

**EXPLANATIONS FOR THE  
MAY 22, 2012 ANNUAL TOWN MEETING  
WARRANT ARTICLES**

**ARTICLE 1**

Submitted by: Board of Selectmen

Article 20 of the November, 2000 Special Town Meeting requires that this be the first article at each Annual Town Meeting. It calls for the Selectmen to appoint two Measurers of Wood and Bark.

**ARTICLE 2**

Submitted by: Human Resources

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.

**ARTICLE 3**

Submitted by: Treasurer/Collector

This article authorizes the Town Treasurer to enter into Compensating Balance Agreements, which are agreements between a depositor and a bank in which the depositor agrees to maintain a specified level of non-interest bearing deposits in return for which the bank agrees to perform certain services for the depositor. In order to incorporate such compensating balance agreements into the local budget process, the Commonwealth passed a law in 1986 mandating that all such arrangements be authorized by Town Meeting on an annual basis.

**ARTICLE 4**

Submitted by: Board of Selectmen

Section 2.1.4 of the Town's By-Laws requires that each Annual Town Meeting include a warrant article showing the status of all special appropriations.

**ARTICLE 5**

Submitted by: Board of Selectmen

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.

**ARTICLE 6**

Submitted by: Board of Assessors

This article provides for an increase in the property tax exemptions for certain classes of individuals, including surviving spouses, the elderly, the blind, and disabled veterans.

The proposed increases, which require annual reauthorizations, have been approved annually since FY89.

**ARTICLE 7**

Submitted by: Board of Selectmen

The purpose of this article is to make any year-end adjustments to the current year (FY12) budget. Also included is additional funding for the Pierce School Auditorium project, which is required due to the bids coming in over budget.

**ARTICLE 8**

Submitted by: Advisory Committee

This is the annual appropriations article for FY2013. Included in this omnibus budget article are operating budgets, special appropriations, enterprise funds, revolving funds, and conditions of appropriation. This is the culmination of work that officially began with the presentation of the Town Administrator's Financial Plan on February 14<sup>th</sup>. The proposed budget has since been reviewed by numerous sub-committees of the Advisory Committee, the full Advisory Committee, and the Board of Selectmen. The vote ultimately recommended to Town Meeting is offered by the Advisory Committee.

**ARTICLE 9**

Submitted by: Jonathan Davis, Town Meeting Member, Precinct 10 and Regina Frawley Town Meeting Member, Precinct 16

This is a "Good Government" Article requiring Town Committees to hold at least one Public Hearing prior to voting on any proposed Warrant Article. It will give practical life to the public's Constitutional right to petition the government – in this case, on proposed Articles intended for Town Meeting which are deliberated by Committees.

For the purposes and scope of this By-Law, a "Public Hearing" is intended to provide an opportunity for interested persons to appear to express their views, pro or con, and/or to provide the Committee with written submissions.

The petitioners have observed a significant decline in the number of officially calendared opportunities for the public to speak on matters coming before Committees. Instead, the right to speak has been supplanted with a privilege to speak - a recent phenomenon, usually referenced in Town agendas as "Public Comment".

"Public Comment" means that if time allows, then, at the discretion of the Committee Chair, the public may be heard. Also, Committee Chairs may, in their discretion, arbitrarily impose restrictions like prior notification of intent to comment (thus bottling up the flow of spontaneous ideas that might be stimulated by the Committee's deliberations), unreasonable time restrictions and limiting on the number of public speakers

The petitioners believe that eliminating "Public Hearings" on Town Meeting Warrant Articles is a narrowing of the Constitutional right of the public to petition their government. It also deprives Committees of ideas, sentiments, and even facts and

recollections of Town history and precedents that might help Committees in their deliberations and the performance of their duties.

With the exception of the plenum of the Advisory Committee (more about that later) this Article is intended to apply to every “Committee” as defined in existing By-Laws sec. 1.1.4 – namely an “elected or appointed board, commission, council and trustees”. (Hereafter, this Description will use the term “committee” although the coverage of sec. 1.1.4 is intended.)

This Article is limited to Committees’ consideration of proposed Articles for a Warrant. The reasons for this limitation are as follows:

1 - The petitioners are aware that Committees might object that requiring opportunities for public comment on all matters coming before them might prove unwieldy. While the petitioners believe that the cumbersomeness of democracy is often one of its great strengths, nevertheless, the petitioners are trying to be sympathetic to the burdens placed on members of Committees. Therefore, at this time, the petitioners are restricting the scope of this Article to proposed Articles intended by their proponents for a Warrant. [A similar phrase, “intended for the Warrant”, appears in existing By-Law sec. 2.1.4.]

Also, it should be noted that the Article requires only one calendared opportunity for public comment on each proposed Article being deliberated by a Committee. The Article does not prescribe the conduct of the public hearing, the length of time to be accorded each speaker from the public, or whether the public hearing should occur immediately or less proximately before the Committee votes on the proposed Article. These considerations are left, at least for now, to the good faith determination of the Committee or its chairperson.

2 – The positions taken by Committees with respect to proposed Articles affect Town Meeting’s own deliberations. The petitioners believe that Committees’ recommendations about proposed Articles may be enriched and made more cogent by calendared public input at the Committee level. Town Meeting, in turn, may benefit from this in its own deliberations. Long-time Town Meeting Members may well remember occasions on the floor of Town Meeting when unorthodox views surfaced during debates, often from unscheduled speakers speaking from the aisles, that changed the minds and votes of Town Meeting (and, hopefully, produced more thoughtful legislation).

The Article excludes the plenum of the Advisory Committee on the theory that, with twenty six members drawn from across the Town (some of whom may not even be Town Meeting members) there is a breadth of viewpoints and a breadth of contact points with the public so that views from the public are more likely than in the case of smaller Committees to find their ways into deliberations of the plenum. Furthermore, Advisory Committee protocol requires its subcommittees to consider in detail proposed Articles, and requiring calendared public hearings before the subcommittees gives the public at least an indirect “bite at the apple” before the Advisory Committee. Also, the plenum of the Advisory Committee may, in its discretion, permit public comment.

It might be argued that the views of the public will not tell Committees anything that Committees do not already know. Merely to state this argument should be sufficient to cause its dismissal out of hand.

Some might argue that requiring public hearings will bog Committees down in discharging their responsibilities. The proponents are sensitive to this concern and, so, have limited the Article to consideration of proposed Articles intended for a Warrant.

The proponents hope that requiring at least one calendared public hearing prior to a Committee's vote on a proposed Town Meeting Warrant Article will enrich and assist the Committee's decision making, and offer members of the Public – perhaps even Town Meeting Members - the opportunity to express their views and influence the Committee's deliberations

Finally, and as previously mentioned, the proponents also believe that requiring at least one calendared public hearing as each Committee considers proposed Warrant Articles will vitalize and enhance the democratic principle and Constitutional right to petition the government.

#### **ARTICLE 10**

Submitted by: Preservation Commission

At a meeting on January 10, 2012, the Preservation Commission received a request from the owner of the property at 26 Weybridge Road. The Commission voted to have the owner prepare a preliminary study report on the establishment of a new local historic district, as required by M.G.L. Chapter 40C.

A preliminary study report was prepared by residents Ken Liss (President of the Brookline Historical Society) and Norah Mazar (Building Conservator) and edited by the Brookline Preservation Commission staff.

Based on the conclusions in the report, the Brookline Preservation Commission voted at its February 14, 2012 meeting to accept the preliminary study report for submission to the Massachusetts Historical Commission and the Brookline Planning Board, as required by M.G.L. Chapter 40C. The Commission also voted unanimously to submit a warrant article to Town Meeting to establish the new local district.

There are very few extant houses and carriage houses that date to the early nineteenth century remaining in Brookline, a densely populated town that saw waves of demolition and rebuilding with the advent of regular trolley service to and from Boston, with whom it shares a border. The Wild-Sargent house and carriage house are the only remaining Federal/Greek Revival style buildings in the area. The next oldest property in its vicinity is the Candler Cottage at 447 Washington Street, a c. 1850 Gothic Revival house and carriage house designed by Richard Bond. Three historic houses on Aspinwall Hill were lost to demolition: the Federal-era homestead of the family for whom the hill was named, the Tappan House (c. 1822) and the Bowditch House (c. 1867).

This 26 Weybridge Road property has been characterized as an oasis of open space in the midst of a densely settled neighborhood of single family homes and apartment buildings.

The surrounding streets of Blake Park were laid out and developed into small single family house lots in the 1920s and 1930s. The proposed Local Historic District would be a valuable benefit to the community. The loss of this ensemble and the open space around it, located in a very visible triangle of land at the junction of Somerset and Weybridge Roads, would negatively impact the integrity of the entire Aspinwall Hill neighborhood and the quality of life for its residents.

There will be a Public Hearing on the matter on or after April 27, 2012, as per M.G.L. Chapter 40C, after which time the final study report will be completed and reviewed for acceptance.

The owners also will ask the Town to accept a Preservation Restriction on the property in order to preserve the location and setting of the buildings and to conserve the open space around them for the benefit of the community.

Under Article 5.6, Preservation Commission and Historic Districts By-law of the Town By-laws, any proposed local historic district must be approved by a 2/3 vote of Town Meeting. There are currently six local historic districts in Brookline: Cottage Farm, established in 1979; Pill Hill, established in 1983; Graffam-McKay, established in 2004; Harvard Avenue, established in 2005; Chestnut Hill North, established in 2005 and Lawrence, established in 2011.

## **ARTICLE 11**

Submitted by: Preservation Commission

At a meeting on February 14, 2012, the Preservation Commission received a request from the Jane Culver Sargent Trust of 1998 to accept a preservation restriction on the property currently owned by it at 26 Weybridge Road. The Commission voted unanimously to recommend that the town vote to accept the restriction at the Spring 2012 Town Meeting.

At the same meeting the commission also voted to recommend the establishment of a Local Historic District encompassing the same 26 Weybridge Road property owned by the trust, and consisting of five lots containing two buildings, a main house and a carriage house, both dating to around 1822. The proposed district would be called the Wild-Sargent Local Historic District after the two families who owned the property for the most extended periods of time.

The Sargent family and Mr. Keith Hughes, trustee for the Jane Culver Sargent Trust of 1998, are requesting acceptance of the Preservation Restriction in order to better safeguard the location and setting of the historic buildings on the property. They wish to ensure that the sense of open space and the sightlines from the street onto the property are not obstructed or reduced by future construction or subdivision. Their intentions are to maintain as much of the historic character of the landscape and buildings as possible for the benefit of the community while at the same time allowing for future use and adaptation of the property.

## DEED OF PRESERVATION RESTRICTION

Whereas, the property described herein is a portion of an historically significant estate originally constructed around 1822, said property having a main house and a carriage house;

Whereas the purpose of this restriction is to permanently prevent subdividing and building on the property in a manner that would detract from the historic character of the property; and

Whereas, in conjunction with the grant of this Deed of Preservation Restriction, the subject property has been made a Local Historic District pursuant to M.G.L. c. 40C, to be known as the "Wild-Sargent Local Historic District," and said designation provides for review of any exterior changes to the property visible from a public way, park or body of water in accordance with M.G.L. c. 40C and the Town of Brookline's Design Guidelines for Local Historic Districts, as these may be amended from time to time,

NOW THEREFORE, I, KEITH L. HUGHES, of Cambridge, Massachusetts, as I am Trustee of THE JANE CULVER SARGENT TRUST OF 1998, under an Indenture of Trust dated April 30, 1998, and filed in the Registry District of Norfolk County as Document No. 1061754, in accordance with the wishes of JANE CULVER SARGENT, as set forth in Article III of said trust, and by every other power, hereby grant to THE TOWN OF BROOKLINE, MASSACHUSETTS, a municipal corporation, Town Hall, 333 Washington Street, Brookline, Massachusetts 02445, for nominal consideration of one dollar (\$1.00) paid, a preservation restriction in accordance with Sections 31 and 32 of Chapter 184 of the General Laws of Massachusetts, in gross and in perpetuity, over that land, situated in Brookline, Norfolk County, Massachusetts, now known as 26 Weybridge Road, and being shown as:

Lots A, D and E on Land Court Plan 10876B a copy of a portion of which is filed the Norfolk Registry District with Certificate No. 8690 Book 44; Lot 63 on Land Court Plan 8628C, a copy of a portion of which is filed the Norfolk Registry District with Certificate No. 8155 Book 41; and Lot 64C on Land Court Plan 8628L, a copy of a portion of which is filed the Norfolk Registry District with Certificate No. 8839 Book 45. For Grantor's title see Certificate of Title No. 170002.

The terms of the preservation restriction are as follows:

1. The carriage house located on Lot E may be converted for residential use and sold, together with all or part of Lots D and E, as may be permitted by applicable zoning. No other structures may be constructed on Lots D and E.
2. Any boundary fence or vegetation barrier which may be installed to separate the lot containing the carriage house from the main residence on Lot A shall not exceed forty-two (42) inches in height.
3. Lots A, 63 and 64C, and any portion of Lots D and E which might be retained from any sale of the carriage house, shall remain in common ownership, and no residential structure in addition to the main residence on Lot A may be constructed thereon. One garage for the storage of no more than two vehicles, and not exceeding one story in height, may be constructed on the combined area

of Lots A, 63 and 64C, as may be permitted by applicable zoning. No other structures may be constructed on said lots.

WITNESS my hand and seal, as Trustee as aforesaid this day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Keith L. Hughes, Trustee  
as aforesaid

COMMONWEALTH OF MASSACHUSETTS

County \_\_\_\_\_, 2012

Before me personally appeared KEITH L. HUGHES known to me by \_\_\_\_\_,  
and acknowledged the foregoing to be his free act and deed, as Trustee as aforesaid.

\_\_\_\_\_  
Notary Public  
My commission expires:

**ACCEPTANCE AND APPROVAL BY SELECTMEN  
FOR TOWN OF BROOKLINE (GRANTEE)**

We, the undersigned, being a majority of the Selectmen of the Town of Brookline, Massachusetts, hereby certify that at a meeting duly held on \_\_\_\_\_, 2012, the Selectmen voted to accept and approve the foregoing Preservation Restriction to the Town of Brookline, pursuant to M. G. L. Chapter 40C, M.G. L. Chapter 184, Sections 31-33, and the by-laws of the Town of Brookline.

Selectmen:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

County of Norfolk ss. \_\_\_\_\_, 2012

On this \_\_\_\_\_, day of \_\_\_\_\_ 2012, before me, the undersigned notary public, personally appeared \_\_\_\_\_

\_\_\_\_\_ Selectmen of the Brookline Board of Selectmen, proved to me through satisfactory evidence of identification, which was/were [type of evidence] \_\_\_\_\_, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily, in such capacity, for its stated purpose.

\_\_\_\_\_  
NOTARY PUBLIC

Name (Print):

My Commission expires:

**APPROVAL BY THE MASSACHUSETTS HISTORICAL COMMISSION  
COMMONWEALTH OF MASSACHUSETTS**

The undersigned hereby certifies that the foregoing Preservation Restriction to the Town of Brookline, Massachusetts, has been approved by the Massachusetts Historical Commission in the public interest pursuant to M.G.L., Chapter 184, Section 32. Approval of this Preservation Restriction by the Massachusetts Historical Commission is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Property, and any such pre-existing rights of the public, if any, are not affected by the granting of this Preservation Restriction.

Date: \_\_\_\_\_ By: \_\_\_\_\_

Print: \_\_\_\_\_

Acting Executive Director  
and Clerk, Duly Authorized  
Massachusetts Historical  
Commission

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk, ss. \_\_\_\_\_, 2012

On this \_\_\_\_\_, day of \_\_\_\_\_ 2012, before me, the undersigned notary public, personally appeared \_\_\_\_\_, acting for the Massachusetts Historical Commission, Commonwealth of Massachusetts, proved to me through satisfactory evidence of identification, which was/were [type of evidence] \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and

acknowledged to me that she/he signed it voluntarily, in such capacity, for its stated purpose.

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NOTARY PUBLIC

Name (Print):

My Commission expires:

## **ARTICLE 12**

Submitted by: Eric Dumas

Tobacco use is a leading cause of preventable morbidity and mortality in the United States; approximately 443,000 people die prematurely each year and another 8.6 million live with a serious illness due to tobacco use.<sup>1</sup> The negative consequences of using tobacco products include but are not limited to: cancers, respiratory and cardiac diseases, negative birth outcomes, and eye, nose, and throat irritation.

Despite current laws that prohibit the sale of tobacco products to minors, youth smoking remains a major public health problem. In the 24<sup>th</sup> Surgeon General's Report, U.S. Surgeon General David Satcher documented that smoking among U.S. high school students increased thirty three percent (33%) from 1992-1998.<sup>2</sup> According to a 2000 survey conducted by the Centers for Disease Control and Prevention, eighty two percent (82%) of smokers tried their first cigarette before the age of eighteen.<sup>3</sup> Data from the 1991 National Household Survey on Drug Abuse indicated that fifty three percent (53%) of surveyed smokers began smoking daily before age eighteen.<sup>4</sup> These numbers are alarming because the earlier a young person's smoking habit begins, the more likely he or she will suffer a greater risk of diseases caused by smoking.<sup>5</sup> What is more, once someone becomes addicted to tobacco products, it is exceptionally difficult for that person to stop using them.<sup>6</sup> To break or change this pattern, Brookline must make it more difficult for merchants to sell to minors. If teenagers have difficulty buying tobacco, the initiation of tobacco use can be delayed or prevented.<sup>7</sup>

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<sup>1</sup> 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):1226-1228.

<sup>2</sup> Centers for Disease Control and Prevention, *Tobacco Use Among High School Students-United States, 1997*, 47 MORBIDITY & MORTALITY WKLY. REP. 229 (1998)

<sup>3</sup> Centers for Disease Control and Prevention, "Youth Surveillance- United States 2000," 50 MMWR 1 (Nov. 2000).

<sup>4</sup> FDA Final Rule, *supra* note 6, at 44440.

<sup>5</sup> Emanuela Taioli & Ernst L. Wynder, *Effect of the Age at Which Smoking Begins on Frequency of Smoking in Adulthood*, 325 NEW ENG. J. MED. 968-969 (1991).

<sup>6</sup> See U.S. Dep't of Health and Human Servs., THE HEALTH CONSEQUENCES OF SMOKING-NICOTINE ADDICTION: A REPORT OF THE SURGEON GENERAL iii-v (1988).

<sup>7</sup> U. S. Dep't of Health & Human Servs, PREVENTING TOBACCO USE AMONG YOUNG PEOPLE: SURGEON GENERAL'S REPORT (1994).

Prohibiting the sale of tobacco products to people under the age of nineteen would help curtail Brookline youths' access to tobacco products and potentially reduce youth smoking rates within the town. As the law currently stands, any person eighteen years or older can legally purchase and consume tobacco products. At Brookline High School, this means that 75.4% of current seniors will be legally able to purchase tobacco products this year.<sup>8</sup> Since very few students reach nineteen years of age while still enrolled in the high school, increasing the legal age of consumption by one year would greatly reduce the number of students that could purchase tobacco products in Brookline High School. By decreasing the number of eligible buyers in high school, this warrant article could help reduce youth smoking by decreasing the number of access points students have to tobacco products.

The intent of this warrant article is to allow the town of Brookline to help curtail youth smoking. This warrant article is comparable to tobacco laws that exist in other states and towns. Nationally, nineteen (19) is the minimum age of consumption for tobacco products in Alaska, Alabama, Utah, New Jersey, and three counties in New York State, including the two that make up Long Island. Locally, warrant articles that increase the age of consumption for tobacco products above the age of eighteen have passed in Needham without issue. Since these places were able to raise the minimum age of consumption of tobacco products without issue, one could infer that Brookline would be able to do the same.

### **ARTICLE 13**

Submitted by: Department of Planning and Community Development

The Planning and Community Development Department is submitting this article at the recommendation of the Selectmen's Zoning By-Law Committee. There has been a proliferation of small group fitness businesses in Brookline's commercial districts. These businesses tend to locate in smaller storefronts (500-2,500 s.f.) and are characterized by being limited to personal training (either individual or in small groups) or one group fitness class at a time (i.e. yoga, pilates or karate studios, etc.). These facilities are substantially smaller than health clubs and offer substantially fewer amenities. However, as there is no exemption in the Zoning By-law for small scale fitness clubs; they are required to go through the same special permit process as their higher-impact cousins, full service gyms. It was believed that issues of noise and/or vibration would be likely be self-regulated by property owners, who would seek to ensure that there were no adverse impacts on other tenants in their buildings. As these clubs will likely have a minimal impact, the Zoning By-Law Committee proposes allowing them as a by-right use in commercial districts.

### **ARTICLE 14**

Submitted by: Department of Planning and Community Development

The Planning and Community Development Department is submitting this article at the recommendation of the Selectmen's Zoning By-Law Committee. Recently, there was a

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<sup>8</sup> Hal Mason, Assistant Headmaster, Brookline High School

proposal for a “doggie day care” facility in Coolidge Corner. Since this use didn’t exist when the Table of Uses was formulated in the 1960s, and there are likely to be future requests for this use, including other types of domestic household animals, it should be added to the Table of Uses. Conditions for allowing a veterinarian office (Use #20A) require studies by recognized experts addressing noise, odor and waste disposal impacts, and this condition should be included for the animal day care use as well, since the impacts are similar. Additionally, at the request of the Public Health Director, a condition has been added allowing the Director to impose restrictions on the number, size, and location of the facilities. It is proposed here that the new animal day care use be allowed in local business, general business and industrial districts by special permit and that the veterinarian office use (Use #20A) be amended to allow it, again by special permit, in local business districts, where it is now forbidden.

### **ARTICLE 15**

**Submitted by:** Department of Planning and Community Development

The Town’s Floodplain Overlay District was created in response to a federal requirement outlined in Paragraph 60.3(c) of the National Flood Insurance Program regulations (44 CFR 59, etc.) in order to allow Town residents to obtain flood insurance. The existing Floodplain Overlay District is based on floodplain maps created in 1980. Over the past few years, FEMA has been updating the flood maps for Norfolk County and new maps are scheduled to go into effect on July 12, 2012. These revisions, developed in consultation with FEMA and the state Department of Conservation and Recreation (DCR), update the map references in the Floodplain Overlay District and also update some of the language in Section 4.10.

Many of the “panels” – or maps – referenced in the new language are panels that do not have any areas within the Floodplain Overlay District. On the advice of DCR, these panels are referenced in the bylaw as well as those with areas within the Overlay, so that the entire town has FIRM references in the Zoning Bylaw. In any case, there are few, if any, changes in Brookline between the earlier flood maps and the new ones. The Town is simply being updated as part of an overall update of Norfolk County.

### **ARTICLE 16**

**Submitted by:** Michael Oates, Town Meeting Member, Precinct 12

This Warrant Article would eliminate certain regulations on projects involving Dover Amendment-covered institutions, including schools and religious organizations. Specifically the article would eliminate dimensional restrictions and parking requirements. Removing these regulations will bring our zoning by-laws in line with de facto town practices.

The Dover Amendment (MGL Chapter 40A Section 3) was enacted in 1950 in response to exclusionary “snob” zoning in a case that attempted to restrict a religious use in the town of Dover. It was broadened in 1956 to include public educational uses. The amendment allows these institutions to bypass most local zoning by-laws.

The Dover Amendment permits a municipality, at its discretion, to enact “reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot

area, setbacks, open space, parking and building coverage requirements.”<sup>9</sup> In 1965, following a Dover Amendment zoning dispute with Sisters of the Holy Cross (then Cardinal Cushing College, now Newbury College), Brookline Town Meeting enacted by-law §5.08 to codify dimensional and other restrictions for these institutions. The intention was to “relax limitations on religious and educational uses sufficiently to earn court approval if challenged”, satisfying Dover Amendment case law.<sup>10</sup> In deference to the law, the regulations are substantially more generous than those for any other use and can be exceeded by special permit when meeting a standard of “general harmony”.<sup>11</sup>

For a long time, this by-law worked. The town was able to negotiate and meet the needs of both institutions and neighborhoods. But almost 50 years later, Brookline is a more densely developed town, and institutional needs are encroaching on limited open space and on neighborhoods. While other towns continue to fight the Dover Amendment, Brookline now embraces it. In two recent projects the town has ignored these zoning by-laws in favor of institutional expansion.

In the case of Runkle School, the Zoning Board of Appeals used the Dover Amendment to nullify by-laws §5.08 and §6.02. Following the ZBA decision, Town Counsel’s office explained the ruling: by-law §5.08 contains a “general harmony” provision, but the Dover Amendment waives that zoning requirement.<sup>12</sup> In effect Town Counsel’s opinion means §5.08 and §6.02 do not qualify as reasonable regulations under the Dover Amendment and need not be followed by the town. In making its decision, the Chair of the ZBA stated “I, for one, am convinced that the needs of the Runkle School for an addition outweighs the municipal needs” to hold to local zoning laws.<sup>13</sup>

In the case of The Church of Jesus Christ of Latter-day Saints, the Zoning Board of Appeals, again citing the Dover Amendment, ignored dimensional requirements in the church’s FAR calculation. The board nullified the double-height space calculation for FAR<sup>14</sup>, and also subtracted parking garage lobby space from the FAR calculation. The resulting reduction in square footage provided the basis for their approval under a special permit.

Being a public project, the Runkle School in particular caused much division in the surrounding neighborhood. Many neighbors supported the town’s efforts to avoid these zoning by-laws, believing no restrictions should apply to public schools. Others sought protection under the same by-laws, holding onto an expectation that the town enforces its own zoning rules. Everyone spent significant time, energy, and money over the question of general harmony and what’s required of Dover-covered institutions today.

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<sup>9</sup> Massachusetts General Laws Chapter 40A Section 3 (the “Dover Amendment”).

<sup>10</sup> Combined Reports of the Selectmen and Advisory Committee, December 1965, article 3 explanation.

<sup>11</sup> Brookline Zoning By-law §5.08, §6.02.

<sup>12</sup> Minutes of the Board of Selectmen executive session held on February 9, 2010.

<sup>13</sup> BrooklineTAB, February 4, 2010, *Brookline ZBA approves Runkle expansion; neighbors null appeal*.

<sup>14</sup> §2.07 of the Zoning By-law defines “Gross Floor Area” and has a provision that increases the floor area for interior spaces that are more than 12 feet in height. The calculation attempts to capture excess bulk of double-height spaces not otherwise accounted for in the FAR calculation.

In each of these cases, neighbors felt the final designs did not meet the general harmony provisions of the by-laws. But town boards and commissions felt that institutional needs were more important. Citing the Dover Amendment, they ignored our zoning rules and allowed the projects to move forward as proposed.

Ultimately, the question arises, should we have by-laws that the town does not follow and, indeed, spends tax dollars to circumvent. The town shouldn't avoid its own rules, and certainly shouldn't spend taxpayer money to do so. To avoid this contention in the future, Town Meeting should decide whether the restrictions in by-laws §5.08 and §6.02 remain applicable and still qualify as reasonable regulations.

Eliminating the regulations will enable Dover-covered institutions to bypass zoning rules without restriction, allowing them to focus on their missions. It will reset residents' expectations by permanently eliminating the requirement for "general harmony" with neighbors. It will codify the deference already given these projects by town departments, boards and commissions, aligning the rules with the town's current practices.

### **ARTICLE 17**

Submitted by: Department of Planning and Community Development

The Planning and Community Development Department is submitting this article at the recommendation of the Selectmen's Zoning By-Law Committee. For certain projects to qualify for a bonus of extra floor area or height, public benefits need to be provided. This amendment proposes that a developer not be able to claim as a public benefit anything that is already required by the Zoning By-Law or by any other by-law, statute, code or regulation. As just one example, the Zoning By-Law provides in Section 5.21 that additional gross floor area may be granted for "environmentally friendly sustainable building ... practices." The Town, however, has recently adopted the Stretch Energy Code that requires certain energy-saving measures. Measures already required by the Zoning By-Law or other codes or regulations such as the Stretch Energy Code should not result in bonuses of floor area or height.

Section 5.21 already states that floor area bonuses are not permitted for affordable housing or open space, if those benefits are not in excess of that required by the Zoning By-Law. This amendment would broaden that concept in three ways: (a) by extending it to requirements in addition to those found in the Zoning By-Law; (b) by extending it to "public benefits" beyond affordable housing and open space; and (c) by extending it to Section 5.32 (height bonuses).

In addition, the amendment inserts in Section 5.32.2.a the language that any additional height must be commensurate with the public benefit offered. Similar language is already included in Section 5.21 (additional floor area), but was inexplicably omitted from Section 5.32 (height). This addition attempts to ensure that in return for bonuses of not only floor area but also height, the benefits to the Town and neighborhoods are substantial and commensurate with the relief allowed.

The Zoning By-Law Committee recognizes that additional revisions of the public benefit provisions of the By-Law may be warranted, but believes that these changes are an appropriate first step.

### **ARTICLE 18**

Submitted by: Department of Planning and Community Development

The Planning and Community Development Department is submitting this article at the recommendation of the Selectmen's Zoning By-Law Committee. The article addresses two issues relating to time extensions to exercise the rights granted by variances and special permits.

First, the article would explicitly permit time extension requests to be granted by the Board of Appeals without requiring the additional step of Planning Board review and a Planning Board Report. Time extension requests typically occur for financial reasons or difficulties in hiring a contractor. The Planning Board and Board of Appeals rarely have objections to granting these requests. Consideration of these requests does not allow for discussion of the merits of the original case or for expansion of the scope of work originally allowed by a variance or special permit, but solely for discussion of the reasons for the request for additional time. If a project's scope has changed, a modification request, not a time extension request, must be submitted, and this would continue to go to both boards. Given the largely pro forma nature of time extension requests, and the fact that there will continue to be notice and a hearing before the Board of Appeals, the additional steps of a Planning Board hearing and report needlessly burden the applicant and the Planning Board.

Second, in reviewing the provisions of Chapter 40A (the State's Zoning Act) in connection with this article, it was noted that Section 10 of Chapter 40A appears to contemplate only a six-month extension for variances, not a series of six-month extensions:

“If the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights *for a period not to exceed six months*; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period.”

The article therefore removes the references to “one or more extensions” in order to bring our By-Law into compliance with the apparent intent of state law.

### **ARTICLE 19**

Submitted by: Department of Planning and Community Development

Olmsted Hill Road is a new, 600+ foot road serving a new subdivision developed on the former Town-owned reservoir site on Fisher Hill. It begins at Fisher Avenue and ends in a “hammerhead” turnaround. The Town owns and will continue to own the parcel of land making up the roadway.

By way of background, development of this site by New Atlantic Development Corporation followed developer selection through a Request for Proposals issued by the Town on September 30, 2008; a unanimous Town Meeting vote to convey the property on November 18, 2009; and the execution of a Land Disposition Agreement (LDA) between developer and Town on May 11, 2010. Under the LDA, the “Olmsted Hill” project was treated as two components – a land development component and an affordable housing component.

Under the land development component, and in accordance with an approved subdivision plan dated January 11, 2011, the developer undertook the demolition of the two underground reservoirs, the importation of fill material, site grading, the construction of a road and sidewalk, and installation of associated utilities (underground sewer, drain, water, gas, electric, CATV and telephone). This work was carried out under license from and on land owned by the Town, and subject to monitoring and approval by the Town’s Department of Public Works (DPW).

The subdivision creates 10 single family lots and one larger lot for a 24-unit affordable condominium complex. As each lot was ready for purchase by an end-user or builder, the lot was transferred from Town to developer. The Town still owns the right-of-way on which the road was constructed. As of early March, 2012, the two remaining single family lots were under agreement to sell in April. In accordance with its agreement with the Town, the lots are being conveyed prior to installation of the finish course of road pavement, granite curbing, and sidewalks. This work was deferred until completion of heavy construction on the multi-family lot in order to avoid damage to the curbing and sidewalks during construction. The developer will undertake this work as soon as the plans for the two final lots are finalized, but in any case by the completion of the affordable housing component during the summer of 2012. Funding for road completion has been set aside, with payment subject to approval by the DPW.

## **ARTICLE 20**

Submitted by: Retirement Board

This article is inserted in the warrant at the request of the Retirement Board. The Brookline Retirement Board voted unanimously on February 6, 2012 to adopt this section.

Sections 29 and 30 of Chapter 176 of the Acts of 2011 created a local option that will increase the minimum monthly allowance contained in G.L. c. 32, § 12(2)(d) of a member survivor allowance from \$250 to \$500. This section became effective on February 16, 2012. Payments to eligible recipients are prospective only.

The Brookline Retirement System has less than 25 survivor/retirees that would be affected by this new law. The cost would be less than \$20,000.00 for FY 2013 and would have a decreasing impact in future years. The Board strongly urges adoption of this local option, which will help survivors offset increases in health care and other necessities of life.

## **ARTICLE 21**

Submitted by: Retirement Board

This article is inserted in the warrant at the request of the Retirement Board. The Brookline Retirement Board voted unanimously on February 6, 2012 to adopt this section.

Section 19 of Chapter 133 of the Acts of 2010 provides authority to municipal retirement boards to increase the COLA base in increments of \$1,000.00 for members and surviving spouses of members of the retirement system receiving retirement allowances on June 30<sup>th</sup> of the prior fiscal year.

By taking favorable action on this Article, the Town will accept a local option which increases the base upon which the cost of living increases may be granted to Town retirees from the first \$12,000 to the first \$13,000 of the retirement allowance. This will bring equity to retirees of the Town of Brookline following enactment of Chapter 176 of the Acts of 2011, which automatically increased the COLA base for retirees of the Massachusetts State Teachers Retirement System (which includes Retired Brookline Teachers and Administrators) and the Massachusetts State Employees Retirement System to \$13,000.

Currently, the retirement COLA which has been factored into the system's funding schedule is 3% of the first \$12,000. The funding schedule will be revised to anticipate the possibility of a 3% COLA each year on the first \$13,000. The Retirement's Board's actuary estimates that the amortization of this new COLA provision would add in the neighborhood of \$225,000 per year to that schedule. The Retirement Board has made changes to the membership criteria and has decreased the administrative expenses to substantially offset the increase to the funding schedule.

Several legislative authorities have adopted this section so as to increase the COLA base. It is now up for consideration by municipalities during the current spring cycle of town meetings across the Commonwealth.

## **ARTICLE 22**

Submitted by: Retirement Board

The Act substantively changes the retirement plan for public employees in Massachusetts by adjusting retirement benefits and by providing significant enhancements to the governance and operations of the Commonwealth's retirement boards.

This article is inserted in the warrant at the request of the Brookline Retirement Board, which voted on February 6, 2012 to adopt this section by a vote of four in favor, and one recusal.

Section 34 of the Act re-wrote G.L. c. 32, § 20(6) allowing a new local option provision that replaces the current \$3,000 local option stipend and allows for an increase in the stipend paid to members of retirement boards. Currently, stipends for members of approximately two-thirds of retirement boards in the Commonwealth have been approved.

The section becomes effective on February 16, 2012. With reference to governance of retirement boards, the Act requires that retirement board members follow enhanced procurement requirements and apply increased fiduciary oversight of the retirement system's \$200,000,000 investments. In addition, retirement board members must now undergo mandatory education and training, and must file annual statements of financial interests and acknowledgements of compliance with the conflict of interest and retirement laws. Penalties for non-compliance are substantial, and non-compliance may be considered a breach of fiduciary obligations for which a Board Member would be personally liable.

In recognition of the increased responsibilities and accountability of retirement board members, the Legislature has provided this local option.<sup>15</sup>

Payment of the stipend is made from "funds under the control of the board," and would be funded from the system's return on investments. The Board Members' stipend is dependent upon acceptance of the law by a vote of the legislative body.

Although action by the local retirement board is not required in this process, the Brookline Retirement Board supports this increase, and respectfully requests that Town Meeting recognize the increased responsibilities of members of the Brookline Retirement Board by voting to accept this local option so as to provide a stipend to its members in the amount of not more than \$4,500 per year.

### **ARTICLE 23**

Submitted by: Lee L. Selwyn, Town Meeting Member, Precinct 13

The Brookline Transportation Board has recently voted to authorize and implement so-called "contraflow" or, more descriptively, "wrong-way" bicycle lanes on certain one-way streets within the Town. A "contraflow" bicycle lane is a marked-out travel lane reserved for exclusive use by bicyclists for travel in a direction opposite to that permitted for motor vehicle travel on such one-way streets or, on two-way streets, in a direction opposite to the direction permitted for motor vehicles in the adjacent travel lane. The "contraflow" lane will be approximately five (5) feet in width and will be separated from the motor vehicle travel lane by a double yellow line painted on the road. The width of the remaining motor vehicle travel lane will thus be correspondingly narrowed by this same five (5) feet. Motor vehicles will not be permitted to use the "contraflow" lane in

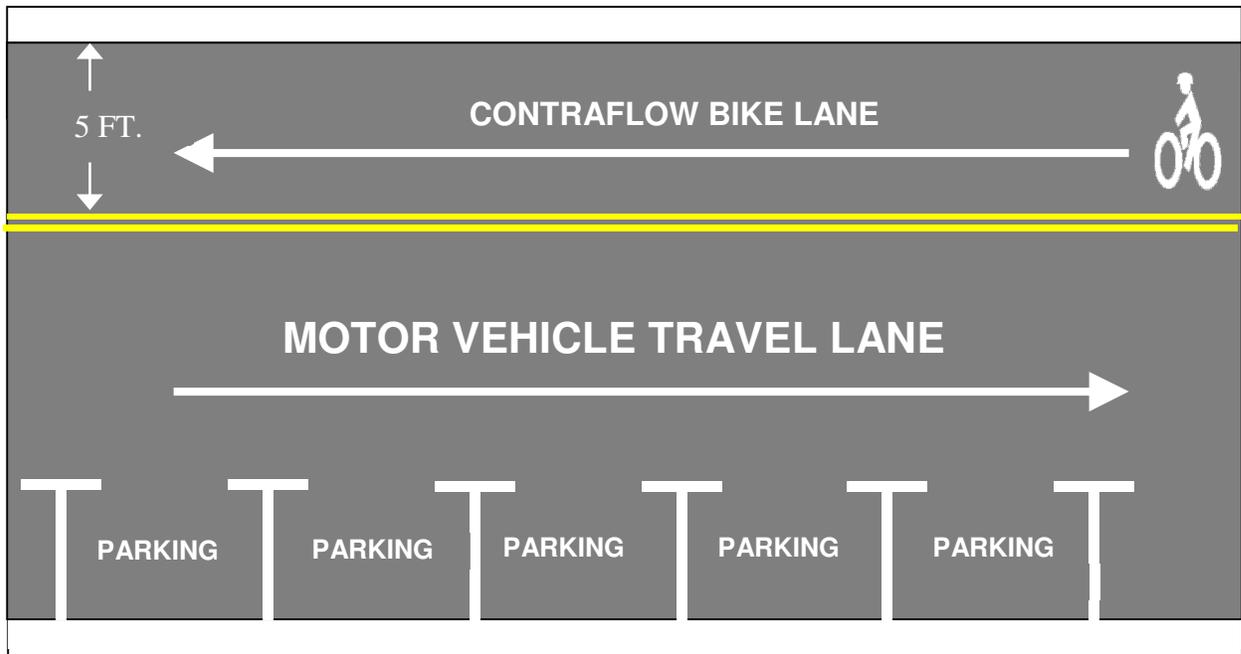
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<sup>15</sup> Section 34 of Chapter 176 of the Acts of 2011 provides as follows:

"Said section 20 of said chapter 32, as so appearing, is hereby further amended by striking out subdivision (6) and inserting in place thereof the following subdivision:-

(6) *Retirement Board Members Compensation.*-The elected and appointed members of a city, town, county, regional, district or authority retirement board upon the acceptance of the appropriate legislative body shall receive a stipend; provided, however, that the stipend shall not be less than \$3,000 per year and not more than \$4,500 per year; provided, further, that the stipend shall be paid from funds under the control of the board as shall be determined by the commission; and provided, further, that an ex-officio member of a city, town, county, district or authority retirement board upon the acceptance of the appropriate legislative body shall receive a stipend of not more than \$4,500 per year in the aggregate for services rendered in the active administration of the retirement system."

either direction. Parking on streets with contraflow bicycle lanes will be permitted only on the side of the street opposite the contraflow bicycle lane, for one-way streets this will generally be on the right-hand side of the street relative to the direction of motor vehicle travel. The diagram below illustrates the manner in which such lanes will be designated. One-way streets are ordinarily identified by "DO NOT ENTER" signs placed at each "outflow" intersection and by "ONE WAY" signs at "inflow" intersections indicating the allowed direction of motor vehicle travel. On one-way streets with contraflow bicycle lanes, the "DO NOT ENTER" signage at intersections at outflow ends of the one-way street will be identified by signage indicating "DO NOT ENTER EXCEPT BICYCLES" or words to that effect.



Contraflow or wrong-way bike lanes create safety and other concerns for drivers, pedestrians in general and for handicapped pedestrians in particular, as well as for residents on the affected streets. The benefits to bicyclists of contraflow bike lanes must be weighed against the negative impacts such contraflow bike lanes would have upon pedestrians, drivers, and residents on the affected streets. These are policy considerations that should be addressed and resolved on a Town-wide basis and with input from all affected persons not unlike the process afforded other matters that routinely come before Town Meeting. This Article will afford elected Town Meeting Members the opportunity to address and resolve this important policy decision on a Town-wide basis, one way or the other.

The process by which the Transportation Board considers – and ultimately authorizes – the creation of contraflow bicycle lanes is initiated by the "Bicycle Advisory Committee." The Bicycle Advisory Committee is an *ad hoc* committee whose members are selected and appointed by the Transportation Board. The Brookline Bicycle Advisory Committee's stated mission is "to improve conditions for bicycling and to promote bicycling by children and adults, for both transportation and recreation." <http://www.brooklinebikes.org/> (visited 2/28/12). There is no indication that the Transportation Board has adopted any formal process for reviewing such proposals, or

for affording others who might be affected by their adoption to provide input to the Board's deliberations. Absent such a process, there is no assurance that in evaluating proposals for specific contraflow bike lanes, the Board will give sufficient consideration as to how actions intended to "improve conditions for bicycling and to promote bicycling by children and adults" – such as the creation of contraflow bike lanes – may adversely affect safety and other concerns of pedestrians, motorists, residents, and others.

Traffic laws are a type of social contract among all who use our streets and roads, and in exchange for each individual's compliance with them, create an expectation that others will comply as well. Drivers stop at red lights and, when the light turns green for them, have a reasonable expectation that the drivers on the intersecting street will stop at the red light facing them and not enter the intersection. Pedestrians have similar expectations. In the case of one-way streets, both drivers and pedestrians have an expectation that traffic will be coming at them from one direction only. Bicycles travel at speeds comparable to those of automobiles and are expected to obey the same traffic laws as automobiles. Yet bicyclists are not required to obtain a license, are not required to carry personal injury liability insurance, are not required to display any identification tags on their bicycles, and are subject to minimal fines for violating traffic laws (e.g., for running a red light or for going the wrong way on a one-way street), fines that are significantly lower than those applicable for motor vehicle moving violations, and that have no insurance premium consequences for the bicyclist. Yet a collision between a bicycle and a pedestrian will frequently result in serious injury to the pedestrian, sometimes just as serious as having been hit by an automobile.

On January 19, 2012, the Transportation Board published its Agenda for its January 26, 2012 meeting. Included therein were considerations of proposals for contraflow bicycle lanes on Green Street, Park Street, and Dudley Street. Following the publication of the agenda and prior to the January 26, 2012 Transportation Board meeting, a number of Town Meeting Members and other Brookline residents sent e-mails to the Chairman of the Transportation Board expressing their concerns and their opposition to these proposals. Following are examples of the specific concerns that were raised in these e-mails:

From Lee Selwyn, TMM Pct. 13, January 19, 2012:

I think that you need to be extremely cautious about allowing what you are calling "contraflow" – and what I would call "wrong-way" – bike lanes on one-way streets. In addition to the obvious concerns regarding collisions with cars, a bike traveling in the wrong direction on a one-way street creates an enormous problem for pedestrians who have an entirely reasonable expectation as to which direction to look before crossing the street. This would be a particular problem for visually-handicapped pedestrians who have a difficult enough time seeing an oncoming bike even if travelling in the same direction as car traffic, and who would be even less able or likely to see a bike travelling in the wrong direction.

We have bicyclists in Brookline riding on the sidewalk, not stopping at traffic lights, weaving through traffic, and in general ignoring traffic laws. "Legalizing" going the wrong way down a one-way street is a step in the wrong direction

(pardon the pun), and will serve only to escalate the already substantial friction between bicyclists and the rest of us. ...

A one-way street is just that, and bikes should be required to use it in exactly the same manner as other moving vehicles.

From Jonathan Margolis, TMM Pct. 7, January 19, 2012:

In many cases, establishing bike lanes that go against traffic will be confusing, and the existence of such lanes is likely further to undercut attempts to get cyclists to obey the traffic laws.

I live on a one-block long one-way street. Cyclists frequently ride the wrong way. They are a danger to pedestrians, but also to themselves, and to motorists who are using the street lawfully.

Why should we reward bad behavior – especially when we are trying to get riders to obey the traffic laws. Can't cyclists – many of whom brag about how many miles they ride each week – go around the block?

From Carol Hillman, TMM Pct. 1, January 19, 2012:

... We have enough trouble with bicycles in the wrong place, no lights at night etc. etc. without having to worry about them going the opposite way on a one way street. Think London and crossing the street for Americans. ...

I'd hate to be the pedestrian "experimented" on when a bike "flattens" me going the wrong way on a one way street.

From Betsy Shure Gross, TMM Pct. 5, January 19, 2012:

... Not only is it almost impossible to cross streets in Brookline with crutches and/or a cane given the timing of the "WALK" signs, it will be a travesty to also have to deal with bicycles coming from the "wrong" direction when they are already a threat to life and (impaired) limbs as it is! And, of course, I am thinking of activities during the daylight hours. Impossible to contemplate such conditions in the dark.....

From Lee Selwyn, TMM Pct 13, January 20, 2012:

We have bikers riding on the sidewalks even on streets that have marked-out bike lanes. We gave them their bike lanes and yet many still won't use them. And as to what people with visual impairment can or can't do or do or don't do, here's some additional information that might help to make these concerns clearer.

... a visually impaired individual must necessarily be more careful about crossing a street and watching out for oncoming traffic. Cars are far more easily seen than bikes, for several reasons. First, they are BIGGER. Second, they tend to have BRIGHTER HEADLIGHTS. Third, they are NOISIER – it's almost impossible

to "hear" a fast-approaching bike. And fourth, they are far more likely to obey traffic laws than bikes (with the possible exception of failing to stop at crosswalks, which is still a big problem).

Bikes often go the wrong way on one-way streets, but that is hardly a basis to make such conduct legal. I'm really having difficulty understanding what purpose is served by allowing wrong-way biking. Perhaps someone can explain why bikes need this wrong-way travel carve-out, and why bikes, which can and often do travel at the same speeds as cars, should get a pass with respect to traffic laws?

From John VanScoyoc, TMM Pct. 13, January 24, 2012

As an avid bicyclist who cops to occasionally breaking some rules on my rides around town, nonetheless I have to complicate this discussion: I side with those who question the wisdom of contra-flow bike lanes. From my experience, they are contra-intuitive, contra-protective, contra-safety and thus contra-sensible. At best, a last resort if no other accommodation for bicyclists is available.

Similar and even more specific concerns were raised by persons attending the January 26, 2012 Transportation Board meeting. In particular, strong opposition to the proposal was expressed by residents of the affected streets. Several residents of Park Street noted that while there is a parking lane on the west side of the street (i.e., on the right-hand side in the southbound direction of travel), it is sometimes necessary for a car to pull up on the opposite side to unload packages and/or to pick up or drop off an elderly passenger. The carve-out of a wrong-way bike lane would preclude this. Residents of Dudley Street expressed concerns regarding the poor lighting and the difficulty of seeing an oncoming bicycle after dark. While these concerns were noted by the Transportation Board members, they were given short shrift.

Contraflow or wrong-way bike lanes may offer certain minor conveniences for bicyclists, but they present serious and legitimate safety concerns for motorists and pedestrians and for those living on the affected streets. These safety concerns easily outweigh the modest gains in convenience for bicyclists and, indeed, some of these safety issues also apply to bicyclists themselves. One-way streets in Brookline are narrow – which is often why they were designated as “one way” to begin with – and often serve densely populated areas. In the less densely populated areas (e.g., Dudley Street), the one-way streets are often winding and poorly lit, further impairing visibility.

This Article will provide a means by which the potential benefits to bicyclists that might result from specific contraflow bike lane proposals can be weighed against the potential threats to public safety that these wrong-way bicycle lanes may create. Specific contraflow bike lane proposals would be recommended by the Transportation Board (or others) in the form of Warrant Articles submitted for Town Meeting approval. Comments on such proposed Warrant Articles could be offered by the Council on Aging, the Commission for the Disabled, and affected individuals. The Transportation Board, either on its own or with the guidance of Town Meeting, can and should adopt a formal process for considering contraflow bike lane proposals, including the development of a set of guidelines to identify possible locations, posted Transportation Board site visits for evaluation, notices mailed to abutters, and written post-implementation analysis. A

requirement for formal approvals from the Council on Aging and the Commission for the Disabled could also be considered.

Under the existing legislation, Transportation Board decisions of this type may be appealed, but only on a case-by-case basis, to the Board of Selectmen which, by a majority vote, has the authority to reverse them. And even with respect to such appeals, there are no existing guidelines to assist the Selectmen in their review of the Transportation Board's action. The "home rule" petition being proposed in this Article would limit the Transportation Board's authority with respect to contraflow bike lanes to that of developing recommendations to be submitted for Town Meeting approval and, in so doing, would encourage the formulation of fair and balanced guidelines to assist in this process.

#### **ARTICLE 24**

Submitted by: Frederick S. Lebow

[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".<sup>16</sup>) Brookline became an island of Norfolk County (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 2013, the County assessment for Brookline is nearly \$715,000. (While the County assessment to all cities and towns is capped at 2½%, there is no cap on an individual town's assessment

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<sup>16</sup> See the Secretary of State's web site at [www.sec.state.ma.us/cis/cisctlist/ctlistidx.htm](http://www.sec.state.ma.us/cis/cisctlist/ctlistidx.htm)

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 2013, Brookline is the largest contributor, accounting for 13% 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 \$715,000 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.

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 2006 to nearly \$715,000 in Fiscal 2013. During that period, Brookline has paid Norfolk County in excess of \$5 million in assessments.

#### **ARTICLE 25**

Submitted by: Frederick S. Lebow

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.

#### **ARTICLE 26**

Submitted by: Stanley Spiegel, Town Meeting Member, Precinct 2

At the present time, two broadly accepted and widely shared Town goals are in potential conflict: the commitment to protect the character of our neighborhoods, and the need to make investments for the Town's future, including the specific need to respond to a rapidly growing school population.

The premise of this warrant article is that the two goals need not be mutually exclusive. Rather, the Town and Schools can and should make necessary investments in infrastructure, but must do so with thoughtful respect for abutters and surrounding neighborhoods.

From the perspective of the Town, this is the right thing to do. Although educational and religious institutions receive certain protections under the Dover Amendment, and although certain public uses are treated more leniently than private uses under our Zoning By-Law, the Town should nonetheless lead by example with respect to the critical issue of minimizing neighborhood impacts. We should expect no less from the Town than we expect from private developers. Moreover, demonstrated indifference to neighborhood impacts can only result in increased resistance to future public projects.

While some have argued that purchasing a home next to public property has inherent risks that should be obvious to any potential buyer, validating that attitude does not serve the public good. Not only does it suggest that the Town will act insensitively towards abutters, but it encourages opposition to fund worthy public projects because of potentially uncontrolled outcomes.

The Runkle School project was, unfortunately, beset with controversies from the beginning. A mistaken interpretation of the Zoning By-Law, later acknowledged to be erroneous, initially led to the assumption that a building with a Floor Area Ratio approximately 70% larger than otherwise permissible could be built as of right, and to corresponding designs. When it was determined that a special permit was required and would be sought, the project was instead approved under the Dover Amendment without effort to apply the directive in Section 5.08(2) of the Zoning By-Law that modification of dimensional requirements be permitted to the extent necessary to allow reasonable development “in general harmony with other uses permitted and as regulated in the vicinity.”

It should be noted that efforts were made to minimize the impact of the increased square footage through, among other measures, the placement of a landscaped buffer zone, traditional building materials, and softened colors in classroom interiors visible from the public way.

With regard to the mechanical units on top of the building, however, specific problems arose. Most of the mechanical units and screening now installed on the roofs of the building were not included in the plans or elevations presented by the architect to the Zoning Board of Appeals when the zoning exemption for the project was granted in 2010. To the contrary, perspectives of the building revealed only a limited number of small units on the roof. Indeed, certain units, including those closest to abutters, were not included in the plans or elevations presented to the Building Commission or to the Runkle School Building Committee in June 2010 prior to the submission of plans to the Massachusetts School Building Authority, and even units that were shown on floor plans were not shown in the exterior elevations.

At no time were the mechanical units shown in documents presented to neighbors. To the contrary, documents provided to the neighbors in March 2010 actually showed the building from a perspective that hid almost the entire mass of certain rooftop units behind the cornice of the building. Moreover, despite the obvious concern of abutters for the mass and proximity of the building, and the obvious sensitivity of those issues, elevations showing the rooftop mechanical units and screens – which essentially add the height of another floor to much of the roof – were never shown to neighbors. Abutters assert that

they first learned of the change in plans from those approved by the ZBA when the screening for the units was actually installed on the building.

Although the ZBA has ruled that the project should be allowed to go forward, litigation is always a possibility. Litigation or no litigation, trust in the Town's regard for abutting property owners has been undermined, and steps should be taken to restore the confidence of citizens in their Town.

There is no doubt that addressing the issue will be expensive, because the potential problems were not called to the attention of the relevant boards and neighbors in a timely fashion. Petitioners do not seek to assign blame for this situation or call for the costs to be borne by the Runkle School project, or cause a delay in the scheduled reopening of the school this Fall. Rather, they seek for the use of otherwise unexpended FY2012 funds and, if needed, the appropriation of FY2013 and/or FY2014 funds, in a good faith effort to address the problem. Such work could be performed during the summer of 2013, when school is not in session. Petitioners also urge the Town to implement policies and, if necessary, changes in the Zoning By-Law, to ensure that similar situations do not occur in other neighborhoods and to allow future School and other public projects to proceed with confidence. We should strive for an environment of trust in which we can make necessary investments in our Town and Schools while at the same time protecting abutters in our neighborhoods.

#### **ARTICLE 27**

Submitted by: Human Resources/Youth Resources Commission & Hidden Brookline Committee

At the time the United States declared its independence in 1776, every state was a slave-owning state, including Massachusetts. In Brookline, slavery had already existed for over 100 years and would continue for another 25 years. The first mention of slavery comes in Town Meeting records of 1675, when a business consortium of Brookline men informed the Town that they would be holding six Native-Americans in Town until they could arrange their sale to the Caribbean. Hidden Brookline, a committee of the Human Relations-Youth Resources Commission, brings this warrant article now before Town Meeting so that we can publicly acknowledge this painful past and resolve to be vigilant against any and all recurrence of such prejudice.

In a unique and moving ceremony, on September 12, 2009, with the cooperation of the Cemetery Trustees and recorded by Brookline Access Television, we unveiled an engraved stone in the wall of the Old Burying Ground to honor and celebrate the African-American enslaved men, women and child buried there. Almost 300 members of the public joined in this special occasion. On June 8, 2011, the Hidden Brookline Committee received an award from the Brookline Preservation Commission in recognition for this event.

In the years since the Committee's founding in 2006, we have carried out research at the Massachusetts State Archives, the Massachusetts Historical Society, the New England Historic Genealogical Society, and the Brookline Public Library. We have shared this work with various audiences: leading walking tours for students and teachers, mounting

exhibits at our libraries, giving talks to civic organizations, and speaking at Town celebrations of national holidays.

The Hidden Brookline Committee is recognized as a leader in Massachusetts for our research and public education on slavery. Our research has been noted by the Brookline TAB, the Boston Globe, WBZ-TV, and NECN.

### **ARTICLE 28**

Submitted by: Catherine Marris, Jake Wolf-Sorokin, and Pema Doma

While much time and energy has been spent making 'green' and sustainable improvements to various aspects of new building and infrastructure design as well as renovation of existing structures, the effects of toxic diesel pollution *during* construction projects are often overlooked. Highly problematic but easily prevented exposure to particulate matter soot in diesel exhaust has been linked to asthma, diabetes, stroke, heart attack, cancer and over 21,000 premature deaths annually in the U.S. Soot (black carbon) is a warming pollutant 2,000 times more potent than CO<sub>2</sub>. Its significance is increasingly being highlighted in national news sources. Updating Brookline's contract specifications to require the use of cleaner heavy-duty vehicles and equipment/or filters on aging equipment can practically eliminate emissions of particulate matter and black carbon soot. This is a relevant action to consider taking given the high rates of pediatric asthma in Brookline, the high cost of health insurance to the town, and significant investment in construction projects planned over the next 6 years.

### **ARTICLE 29**

Submitted by: Frank Farlow, Town Meeting Member, Precinct 4, David Kluftler, Town Meeting Member, Precinct 12, and Heleni Thayre

This resolution asks Congress to send to the states a constitutional amendment that restores to the federal and state governments the authority to regulate contributions and expenditures in elections and clarifies that corporations do not have free speech rights identical to those of individuals.

In the January, 2010, case *Citizens United v. Federal Elections Commission*, the Supreme Court struck down bipartisan federal legislation that had limited corporations from spending their general treasury funds on political expenditures. As a result, for-profit corporations may now spend unlimited amounts to influence elections at all levels of government. Further, by equating unlimited spending to influence elections with free speech, the decision effectively eliminated government's ability to place any limits on campaign spending.

The Court's action dramatically dilutes the voice of every American who does not control a large corporate treasury or a vast personal fortune. Corporate lobbyists and other powerful special interests, as well as the extraordinarily rich, are now able to threaten public officials at all levels with the possibility of unending negative campaign ads if their agendas are not supported — and the voices of ordinary citizens are drowned out of the electoral process.

The potential impact on elections is enormous: if ExxonMobil had spent just two percent of its 2008 profits in the last presidential election, it would have outspent presidential candidates McCain and Obama *combined*.<sup>17</sup> Indeed, according to the *Washington Post*, spending on television ads by groups independent of the campaigns is already *five times* what it was during the entire Republican primary season four years ago.<sup>18</sup> We're already seeing the avalanche of money resulting from the *Citizens United* case – by far the largest expenditures in the current Republican primary have been made by the super PAC of the leading candidate<sup>19</sup>, suggesting that Super PACs have already become kingmakers – and the negative effects will only increase.

For over a century, Congress and the states have limited the role of money in the political process due to its inevitable corrupting influence. This is no less important today.

Before sending a proposed constitutional amendment to the states, Congress must first approve it by a two-thirds vote in both houses. Three-quarters of the state legislatures (38 out of 50) must then ratify the amendment for it to succeed.

(An amendment may also be proposed by a national constitutional convention called for by two-thirds of the state legislatures, but this has never happened previously. A third possibility is ratification by conventions in three-quarters of the states. This has occurred only once, when Prohibition was repealed).

### **ARTICLE 30**

Any reports from Town Officers and Committees are included under this article in the Combined Reports. Town Meeting action is not required on any of the reports.

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<sup>17</sup> <http://www.tvweek.com/blogs/2009/09/the-us-supreme-court-heard-a-case-yesterday-that-could-affect-millions-and-millions-of-dollars-spent.php>

<sup>18</sup> [www.washingtonpost.com/politics/.../gIQA3dzjP\\_story.html](http://www.washingtonpost.com/politics/.../gIQA3dzjP_story.html)

<sup>19</sup> <http://www.opensecrets.org/pacs/superpacs.php>