resolution Concerning the Use of Robocalls in Political Campaigns

Whereas, the Do-Not-Call Implementation Act of 2003 has provided to Americans an opportunity to refuse to accept commercial telemarketing calls;

Whereas, Senator Diane Feinstein (D-CA) introduced a Federal Robocall Privacy Act (S. 2624) to the 110th Congress in February 2008;

Whereas, Citizens for Civil Discourse (CCD), a non-profit, non-partisan organization, is attempting to get politicians to follow the wishes of those citizens who have signed up for their National Political Do Not Contact Registry; and

Whereas, many Americans, including residents of Brookline, find political robocalls to be intrusive and disruptive;

NOW, THEREFORE, BE IT RESOLVED THAT this Town Meeting urges all political candidates for state and federal offices running in Massachusetts to be judicious and sparing in the combined use of computerized autodialers and pre-recorded messages in political campaigns; and

Be it Further Resolved, that, within two weeks of its adoption and afterwards for newly announced candidates and committees, the Town Clerk give notice of the adoption of this resolution to the residential address or campaign web address of candidates for federal, state, district, and county offices, whose names as candidates the Commonwealth of Massachusetts has determined will appear on state primary and state election ballots in Brookline, as well as the offices of committees advocating positions on questions that the Commonwealth of Massachusetts has determined will appear on the state election ballots in Brookline.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Article 18, submitted by Petitioner Michael Burstein, is a resolution that concerns the practice by political candidates of using automated pre-recorded telephone calls (so called "robocalls") to reach voters, usually just prior to an election.

Petitioner had submitted, for the Spring 2011 Town Meeting, a warrant article, which in its original form sought to ban robocalls in Brookline on the grounds that many people find political robocalls to be intrusive and disruptive. The petitioner was motivated by the fact that he and other Brookline residents received multiple robocalls, sometimes by one candidate in the same evening, during campaigns that preceded the special election to fill Senator Kennedy's seat. While the federal *Telemarketing and Consumer Fraud and Abuse Prevention Act* allows consumers to place themselves on a do-not-call list to opt out of commercial telephone solicitations, this legislation does NOT cover calls placed by charitable organizations or political campaigns. Petitioner was seeking a way to limit political robocalls.

During the deliberative process leading to that Town Meeting, the language of the resolution was first modified from "ban" to "regulate" robocalls, in order to meet First Amendment concerns, and the whereas clauses were modified and simplified. The full Advisory Committee, still concerned about First Amendment issues, voted favorable action on a revised motion that did not ban or regulate but "urges our representatives and senators in the Massachusetts General Court and the United States Congress to introduce and/or support legislation regulating the combined use of computerized autodialers and pre-recorded messages in political campaigns; and Be it Further Resolved, that the Town Clerk send notice of the adoption of this resolution to all representatives of Brookline in the General Court, the U.S. House of Representatives, and the U.S. Senate within two weeks of its adoption or act on anything relative thereto." However, Town Meeting voted No Action on the revised motion.

For the November, 2011 Town Meeting, Mr. Burstein has again submitted a resolution about robocalls. This resolution retains the same Whereas clauses as the resolution from Spring 2011, but changes the resolve clauses and urges political candidates for state and federal offices to be judicious and sparing in the combined use of computerized autodialers and pre-recorded messages in political campaigns and specifies that the Town Clerk send notice of the resolution to political candidates. He acknowledged that the resolution in Spring 2011 sought to ban or regulate robocalls while this one is much weaker and has no real teeth, as it essentially asks candidates to refrain from robocalls, or at least use them sparingly. He included the provision about the Town Clerk sending notice in order to ensure that candidates are aware of a resolution by Town Meeting.

In its deliberations, the Advisory Committee's SubCommittee focused on the language concerning the duties of the Town Clerk. The SubCommittee worked with Town Clerk Pat Ward to revise the language of the resolution to ensure that the burden on Town Clerk of this resolution would not be onerous; the revised wording (bolded where changed) is:

> …within two weeks of its adoption and afterwards for newly announced candidates and committees, the Town Clerk **give** notice of the adoption of this resolution to the **residential address or campaign web address** of candidates for **federal, state, district, and county** offices, whose names as candidates **the Commonwealth of Massachusetts has determined** will appear on **state** primary and **state election** ballots in Brookline, as well as the offices of committees advocating positions on questions that **the Commonwealth of Massachusetts** has determined will appear on the **state election** ballots in Brookline…

Candidates for local office are purposely omitted from this resolution.

The SubCommittee voted unanimously to support the revised motion, expressing the belief that that this resolution is not asking too much of candidates, especially given that frequent robocalls can be highly annoying and disruptive to residents and their families.

<u>DISCUSSION:</u>
The full Advisory Committee discussed the article as revised by the SubCommittee. Several members of the Advisory Committee expressed concerns about the language. Statements by members included the following: the language is very subjective in terms of what would be objectionable; it seems presumptuous for the Town to tell candidates how to relate to residents; the Town should not be engaged in urging candidates ***not*** to exercise their constitutional rights. The feeling was that while this will not prohibit the free expression of political views, it does suggest inhibiting them. Others stated that it is reasonable, that the resolution does not go too far and lets candidates know residents' concerns, and that, while the resolution does contain subjective language, it is also acknowledged that this is a resolution to provide guidance to candidates, some of whom will ignore it.

The Advisory Committee, by a vote of 8 – 17, recommends NO Action Article 18.

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ARTICLE 19

NINETEENTH ARTICLE
Reports of Town Officers and Committees

SELECTMEN'S CLIMATE ACTION COMMITTEE
REPORT TO TOWN MEETING FALL 2011

I. INTRODUCTION

In 2008, the Board of Selectmen established the Selectmen's Climate Action Committee (CAC) in conjunction with a Resolution passed by Town Meeting that May (Appendix 1). 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 Report to Town Meeting, informing the town on the committee's work and progress. The committee continues to provide Town Meeting with such reports annually. This year's report builds upon the content of previous years' reports, presenting a summary of the committee's activities over the past year and identifying new goals and priorities.

The CAC held its first meeting on November 6, 2008, and has met monthly since then. Early on, the committee organized itself into working subcommittees, which hold additional meetings monthly or as needed (Appendix 3). These subcommittees evolve and change as projects and goals arise and are completed.

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

Achieving Green Community Status

- In cooperation with town staff, attained "Green Community" status for the Town of Brookline. This designation affirms and publicizes the commitment of the town to sustainability, and the town is now qualified to apply for additional funding opportunities for renewable energy or energy efficiency projects.
- To satisfy Green Community requirements (Appendix 5), assisted with the drafting of a fuel efficient vehicle purchasing policy that requires all new vehicles purchased by

the town, except for police cruisers and heavy trucks, to meet higher fuel efficiency averages set by the state. The Board of Selectmen adopted this policy in spring 2011.

- Also to satisfy Green Community requirements, developed a Municipal Energy Reduction Plan to lower municipal energy consumption 20 percent below 2009 levels over five years. This plan was adopted by the Board of Selectmen in spring 2011. Much of the reduction is anticipated to be accomplished through a continuation of the LED streetlight replacement pilot as well as several projects implemented by the Building Department. A summary from the Municipal Energy Reduction Plan showing municipal energy consumption and projected savings by category is presented below.

Category	Fiscal Year 2009 MMBtu	% of Total MMBtu Baseline Energy Consumption	MMBtu Savings Already Implemented	Projected Planned MMBtu Savings	Total MMBtu Savings	Savings as % of Total MMBtu Baseline Energy Consumption
Buildings*	135,328	70.2%	10,307	19,580	29,887	15.5%
Vehicles	46,402	24.1%	782	1,377	2,159	1.1%
Street/Traffic/Park Lights	10,989	5.7%	0	7,936	7,936	4.1%
TOTAL	192,718	100%	11,089	28,893	39,981	20.7%

- Applied for the initial round of available Green Community funding of $215,050 from the Green Communities Division of the Department of Energy Resources. The proposed projects are energy reduction measures identified in the adopted Municipal Energy Reduction Plan and will serve as a first step in that plan's implementation.
- After significant efforts by the Selectmen's Climate Action Committee to support its approval, the stretch code, which was adopted by Town Meeting in 2010 to satisfy Green Community requirements, went into effect January 2011 and is being implemented by the town's Building Department.

Improving Residential Energy Efficiency through Green Homes Brookline

- Assist with the outreach and management of the Green Homes Brookline program, an energy assessment and weatherization program funded by the federal Energy Efficiency and Conservation Block Grant (EECBG) program. The energy services company Next Step Living, in partnership with non-profits New Ecology and the Massachusetts Energy Consumers Alliance, administer the program, which encourages all Brookline residents, regardless of housing tenure, to obtain no-cost energy assessments of their homes. Energy assessments of multi-family buildings are also subsidized by the program, as well as energy improvements for households earning between 60% and 120% of area median income. As of 9/30/2011, 383 assessments and 24 weatherization jobs in Brookline homes have been completed.
- Outreach successes: The CAC hosted a landlord event in May that attracted over 50 participants. The CAC is also partnering with local grassroots group Climate Change Action Brookline (CCAB) to promote the program and encourage participation. Over 60 CCAB volunteers signed up to canvass local homes in March, April and October to disseminate information about the program. Both the CAC and CCAB, along with Next Step Living representatives, have been present at local community events such as the Brookline Farmers Market to spread awareness of the program.

Supporting Alternative Vehicles with Electric Vehicle Charging Stations

- The CAC assisted the Department of Planning and Community Development with applying for a state grant for two free electric vehicle charging stations, and the town was awarded the grant in July. The two publicly-available stations will be located in the Town Hall public parking lot and the Babcock Street public parking lot. Each station will be able to charge two electric vehicles simultaneously. The town hopes to also obtain an additional free charging station for the Town Hall garage to charge the Chevrolet Volt expected to be purchased by the Building Department.

Supporting Active Transportation

- CAC Membership served on the Bicycle Sharing Committee and worked with Metropolitan Area Planning Council (MAPC), state and federal transportation officials, and the Department of Planning and Community Development to secure Brookline's participation in the regional Hubway bicycle sharing network.

Engaging Residents through First Annual Climate Week

- The first annual Climate Week was held the last week of January this year, and was co-sponsored by the CAC, CCAB, Brookline School Committee, Brookline Department of Public Health, and Brookline Adult and Community Education. Numerous businesses and town departments collaborated in creating nearly 20 special events. The week of public sessions and workshops included a kick-off environmental town meeting and practical hands-on carbon-savings workshops such as *The Ups and Downs of Windows*. All events helped to inform and encourage climate-friendly behavior.
- Planning for the second annual Climate Week, to be held from January 21-29, 2012, has already begun.

Developing a New Local Climate Action Plan

- Performed research and analysis of other municipalities' local climate action plans in preparation for developing a new local climate action plan for Brookline.
- Hosted a public forum in June 2011 to gather input from the community regarding priorities for the plan.
- Set up an online survey in spring 2011, reaching out to a wide range of citizen groups and individuals, seeking climate action suggestions for possible inclusion in the new plan.
- Determined the reduction target for the new local climate action plan should be consistent with the reduction target selected by the state under the Global Warming Solutions Act, which is a reduction in greenhouse gas emissions of 25 percent below 1990 levels by 2020.
- Developed a methodology for evaluating action measures for inclusion in a new plan, considering factors such as effectiveness at reducing greenhouse gas emissions, cost,

political feasibility, co-benefits and public acceptance. Used this methodology to shorten a long list of possible actions to those that are realistic, effective, and tailored to Brookline.

- Composed the first draft outlines of the plan, with the expectation it will be completed by early 2012.

Strengthening Community Partnerships

- Continued and strengthened a close working relationship with CCAB. Joint initiatives include Green Homes Brookline, Brookline Tomorrow and Climate Week.
- 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 and designation, the Green Homes Brookline program, and other related projects.
- Further developed the partnership between CCAB, CAC, and the Public Health 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. Develop a new local climate action plan. The town's previous climate action plan dates from 2002, and through a planning process the committee will identify clear, achievable actions to reduce the town's overall greenhouse gas emissions. These actions will provide a road map and policy framework for the committee as it moves forward.
2. Collaborate with CCAB on community education and engagement activities to promote lifestyle changes that lead to greenhouse gas reduction.
3. Monitor and support the town's implementation of the Green Homes Brookline Program, as well as other EECBG initiatives (Appendix 4).
4. Collaborate with CCAB to organize and run Climate Action Week, to be held in January 22-29, 2012, and other events that are part of the Brookline Tomorrow campaign.
5. Provide support for the town's efforts to implement the Green Communities Act criteria and objectives, including the execution of the municipal energy reduction plan, and encouraging the pursuit of renewable energy generation alternatives.
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

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
Amy Kershaw	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 are currently two vacancies, one for the Chamber of Commerce designee and another at-large vacancy.)

3. CAC Organization

The Climate Action Committee was initially organized into five subcommittees, but the committee's organization has continually been modified to improve its effectiveness at accomplishing goals and tasks and to make the best use of its members' resources. At present, the committee has one main subcommittee: the Climate Action Planning Subcommittee. The committee's former subcommittee, Brookline Tomorrow, has become a separate entity.

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;
- Two LED street light pilot projects in a neighborhood of South Brookline and in Brookline Village;
- Establish Green Homes Brookline, 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_2e, 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_2e, 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

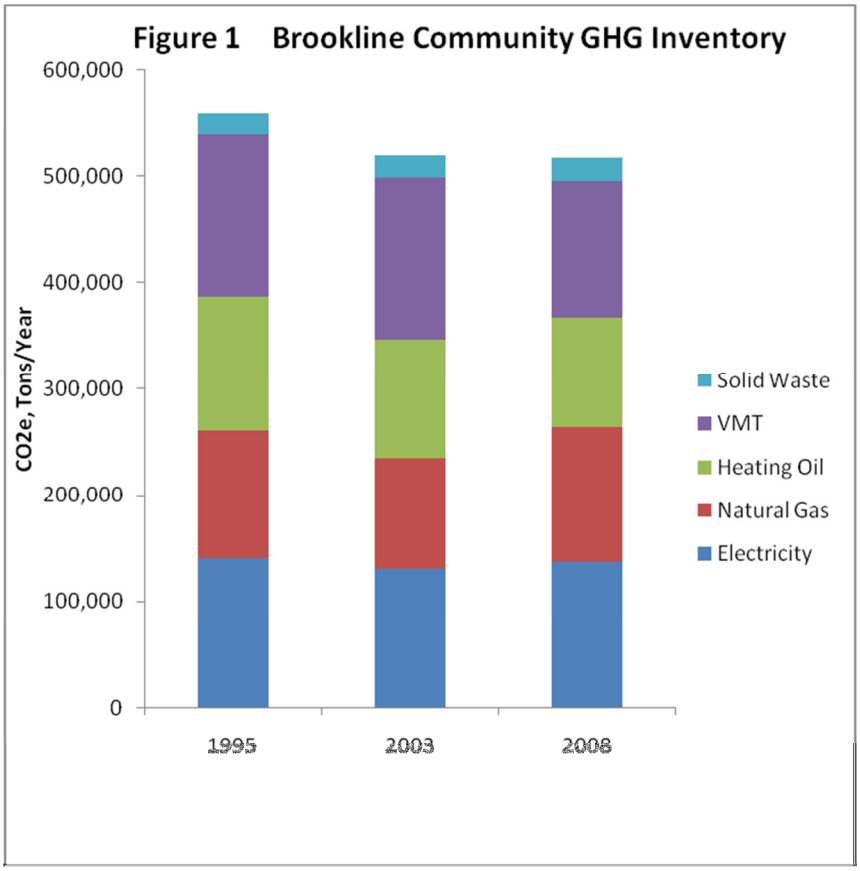
Figure 1 Brookline Community GHG Inventory
600,000
500,000
400,000
300,000
200,000
100,000
0
CO2e, Tons/Year
1995
2003
2008
Solid Waste
VMT
Heating Oil
Natural Gas
Electricity

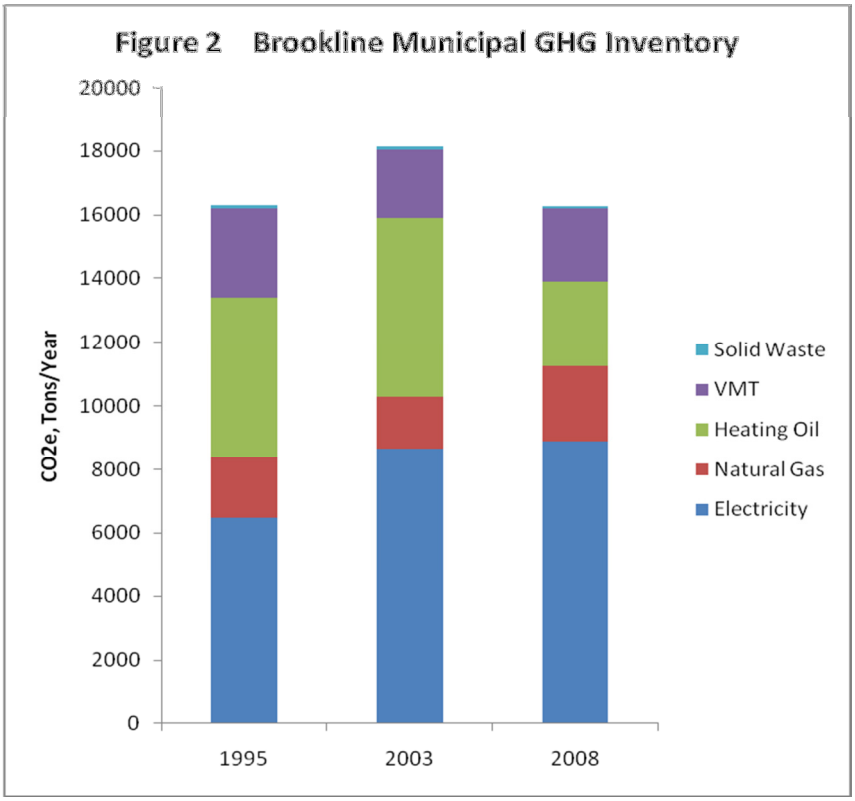
Figure 2 Brookline Municipal GHG Inventory
20000
18000
16000
14000
12000
10000
8000
6000
4000
2000
0
CO2e, Tons/Year
1995
2003
2008
Solid Waste
VMT
Heating Oil
Natural Gas
Electricity

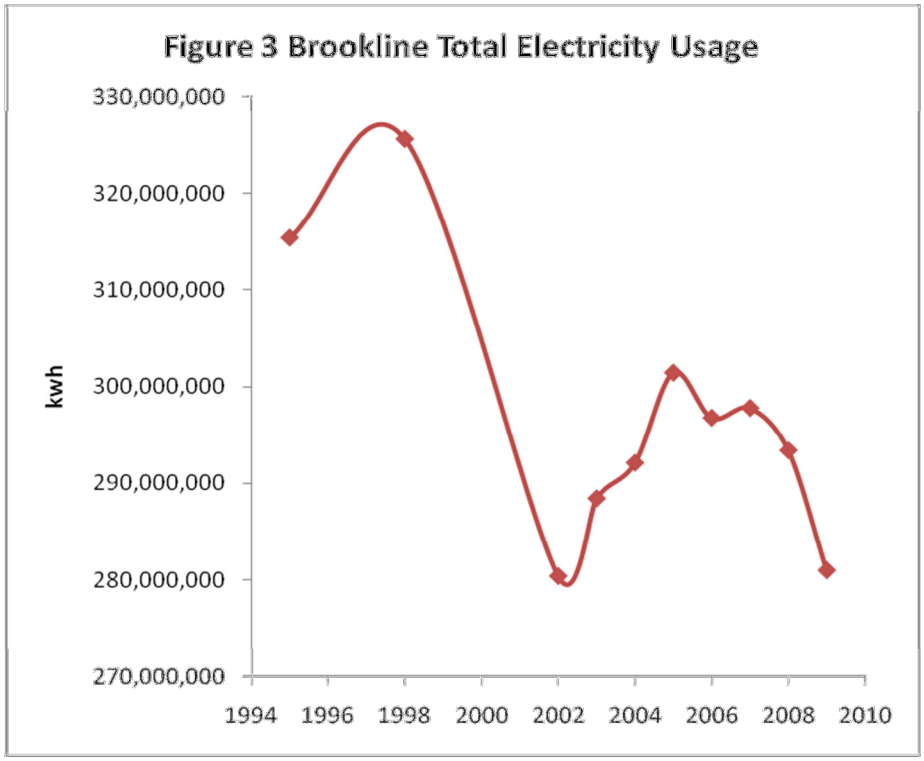
Figure 3 Brookline Total Electricity Usage
kwh
330,000,000
320,000,000
310,000,000
300,000,000
290,000,000
280,000,000
270,000,000
1994
1996
1998
2000
2002
2004
2006
2008
2010

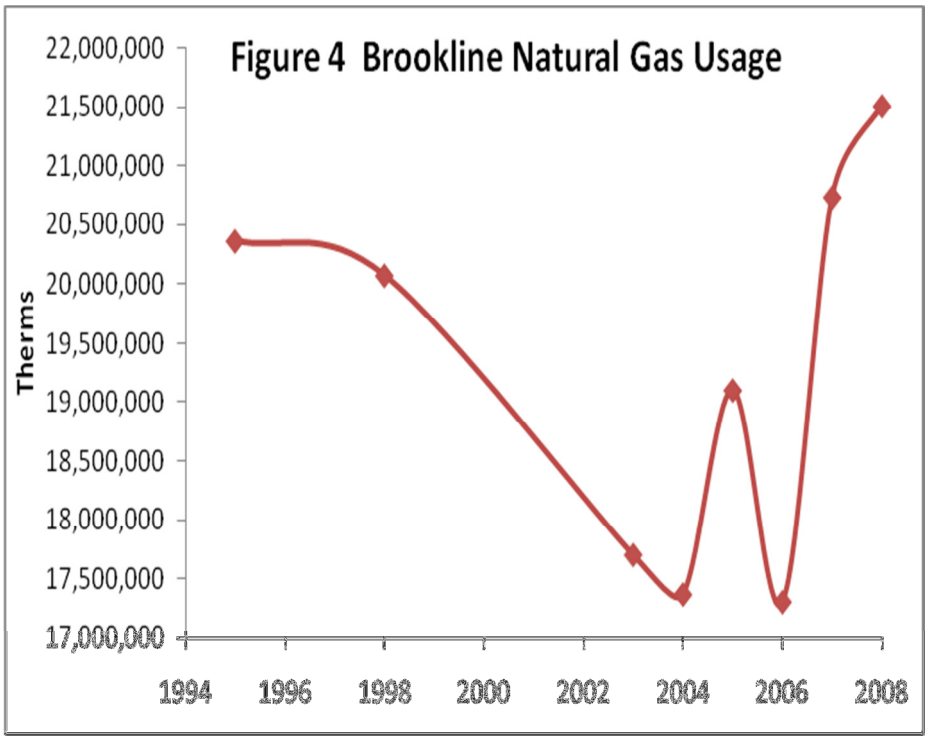
Figure 4 Brookline Natural Gas Usage
Therms
22,000,000
21,500,000
21,000,000
20,500,000
20,000,000
19,500,000
19,000,000
18,500,000
18,000,000
17,500,000
17,000,000
1994
1996
1998
2000
2002
2004
2006
2008

INTERIM REPORT OF MODERATOR'S COMMITTEE ON WASTE DISPOSAL
November 15, 2011

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 previous interim report was issued in November 2010, and a list of current committee members follows in Appendix A.

II. THE COMMITTEE'S PROCESS

The committee has met regularly since formation. All meetings followed public notice. Most meetings focused on data gathering or analysis related to specific topics.

In addition, the committee held two public hearings, in May 2010 and June 2011. Neither hearing was well attended by members of the public.

III. IMPACT OF SINGLE STREAM RECYCLING

The Committee supported the decision to implement single stream recycling in the fall of 2010. Of note, 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*.

IV. INTERIM PROGRESS UPDATE

The committee identified multiple waste management approaches that are successfully deployed in other communities and could be employed in Brookline. Separately, a framework was established and used to evaluate each approach against specific criteria including feasibility, environmental impact, cost, and other considerations.

The committee has not settled on a specific recommendation and a corresponding justification has not been completed.

V. NEXT STEPS

The committee needs additional time to further evaluate alternatives, gather additional public input, and prepare a final recommendation. In addition, the committee has requested that the Moderator appoint at least two (2) new members to replace individuals who have resigned.

The committee expects to gather additional public comment and complete its final report no later than the Fall Town Meeting of 2012.

APPENDIX A: Current Committee Members

Frank Friedman
Ken Goldstein
Gerald Koocher
Andrew Pappastergion
Stanley Spiegel
Virginia Smith
Ray Wise