



**TOWN OF BROOKLINE
MASSACHUSETTS**

**REPORTS OF SELECTMEN
AND ADVISORY COMMITTEE**

on the

Articles in the Warrant

for the

SPECIAL TOWN MEETING

to be held in the High School Auditorium

Tuesday, November 13, 2012

at

7:00 P.M.

(Please retain this copy for use at the Town Meeting)

Town of Brookline

BOARD OF SELECTMEN

Betsy DeWitt, Chairman

Nancy A. Daly

Jesse Mermell

Richard W. Benka

Kenneth M. Goldstein

Melvin A. Kleckner, Town Administrator

"The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operation of its programs, services or activities. Persons with disabilities who need auxiliary aids and services for effective communication in programs, services and activities of the Town of Brookline are invited to make their needs and preferences known to: C. Stephen Bressler, ADA Coordinator and Director of the Human Relations-Youth Resources Commission, 11 Pierce Street, Brookline, MA 02445, 730-2300 Voice, 730-2327 TDD, 730-2296 FAX."

MODERATOR

Edward N. Gadsby, Jr.

ADVISORY COMMITTEE

Harry K. Bohrs, Chair, 97 Toxteth Street	566-3556
Neil Wishinsky, Vice-Chair, 20 Henry Street.	739-0181
Carla Benka, 26 Circuit Road.	277-6102
Edith R. Brickman, 33 Pond Avenue, #407B	734-5090
Clifford M. Brown, 9 Hyslop Road	232-5626
Sumner J. Chertok, 80 Park Street, #65.	734-1169
Lea Cohen, 1060 Beacon Street, #11	947-9713
Benjamin J. Franco, 275 Cypress Street	453-9413
Nancy Heller, 40 Abbottsford Rd.	277-6108
Amy Hummel, 226 Clark Road	731-0549
Sytske V. Humphrey, 46 Gardner Road.	277-1493
Angela Hyatt, 87 Walnut Street	734-3742
Alisa G. Jonas, 333 Russett Road.	469-3927
Janice Kahn, 63 Craftsland Road.	739-0606
Estelle Katz, 41 Park Street	566-3457
Bobbie M. Knable, 243 Mason Terrace	731-2096
Gerald P. Koocher, 285 Beverly Road.	469-2432
Frederick Lebow, 71 Colchester Street.	739-1930
Fred Levitan, 1731 Beacon Street	734-1986
Pamela Lodish, 195 Fisher Avenue.	566-5533
Sean M. Lynn-Jones, 53 Monmouth Street	738-6228
Shaari S. Mittel, 309 Buckminster Road	277-0043
Michael Sandman, 115 Sewall Ave., No. 4	232-7125
Lee L. Selwyn, 285 Reservoir Road,	277-3388
Stanley L. Spiegel, 39 Stetson Street	739-0448
Charles Swartz, 69 Centre Street.	731-4399
Leonard A. Weiss, 46 Hawthorn Road	277-8403
Karen Wenc, 84 Summit Avenue,	232-4983
Christine M. Westphal, 31 Hurd Road	738-7981
Wendy J. Pray, Executive Assistant, Town Hall	730-2115

NOVEMBER 13, 2012
SPECIAL TOWN MEETING
INDEX OF WARRANT ARTICLES

<u>ARTICLE NUMBER</u>	<u>TITLE</u>
1.	Approval of unpaid bills. (Selectmen)
2.	Approval of collective bargaining agreements. (Human Resources Director)
3.	FY2013 Budget Amendments. (Selectmen)
4.	Amendment to Section 2.5.2 Town's By-Laws – Combined Reports -- requires the Board of Selectmen and Advisory Committee to hold a duly noticed public hearing prior to a final vote on any warrant article. (Moderator's Committee on Public Hearings)
5.	Amendment to the Town's By-Laws – creation of Article 3.22 (The Public's Right To Be Heard On Warrant Articles) -- requires any committee reviewing a warrant article to hold a duly noticed public hearing. (Petition of Jonathan Davis and Regina Frawley)
6.	Amendment to Article 5.10 of the Town's By-Laws – Neighborhood Conservation Districts -- creation of the Settlement Neighborhood Conservation District. (Petition of Eleanor Demont, Andrew Martino, Lynda Roseman, and Kathleen O'Connell)
7.	Amendment to the Town's By-Laws – creation of Article 5.11 (Mortgages, Foreclosures, and Property Policy) -- establishment of a Mediation Program. (Petition of Merelice)
8.	Amendment to the Town's By-Laws – creation of Article 8.32 - Prohibition on the Use of Polystyrene Based Disposable Food Containers. (Petition of Nancy Heller)
9.	Amendment to the Town's By-Laws -- plastic bag reduction. (Petition of Jessica Arconti)
10.	Amendment to the Zoning By-Law – Section 4.07 (Table of use Regulations) -- to permit domestic household animal day care centers (Use 32A) by special permit in L (local business), G (general business) and I (industrial) districts. (Department of Planning and Community Development)
11.	Amendment to the Zoning By-Law – Section 9.12 (Administrative Review for Day Care Centers) -- to require administrative review of day care centers. (Department of Planning and Community Development)
12.	Authorize the Leasing of Town-Owned Property -- 27 Ackers Ave. (Selectmen)

13. Authorize the Leasing of Town-Owned Property -- 15 Newton St. (Selectmen)
14. Legislation to Grant 11 Additional Liquor Licenses for the Sale of All Alcoholic Beverages to be Drunk on the Premises. (Selectmen)
15. Resolution Regarding the Study of “Solar Ready” Roofs on Municipal Buildings. (Petition of Thomas Vitolo)
16. Resolution Calling on Congress to End the War in Afghanistan, Reduce the Military Budget and Bring Our Troops and Tax Dollars Home. (Petition of Patricia Connors and Cornelia van der Ziel)
17. Reports of Town Officers and Committees. (Selectmen)

2012 SPECIAL TOWN MEETING WARRANT REPORT

The Board of Selectmen and Advisory Committee respectfully submit the following report on Articles in the Warrant to be acted upon at the 2012 Special Town Meeting to be held on Tuesday, November 13, 2012 at 7:00 pm.

Note: The following pages of this report are numbered consecutively under each article.

ARTICLE 1

FIRST ARTICLE

Submitted by: Board of Selectmen

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. Both the Police and Fire Departments have unpaid Verizon bills. While quite old, the Public Safety Business Office has explained to the Selectmen that they are legitimate bills that occurred during a transition in the accounting system, and need to be paid. Confusion on part of both the Town and the utility company is the reason why the bills were never paid. The Selectmen have reviewed the bill and verified that it is a valid obligation of the Town. Therefore, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 23, 2012, on the following votes:

VOTED: To authorize the payment of the following unpaid bills of a previous fiscal year from the FY2013 Police Budget:

Verizon \$932.81

VOTED: To authorize the payment of the following unpaid bills of a previous fiscal year from the FY2013 Fire Budget:

Verizon \$1,121.55

November 13, 2012 Special Town Meeting

1-2

ADVISORY COMMITTEE'S RECOMMENDATION

The Advisory Committee recently became aware of a previously unpaid bill. Our report and recommendation under Article 1 will be provided in the Supplementary Mailing.

XXX

ARTICLE 1

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

BACKGROUND:

Passage of Article 1 would authorize payment for the Police Department and Fire Department of a combined \$2,054.36 in unpaid Verizon bills. The bills in question are for service charges associated with telephone lines that allow the Police and Fire Departments wireless communication system to function.

Should Article One pass a total of six bills will be paid—three Police Department bills and three Fire Department bills. The three Police Department bills are all from April 2009 and total \$932.81. The unpaid Fire Department bills are from February, March and April 2006 and total \$1,121.55. At this time, it is believed that all funds due to Verizon by the Police Department and Fire Department have been paid without incident since April 2009. This article addresses only those earlier bills.

The telephone lines that the unpaid bills relate to are connected to the “repeaters” which allow Brookline’s public safety wireless communication system to function. A repeater amplifies a radio transmission allowing it to carry a greater distance at increased strength. Repeaters are used in Brookline to ensure that members of the public safety departments are able to communicate with one another without interruption regardless of where they are in town at any given moment.

DISCUSSION:

Anthony Ansaldi, the Business Manager for the public safety departments, told the Advisory Committee that he does not dispute that the \$2,054.36 being moved under Article 1 is owed to Verizon.

He stated that the six bills had gone unpaid for a variety of reasons, but chiefly because of a lack of continuity in his department’s interactions with Verizon’s billing department. According to Mr. Ansaldi, every time efforts were made to settle these bills his department spoke to a different Verizon representative. He also mentioned the inherent confusion of the Town’s bills received from Verizon as another reason for the delay in payment. Frequently, Verizon misapplies a payment (for example, applying a Recreation Department payment to the Police Department’s bill) or incorrectly applies or removes a credit. The misapplication of payments and/or adjustment of a bill makes it difficult to ensure that an account is not in arrears.

The fact that these six bills are overdue came to light this past March when Mr. Ansaldi received a phone call from Verizon. The Committee was informed that Verizon is not charging late fees or penalties for these outstanding bills.

Should payment of these bills be authorized the funds will be taken from the Police and Fire Department budgets.

When considering Article One, the Advisory Committee expressed confusion about why phone lines are needed to enable wireless communication in Brookline. Mr. Ansaldi was unfamiliar with the intricacies of repeater technology and the Town's wireless communication system; therefore, he was unable to explain the need for the phone lines. In the absence of an explanation, members of the Committee encouraged Mr. Ansaldi to investigate whether wired lines could be eliminated and replaced with Voice Over Internet Protocol (VoIP) technology. He pledged to look into this matter and report back to the Committee in the spring.

In light of Mr. Ansaldi's raising misapplied payments as part of the reason why these six bills have gone unpaid, the Advisory Committee asked if he had spoken to the Town's Finance Department regarding this issue. Mr. Ansaldi confirmed that he had and repeated that the bills were legitimate. Members of the Committee also commented that Verizon should provide the Town with a single contact based on the volume of its business. Providing such as person would eliminate the problem of lack of continuity in contacts at Verizon. Mr. Ansaldi will raise this as an issue to be explored.

Many members of the Advisory Committee expressed concern and displeasure that unpaid bills from 2006 where only now coming to light. There was widespread agreement that a system should be established that flags long unpaid bills for immediate action and perhaps anticipates when bills are due. Mr. Ansaldi agreed that these bills had gone unpaid for too long. He went onto say that as a result of these bills coming to light he has introduced a new system that requires additional information about the status of the Police and Fire Department's utility payments to be presented to him when he signs off on the payment each month. He believes that this will prevent the current situation from arising again.

RECOMMENDATION:

The Advisory Committee felt comfortable authorizing payment of these six outstanding bills, and expects that in the future bills will not go unpaid for this length of time.

Accordingly, the Advisory Committee by a vote of 21-0-0 recommends FAVORABLE ACTON on the following:

VOTED: To authorize the payment of the following unpaid bills of a previous fiscal year from the FY2013 Police Budget:

Verizon	\$932.81
---------	----------

VOTED: To authorize the payment of the following unpaid bills of a previous fiscal year from the FY2013 Fire Budget:

Verizon	\$1,121.55
---------	------------

ARTICLE 2

SECOND ARTICLE

Submitted by: Human Resources

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 no Collective Bargaining agreements for Town Meeting authorization at this time. As a result, the Board recommends NO ACTION, by a vote of 5-0 taken on October 23, 2012.

ADVISORY COMMITTEE'S RECOMMENDATION

At the time of this writing, there are no collective bargaining contracts to consider. Therefore, the Advisory Committee unanimously recommends NO ACTION under Article 2.

XXX

ARTICLE 3

THIRD ARTICLE

Submitted by: Board of Selectmen

To see if the Town will:

- A) Appropriate additional funds to the various accounts in the fiscal year 2013 budget or transfer funds between said accounts;
- B) To see if the Town will vote to appropriate, borrow or transfer from available funds, \$1,750,000 to be expended under the direction of the Building Commission, with the approval of the Board of Selectman and the School Committee for a feasibility study to understand the extent of facility and programming deficiencies at the Devotion School located at 345 Harvard Street in the Town of Brookline, Massachusetts and as further described as Parcel I.D. No. 148-13-00 in the Town of Brookline Assessor's map and database and to explore the formulation of a solution to those deficiencies, for which feasibility study the Town may be eligible for a grant from the Massachusetts School Building Authority. The MSBA's grant program is a non-entitlement, discretionary program based on need, as determined by the MSBA, and any costs the Town incurs in connection with the feasibility study in excess of any grant approved by and received from the MSBA shall be the sole responsibility of the Town;
- C) Appropriate a sum of money, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts to be approved by the Board of Selectmen, for enhancements to the Parking Meter System.
- D) And determine whether such appropriations shall be raised by taxation, transferred from available funds, provided by borrowing or provided by any combination of the foregoing; and authorize the Board of Selectmen, except in the case of the School Department Budget, and with regard to the School Department, the School Committee, to apply for, accept and expend grants and aid from both federal and state sources and agencies for any of the purposes aforesaid.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This article is inserted in the Warrant for any Town Meeting when budget amendments for the current fiscal year are required. For FY2013, the warrant article is necessary to reallocate funding based upon more favorable State Aid, Group Health Insurance, and Group Life Insurance amounts. A total of \$797,005 will be reallocated to the School

budget, Pension fund, and DPW Transportation Division. In addition, the Article will seek funding for the Feasibility/Schematic Design phase of the Devotion School project (a portion of which is to be funded by the Massachusetts School Building Authority), and potentially seek funding to pay for new “smart” single-space parking meters. Funding for the Devotion School project is planned for from Overlay Surplus.

It should be noted that the funding for the meters may not be required; it depends on whether, through the procurement process, the vendor will take surplus multi-space meters from the Town in exchange for the new meters. If they do not, then the Town will need an appropriation to purchase the meters. The Town would then sell the surplus multi-space meters, thereby recouping the funds appropriated. Since the Warrant closes prior to the conclusion of the procurement process, the ultimate funding plan for the new single-space meters remains unclear. Therefore, it is prudent to include language for an appropriation of funds.

SELECTMEN’S RECOMMENDATION

Article 3 of the Warrant for the 2012 Fall Town Meeting proposes amendments to the FY13 budget. The article is required to address both operating and capital issues:

1. *Operating Budget* - \$797,005 in additional budget capacity has been created that is being recommended for appropriation. The source of the budget capacity includes: 1.) higher than anticipated state aid, 2.) lower than anticipated health insurance costs, and 3.) lower than anticipated life insurance costs. It is recommended that this budget capacity be allocated as follows:
 - \$430,222 to the School Department Operating Budget
 - \$344,283 to the Pension Fund
 - \$22,500 to the DPW Transportation Division

Below, please find a detailed description of the source of the budget capacity and the recommended appropriations.

2. *Capital Budget* – the Town is ready to pursue an appropriation of funds for the Feasibility Study/Schematic Design phase of the Devotion School project, a share of which will be paid for by the Massachusetts School Building Authority (MSBA). The cost of this phase is projected to be \$1.75 million, which is proposed to be funded from an available surplus in the Tax Overlay account. In addition, an appropriation may be required to fund the procurement of the new single-space digital meters. The amount that may be necessary will depend upon the amount and/or accounting of the sale of surplus multi-space meter equipment. If an appropriation is required, it will be funded from the separate Parking Meter Fund. A supplemental report will be prepared for Town Meeting if the funding is not required.

OPERATING BUDGET

- State Aid

When the Town's FY13 budget was being developed, the State Aid figures from the budget presented by the Governor in January were used. His proposal resulted in an increase of \$1.6 million (24%) in Net Local Aid from FY12 levels. It also was \$2.3 million (29%) greater than what was assumed in the Financial Forecast presented in December, 2011. The large increase was driven by Ch. 70, which grew \$2 million (29%) from FY12.

The House and Senate versions of the budget, which followed in April and May, were even more beneficial to local government than the Governor's. In addition to the increase in Ch. 70, both of those versions increased Unrestricted General Government Aid (UGGA) by \$65M (8%), an account the Governor level-funded at \$834M. For Brookline, that resulted in an increase of \$388,275. The final State budget signed into law by the Governor incorporated the higher figures for UGGA. When changes to smaller Cherry Sheet accounts and reductions to two assessments are added, the net result is \$430,222 of State Aid above the amount assumed in the budget approved by Town Meeting.

The final State budget also included increases in non-Cherry Sheet aid that were recommended by the House and Senate. Specifically, both the Special Education "Circuit Breaker" and METCO accounts were increased (the Governor level-funded both): Circuit Breaker by 14% (\$29 million) and METCO by 3% (\$500,000). These increases will provide the School budget with \$250,000 - \$300,000 of additional budget capacity in FY13 above and beyond their share of the additional Cherry Sheet aid. In addition, the budget includes \$11.3 million for a new line-item to reimburse school districts for transportation costs associated with the McKinney-Vento Act (educating homeless children). The Schools estimate this to yield approx. \$75,000 in FY13, bringing increases in non-Cherry Sheet aid to \$325,000 - \$375,000.

The table on the following page shows how the final State budget results in \$430,222 of additional Net State Aid, exclusive of the above-mentioned non-Cherry Sheet funding:

November 13, 2012 Special Town Meeting
3-4

	FY12	FY13 FIN PLAN	FY13 STATE BUDGET	VERSUS FINANCIAL PLAN	
<i>RECEIPTS</i>					
Ch. 70	6,932,850	8,949,381	8,949,381	0	0.0%
Unrestricted General Gov't Aid	4,981,754	4,981,754	5,370,029	388,275	7.8%
Vets Benefits	81,803	107,470	103,202	(4,268)	-4.0%
Exemptions	37,892	38,557	38,557	0	0.0%
Charter School Reimbursements	14,791	32,978	4,190	(28,788)	-87.3%
TOTAL RECEIPTS	12,049,090	14,110,140	14,465,359	355,219	2.5%
<i>CHARGES</i>					
County	698,333	715,791	715,791	0	0.0%
Retired Empl. Health Ins.	1,855	0	0	0	0.0%
Air Pollution Dist.	23,973	24,993	24,993	0	0.0%
MAPC	17,164	18,502	18,502	0	0.0%
RMV Surcharge	271,360	262,660	262,660	0	0.0%
MBTA	4,534,376	4,965,929	4,965,929	0	0.0%
SPED	68,120	59,317	55,275	(4,042)	-6.8%
School Choice Sending Tuition	2,279	5,000	5,000	0	0.0%
Charter School Sending Tuition	54,048	110,630	39,669	(70,961)	-64.1%
TOTAL CHARGES	5,671,508	6,162,822	6,087,819	(75,003)	-1.2%
<i>OFFSETS</i>					
School Lunch	26,417	27,780	27,780	0	0.0%
Libraries	80,422	81,380	81,380	0	0.0%
TOTAL OFFSETS	106,839	109,160	109,160	0	0.0%
NET LOCAL AID	6,484,421	8,056,478	8,486,700	430,222	5.3%

In response to the budget pressures placed on the School budget by recent enrollment growth, the Town/School formula was amended for FY13 by adding an “enrollment growth” cost that was split 50% / 50%, meaning the Town absorbed half of the cost of the assumed enrollment growth. The impact of that modification was an increase of \$275,000 in the Schools appropriation. The estimated costs of enrollment were predicated upon an assumed incoming kindergarten class of approximately 600 students.

Since then, the enrollment estimate has only grown. In the Spring, the kindergarten enrollment estimate was increased to 650, and the additional costs resulting from this increase were covered by the School Department’s share of additional budget capacity created by lower than anticipated health insurance costs. The actual number of kindergarten students is 667. In addition, SPED costs for FY13 are estimated to be greater than originally assumed. When the increased costs associated with enrollment

and SPED are factored into the Town/School formula, the result is the entirety of the \$430,222 in additional net State Aid going to increase the School budget.

- Health Insurance Budget

One of the outstanding issues at the time the FY13 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 FY13 that increased, in the aggregate, approximately 2% for Brookline, below the 5% assumed in the Financial Plan. As a result, the impact on the FY13 Group Health budget was significant.

Based on the final rates, the Group Health budget for FY13 is estimated to be \$23.93 million, an amount that is \$851,189 less than the amount built into the Financial Plan. Of this amount, the School's share is \$453,537 and the Town's share is \$397,652, as shown in the table below:

FY13 Group Health Budget in Fin Plan	23,929,561
FY13 Group Health Revised Budget	23,078,371
Variance	(851,189)
School	(453,537)
Town	(397,652)
FY12 Group Health Budget	21,680,402
FY13 Increase - \$	1,397,969
FY13 Increase - %	6.4%

The School's share was added to their appropriation that was approved by Town Meeting in May. \$50,869 of the Town's share was appropriated to fund various items identified in the budget review process, leaving a balance of \$346,783, which was left in the Group Health line-item as a hedge against budget uncertainties including, but not limited to, the cost of vehicle fuel.

- Life Insurance Budget

When the FY13 budget was set, the rates for Group Life Insurance were not finalized. A 17% rate increase was assumed after discussions with the life insurance carrier. The Chief Procurement Officer and Human Resources Director discussed with the carrier options to reduce or eliminate the 17% rate increase. The carrier proposed the

implementation of a supplemental life insurance program¹ in FY14 in exchange for a three-year (FY13-FY15) rate lock. This allows for a \$20,000 reduction in the line-item.

- OPERATING BUDGET RECOMMENDATIONS

Based on the modified Town/School formula, the recommendation is to allocate all of the additional Net State Aid (\$430,222) to the School budget. As for the remaining amount of the Town's portion of the health insurance savings (\$346,783), the recommendation is to appropriate those monies, less \$22,500, to the Pension appropriation in preparation for the significant budget increase in FY14. In addition, the \$20,000 from the reduction in the Group Life Insurance line-item is recommended to be added to the Pension appropriation, bringing the total increase to \$344,283. The recommendation for the remaining \$22,500 is to allocate that to the DPW budget for an additional Transportation Division staff person to help implement and manage the Taxi Medallion program.

Each of these recommendations are detailed as follows:

Pensions

In CY11, the pension fund did not earn the 8.15% the funding schedule assumed (the fund lost 1.4%). Since the retirement board utilizes "asset smoothing", 20% of those losses (the difference between 8.15% and -1.4%) had to be recognized as part of the new valuation prepared by the actuary. In addition, the final 20% of the CY08 28% loss (versus assumed growth of 8.25%) had to be recognized. Those two drivers, plus the increased COLA approved by Town Meeting in May, mean a significant increase in the pension appropriation for FY14.

When faced with a similar looming increase to the pension appropriation in FY12, the FY10 budget amendment approved at the 2009 Fall Town Meeting allocated additional funding for the pension system (from the then-new Meals tax and the increased Lodging tax). This reduced the ultimate increase required in FY12 since it was built into the base for the FY10 and FY11. Increasing the FY13 appropriation by \$344,283 will similarly help the FY14 budget. It also helps mitigate the impact of lowering the systems annual investment return assumption from 8.15% to 7.75%, a prudent step that has long-term benefits for the retirement system.

DPW Transportation Division

The Town has been investigating the move to a taxi medallion system since 2005. These efforts intensified around 2006/2007, when the Town contracted with Bruce Shaller to undertake an analysis of the regulatory options available to the Town. After he reported that moving to a medallion system was feasible, in the

¹ A supplemental life insurance program comes at no cost to the Town. All premiums are paid for by employees who choose to purchase additional life insurance above the \$5,000 they currently get under the Town's Group Life program.

Fall of 2008, Town Meeting was presented with, and approved, Home Rule legislation allowing the Town to establish a taxi medallion system.

In order to help plan for the conversion from the current annual license system to medallions, the Town contracted with Richard LaCapra in 2010. He has since made his recommendations to both the Selectmen and the Transportation Board. In order to move to a medallion system, much work is required by the Transportation Division, Procurement Office, and Town Counsel's office. Clearly, the Transportation Division is not adequately staffed to handle the implementation of and on-going oversight of a medallion industry. The recommendation is to hire a full-time mid-grade C-grade position to assist the Transportation Administrator, with an estimated salary of approx. \$40,000 - \$45,000. For FY13, only half of that amount is required, as the person will not be hired before January 1.

CAPITAL IMPROVEMENT PROGRAM (CIP)

- Devotion School

As most are well aware, the Devotion School project has been a significant part of the CIP for the past few years. In late-March, the Town was notified that the Massachusetts School Building Authority (MSBA) voted to invite the project into its "Eligibility Period", the first step in the MSBA's process. This was exciting and important news for the Town, as the CIP has always assumed a financial partnership with the MSBA.

Since then, the Initial Compliance Certificate ("ICC") has been executed and a School Building Committee has been established. The next step is the invitation to Feasibility Study, for which the Town must seek funding within 270 days of the start of the Eligibility Period. Therefore, in order to move forward with the MSBA as a financial partner, the Town needs to seek an appropriation for the Feasibility Study / Schematic Design phase at this Fall Town Meeting. These funds allow for the hiring of an Owner's Project Manager (OPM) to manage the project, outside consultants to assist in areas such as surveying, traffic, archeological, hazmat, and geotechnical, and an architectural firm to undertake the feasibility study/schematic design. The amount of \$1.75 million is recommended, with funding coming from Overlay Surplus.

- Parking Meters

When the FY13 – FY18 CIP was presented as part of the Financial Plan, \$100,000 was included in order to move to a pay-by-space system in Town-owned parking lots. During the review of the CIP, the Selectmen, Advisory Committee, and Town Meeting were informed that the other part of the parking meter enhancement plan was to move away from curbside multi-space meters to "smart" single-space meters that accept credit/debit cards. In order to do that, the Town needs to buy approximately 400 meters at ~\$500 each. The desired way to pay for that expense is to have the winning vendor purchase the surplus multi-space meters, thereby avoiding the need for a cash outlay. If that is not possible, then an appropriation of funds from the Parking Meter Fund will be necessary.

The timing of finalizing the Warrant required the assumption that the “trade-in” model may not materialize. In that case, the Town would have to appropriate funds at Town Meeting to pay for the new meters and then sell the multi-spaces through a separate process (ultimately recapturing the cash paid out for the new meters). If the “trade-in” model were to happen, then the appropriation would not be necessary and a No Action vote could be taken by Town Meeting on that portion of the Article. Whether or not these funds will ultimately be required will be better understood the first week of November. As approved by both this Board and the Advisory Committee, the vote before Town Meeting includes the funding. In early November, the Selectmen and Advisory Committee will be updated about the need to seek an appropriation. If the “trade-in” model is welcomed by the vendor community and is in the best interest of the Town, a revised budget motion that eliminates the funding request will be recommended to the Selectmen and Advisory Committee and a supplemental report will be provided to Town Meeting.

The Board fully supports these budget amendments, as they prudently address a current year budget issue (gap in the School budget caused by the seemingly never-ending rise in enrollment) and help prepare for the future (increasing the Pension appropriation, additional DPW employee to assist with the implementation and management of a significant new regulatory program). The Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 16, 2012, on the motion offered by the Advisory Committee.

ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND:

Article 3 is an amendment to the Town’s 2013 fiscal year budget. It would, in the words of the article:

- A) Appropriate additional funds to the various accounts in the fiscal year 2013 budget or transfer funds between said accounts;

- B) To see if the Town will vote to appropriate, borrow or transfer from available funds, \$1,750,000 to be expended under the direction of the Building Commission, with the approval of the Board of Selectmen and the School Committee for a feasibility study to understand the extent of facility and programming deficiencies at the Devotion School located at 345 Harvard Street in the Town of Brookline, Massachusetts and as further described as Parcel I.D. No. 148-13-00 in the Town of Brookline Assessor's map and database and to explore the formulation of a solution to those deficiencies, for which feasibility study the Town may be eligible for a grant from the Massachusetts School Building Authority. The MSBA’s grant program is a non-entitlement, discretionary program based on need, as determined by the MSBA, and any costs the Town incurs in connection with the feasibility study in excess of any grant approved by and received from the MSBA shall be the sole responsibility of the Town;

C) Appropriate a sum of money, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts to be approved by the Board of Selectmen, for enhancements to the Parking Meter System.

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

DISCUSSION:

Additional budget capacity (\$797,005) has resulted from three sources: 1) a higher amount of state aid than initially anticipated, 2) lower than anticipated health insurance costs, and 3) lower than anticipated life insurance costs. Reallocation was proposed as follows: a decrease of \$22,500 from the Employee Benefit line (22), and increase of \$22,500 to the Public Works budget line (12), an increase to the Schools budget line (21) of \$430,222 and an increase of \$344,283 to the Pension Fund.

During the Committee's discussion it learned that the \$22,500 savings followed negotiations with the employee life insurance carrier and will result in a stable life insurance rate for FYs 13, 14, and 15. The FY13 budget group life insurance rates had estimated a 17% increase in rates, however the Chief Procurement Officer and Human Resources Director discussed options with the carrier, and negotiated a rate reduction for allowing employees to purchase supplemental life insurance. Employees will also have the ability to purchase additional life insurance at their own expense. Transfer of an equivalent amount to the DPW will allow for hiring of clerical assistance necessary for implementation of the taxi medallion program during the final six months of FY 13. The position is needed during the start-up of the taxi medallion program. If approved, the position will be funded for 12 months in the FY14 budget.

The proposed addition of funds to the schools budget will pay for costs associated with increased kindergarten enrollment this year. In addition to this re-allocation to the school budget, the state legislature increased "non-Cherry sheet" aid for the special education "circuit breaker" account and for METCO, which will yield additional funding for the schools. Because of recent enrollment growth the Town/School funding formula was amended for FY13 to account for an estimated incoming kindergarten class of 600 students. In the late spring this estimate had increased to 650, and by the start of school it became an actual enrollment of 666 (no inferences made). In addition, special education costs for FY13 will also likely come in higher than expected.

Allocating the residual balance of the additional budget capacity, \$344,283 (net of school funding), to the Pension Fund will make beneficial use of the funds and assist in reducing the Town's unfunded pension liability. In CY11 the pension fund did not earn the 8.15% assumed in the funding projections (actual results = -1.4%). Since the retirement board uses "asset smoothing," 20% of those losses (the net difference between 8.15% and -1.4%) must be recognized as part of the new actuarial valuation. In addition 20% of CY08's 28% loss (versus assumed growth of 8.25%) must also be recognized this year.

The Retirement Board is exploring options to control future obligations, but it seems prudent to:

- Recommend allocating the full \$430,222 in increased state aid for addition to the School Department budget.
- Recommend transferring savings resulting from improved rates in the group life insurance program (\$22,500) to the DPW budget to allow hiring of a person to implement and manage the taxi medallion program for the remainder of FY13.
- Recommend allocation of the residual \$344,283 to the Pension Fund.

Capital Improvement Program (CIP)

Devotion School Background

The Devotion School project has represented a significant part of the CIP for a number of years. In late-March the Massachusetts School Building Authority (MSBA) voted to invite the project into its “eligibility period,” the first step in the MSBA funding process. Since that time Brookline has executed an “Initial Compliance Certificate,” and established a School Building Committee. The next step involves a feasibility study for which funding must be sought within 270 days of eligibility. In order for the Town to move forward we must seek funding for a feasibility and schematic design at the Fall Town Meeting.

Failure to act in a timely manner would jeopardize MSBA assistance. Therefore, we recommend the amount of \$1.75 million with funding from the Overlay Surplus

Parking Meter Program

Complaints from the public regarding area meters are well known. The proposed enhancements would eliminate the problematic area meters and replace them with “smart” single-space meters. We would need to purchase approximately 400 such meters at a cost of approximately \$500 each, hence the \$200,000 figure.

Negotiations are in progress seeking to “trade-in” the area meters. If those negotiations are successful, we may reduce this amount or propose no action at the time of Town Meeting. In the interim, we recommend raising and appropriating \$200,000. We recommend raising and appropriating \$200,000 for expenditure aimed at enhancing the parking meter system, under the direction of the Commissioner of Public Works, with any necessary contracts approved by the selectmen.

RECOMMENDATION:

The Advisory Committee, by a vote of 17 in favor, 1 opposed, and 0 abstentions, recommends FAVORABLE ACTION on the following motion:

VOTED: That the Town:

1. Amend the FY2013 budget as shown below and in the attached Amended Tables I and II:

ITEM #	ORIGINAL BUDGET	PROPOSED CHANGE	AMENDED BUDGET
12. Public Works	\$13,484,466	\$ 22,500	\$13,506,966
21. Schools	\$78,649,602	\$430,222	\$79,079,824
22. Employee Benefits	\$45,569,508	-\$ 22,500	\$45,547,008

2. That the Town of Brookline appropriate the sum of \$1,750,000 for the purpose of paying costs of a feasibility study and schematic design to understand the extent of facility and programming deficiencies at the Devotion School located at 345 Harvard Street in the Town of Brookline, Massachusetts and as further described as Parcel I.D. No. 148-13-00 in the Town of Brookline Assessor's map and database and to explore the formulation of a solution to those deficiencies, including the payment of all costs incidental or related thereto, and for which the Town may be eligible for a grant from Massachusetts School Building Authority ("MSBA"), said sum to be expended under the direction of the Building Commission, with the approval of the Board of Selectmen and the School Committee; and to meet the appropriation transfer \$1,750,000 from the overlay surplus account; and further that the Town acknowledges that the MSBA's grant program is a non-entitlement, discretionary program based on need, as determined by the MSBA, and any costs the Town incurs in excess of any grant approved by and received from the MSBA shall be the sole responsibility of the Town.
3. Appropriate \$200,000, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts to be approved by the Board of Selectmen, for enhancements to the Parking Meter System; provided that funding come from a transfer from the Parking Meter Fund (SA07) to the General Fund then to Revenue-Financed Capital Fund.

XXX

ARTICLE 3

BOARD OF SELECTMEN’S SUPPLEMENTAL RECOMMENDATION

The Selectmen will be reconsidering Article 3 at their meeting on the night of Town Meeting. The final recommendation will be conveyed to Town Meeting.

ADVISORY COMMITTEE’S SUPPLEMENTAL RECOMMENDATION

BACKGROUND:

In its original recommendation under Article 3 (FY13 Budget Adjustments), the Advisory Committee recommended appropriating \$200K for the conversion to single-head smart parking meters. This was with the realization that negotiations were in progress and that the “place holder” value was likely to change.

The Town has now negotiated to have its 49 surplus multi-spaced meters purchased for \$202K, slightly less than the \$217K cost for 405 new single-head meters. That spread and the additional installation expenses, estimated in total at just over \$40K, can be covered by a previous \$100K appropriation by Town Meeting for parking meters.

Therefore, The Advisory Committee will revisit its vote and recommendation under Article 3 at its scheduled November 8th meeting. The Advisory Committee has not yet formally voted. However, a revised vote would eliminate the previously specified \$200K appropriation for parking meter conversion.

RECOMMENDATION:

A revised vote would appear in the form as follows:

VOTED: That the Town:

1. Amend the FY2013 budget as shown below and in the attached Amended Tables I and II:

ITEM #	ORIGINAL BUDGET	PROPOSED CHANGE	AMENDED BUDGET
12. Public Works	\$13,484,466	\$ 22,500	\$13,506,966
21. Schools	\$78,649,602	\$430,222	\$79,079,824
22. Employee Benefits	\$45,569,508	-\$ 22,500	\$45,547,008

2. That the Town of Brookline appropriate the sum of \$1,750,000 for the purpose of paying costs of a feasibility study and schematic design to understand the extent of facility and programming deficiencies at the Devotion School located at 345 Harvard Street in the Town of Brookline, Massachusetts and as further described as Parcel I.D. No. 148-13-00 in the Town of Brookline Assessor's map and database and to explore the formulation of a solution to those deficiencies, including the payment of all costs incidental or related thereto, and for which the Town may be eligible for a grant from Massachusetts School Building Authority (“MSBA”), said sum to be expended under the direction of the Building Commission, with the approval of the Board of Selectmen and the School Committee; and to meet the appropriation transfer \$1,750,000 from the overlay surplus account; and further that the Town acknowledges that the MSBA’s grant program is a non-entitlement, discretionary program based on need, as determined by the MSBA, and any costs the Town incurs in excess of any grant approved by and received from the MSBA shall be the sole responsibility of the Town.

FY13 BUDGET - AMENDED TABLE 1

		FY12 BUDGET	FY13 ORIGINAL BUDGET	PROPOSED AMENDMENTS	FY13 AMENDED BUDGET	\$\$ CHANGE FROM FY12	% CHANGE FROM FY12
	REVENUES						
	Property Taxes	163,620,489	169,848,463		169,848,463	6,227,974	3.8%
	Local Receipts	20,275,792	21,084,438		21,084,438	808,645	4.0%
	State Aid	13,383,563	14,806,425	355,219	15,161,644	1,778,081	13.3%
	Free Cash	5,380,264	5,336,413		5,336,413	(43,851)	-0.8%
	Overlay Surplus	0	0	1,750,000	1,750,000	1,750,000	-
	Other Available Funds	6,218,966	10,144,344		10,144,344	3,925,377	63.1%
	TOTAL REVENUE	208,879,075	221,220,083	2,105,219	223,325,302	14,446,227	6.9%
	EXPENDITURES						
	DEPARTMENTAL EXPENDITURES						
	1 . Selectmen	619,759	625,898		625,898	6,139	1.0%
	2 . Human Resources	518,942	507,186		507,186	(11,756)	-2.3%
	3 . Information Technology	1,432,526	1,463,774		1,463,774	31,248	2.2%
	4 . Finance Department	2,986,278	2,966,751	0	2,966,751	(19,527)	-0.7%
	5 . Legal Services	781,304	784,384		784,384	3,080	0.4%
	6 . Advisory Committee	20,033	21,118		21,118	1,085	5.4%
	7 . Town Clerk	574,204	625,299		625,299	51,095	8.9%
	8 . Planning and Community Development	615,763	619,572	0	619,572	3,809	0.6%
	9 . Police	14,731,101	14,877,838		14,877,838	146,737	1.0%
	10 . Fire	12,315,250	12,435,279		12,435,279	120,029	1.0%
	11 . Building	6,860,486	6,890,412		6,890,412	29,926	0.4%
(1)	12 . Public Works	13,230,416	13,484,466	22,500	13,506,966	276,550	2.1%
	<i>a. Administration</i>	771,340	794,483		794,483	23,143	3.0%
	<i>b. Engineering/Transportation</i>	1,065,803	1,077,201	22,500	1,099,701	33,898	3.2%
	<i>c. Highway</i>	4,854,813	4,776,451		4,776,451	(78,362)	-1.6%
	<i>d. Sanitation</i>	2,940,903	2,938,452		2,938,452	(2,451)	-0.1%
	<i>e. Parks and Open Space</i>	3,182,580	3,478,101		3,478,101	295,521	9.3%
	<i>f. Snow and Ice</i>	414,977	419,777		419,777	4,800	1.2%
	13 . Library	3,592,249	3,683,992		3,683,992	91,743	2.6%
	14 . Health	1,141,116	1,122,059		1,122,059	(19,058)	-1.7%
	15 . Veterans' Services	247,955	290,996		290,996	43,041	17.4%
	16 . Council on Aging	826,481	858,351		858,351	31,870	3.9%
	17 . Human Relations	104,461	104,251		104,251	(210)	-0.2%
	18 . Recreation	1,008,679	1,014,283		1,014,283	5,605	0.6%
(2)	19 . Personnel Services Reserve	715,000	715,000		715,000	0	0.0%
(2)	20 . Collective Bargaining - Town	881,472	1,775,000		1,775,000	893,528	101.4%
	<i>Subtotal Town</i>	63,203,475	64,865,909	22,500	64,888,409	1,684,935	2.7%
	21 . Schools	75,387,188	78,649,602	430,222	79,079,824	3,692,636	4.9%
	TOTAL DEPARTMENTAL EXPENDITURES	138,590,662	143,515,512	452,722	143,968,234	5,377,571	3.9%
	NON-DEPARTMENTAL EXPENDITURES						
(1)	22 . Employee Benefits	42,108,263	45,569,508	(22,500)	45,547,008	3,438,745	8.2%
(3)	<i>a. Pensions</i>	14,612,334	15,422,765	344,283	15,767,048	1,154,714	7.9%
	<i>b. Group Health</i>	21,680,402	23,425,155	(346,783)	23,078,372	1,397,970	6.4%
	<i>c. Health Reimbursement Account (HRA)</i>	250,000	125,000		125,000	(125,000)	-50.0%
(3)	<i>d. Retiree Group Health Trust Fund (OPEB's)</i>	1,801,527	2,601,928		2,601,928	800,401	44.4%
	<i>e. Employee Assistance Program (EAP)</i>	28,000	28,000		28,000	0	0.0%
	<i>f. Group Life</i>	130,000	150,000	(20,000)	130,000	(0)	0.0%

		FY12 BUDGET	FY13 ORIGINAL BUDGET	PROPOSED AMENDMENTS	FY13 AMENDED BUDGET	\$\$ CHANGE FROM FY12	% CHANGE FROM FY12
	<i>g. Disability Insurance</i>	16,000	16,000		16,000	0	0.0%
(3)	<i>h. Worker's Compensation</i>	1,250,000	1,200,000		1,200,000	(50,000)	-4.0%
(3)	<i>i. Public Safety IOD Medical Expenses</i>	300,000	560,660		560,660	260,660	86.9%
(3)	<i>j. Unemployment Compensation</i>	350,000	350,000		350,000	0	0.0%
	<i>k. Medical Disabilities</i>	30,000	30,000		30,000	0	0.0%
	<i>l. Medicare Coverage</i>	1,660,000	1,660,000		1,660,000	0	0.0%
(2)	23 . Reserve Fund	1,877,151	1,946,946		1,946,946	69,795	3.7%
	24 Stabilization Fund	253,092	0		0	(253,092)	-100.0%
	25 Affordable Housing	355,264	251,363		251,363	(103,901)	-29.2%
	26 . Liability/Catastrophe Fund	141,959	253,669		253,669	111,710	78.7%
	27 . General Insurance	275,000	275,000		275,000	0	0.0%
	28 . Audit/Professional Services	130,000	130,000		130,000	0	0.0%
	29 . Contingency Fund	15,000	15,000		15,000	0	0.0%
	30 . Out-of-State Travel	3,000	3,000		3,000	0	0.0%
	31 . Printing of Warrants & Reports	20,000	20,000		20,000	0	0.0%
	32 . MMA Dues	12,419	12,729		12,729	310	2.5%
	<i>Subtotal General</i>	<i>3,082,885</i>	<i>2,907,707</i>	<i>0</i>	<i>2,907,707</i>	<i>(175,178)</i>	<i>-5.7%</i>
(1)	33 . Borrowing	10,404,421	10,046,874	0	10,046,874	(357,547)	-3.4%
	<i>a. Funded Debt - Principal</i>	<i>7,975,489</i>	<i>7,422,382</i>		<i>7,422,382</i>	<i>(553,107)</i>	<i>-6.9%</i>
	<i>b. Funded Debt - Interest</i>	<i>2,268,932</i>	<i>2,464,492</i>		<i>2,464,492</i>	<i>195,560</i>	<i>8.6%</i>
	<i>c. Bond Anticipation Notes</i>	<i>100,000</i>	<i>100,000</i>		<i>100,000</i>	<i>0</i>	<i>0.0%</i>
	<i>d. Abatement Interest and Refunds</i>	<i>60,000</i>	<i>60,000</i>		<i>60,000</i>	<i>0</i>	<i>0.0%</i>
	TOTAL NON-DEPARTMENTAL EXPENDITURES	55,595,568	58,524,088	(22,500)	58,501,588	2,906,020	5.2%
	TOTAL GENERAL APPROPRIATIONS	194,186,231	202,039,600	430,222	202,469,822	8,283,591	4.3%
	SPECIAL APPROPRIATIONS						
	34 . Technology Applications (revenue financed)		250,000		250,000		
	35 . Commercial Areas Improvements (revenue financed)		50,000		50,000		
	36 . Fire Apparatus Rehabilitation (revenue financed)		50,000		50,000		
	37 . Fire Station Renovations (revenue financed)		320,000		320,000		
	38 . Bicycle Access Improvements (revenue financed)		75,000		75,000		
	39 . Harvard / Green Pedestrian Crossing Study (revenue financed)		25,000		25,000		
	40 . Street Rehabilitation (revenue financed)		1,470,000		1,470,000		
	41 . Sidewalk Repair/Reconstruction (revenue financed)		276,000		276,000		
	42 . Sidewalk Revolving Fund (revenue financed)		65,000		65,000		
	43 . Parking Lot Rehabilitation (revenue financed)		85,000		85,000		
	44 . Parking Meter System Enhancements (revenue financed from Parking Meter Fund)		100,000		100,000		
	45 . Municipal Service Center Floor Repairs (revenue financed)		300,000		300,000		
	46 . Fisher Hill - Field/Playground (Sale of Town-owned Land Fund)		3,250,000		3,250,000		
	47 . Playground Equipment, Fields, Fencing (revenue financed)		285,000		285,000		
	48 . Town/School Grounds Rehab (revenue financed)		80,000		80,000		
	49 . Tree Removal and Replacement (revenue financed)		165,000		165,000		
	50 . Old Burial Ground (revenue financed)		280,000		280,000		
	51 . Golf Course Maintenance Building Replacement (revenue financed)		500,000		500,000		
	52 . School Furniture Upgrades (revenue financed)		50,000		50,000		
	53 . Town/School ADA Renovations (revenue financed)		60,000		60,000		
	54 . Town/School Elevator Renovations (revenue financed)		250,000		250,000		
	55 . Town/School Emergency Generator Replacement (revenue financed)		125,000		125,000		

	FY12 BUDGET	FY13 ORIGINAL BUDGET	PROPOSED AMENDMENTS	FY13 AMENDED BUDGET	\$\$ CHANGE FROM FY12	% CHANGE FROM FY12
56 . Town/School Energy Conservation Projects (revenue financed)		150,000		150,000		
57 . Town/School Energy Management Systems (revenue financed)		100,000		100,000		
58 . Town/School Hazardous Material Removal (revenue financed)		60,000		60,000		
59 . Town/School Building Security / Life Safety (revenue financed)		150,000		150,000		
60 . School Intercom System Replacement (revenue financed)		250,000		250,000		
61 . High School Stage (revenue financed)		25,000		25,000		
62 . High School Space Needs Study (revenue financed)		50,000		50,000		
63 . Old Lincoln Surface Structural Repairs (revenue financed)		500,000		500,000		
64 . Pierce School Electric Distribution Upgrade - Design (revenue financed)		37,500		37,500		
65 . Classroom Capacity (\$1.19 million = revenue financed, \$560,000 = reappropriation of ex		1,750,000		1,750,000		
66 . Unified Arts Building (UAB) Repairs/Renovations (bond)		1,300,000		1,300,000		
67 . Waldstein Playground / Warren Field (bond)		2,150,000		2,150,000		
68 . Devotion School Feasibility / Schematic Design (Overlay Surplus)			1,750,000	1,750,000		
(4) TOTAL SPECIAL APPROPRIATIONS	6,979,000	11,183,500	1,750,000	12,933,500	5,954,500	85.3%
TOTAL APPROPRIATED EXPENDITURES	201,165,231	213,223,100	2,180,222	215,403,322	14,238,091	7.1%
NON-APPROPRIATED EXPENDITURES						
Cherry Sheet Offsets	106,839	109,160		109,160	2,321	2.2%
State & County Charges	5,671,508	6,162,822	(75,003)	6,087,819	416,311	7.3%
Overlay	1,910,496	1,700,000		1,700,000	(210,496)	-11.0%
Deficits-Judgments-Tax Titles	25,000	25,000		25,000	0	0.0%
TOTAL NON-APPROPRIATED EXPEND.	7,713,843	7,996,982	(75,003)	7,921,979	208,136	2.7%
TOTAL EXPENDITURES	208,879,074	221,220,083	2,105,219	223,325,302	14,446,228	6.9%
SURPLUS/(DEFICIT)	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 #33)

FY13 BUDGET - AMENDED TABLE 2

Department/Board/Commission	Personnel Services/ Benefits	Purchase of Services	Supplies	Other Charges/ Expenses	Utilities	Capital Outlay	Inter-Gov'tal	Debt Service	Agency Total
Board of Selectmen (Town Administrator)	605,270	6,868	4,000	6,600		3,160			625,898
Human Resources Department (Human Resources Director)	262,867	201,219	8,500	31,000		3,600			507,186
Information Technology Department (Chief Information Officer)	925,515	436,091	33,850	27,550		40,769			1,463,774
Finance Department (Director of Finance)	1,964,742	930,566	37,710	16,165	2,318	15,250			2,966,751
Legal Services (Town Counsel)	549,367	124,017	3,300	104,700		3,000			784,384
Advisory Committee (Chair, Advisory Committee)	17,942	36	2,275	570		295			21,118
Town Clerk (Town Clerk)	529,427	78,223	13,750	1,400		2,500			625,299
Planning and Community Department (Plan. & Com. Dev. Dir.)	584,137	16,673	9,212	4,550		5,000			619,572
Police Department (Police Chief)	13,346,709	371,485	221,750	59,500	426,110	452,284			14,877,838
Fire Department (Fire Chief)	11,709,480	144,755	146,260	27,650	247,062	160,072			12,435,279
Public Buildings Department (Building Commissioner)	1,964,115	2,112,739	22,670	5,350	2,729,651	55,887			6,890,412
Public Works Department (Commissioner of Public Works)	7,247,673	3,236,871	883,075	40,900	1,378,447	700,000	20,000		13,506,966
Public Library Department (Library Board of Trustees)	2,550,352	167,396	542,520	3,700	337,922	82,101			3,683,992
Health Department (Health Director)	868,861	191,237	15,100	4,120	37,686	5,055			1,122,059
Veterans' Services (Veterans' Services Director)	153,907	2,729	650	133,185		525			290,996
Council on Aging (Council on Aging Director)	662,809	32,277	18,000	2,900	70,366	72,000			858,351
Human Relations/Youth Resources (Human Relations Dir.)	98,890	1,761	2,600	450		550			104,251
Recreation Department (Recreation Director)	694,548	75,897	70,980	12,400	154,079	6,380			1,014,283
School Department (School Committee)									79,079,824
Total Departmental Budgets	44,736,609	8,130,839	2,036,202	482,690	5,383,640	1,608,428	20,000		141,478,233
DEBT SERVICE									
Debt Service (Director of Finance)								10,046,874	10,046,874
Total Debt Service								10,046,874	10,046,874
EMPLOYEE BENEFITS									
Contributory Pensions Contribution (Director of Finance)	15,617,048								15,617,048
Non-Contributory Pensions Contribution (Director of Finance)	150,000								150,000
Group Health Insurance (Human Resources Director)	23,078,372								23,078,372
Health Reimbursement Account (HRA) (Human Resources Director)	125,000								125,000
Retiree Group Health Insurance - OPEB's (Director of Finance)	2,601,928								2,601,928
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)	1,200,000								1,200,000
Public Safety IOD Medical Expenses (Human Resources Director)	560,660								560,660
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	45,547,008								45,547,008
GENERAL / UNCLASSIFIED									
Reserve Fund (*) (Chair, Advisory Committee)				1,946,946					1,946,946
Liability/Catastrophe Fund (Director of Finance)				253,669					253,669
Housing Trust Fund (Planning & Community Development Dir.)				251,363					251,363
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)				12,729					12,729
Town Salary Reserve (*) (Director of Finance)	1,775,000								1,775,000
Personnel Services Reserve (*) (Director of Finance)	715,000								715,000
Total General / Unclassified	2,490,000	418,000	10,000	2,479,707					5,397,707
TOTAL GENERAL APPROPRIATIONS	92,773,617	8,548,839	2,046,202	2,962,397	5,383,640	1,608,428	20,000	10,046,874	202,469,822

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

ARTICLE 4

FOURTH ARTICLE

Submitted by: Moderator’s Committee on Public Hearings

To see if the Town will amend the General By-Laws as follows:

By inserting the following sentence immediately after the first sentence in Section 2.5.2 of Article 2.5 (addition in bold):

SECTION 2.5.2 COMBINED REPORTS

The explanation and relevant data submitted by the petitioners for a petition article shall be included, together with article, in the combined reports. **The Board of Selectmen and the Advisory Committee (or a subcommittee of the Advisory Committee) shall hold at least one duly noticed public hearing prior to a final vote of the Board of Selectmen or the Advisory Committee, as the case may be, on any article in the Warrant.** The Board of Selectmen and the Advisory Committee shall prepare written reports, stating their recommendations and the reasons therefor, for all articles in the Warrant for a Town Meeting. The reports shall be included in the combined reports to be delivered or mailed as follows:

Or act on anything relative thereto.

PETITIONER’S ARTICLE DESCRIPTION

This article is submitted by the Moderator’s Committee on Public Hearings. It would amend Section 2.5.2 of Article 2.5 of the Town’s By-Laws to require the Board of Selectmen and the Advisory Committee (or a subcommittee of the Advisory Committee) to hold at least one public hearing on each article included in the Warrant.

Article 9 of the May 2012 Annual Town Meeting would have required all Town committees to hold at least one public hearing prior to taking a vote on any article included in the Warrant. Town Meeting voted to refer Article 9 to a Moderator’s Committee and asked that the Committee report before the November 2012 Town Meeting.

The Moderator appointed Harry Friedman, Helen Herman, Donna Kalikow, Richard Leary, and Sean Lynn-Jones to the Moderator’s Committee on Public Hearings. The Committee held multiple meetings and one public hearing. It also received many written comments from Brookline residents and members of various Town Committees.

The Moderator's Committee voted 5–0 to recommend this By-Law amendment at its meeting on September 12, 2012.

The Moderator's Committee will include other recommendations in its final report, but this article is the only recommendation for a By-Law amendment and the only recommendation that takes the form of an article to be included in the Warrant. The other recommendations are enumerated at the end of this explanation.

The Rationale for this Article

The Moderator's Committee concluded that a By-Law requiring at least one public hearing before voting on a Warrant article should apply to the Board of Selectmen and the Advisory Committee, for the following reasons.

First, the Committee recognized that public hearings can provide valuable information during the consideration of Warrant articles. Members of the public who are not Town Meeting Members rarely address Town Meeting, so the consideration of Warrant articles by the Selectmen and Advisory Committee prior to Town Meeting is an important opportunity for public input.

Second, for many years it has been the practice of the Board of Selectmen and the Advisory Committee (or a subcommittee of the Advisory Committee) to hold one or more public hearings on articles that have been placed on the Warrant. Amending the Town's By-Laws to require such public hearings would codify that practice and ensure that it continues.

Third, the Board of Selectmen and the Advisory Committee present the overwhelming majority of written reports to Town Meeting. They are already required by By-Law to make recommendations to Town Meeting. They are thus in a different category than the other committees that sometimes make recommendations to Town Meeting.

The amendment is to Section 2.5.2, because that is where the By-Law addresses the Combined Reports, and such hearings have traditionally been part of the process of preparing the recommendations of the Selectmen and the Advisory Committee for the Combined Reports.

The By-Law amendment would allow the Advisory Committee to satisfy the requirement of a public hearing by having one of its subcommittees hold a public hearing. This provision recognizes that the practice of the Advisory Committee has been to have its subcommittees hold public hearings on Warrant articles. Given the size of the Advisory Committee (20–30 members), subcommittee hearings generally offer a more effective forum for interaction between the public and members of the Advisory Committee. The Moderator's Committee did not think the same logic applies to the Board of Selectmen, which has only five members and has traditionally not divided into subcommittees to hold public hearings.

The amendment does not include a definition of “public hearing.” After consulting with Town Counsel, the Moderator’s Committee realized that such a definition was unnecessary: the defining feature of a public hearing is that all members of the public in attendance are given an opportunity to speak. The precise format and procedure may vary. Town Counsel can provide guidelines and advice to Town Committees.

Public Hearings by Other Town Committees

Although the Moderator’s Committee is recommending a By-Law that only requires the Selectmen and the Advisory Committee to hold public hearings on Warrant articles, the Committee recognizes that it would be valuable for other committees to hold public hearings. Such hearings can provide important information and holding them reaffirms the very important democratic principle that the public’s input matters. The elected and appointed officials of the Town of Brookline should make it clear that public input is welcome and encouraged.

The Moderator’s Committee concluded, however, that Town committees other than the Selectmen and Advisory Committee should not be required by By-Law to hold public hearings before taking a vote on a Warrant article. As noted above, the Selectmen and Advisory Committee make the overwhelming majority of recommendations to Town Meeting. Instead of a By-Law, a standing policy could require other Town committees to hold public hearings before taking a vote on a Warrant article. A standing policy could be changed more rapidly than a By-Law and this flexibility may prove useful if some Town committees can persuasively demonstrate that it is not always appropriate to hold a public hearing on a Warrant article. (Members of several committees, including the Advisory Council on Public Health and the Human Resources Board made such arguments to the Moderator’s Committee.) Many such standing policies and practices currently operate successfully in Brookline. For example, the practice of notifying a petitioner when the Board of Selectmen plans to consider his or her Warrant article was established by an August 30, 2006, memorandum of the Town Administrator, not by By-Law.

The Moderator’s Committee therefore recommends that the Selectmen adopt a standing policy that would require committees that they appoint to hold at least one public hearing prior to taking a vote on any article included in the Warrant. Such a policy might take the following form:

Standing Policy of the Board of Selectmen with respect to
Public Hearings on Warrant Articles

Before taking a vote expressing an opinion or recommendation on any article included in the Warrant for any Town Meeting, the Board of Selectmen and any of the Boards, Committees or Commissions as defined in Section 1.1.4 of the Town’s General By-Laws, that are appointed by the Board of Selectmen, shall hold at least one non-adjudicatory public hearing on the subject matter. Notice of the hearing shall be satisfied by including it as a public hearing under the requirements of the Open Meeting Law, G.L.c.30A, §18 et seq. Town Counsel shall issue general guidelines for the conduct of such hearings. Any Board, Commission, or Committee unfamiliar with conducting a public hearing should consult with Town Counsel.

The failure to comply with this policy shall not affect the legality of any Town Meeting action.

The Moderator's Committee recommends that other appointing authorities, including the Moderator, and elected committees adopt similar standing policies.

If the use of standing policies to encourage Town committees to hold public hearings on Warrant articles turns out to be problematic, Town Meeting could revisit the issue and consider amending the Town By-Law to require additional Town committees to hold public hearings.

Other Recommendations of the Moderator's Committee

The report of the Moderator's Committee on Public Hearings will include other recommendations, none of which take the form of a Warrant article or By-Law amendment. For example, because there is some confusion and uncertainty about what a public hearing entails, the Committee recommends that Town Counsel offer guidelines for conducting public hearing as part of the mandatory educational training for all elected and appointed officials.

The Moderator's Committee also recommends that the Town website include user-friendly information on the schedule of public hearings for all articles included in the Warrant, so that citizens are easily able to find a list of all such hearings and, if possible, actions taken on each article.

SELECTMEN'S RECOMMENDATION

Article 4 was submitted by the Moderator's Committee on Public Hearings, which was established by a vote taken under Article 9 of the May, 2012 Annual Town Meeting. That article proposed to require any board/committee/commission to hold at least one Public Hearing prior to voting on any article contained in a Warrant for Town Meeting. (The Advisory Committee would have been exempt from the requirement because of their well-established practice of having sub-committees hold public hearings on all warrant articles.) The Selectmen agreed with the petitioners that it was a "good government" article that attempted to increase citizen engagement; however, the Board saw a number of issues with the way the article was crafted that needed further vetting.

The Selectmen thank the Moderator's Committee for their good work under tight time constraints. The proposal under this Article 4 is straightforward, simple, and effective. It requires the Board of Selectmen and the Advisory Committee (or a sub-committee of the Advisory Committee) to hold at least one duly noticed public hearing prior to a final vote on any article in the Warrant. Where this differs from both Article 9 of the May Town Meeting and the similar proposal submitted by the same petitioners for this Town Meeting (see Article 5) is that it does not require up to 60 different

boards/commissions/committees to be subjected to the requirement. Requiring all of these volunteer bodies to fall under the requirements of the proposed by-law amendment would be cumbersome. The Board does not believe that every committee reviewing an article has to have a public hearing, especially if they are only reporting back to the Board of Selectmen. Two good examples are the Board of Assessors or the Advisory Council on Public Health. In addition, the requirement could actually deter residents from submitting warrant articles since there would be additional meetings for them to attend, mostly in the evening, potentially requiring them to make child care arrangements.

As recommended by the Moderator's Committee, the Board has approved a standing policy with respect to public hearings on warrant articles. By a vote of 5-0 taken on October 23, 2012, the Selectmen adopted the following policy:

Prior to submitting an independent report for publication in the Combined Reports to Town Meeting on any article included in the Warrant for any Town Meeting, the Board of Selectmen and any of the Boards, Committees or Commissions as defined in Section 1.1.4 of the Town's General By-Laws, that are appointed by the Board of Selectmen, shall hold at least one non-adjudicatory public hearing on the subject matter. Notice of the hearing shall be satisfied by including it as a public hearing under the requirements of the Open Meeting Law, G.L.c.30A, §18 et seq. Town Counsel shall issue general guidelines for the conduct of such hearings. Any Board, Commission, or Committee unfamiliar with conducting a public hearing should consult with Town Counsel.

The failure to comply with this policy shall not affect the legality of any Town Meeting action. In addition, the Board of Selectmen strongly recommends that any Board or Commission that is discussing a warrant article allow time for public comment on the article.

The Selectmen again thank the petitioners of Article 9 of the May Town Meeting, who also submitted Article 5 of this Town Meeting, as they raised an important issue that will result in a better warrant article review process. The Board does, however, prefer the approach recommended by the Moderator's Committee under this Article 4. The Board recommends FAVORABLE ACTION, by a vote of 4-0 taken on October 2, 2012, on the following:

VOTED: That the Town amend the General By-Laws as follows:

By inserting the following sentence immediately after the first sentence in Section 2.5.2 of Article 2.5 (addition in bold):

SECTION 2.5.2

COMBINED REPORTS

The explanation and relevant data submitted by the petitioners for a petition article shall be included, together with article, in the combined reports. **The Board of Selectmen and the Advisory Committee (or a subcommittee of the Advisory Committee) shall hold at least one duly noticed public hearing prior to a final vote of the Board of Selectmen or the Advisory Committee, as the case may be, on any article in the Warrant.** The Board of Selectmen and the Advisory Committee shall prepare written reports, stating their recommendations and the reasons therefor, for all articles in the Warrant for a Town Meeting. The reports shall be included in the combined reports to be delivered or mailed as follows:

ROLL CALL VOTE:

Favorable Action

DeWitt

Daly

Mermell

Benka

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Article 4 is submitted by the Moderator's Committee on Public Hearings. The Committee was appointed as a result of a vote by the May 2012 Annual Town Meeting to refer Article 9 of the May 2012 meeting to a Moderator's Committee which was asked to report before the November 2012 Town Meeting. The original article would have required all Town Committees to hold at least one public hearing prior to taking a vote on any article included in the warrant.

The current proposal would only require the Advisory Committee (or a subcommittee of the Advisory Committee) and the Board of Selectmen to hold at least one public hearing prior to a final vote on any article in the Warrant. Specifically, the Moderator's Committee recommends that we amend the General By-Laws as follows:

By inserting the following sentence immediately after the first sentence in Section 2.5.2 of Article 2.5 (addition in bold):

SECTION 2.5.2

COMBINED REPORTS

The explanation and relevant data submitted by the petitioners for a petition article shall be included, together with article, in the combined reports. **The Board of Selectmen and the Advisory Committee (or a subcommittee of the Advisory Committee) shall**

hold at least one duly noticed public hearing prior to a final vote of the Board of Selectmen or the Advisory Committee, as the case may be, on any article in the Warrant. The Board of Selectmen and the Advisory Committee shall prepare written reports, stating their recommendations and the reasons therefor, for all articles in the Warrant for a Town Meeting. The reports shall be included in the combined reports to be delivered or mailed as follows:

DISCUSSION:

Sean Lynn-Jones, acting as chair of the Moderator's Committee, presented for the Moderator's Committee and explained that the Committee was limiting its recommendation to requiring the Advisory Committee and the Selectmen to hold at least one public hearing prior to a final vote on any Article included in the Warrant. While the Moderator's Committee felt that public hearings are an important part of the Town Meeting process, the Committee felt that a change in the by-laws should be limited to the Advisory Committee and the Board of Selectmen because, generally, their recommendations were the only ones included in the Combined Reports and they were required to report on every article. The Moderator's Committee felt that some other Town Committees had their hearing requirements set by state law and therefore did not need to be covered by a Town by-law; that there were some cases where a public hearing might not be necessary; and that the Selectmen created most of the Town Committees and they should be responsible for setting policy for those Committees. The Moderator's Committee recommended that the Board of Selectmen issue a policy statement which might take the form and title:

Standing Policy of the Board of Selectmen with Respect to Public Hearings on Warrant Articles

And in doing so, the Selectmen could require that all of their Committees hold public hearings. While the Selectmen had not yet issued such a policy at the time of the Advisory Committee's consideration of this article, we were informed that the Board of Selectman was considering policy language that same evening.

Members of the Advisory Committee noted that there is a long standing tradition of public hearings in the Town and that this should be instilled in our By-laws. Some members felt requiring all Town Committees (and subcommittees) to hold hearings on articles might not be necessary and could be too burdensome. This proposal provides a balanced approach.

The Advisory Committee suggests that the Advisory Committee subcommittee option be clarified by adding language to the parentheses (or *in the alternative to the full Advisory Committee* a subcommittee of the Advisory Committee). There may be a legal distinction between *or* and *and*. To avoid ambiguity or a misreading, though, the Committee believes this phrase will keep it clear.

The Advisory Committee also suggests adding the word *each* to the proposed language of the Moderators Committee proposal after the parentheses and before the word shall.

RECOMMENDATION:

By a vote of 25-0, the Advisory Committee recommends FAVORABLE ACTION on the following:

VOTED: That the Town amend the General By-Laws as follows:

By inserting the following sentence immediately after the first sentence in Section 2.5.2 of Article 2.5 (addition in bold):

SECTION 2.5.2 COMBINED REPORTS

The explanation and relevant data submitted by the petitioners for a petition article shall be included, together with article, in the combined reports. **The Board of Selectmen and the Advisory Committee (or *in the alternative to the full Advisory Committee a subcommittee of the Advisory Committee*) each shall hold at least one duly noticed public hearing prior to a final vote of the Board of Selectmen or the Advisory Committee, as the case may be, on any article in the Warrant.** The Board of Selectmen and the Advisory Committee shall prepare written reports, stating their recommendations and the reasons therefor, for all articles in the Warrant for a Town Meeting. The reports shall be included in the combined reports to be delivered or mailed as follows:

XXX

ARTICLE 4

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

At its October 30, 2012 meeting, the Selectmen reconsidered Article 4 for the purpose of reviewing the amended Article 4 approved by the Advisory Committee. By a vote of 5-0, the Board recommends FAVORABLE ACTION on the amended Article 4 moved by the Advisory Committee.

ARTICLE 5

FIFTH ARTICLE

Submitted by: Regina Frawley and Jonathan Davis

To see if the Town will amend the Town's By-Laws in the following manner:

By adding Article 3.22 immediately between Article 3.21 and Article 4.1, as follows:

ARTICLE 3.22

The Public's Right To Be Heard On Warrant Articles

Any committee as defined in section 1.1.4, before taking its first or only vote with respect to an Article on the Warrant, must hold a duly noticed non-adjudicatory public hearing with respect to the Article, and the committee's permanent record must record that a duly noticed non-adjudicatory public hearing with respect to such Article occurred before such vote.

Due notice of the public hearing shall be satisfied if the due notice complies with the Open Meeting Law (G.L. 30A, secs. 18 et seq.) and By-law 3.21.3(a).

The vote may take place at any time or date after the completion of the duly noticed public hearing.

This Article shall not apply to the plenum of the Advisory Committee.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This is a "Good Government" Article requiring Town Committees to hold at least one Public Hearing prior to voting on any proposed Warrant Article. The United States' Constitution gives the people the **right to petition the government**—in this case on proposed Articles intended for Town Meeting which are "deliberated" by Town Committees. This Article will ensure that the most basic "grassroots" level of government, the people of Brookline, will have the right to be heard by its elected and appointed Town government.

Town Counsel has defined "**Public Hearing**" as an opportunity for interested persons to appear to express their views, and/or to submit their views in writing to a Committee on a matter which will be considered at a "Public Meeting". Massachusetts General Laws

references “Public Hearings” but never defines them, leaving such procedural rules and regulations to individual Committees.

A “**Public Meeting**” is not the same as a Public Hearing, and does not necessarily require a “Public Hearing” before taking a vote or discussing any matter. Thus, this Article only refers to at least one Public Hearing considered by a Committee prior to its taking its first or only vote.

A “Public Hearing” is also not a discretionary “**public comment period**”, which often is allowed only when time or inclination allows, and which has no reference in law, and is exclusively the prerogative of a chair.

“Public Hearings” are subject to “Guidelines”, and are not subject to filibustering. Guidelines may promulgate time-limits, require sign-in, or “no repetitive comments”, etc. and many States and communities have excellent Guidelines which the petitioners have submitted to the Selectmen.

Public Hearings are not intended to impair the function of government, but implement its decision-making by providing a required noticing and opportunity for a Committee’s “hearing” of the public’s views prior to voting on a Warrant Article.

This Article refers to “**non-adjudicatory**” public hearings, as opposed to “**adjudicatory**” public hearings, which are already mandated by law (e.g. Zoning Board of Appeals and Planning Board’s consideration of a zoning By-Law proposal, and victualler’s and liquor licenses which must be noticed in a newspaper to give abutters *et al* a chance to be heard.)

“Non-adjudicatory” covers only those Articles which are otherwise exempt from Public Hearings, and which would ***require no more notification than any Public Meeting requires, forty-eight hours***. In simple terms, the words “Public Hearing” are all that is needed, typed on a Warrant Article item, on any regular meeting agenda, 48-hours prior to the hearing to comply with this Article: Exactly as currently required by state and town by-laws!

This Article arose from a publicly-stated **policy** by the newly-elected Board of Selectmen Chair that the BOS would “not hold Public Hearings on Warrant Article”. The Chair subsequently upheld her view that, “there is no legal requirement to hold public hearings on Warrant Articles, and a Chair has the prerogative to enunciate a policy not to hold public hearings.”

Subsequently, when other Committees also began holding arbitrary “Public Comment” periods rather than the long-held tradition of “Public Hearings”, the petitioners perceived a significant decline in the customary democratic process, and the threat of further decline. The public who took the time to attend a meeting where they had expected to speak on a Warrant Article they believed would affect their area, expressed their

discouragement when they were told they would not be allowed to speak. “Why bother to come if no one wants to hear what we think?” Why, indeed.

After considerable consultation with Town officials willing to collaborate, and after intensive research of other communities’ practices, policies and by-laws, the petitioners decided to submit a Warrant Article requiring Committees to hold at least one Public Hearing on an Article, prior to taking a vote or making a recommendation on said Article. After a Public Hearing on Article 9, the petitioners themselves “heard” the public’s suggestions and modified Article 9 prior to Town Meeting, illustrating the benefits of Public Hearings on Warrant Articles.

This Article is a “modest proposal”, and not the cumbersome, complicated burden some have feared, or suggested.

Thus, in addressing Town officials stated concerns, please note **what this Article does not do:**

- It does not require any Committee to hold Public Hearings on every item on its agenda: ***Only on a Warrant Article it intends to deliberate and vote on.***
- This Article does not state or imply that any person attending a Public Hearing may “hold forth” without limitations of time or be allowed to “wander off-course” of the Article, or to be redundant.
- This Article does not impair Committee Chairs’ prerogative to promulgate and follow Committee guidelines for conducting Public Hearings.
- This Article does not prevent Committees from ***re-considering*** an Article without further Public Hearings. Committees are free to re-consider any Article on its agenda, without further Public Hearings, however much re-consideration might benefit from further Hearings.
- This Article does not require onerous notifications or expensive newspaper Public Notices. The Open Meeting Law states “forty-eight hours” notice must be given for a Public Meeting. Any Warrant Article Public Hearing would require no more than 48 hours notice on a Committee’s agenda which is already mandated by the Open Meeting Law and the Town’s By-Law on electronic notification. **Nothing more than adding the words “Public Hearing” on an agenda item needs to be done to meet the Article’s requirement.**
- This Article does not include the largest Committee in Brookline: The Advisory Committee, (historically referenced as “The Committee of Thirty”) when the whole body meets to consider Articles, precisely because of its size, and the many meetings it holds. However, this Article does include the “subcommittees” of the Advisory Committee which historically has usually held Public Hearings in order to include the public’s views in its reports to the Advisory Committee

plenum. Since it was, in fact, some of the Advisory Committee subcommittees which had become careless about holding true “Public Hearings”, this Article includes AC subcommittees. (The current AC Chair is already diligently requiring AC subcommittees to hold Public Hearings. However, a subsequent Chair might not be so concerned. No laws, state, federal, requires a community’s Finance Committee (the AC) to hold Public Hearings on Warrant Articles.)

- This Article does not require any Committee to hold a “special” and separate public meeting, but instead allows a Committee to incorporate a Public Hearings component in its regular, publicized agendas. (Though, according to Town Counsel, neither the Warrant Article or any reconsideration of an Article, should be considered under “Other Business”, but should be specifically noticed. However, “reconsideration of an Article need not require another Public Hearing.”)

The Petitioners are re-submitting this Article for the following reasons:

- Town Meeting voted to refer Article 9 in May to a “Moderator’s Committee” which did not conclude its meetings and hold a public deliberation and vote in time for the August 30 deadline for filing Warrant Articles. Its final meeting is not scheduled until September, and theoretically the Committee may submit an Article, if it chooses, at that time. ***However, citizen-petitioners may not exceed the August 30th deadline.***
- Only one other recommendation was submitted, by a Committee member who is also on the Moderator’s Town Committee on Organization and Structure, who recommended: An ***Board of Selectmen policy (subject to change at any time) rather than a By-law requirement which would require a rigorous vetting to amend.***
- Moreover, ***no Moderator Committees such as the standing Advisory Committee and its subcommittees, ad hoc committee such as the Moderator’s Committee on Public Hearings, and the standing Town Committee on Organization and Structure (CTOS) are included in this Committee member’s proposed policy—only Selectmen’s Committees.*** Since many important votes on Articles are taken by these Committees, the petitioners feel strongly that the public’s right to be heard would be severely truncated, if not negated.
- The Moderator’s Committee Chair rightly noted that, in the one-and-a-half years interim since the BOS Chair chose to eliminate Public Hearings on Warrant Articles, the same Chair has declined to hold a Public Hearing on any Warrant Article. Further, other Selectmen have publicly and strongly opposed Public Hearings on Articles, stating with the Chair: “We don’t have to hear from the public. By the time we are ready to vote we already know all we need to know about an Article to take a position.” The petitioners believe often “the past is

prelude to the future”. Past behaviors, and the absence of behaviors, are good indicators of what to expect going forward.

- Some Selectmen wish to “compromise”, not burden “expert Committee members” and, instead, have a “subcommittee of a committee” hold Public Hearings. (One new TMM, a doctor, challenged the assumption that experts know all they need about their topics, and often, expectantly, disagree amongst themselves.)

Two years ago a Warrant Article was referred to a Selectmen’s subcommittee: It consisted of one Selectman, one citizen (who had opposed the Article) and three staff, all of whom were given votes. No supporters were appointed, and nearly all meetings were held at 8 a.m., thereby preventing most working people from attending, including parents needing to get their children to school.

This example broke several traditions, including giving staff a vote, a staff that is subject to Selectmen’s reviews, an uncomfortable position to place any staff in, at best. Past as prelude, once again.

The petitioners perceive these expressed Selectmen views, and behavior, along with their unanimous votes opposing Public Hearings on WAs, does not lead them to expect the kind of Public Hearing due process it otherwise is required to hold on, for example, victualler’s and liquor licenses, which are held to “adjudicatory” requirements, including newspaper notices, etc. This Article does not require the same level of notification, or add any public expense.

The petitioners hope tha required Public Hearings on Warrant Articles will enrich the deliberative process that all Committees are required to conduct under the Open Meeting Law, and will expose the public to the thinking and reasoning of the Committee such as to allow its own views to be influenced. Information—even one datum—may change a decision.

Democratic “due process” is essentially a dialectic: Opinions, contra-opinions, alternatives, consequences, and, it is hoped, reasonable synthesizing of views, often referred to as a “collaborative or consultative process”. May’s Article 9 was the product of just this kind of process. The petitioners believe May’s Article 9, by whatever enumeration in November, is worthy of re-submission. Its motives, rigorous research and methodology have complied with the rigors of any responsibly proposed By-Law.

In conclusion, to quote another community’s Town official: “Are you kidding me? We wouldn’t think of any committee’s deliberating on a Warrant Article without holding Public Hearings!” And another: “Are you trying to tell me liberal Brookline doesn’t hold Public Hearings on Warrant Articles? I can’t believe it.”

Neither could we, until one-and-a-half years ago.

Please ensure that every constituent whose quality of life will often turn on Town Meeting's vote, has a chance to "be heard" on any Article that will come before Town Meeting, and ensure that when an important issue comes to your own neighborhood, that you and your constituents will be heard by the officials whose opinions directly affect their lives.

As Town Meeting Members, we represent the public and we, too, need to "hear" our neighbors, residents and voters. Without a By-Law requiring Public Hearings even Town Meeting Members, will have no "right to petition (our) government" during the long process of deliberating Warrant Articles, save on the floor of Town Meeting. And as May demonstrated, when no one was allowed to speak at the mike, waiting until Town Meeting to voice one's view is risky business, indeed. Please vote for this Article. Or risk that when a vital Article might severely impact your precinct(s), you might have to "hold your peace."

Aren't we a bit tired of hearing the phrase "unintended consequences", some of which might have been brought to light at a Public Hearing? Think of the RePrecincting Committee: Borders were changed when those living in the area insisted on being "heard", challenging the well-intentioned but inappropriate configurations, some of which would have broken up a cohesive neighborhood.

As Representative Town Meeting Members, our constituents deserve better. They deserve a "voice". They deserve to be "heard." Tonight, we can ensure they will have that voice.

SELECTMEN'S RECOMMENDATION

The subject matter of Article 5 is similar to that of Article 4: public hearings for Warrant Articles. Please see the Selectmen's Recommendation under Article 4. For reasons provided in that Recommendation, the Board recommends NO ACTION, by a vote of 4-0 taken on October 2, 2012, on Article 5.

ROLL CALL VOTE:

Favorable Action

DeWitt

Daly

Mermell

Benka

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Article 5, submitted by Town Meeting Members Regina Frawley and Jonathan Davis, seeks to amend the Town By-Laws in the following manner:

By adding Article 3.22 immediately between Article 3.21 and Article 4.1, as follows:

ARTICLE 3.22

The Public's Right To Be Heard On Warrant Articles

Any committee as defined in section 1.1.4, before taking its first or only vote with respect to an Article on the Warrant, must hold a duly noticed non-adjudicatory public hearing with respect to the Article, and the committee's permanent record must record that a duly noticed non-adjudicatory public hearing with respect to such Article occurred before such vote.

Due notice of the public hearing shall be satisfied if the due notice complies with the Open Meeting Law (G.L. 30A, secs. 18 et seq.) and By-law 3.21.3(a).

The vote may take place at any time or date after the completion of the duly noticed public hearing.

This Article shall not apply to the plenum of the Advisory Committee.

DISCUSSION:

Article 5 and Article 4 are not mutually exclusive. They are, to an extent, redundant. Article 5 applies more broadly and amends a different portion of our By-laws.

This article is essentially a resubmission of Article 9 from the May 2012 Annual Spring Meeting. The petition stated they were very concerned that the committees and the Board of Selectmen may not hold public hearings on proposed Warrant Articles before voting on a recommendation to Town Meeting. They also expressed concern that there had been a general decline in the Towns long standing tradition of holding public hearings on matters that would come before Town Meeting and that this was leading to lack of public participation in the entire process of Town governance. The petitioners believe that should the Board of Selectmen only allow comment periods at public meetings, and not full public hearings on Articles in the Warrant, other Town Committees may begin to follow that same approach, leading to a general decline in the number of Public Hearings and of voter participation in Town governance. The petitioners believe that the proposal in Article 5 for a bylaw requiring all committees (boards and commissions) to hold public hearings if considering a warrant article was better than having the Board of Selectmen promulgate and publish a standing policy on public hearings for Town Committees, since

a policy can be easily changed and is not binding on either the Board of Selectmen or Town Committees.

Brookline has a long tradition of vigorous public discourse and the Advisory Committee believes that public hearings are an important part of the Town Meeting process, resulting in better Warrant Articles and encouraging participation in Town governance. While all concurred on the value of public hearings, a number of Committee members expressed the concern that amending the Town By-law to require all Committees considering a Warrant Article to hold a public meeting before making a recommendation might be excessive. It was noted that some committees may be formed for a particular expertise and that subjecting that sort of a committee to these requirements may lead to a politicization that serves no one in the end. It may allow be a disincentive for some to volunteer for such committees.

Others felt public hearings can be easily incorporated into public meetings, using a single notice, time and place for both. This approach should not be burdensome for Town's Committees. Additionally, it was pointed out that people have varied schedules and can't always attend a hearing, but more opportunities to attend a public hearings may lead to better community participation and input. It was also noted that this article pertains only to those committees considering articles on the Warrant and that is generally just a handful.

The Committee also considered an amendment offered by Town Meeting Member Marty Rosenthal. That amendment would allow committees to satisfy the requirements of the By-law if a quorum of its membership attended another duly noticed public hearing on the article. The intent is to reduce the burden of multiple, and perhaps redundant, hearings for all participants. However, an example offered by one member (which no one should ever expect to occur) is that, under that amendment, the Advisory Committee could satisfy the requirement if a quorum of the Planning and Regulation Subcommittee simply sat through a hearing by the Planning Board on a particular article. Often, though, different committees bring different perspectives to the issue, and we would not want to discourage that. The Advisory Committee voted strongly against that amendment noting that attending a hearing was not the same as participating.

The Committee did recommend several changes to the language of the article. Hearing from the School Committee, the Advisory Committee was persuaded that, given the structure of the School Committee, the School Committee should be able to satisfy the requirement of the By-law in much the same way as the Advisory Committee through its subcommittees.

The Advisory Committee's motion also strikes the term "non-adjudicatory". This is a term that is not found elsewhere in our By-laws, is not necessary (public hearings suffices) and is seen as more confusing than illuminating.

Finally, the Committee adds a proviso that failure to comply with this bylaw shall not nullify the actions of Town Meeting. This By-law, unlike the proposal in Article 4, falls

into a portion of the By-laws that does not explicitly reference this. Good intentions aside, mistakes may happen and should not be available as a legal pretext to challenge the judgment of Town Meeting.

RECOMMENDATION:

By a vote of 14-10-1, the Advisory Committee recommends FAVORABLE ACTION on the following:

VOTED: That the Town amend the Town's By-Laws in the following manner (red-lined against original Article):

By adding Article 3.22 immediately between Article 3.21 and Article 4.1, as follows:

ARTICLE 3.22
The Public's Right To Be Heard On Warrant Articles

Any committee as defined in section 1.1.4, before taking its first or only vote with respect to an Article on the Warrant, must hold a duly noticed ~~non-adjudicatory~~ public hearing with respect to the Article, and the committee's permanent record must record that a duly noticed ~~non-adjudicatory~~ public hearing with respect to such Article occurred before such vote.

Due notice of the public hearing shall be satisfied if the due notice complies with the Open Meeting Law (G.L. 30A, secs. 18 et seq.) and By-law 3.21.3(a).

The vote may take place at any time or date after the completion of the duly noticed public hearing.

This Article shall not apply to the plenum of the Advisory Committee or School Committee, provided a subcommittee of those bodies assigned to review and report to the full Committee on a warrant article complies with the by-law by holding a duly noticed public hearing before any vote on said warrant article.

Failure to comply with the provisions of this Section 3.22 shall not affect the legality of any town meeting or of any action taken thereat.

XXX

ARTICLE 5

Amendment offered by Stanley Spiegel, TMM-2

In the first sentence of the Advisory Committee's vote on page 5-9 of the Combined Reports, immediately after "section 1.1.4", add: "that transmits its position on an Article on the Warrant to Town Meeting Members, either in a written report, electronically, or by oral presentation at or prior to Town Meeting,"

and immediately after "with respect to" change: "an Article on the Warrant" to "said Article"

so that the Advisory Committee motion as amended becomes:

VOTED: That the Town amend the Town's By-Laws in the following manner (edited against original Article):

By adding Article 3.22 immediately between Article 3.21 and Article 4.1, as follows:

ARTICLE 3.22
The Public's Right To Be Heard On Warrant Articles

Any committee as defined in section 1.1.4 that transmits its position on an Article on the Warrant to Town Meeting Members, either in a written report, electronically, or by oral presentation at or prior to Town Meeting, before taking its first or only vote with respect to said article, must hold a duly noticed ~~non-adjudicatory~~ public hearing with respect to the Article, and the committee's permanent record must record that a duly noticed ~~non-adjudicatory~~ public hearing with respect to such Article occurred before such vote.

Due notice of the public hearing shall be satisfied if the due notice complies with the Open Meeting Law (G.L. 30A, secs. 18 et seq.) and By-law 3.21.3(a).

The vote may take place at any time or date after the completion of the duly noticed public hearing.

This Article shall not apply to the plenum of the Advisory Committee or School Committee, provided a subcommittee of those bodies assigned to review and report to the full Committee on a warrant article complies with the by-law by holding a duly noticed public hearing before any vote on said warrant article.

Failure to comply with the provisions of this Section 3.22 shall not affect the legality of any town meeting or of any action taken thereat.

EXPLANATION

Encouraging petitioners, supporters and opponents to attend a great many public hearings on a given warrant article might prove unduly daunting, and hence discourage some would-be petitioners from filing warrant articles. It might also prove burdensome to small committees that lack the staff to provide adequate outreach to inform the public of hearings, and to appropriately record testimony offered by the public, thus discouraging such committees from even considering articles on the warrant.

The proposed amendment requires public hearings only for those committees transmitting their positions directly to TMMs, presumably to influence their votes, as opposed to merely advising and providing input (along with input from other members of the public) to bodies such as the Selectmen and Advisory Committee. The intent is to avoid excessive public hearings while still having a by-law requirement (rather than merely a policy statement) assuring that committee recommendations conveyed directly to Town Meeting be made only after members of the public have had an opportunity to voice their opinions.

ARTICLE 5

Amendment offered by Marty Rosenthal, TMM-9

MOVED: That the Town amend the Town's By-Laws in the following manner:

By adding Article 3.22 immediately between Article 3.21 and Article 4.1, as follows:

ARTICLE 3.22 The Public's Right To Be Heard On Warrant Articles

Any committee as defined in section 1.1.4, before taking its first or only vote with respect to an Article on the Warrant, must hold a duly noticed non-adjudicatory public hearing with respect to the Article, and the committee's permanent record must record that a duly noticed non-adjudicatory public hearing with respect to such Article occurred before such vote.

Alternatively, any committee other than the Board of Selectmen and Advisory Committee may satisfy the preceding paragraph by (A) having a quorum of its members attend one or more public hearing(s) on a warrant article, (B) so noting in its public record prior to voting on such article; and (C) inviting the principal petitioner for all meetings discussing her/his article."

Due notice of ~~the all such~~ public hearings shall be satisfied if ~~it the due notice~~ complies with the Open Meeting Law (G.L. c. 30A, §§-secs. 18 et seq.) and Brookline By-law 3.21.3(a). ~~The Any committee's vote on a warrant article~~ may take place at any time ~~or~~ date after ~~that committee's the completion of the duly noticed~~ public hearing, or after that committee's quorum had attended one or more hearing(s) under the immediately preceding paragraph.

This Article shall not apply to the plenum of the Advisory Committee.

EXPLANATION

This is intended as a modest amendment by some longtime supporters of both open and participatory government in general, and public hearings in particular. We feel art. 5 can/should be slightly improved -- by easing unnecessarily excessive burdens on principal ("lead") petitioners, on other members of the public who care enough about a

warrant article to want to be heard, and on smaller &/or *ad hoc* Town committees who lack any staff (*e.g.*, to take minutes about each speaker).

Some supporters of art. 5 fear that this proposal waters it down too far. That fear is unfounded. The new and salutary minimum of two, and often more, public hearings is more than enough for the main purpose of such hearings -- to let members of the public weigh in. Since most Town committees have always heard from and dialogued with the principal spokespersons for warrant articles -- which would herein become mandatory -- the only issue is how (and how often) such other citizens can (and need to) weigh in.

The biggest concern about this proposal has been the lack of (mandatory) dialog between visiting committee members and the speakers. However, first, earlier drafts of this proposal had such a mandate; but it was viewed as logistically too cumbersome, especially for large hearings with other agenda items. Second, the Moderator -- in his usual infinite wisdom -- deemed an earlier version (at twice the length) too complicated and “beyond the scope” of art. 5, so it’s been simplified. Third, especially at smaller hearings, it is hoped and herein encouraged that, time permitting, chairpersons will permit questions by such visiting committee members -- who could, of course, also question speakers afterwards if they wish.

Finally, our current, larger public hearings, especially with those numerous speakers, have minimal -- if any -- time for dialogue between committee members and speakers; indeed, a few of such speakers are not used to, or eager for, such questions.

So, especially the smaller and staff-less committees should have the option of either (a) holding their own public hearing, or (b) attending another one, usually a larger one with more citizens speaking. Along with avoiding a new, unnecessary deterrent to such smaller committees offering recommendations on warrant articles, which we should instead encourage, the main goal of this amendment is to make art. 5 easier on petitioners, their supporters, and also their opponents. It is not easy being a principal petitioner -- or opponent. Aside from drafting (often by committee, ugh!) the article and explanation (or objections), getting signatures, and/or organizing public statements and answering media inquiries, etc., it now involves going to at a minimum of four meetings - - with the A/C & BoS -- and often far more. Each such meeting requires coordination with one’s main allies, including discussing new developments, *e.g.* often amendments.

The tasks for principal petitioners for “hearings” are even harder. Since some committees will inevitably (albeit mistakenly) view minimal citizen attendance as a lack of public interest, petitioners often try to round up supporters to come speak -- again with efforts to alert them to the recent developments, often causing internal dialogue. Most such “ordinary” citizens would be more than satisfied to appear once or at most twice. Asking them to appear even more often is basically unfair to them -- and to their coordinators -- and totally unnecessary.

ARTICLE 5

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

BACKGROUND:

This amendment was submitted by Stanley Spiegel TMM2.

The petitioner's motion would essentially set a floor as to where the By-law offered in Article 5 must be applied.

All boards, committees and commissions taking and transmitting a position or making a recommendation on a Warrant Article to Town Meeting would be required to hold at least one public hearing.

Those committees or subcommittees providing a position on an Article to a larger board or committee, with no intention of offering any specific recommendation to Town Meeting, would not be required to hold a public hearing, though its appointing agency could still require it.

DISCUSSION:

The petitioner pointed out that at the very least there will be two public hearings (BOS and AC) held on each Warrant Article prior to deliberation at Town Meeting. If another board or commission, such as the Conservation Commission or Planning board, takes a position and offers a recommendation to Town Meeting then there will be additional public hearings as they will be required to hold public hearings as well.

The petitioner is concerned that at a certain point the process may induce hearing-fatigue and become counterproductive should the By-law requirement be extended down to the smallest level. Petitioners, proponents and opponents will need to attend a variety of, often redundant, public hearings.

The petitioner believes that those boards and committees feeling strongly enough to make a recommendation to Town Meeting on an Article should hold a public hearing. But, smaller subcommittees that have no intention of making such a recommendation to Town Meeting, and may offer a view only because its appointing body specifically solicits a comment, should not have to meet this same requirement. Often these smaller committees or subcommittees have a special purpose and their comments are meant to offer a more technical appraisal. These views will be but a single component in the larger consideration by their appointing authority which may, after holding a public hearing(s), make a recommendation to Town Meeting.

A number of Advisory Committee members were concerned that applying this Bylaw to these types of groups may dissuade productive engagement, stifle candor and burden

some smaller committees; that we may even risk making the process so cumbersome that people are less inclined to participate.

These members believe that those boards and committees making recommendation to Town Meeting should be expected to hold public hearings, but that it is not necessarily applicable in every case. They view this amendment as providing a good balance to the proposed By-law.

Other members felt that the By-law is not an onerous requirement, regardless of a committee or subcommittee's size. Further, they pointed out that the requirement can be easily met by having a period for the public hearing at the same time as a scheduled meeting. They acknowledge that some subcommittees are assembled to provide a specific technical capability. However, there is often much technical expertise outside of committees and much information that can be gleaned from a public hearing, often leading to better final outcomes.

Countering this, though, was the observation that much of that input can, and should, be provided at the public hearing held by the committee reporting to Town Meeting as part of that public consideration. Rolling a public hearing into a meeting may satisfy the By-law, but it may be a public hearing in name only, lacking meaningful attendance and input. No one wants to encourage a hollow gesture.

The bottom line is that this amendment addresses the fundamental issue of how deeply we want this requirement to be applied within our deliberative process. For many it should apply at every level, for others it should apply just to those offering an opinion for Town Meeting's consideration.

RECOMMENDATION:

The Advisory Committee is nearly evenly split on this amendment. By a vote of 12-11-0, the Advisory Committee recommends Favorable Action on the so-called Spiegel Amendment to Article 5.

VOTED: That the Town amend the Town's By-Laws in the following manner (edited against the main motion):

By adding Article 3.22 immediately between Article 3.21 and Article 4.1, as follows:

ARTICLE 3.22
The Public's Right To Be Heard On Warrant Articles

Any committee as defined in section 1.1.4 **that transmits its position on an Article on the Warrant to Town Meeting, either in a written report, electronically, or by oral presentation at or prior to Town Meeting**, before taking its first or only vote with respect to said article, must hold a duly noticed public hearing with respect to the Article, and the committee's permanent record must record that a duly noticed public hearing with respect to such Article occurred before such vote.

Due notice of the public hearing shall be satisfied if the due notice complies with the Open Meeting Law (G.L. 30A, secs. 18 et seq.) and By-law 3.21.3(a).

The vote may take place at any time or date after the completion of the duly noticed public hearing.

This Article shall not apply to the plenum of the Advisory Committee or School Committee, provided a subcommittee of those bodies assigned to review and report to the full Committee on a warrant article complies with the by-law by holding a duly noticed public hearing before any vote on said warrant article.

Failure to comply with the provisions of this Section 3.22 shall not affect the legality of any town meeting or of any action taken thereat.

ARTICLE 6

SIXTH ARTICLE

Submitted by: Eleanor Demont, Andrew Martino, Lynda Roseman, and Kathleen O'Connell

To see if the Town will amend its General By-Laws to establish the Settlement Neighborhood Conservation District, defined by the map attached hereto, by adding a new section 5.10.3.d.2 as follows:

2__There shall be a Neighborhood Conservation District, to be entitled "The Settlement Neighborhood Conservation District" ("the Settlement NCD") the boundaries of which are shown on the map entitled "Settlement Neighborhood Conservation District," a copy of which is on file with the Town Clerk's office and which is hereby declared to be part of this by-law.

The Settlement NCD is part of the area near middle Boylston Street that was developed by the Irish immigrants and residents who had come to Brookline by the 1840s. The land originally was granted to John Ackers and had been slowly sold off and developed. The original houses in this area were modest cottages from the mid-1800s. The area took on its present configuration and character beginning in the late 1890s and up to the pre WWII period. The character of this area remains much as it was in 1940, with its triple deckers and single and two-family homes. Much of the area was developed by the same person, such as the houses on Ackers Terrace, giving the area a consistent and harmonious character. The majority of the original owners worked as gardeners, laborers, coachmen and domestics for the larger estates in South Brookline as founded the St. Lawrence Parish. Residents also worked for the Town and as clerks and agents in Boston. The pattern of development and design of houses created an area with an intimate, pedestrian-scaled quality. Many of the houses were designed by local architect-builders and commissioned by local resident developers. Most of the buildings have ample space between them, back yards and modest front yards.

All construction in the Settlement NCD shall be subject to review in accordance with the design guidelines contained in this section 5.10.3.d.2. Any reviewable project shall be compatible with the existing architecture and pattern of development of the district and its relationship to the adjacent neighborhood.

The intent of the Settlement NCD guidelines is to ensure that significant additions and new buildings are compatible with the historic patterns of scale, feeling and association of the district. Specifically the Settlement NCD shall subject the following sub-sections of section 5.10.2 Definitions of a Reviewable Project: 5.10.2 (i) change to a building such as addition or alteration of more than 20% of existing habitable floor

area or partial or total demolition or the construction of a new building; and 5.10.2 (vii) removal of trees more than eight inches in diameter at 56" height (d.b.h). All activities that would otherwise be subject to other sub-sections of section 5.10.2 shall be exempt from review.

With respect to section 5.10.2 (i) the Settlement NCD Commission shall consider the following design guidelines when reviewing a project with the intent that reviewable projects shall be consistent with the character of the existing dwellings in the district and their relationship to each other.

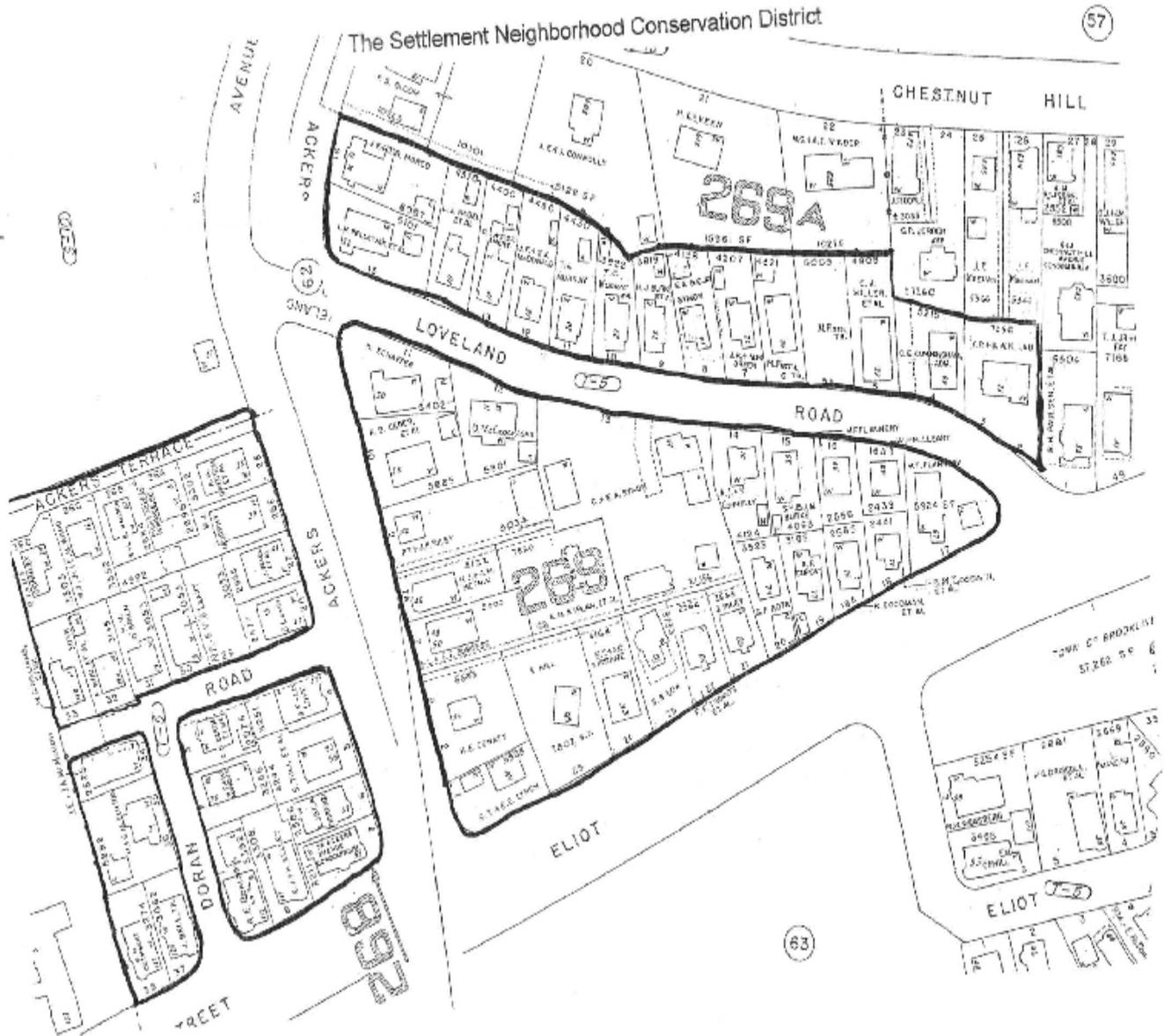
i. Architectural style and character: The character-defining features of the surrounding dwellings or other buildings should be taken into consideration for any Reviewable Project including, but not limited to proportions and height of the upper and lower floor(s); the height and exposure of foundations; the scale of entrances, windows, and porches; the height and orientation of the roof; and features such as dormers, gables, porches, sunrooms, overhanging eaves and chimneys as well as the size, proportion and scale of door and windows of the surrounding dwellings and other buildings, especially those of abutting comparable buildings, unless such buildings are less than 50 years old to the extent that they are inconsistent in character with surrounding comparable buildings.

ii. Building size, height and massing: The total, size and height of any Reviewable Project should be compatible with surrounding comparable buildings, especially abutting buildings. New Dwellings and other buildings should be similarly oriented, have similar yard depths, and similar distance between buildings as their existing counterparts. The height of the roof should fall within a range set by the highest and lowest of those of the surrounding comparable buildings. Dwellings in the neighborhood typically have two to three stories. Many have gabled roofs enclosing an attic, often with dormer windows or shed dormers. Existing cornice heights, eave lines (elevations), porch heights and foundation heights on the street should be considered, especially those of abutting comparable buildings.

iii. Materials: All building materials should be visually compatible with surrounding buildings.

Nothing in this Section 5.10.3.d.2 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.2 imposes greater restrictions upon a Reviewable Project than other by-laws, regulations or statutes, such greater restrictions shall prevail. The provisions of the Section 5.10.3.d.2 shall be deemed separable. If any of its provisions, subsections, sentences or clauses shall be held to be invalid or unconstitutional, the remainder shall continue in full force and effect.

Or act on anything relative thereto.



PETITIONER'S ARTICLE DESCRIPTION

This neighborhood, historically known as The Settlement, dates back to the 1800's and was one of the original settlements of Irish immigrants and their children in Brookline. Many if not most of the families who originally lived in The Settlement worked as gardeners, laborers, coachmen and maids for the wealthier families whose homes surrounded the area. These original families built homes in this area so they could be closer to work. Many of the original settlers were also employed by the town of Brookline as police officers, fire fighters, and in other capacities. Several descendants of the original families still live here.

The resulting neighborhood, nestled between the more expansively scaled Fisher Hill and Chestnut Hill neighborhoods, is made up of modest single family homes with two and three family homes mixed in. The style and scale of the neighborhood is not common in Brookline. The cottage that is now #27 Ackers Ave, built around 1866 by an Irish laborer named Michael Burke, was determined to be of historic significance by the Brookline Preservation Commission and was saved from demolition in 1994.

This article's intention is to create guidelines for measured and controlled growth and change in the Settlement neighborhood. Recent construction projects in the Settlement, much larger in mass than the surrounding houses, have raised concerns. Currently there is a request to demolish a home that was found by the Brookline Preservation Commission to be historically and architecturally significant, replacing it with a potentially much larger dwelling. Further, there are several lots throughout the neighborhood that are large enough to pose ongoing potential development pressures. This is an effort to preserve the integrity and intimate character of the neighborhood.

PLANNING BOARD REPORT AND RECOMMENDATION

This article is being submitted by Citizen Petition. It creates a Neighborhood Conservation District (NCD) for an area near the Heath School, being referred to as "The Settlement". This neighborhood is one of the oldest in Brookline. Settled in the 1840s by mostly Irish immigrants, it started out as an area of modest cottages. By the middle of the twentieth century, these had been replaced by single and two family homes and triple deckers, many of which were built by the same person. Currently, the area is zoned Two Family (T-5), with a minimum lot size of 4,000 s.f. for a single-family and 5,000 s.f. for a two-family, and a maximum Floor Area Ratio (FAR) of 1.0. Loveland Farm, a larger tract of land which had several older houses on it, was redeveloped within the last few years and subdivided into three lots – two, with two large attached townhouses and one, with a single townhouse. To protect from the increasing trend of demolishing residences and replacing them with new larger residences, a group of neighbors have submitted this petition.

The design guidelines in the initial citizen petition for the Settlement NCD required review and approval of a change or addition to a building of more than 20% of habitable floor area, partial or total demolition, construction of a new building, and/or removal of significant trees. However, in response to comments from the Advisory Committee and the public, the citizen petitioners agreed to the language offered by the Advisory Committee, which eliminates tree removal review and increases the size of reviewable alterations to 30% of habitable floor area and requires them to be visible from a public way. Total or partial demolition would continue to be reviewable. All such proposals would be evaluated for consistency to the neighborhood's overall architectural style and character, including building size, height, massing and materials. Additionally, a few properties at the edge of the proposed NCD district were eliminated due to opposition

from the property owners and because they had already basically been built out to the maximum floor area.

The Planning Board is supportive of the neighborhood's efforts to preserve the area's character and prevent overly large additions or teardowns being replaced by buildings that are out-of-scale to the surrounding area. Several projects that have altered the fabric of the neighborhood have already occurred. This neighborhood is an attractive target to developers, because the floor area of most homes is significantly under the allowed Floor Area Ratio of 1.0. The revised warrant article sets a reasonable balance between allowing homeowners flexibility to modify their properties, while requiring review of larger changes. Given the house sizes in the neighborhood, changes of up to 750 sf-900 s.f. would typically remain below the 30% threshold.

In support of the Advisory Committee's language under the Article, the Planning Board offers these additional observations:

Why a Settlement NCD?

The neighborhood shares a scale and character, but also a diversity of dwellings not typical of Local Historic Districts (LHDs). With lot sizes in the 5,000-7,000 s.f. range, and house sizes in the 2,500-3,500 sf range, many properties in the neighborhood have about 2,500-3,500 s.f. of available build out due to the 1.0 FAR. These circumstances can represent an attractive target to developers who seek opportunities to tear down and re-build at larger scale while not needing FAR relief. Several projects have already occurred which altered the scale and character of the neighborhood.

Is the NCD trigger threshold a reasonable one?

Since many properties in the neighborhood have as much as 100% excess FAR, the proposed trigger of "...exterior changes exceeding 30% of the existing dwelling FAR..." seems a reasonable balance between allowing homeowners flexibility to modify their properties in response to life changes without undue review, while directing larger changes (as, for example, major additions, or new dormers) be reviewed. Given the house sizes, changes up to 750-900 s.f. would typically remain below the 30% threshold.

How is a project determined to be reviewable?

Upon the filing for a Building Permit, determination of whether a project is to be referred to the NCD would be the role of the Building Commissioner and his Department in conjunction with Planning staff. The Planning Board believes that the existing Definitions in 2.09 (Interior Conversion) and By-Law section 5.22 (even though written to address Exceptions) may be useful in defining interior versus exterior changes.

Potential for Staff Impacts?

In addition to the Building/Planning staff initial determination, the NCD Commission itself will require staff support. As more NCD's are likely, Town Meeting should recognize that some additional staff time will need to be devoted to support of NCD activity and that over time, the NCD-related duties may require additional staff funding.

Enabling Legislation changes?

Some of these larger concerns have been addressed above. However, the neighborhood, in choosing the NCD approach to provide themselves with more say in local project approval, should have representation on the NCD Commission. The present language adopted last year as the NCD enabling legislation allows for this possibility but does not assure a local voice. As other NCD's are likely, the Town should consider whether, for example, two of seven members on the Commission reviewing a local case should be selected from the neighborhood. If so, how should this selection be determined?

Although the Planning Board is supportive of the efforts of the citizen petitioners, it has some concerns, some of which are outside the scope of this article and relate to the NCD enabling legislation previously approved by Town Meeting. The Board urges the Zoning By-Law Committee, or other appropriate committee, to consider future By-Law amendments, which might improve the NCD enabling legislation by:

- requiring a super majority vote of Town Meeting to create a new NCD (for example, 60%)
- having local representation on the NCD Commission;
- requiring a study report by an impartial group; and
- setting forth procedures and guidelines for citizens who want to propose an NCD

Also, there should be consideration of whether a better or a complementary approach for achieving the same goal might be through zoning or another method. This is suggested because some have voiced concerns about a proliferation of NCDs adding another administrative approval layer for citizens, who may also need Board of Appeals review, and the need in the future for more staff time to support NCD Commissions.

Therefore, the Planning Board unanimously recommends **FAVORABLE ACTION** on Article 6, with the Advisory Committee's recommended language for the Article.

SELECTMEN'S RECOMMENDATION

Article 6 was submitted by petition in order to designate the "Settlement" area, so called, as a district under the new Neighborhood Conservation District (NCD) by-law that was passed by Town Meeting in November of 2011. The NCD was enacted in order to help preserve and protect buildings and settings that are noteworthy and to protect other distinctive features of neighborhoods. The general NCD by-law establishes a framework for this mechanism, including the appointment of a NCD Commission. An additional by-law is required for each individual district that is created. This additional by-law creates the specific design guidelines and other requirements that will regulate development in the proposed district. In the case of the Settlement district by-law, the petitioners propose that jurisdiction be limited to new buildings or to existing buildings that are visible from

the public way that will add more than 30% of existing habitable area in the form of new exterior additions.

There has been some controversy and confusion about the limits of the proposed district. Initially, a map was included with the original petition that was more expansive. Since that submission, the petitioners have amended the proposal by removing some properties on Eliot Street at the Doran Road intersection. In addition, the support of the proposed district by property owners has been somewhat confusing given the changes in the district boundaries and other changes to the text of the by-law. The petitioners have stated that 68% of the property owners in the proposed district are in support, but that assertion has been challenged by some property owners. While the Board of Selectmen are supportive of NCDs in general and value the unique nature of the Settlement neighborhood, but in this case, the development concerns with massing are best addressed through zoning regulation and the limited property owner support and confusion associated with changes to the original proposal has contributed to its failure to adopt a motion for favorable action.

Two members of the Board support Favorable Action. They noted that at the time of the Board’s consideration of this article, about 77-78% of property owners who had expressed an opinion favored a district (the 68% figure counted the “undecided” and “unresponsive” as “no’s”). They also note that the concerns of the petitioners about the impacts of insensitive development are well-founded, and that the original warrant article has been substantially narrowed and clarified during the review process, resulting in an article that addresses only demolitions, new buildings, and substantial exterior additions to properties, all of which could demonstrably have significant adverse impacts on the Settlement neighborhood’s character.

Therefore, the Board recommends NO ACTION, by a vote of 2-2-1 taken on October 23, on Article 6. In the event the Board reconsiders its position on this article, a supplemental report will be issued.

ROLL CALL VOTE:

Favorable Action

DeWitt

Benka

No Action

Mermell

Goldstein

Abstain

Daly

ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND:

Article 6 is a citizen’s petition filed by 4 residents of “The Settlement”. The Settlement is part of the area northwest of the intersection of Boylston Street and Chestnut Hill

Avenue. The petitioners and other supporters are proposing a Neighborhood Conservation District with a goal of maintaining the general look and feel of the neighborhood. There have been some recent out-of-scale projects in the neighborhood which has raised some concerns, plus the house at 12 Ackers Road is slated for demolition which has been stayed by a Preservation Commission imposed demolition delay which expires on May 9, 2013, prior to the May 2013 Annual Town Meeting.

The neighborhood, a part of Precinct 14, sits between the Fisher Hill and Chestnut Hill neighborhoods and is made up of single family, two and three family residences which are more modest than the generally stately single family houses of the surrounding neighborhoods. While homes in the district may differ in style, they tend to be of similar scale, design elements such as gables, orientation to the street and front yard depths. The neighborhood is pedestrian scaled and you clearly know when you are entering and leaving the district

As quoted in the proposed bylaw:

(I)n the second half of the 19th century [the Settlement] became home to Irish immigrants and their descendants, including some who had previously lived in Brookline Village. The land originally was granted to John Ackers and had been slowly sold off and developed. The original houses in this area were modest cottages from the mid-1800s. The area took on its present configuration and character beginning in the late 1890s and up to the pre WWII period. The character of this area remains much as it was in 1940, with its triple deckers and single- and two-family homes. Much of the area was developed by the same person, such as the houses on Ackers Terrace, giving the area a consistent and harmonious character. The majority of the original owners worked as gardeners, laborers, coachmen and domestics for the larger estates in South Brookline and founded the St. Lawrence Parish. Residents also worked for the Town as clerks, firefighters and police officers. The pattern of development and design of houses created an area with an intimate, pedestrian-scaled quality. Many of the houses were designed by local architect-builders and commissioned by local resident developers. Most of the buildings have ample space between them, back yards and modest front yards.

The proposed bylaw would establish a "Settlement Neighborhood Conservation District" (NCD) under the enabling Neighborhood Conservation District bylaw passed at the November 2011 Special Town Meeting. The intent of this NCD is to subject only demolitions, new structures and major additions to design review. Design review would be limited to the exterior elements of a project visible from a public way and must consider the compatibility of the architectural character, building size, height and massing plus materials in relation to the surrounding neighborhood.

Based on comments made during the pre-Town Meeting vetting process, the petitioners proposed a number of modifications to the original language which have been included in the Advisory Committee motion. These include:

1. A modified map removing 4 properties at the edge of the district on Eliot St. that are completely built out.
2. Clarify that only exterior construction visible from a public way is covered and subject to design review
3. Increase the percentage trigger for review from 20% to 30%
4. Change the definition of what is included in the 30% trigger to changes "attributable to an exterior addition or exterior construction"; further narrowing the scope of what is covered.
5. Remove trees from NCD review
6. Other language clarifications including broadening what the NCD Commission should consider in its design review.

DISCUSSION:

The Settlement, by all accounts, is a pleasant, tight knit neighborhood with residents who are proud to be living there. Time and time again, no matter how they felt about the NCD, residents who spoke at the Planning and Regulation subcommittee public hearing praised the neighborhood and the elements that make it what it is. The petitioners presented a slide show showing representative homes, singles, twos and threes, some of which have been expanded over time.

Proponents for the NCD made the following points in different ways:

1. Developers have been offering to buy homes for cash with the intent of tearing down the existing houses and building something much bigger. They felt that the fabric of the neighborhood was under threat. The proposed NCD may not absolutely stop that practice but would impose design review to ensure that the replacement homes fit into the neighborhood. A proponent who was an architect noted that the recent development on Loveland Road could have been easily modified with little or no loss of scale or livable space to be more sensitive to the neighborhood.
2. The demolition delay on the house at 12 Ackers Rd expires before the Spring Town Meeting.
3. A delay in implementation would have a real effect on the neighborhood since a home could be lost and the neighborhood irreversibly altered.
4. The proposed design guidelines reflects the history of the types of modification that have been made in the neighborhood including attic conversions.
5. Only major projects will be subject to design review and even then, only the exterior elements seen from the street will be reviewed. This is much less restrictive than a Local Historic District.

With respect to the question as to why use the NCD approach as opposed to modifying the zoning, given the nature of the district, just about any change to the zoning would create a large proportion of non-conforming properties. If a property is non-conforming, the owners would be prevented from making most modification without a special permit

or variance. Also, a goal of the NCD is to maintain the current scale of the streetscape and context which defines the feel of the neighborhood; this is difficult to do in zoning.

The proponents presented statistics showing the following extent of acceptance of the NCD by the affected neighborhood (as of 10/24/2012):

Total Properties:	70	
Property Owners in Favor	48	(48/70=68.57%)
Property Owners Neutral	3	
Property Owners Unopposed (In Favor +Neutral)	51	(50/70=72.86%)
Property Owners Against	14	(14/70=20.00%)
Undecided (U)	1	
Unresponsive (R)	4	
Total U/R	5	

At the subcommittee public hearing and the subsequent Advisory Committee discussion, a number of points were made in opposition to the establishment of the NCD. A summary of these points follows:

1. Flaws were identified in the enabling legislation that were ignored due to the stated need to get an NCD in place in time for Hancock Village. Because of that, it is too easy to put an NCD in place. Specifically,
 - a. There is no specific process to follow as is the case of zoning and local historic districts
 - b. Only a majority vote of Town Meeting is required
 - c. There is no requirement for the consent of the affected owners or the affected neighborhood
2. The NCD carries many of the features of zoning. While the Attorney General approved the enabling legislation, the language of the approval seemed to leave open that the law could be challenged by other parties. We shouldn't pass any more NCD's until that is settled.
3. Because the language of the enabling legislation was overly broad "now every single Brookline neighborhood is going to try to establish a NCD in order to stop someone from doing something they don't like with any single property. It's harmful. ...this neighborhood does not meet the spirit of the law and is simply an attempt to stop development of the Ackers Street property... If passed they will make it nearly impossible for new owners to make any changes to property they own. It's overly restrictive and places onerous burdens on owners of single family homes. If this accommodation had been in place 100 years ago, Frank Lloyd Wright wouldn't have built a single house!"
4. Not enough property owners have consented. An 85% consent rate was suggested.

5. The map should be redrawn so that property owners who are opposed should be able to opt out of the NCD.
6. There has not been transparency in the process.
7. There is no verification of consent.
8. The language is not specific enough on what is covered especially in the 30% clause.
9. Since the language is changing, property owners don't know what they are consenting to.
10. The makeup of the NCD Commission is uncertain and doesn't necessarily need to include anyone from the neighborhood

(Note: The enabling legislation sets up a 5 or 7 member NCD Commission and mandates 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 other with expertise in the issues specific to an NCD.)

In addition to the above objections, a number of affected property owners considered the NCD a violation of property rights that should not be allowed in this country.

One affected property owner stated that she objected that a committee should decide style. She asserted that there are a number of properties in the neighborhood that are decidedly mediocre and don't merit preservation or duplication.

One property owner thought that instead of an NCD, the neighborhood should band together to form a Preservation Trust that would purchase at risk properties and convert them to affordable housing. She also thought that the NCD should have specific language to allow green alternatives such as solar.

One Town Meeting member cited Wellesley and Lincoln as examples of the kinds of process Brookline should consider. We note that changes to the process are outside of the scope of the warrant article and could not be addressed at this Town Meeting.

1. In Wellesley, a petition of at least 80% of the affected owners must be presented to the Wellesley Historical Commission. 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. The Wellesley process also allows opposed homeowners to opt out, even if there are fewer than 20% in this category, i.e., if 5% oppose an NCD, the NCD might be created but their properties would not be included. Wellesley thus has multiple gatekeepers, the Historical Commission, the study committee, the joint Planning Board and

Historical Commission plus 20% of the affected homeowners can veto the proposal.

2. 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.) Also, 33% of the affected homeowners can veto the proposal by declaring their opposition.

Cambridge also has a process specified that is a bit different. 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 scenario.

With respect to process, the Advisory Committee Recommendation for the enabling legislation in November, 2011 suggested that Town Meeting be careful in considering future NCDs and to consider the recommendation of the Preservation Commission and the views of the affected neighborhood. In this case, at its October 9, 2012 meeting, the Preservation Commission has voted to recommend the establishment of the NCD in principle subject to review of the pending amendments. We understand that the Preservation Commission will be making its final recommendation prior to Town Meeting.

RECOMMENDATION:

The majority of the Advisory Committee felt that after reviewing the slide show of houses and the map that this is really an ideal candidate for an NCD due to its history, density and distinctness. The Settlement boundaries are very defined by the school and larger houses surrounding it. By using the procedural standard suggested in the AC Recommendation for the enabling legislation in 2011, the Preservation Commission studied the neighborhood in the context of a number of demolition reports and has recommended, in principle, the establishment of the NCD, pending the exact language changes coming out of the vetting process. Additionally, in the affected neighborhood, a super majority of the affected property owners have either expressed their approval or have affirmatively remained and are therefore unopposed.

With respect to the suggestion made by some opponents that that the map be redrawn to accommodate any homeowner who wishes be able to “opt-out” of the district, restrictions imposed by zoning, NCDs and the like are intended to create benefits to the community overall in exchange for requiring that individual members of the community forgo a certain degree of flexibility as to the use of their property. Opt-out is fundamentally unfair, because it offers all of the benefits of the broader community-level restriction to the opting-out party while allowing that party to avoid all of the offsetting obligations required in exchange for such benefits.

By a 19-5-1 vote, the Advisory Committee recommends FAVORABLE ACTION on the vote below which accepts the changes proposed by the petitioners plus makes some other technical modifications.

More than one committee member expressed the view that we should try to add process provisions to the enabling legislation and possibly file a home rule petition with the legislature to require a 2/3 vote prior to proceeding with this NCD. Additionally, a number of committee members stated that they would like to see additional evidence that the NCD is supported by an overwhelming majority of the residents within its proposed boundaries or a redrawing of the boundaries to ensure that there is overwhelming support. They felt that it would be better for the neighborhood and for the NCD process, in general, if the creation of this NCD is not divisive.

Prior to the final vote, the Committee considered the original map as published in the warrant (vote failed) and then considered a revised map offered by Michael Merrill (TMM-P14) which removes portions of the district where there are higher degrees of opposition to the NCD (vote failed).

VOTED: That the Town amend its General By-Laws to establish the Settlement Neighborhood Conservation District, defined by the map attached hereto, by adding a new section 5.10.3.d.2 as follows:

2. There shall be a Neighborhood Conservation District, to be entitled "The Settlement Neighborhood Conservation District" ("the Settlement NCD"), the boundaries of which are shown on the map entitled "Settlement Neighborhood Conservation District," a copy of which is on file with the Town Clerk's office and which is hereby declared to be part of this by-law.

The Settlement NCD is part of the area northwest of the intersection of Boylston Street and Chestnut Hill Avenue that in the second half of the 19th century became home to Irish immigrants and their descendants, including some who had previously lived in Brookline Village. The land originally was granted to John Ackers and had been slowly sold off and developed. The original houses in this area were modest cottages from the mid-1800s. The area took on its present configuration and character beginning in the late 1890s and up to the pre WWII period. The character of this area remains much as it was in 1940, with its triple deckers and single- and two-family homes. Much of the area was developed by the same person, such as the houses on Ackers Terrace, giving the area a consistent and harmonious character. The majority of the original owners worked as gardeners, laborers, coachmen and domestics for the larger estates in South Brookline and founded the St. Lawrence Parish. Residents also worked for the Town as clerks, firefighters and police officers. The pattern of development and design of houses created an area with an intimate, pedestrian-scaled quality. Many of the houses were designed by local architect-builders and commissioned by local resident developers. Most of the buildings have ample space between them, back yards and modest front yards.

Only exterior elements visible from a public way of Settlement NCD Reviewable Projects, as defined below, shall be subject to review in accordance with the design guidelines contained in this section 5.10.3.d.2. The intent of these guidelines is to ensure that significant additions and new buildings are compatible with the existing architecture and historic patterns of scale and siting in the district.

Specifically, subsection 5.10.2.m shall be limited in the Settlement NCD to apply only to the following projects, which shall be defined as “Settlement NCD Reviewable Projects”: changes to a building visible from a public way limited to (i) the addition of more than 30% of the existing habitable floor area attributable to an exterior addition or exterior construction (which shall include the additional habitable floor area included within dormers, penthouses, cupolas and the like) or (ii) partial or total demolition, but only to the extent defined in Section 5.3.2.h(a) and (ii) of the General By-Laws; or (iii) the construction of a new building.

All activities that would otherwise be subject to other sub-sections of section 5.10.2 shall be exempt from review.

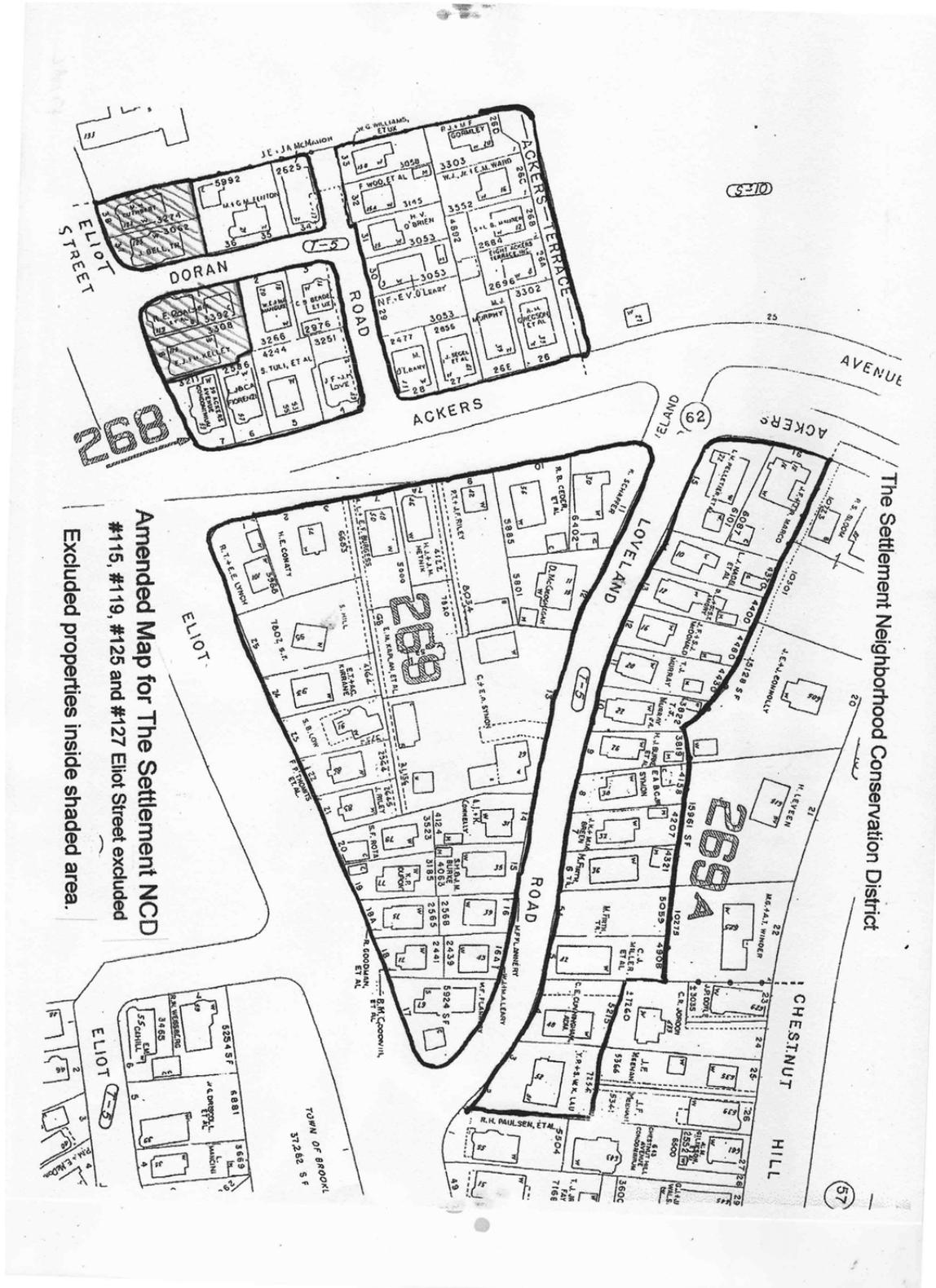
The Settlement NCD shall be governed by the following design guidelines. All Settlement NCD Reviewable Projects shall be consistent with the character of the existing dwellings in the district and their relationship to each other.

i. Architectural character: The character-defining features of the surrounding dwellings or other buildings should be taken into consideration for any Settlement NCD Reviewable Project including, but not limited to, proportions and height of the upper and lower floor(s); the height and exposure of foundations; the scale of entrances, windows, and porches; the height and orientation of the roof; and features such as dormers, gables, porches, sunrooms, overhanging eaves and chimneys as well as the size, proportion and scale of door and windows of the surrounding dwellings and other buildings, especially those of abutting comparable buildings, unless such abutting buildings are less than 50 years old to the extent that they are inconsistent in character with surrounding comparable buildings.

ii. Building size, height and massing: The total, size and height of any Settlement NCD Reviewable Project should be compatible with existing buildings and other structures within the district, especially abutting buildings. New Dwellings and other buildings should be similarly oriented, and have similar yard depths and similar distance between buildings as their existing counterparts. The height of the roof should fall within a range set by the highest and lowest of those of the surrounding comparable buildings. Dwellings in the neighborhood typically have two to three stories. Many have gabled roofs enclosing an attic, often with dormer windows or shed dormers. Existing cornice heights, eave line heights, porch heights and foundation heights on the street should be considered, especially those of abutting comparable buildings.

iii. Materials: All building materials should be visually compatible with, but not necessarily identical to, those of surrounding buildings.

Nothing in this Section 5.10.3.d.2 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.2 imposes greater restrictions upon a Settlement NCD Reviewable Project than other by-laws, regulations or statutes, such greater restrictions shall prevail. The provisions of the Section 5.10.3.d.2 shall be deemed severable. If any of its provisions, subsections, sentences or clauses shall be held to be invalid or unconstitutional, the remainder shall continue in full force and effect.



ARTICLE 6

Amendment offered by Deborah Goldberg, TMM-14 on behalf of the majority of the TMM's in Precinct 14

“Moved to refer the subject matter of article 6 to a Moderator’s Committee for further study, to report back to Town Meeting at the [2013 Annual] Town Meeting.”

EXPLANATION

Article 6 is a petitioned article that proposes an amendment to the Town’s General By-Laws to establish the Settlement Neighborhood Conservation District in the area near Heath School incorporating parts of Eliot Street, Ackers Avenue, Ackers Terrace, Doran Road and Loveland Road.

The purpose of a Neighborhood Conservation District is to try to preserve the sense of a cohesive community. Unfortunately, instead this neighborhood is in conflict. It seems that the process moved too quickly from a conversation of how the neighborhood could be preserved to one dictated by the warrant process. The warrant process seemed to exacerbate the isolation of the two sides from each other.

We, Precinct 14 Town Meeting members, would like to see a Moderators Committee comprised of proponents, opponents, and neutral individuals, Town Meeting Member(s), one Preservation Commission member, one Selectman, one Advisory Committee member and support staff from the Planning Department.

This motion would allow a committee the opportunity to address many of the questions that have been raised regarding the design of the proposed Settlement NCD and the process that was used to inform and obtain opinions from residents of the neighborhood. These issues include the following:

1. Review what the appropriate area of the NCD should be (some, including opponents, have suggested the area should be larger, some smaller);
2. Some property-owners have stated that they were not duly and timely informed of the initial proposed NCD or of later changes. The committee could recommend an appropriate process to ensure the following for the property owners of the Settlement Neighborhood:
 - a. Proof of notice and communication to homeowners of the pros and cons of the Settlement District NCD, guaranteeing true transparency in process;
 - b. Re-engagement process if aspects of the regulations governing the Settlement District are changed prior to a final vote by a Town Meeting;
 - c. Standards for counting homeowners and their preferences

3. Further, the committee could investigate and evaluate the following matters, questions and issues that have been raised but not fully vetted to date:
 - a. Whether there are additional or complimentary steps to accomplish similar goals via zoning or some other process in the Settlement Neighborhood (this could address concerns from owners about the Settlement NCD adding additional administrative approval layers for property owners who may also need Board of Appeals review).
 - b. Whether the Settlement NCD will have the unintended consequence of promoting 40B development in the neighborhood (suggested as an viable option by the owner of 12-16 Ackers).
 - c. Role, if any, of Settlement Neighborhood residents on the NCD Commission.

Both the Selectmen and the Preservation Commission cited the fact that there is insufficient support among affected property owners.

We feel that if the neighbors work together outside of the high stakes warrant process they will have the opportunity to make truly informed decisions about what is best for their neighborhood. We believe that this process is in the best long-term interest of their community.

When we talk about neighborhoods we are not talking about buildings we are talking about people.

ARTICLE 6

PRESERVATION COMMISSION'S RECOMMENDATION

Dear Town Meeting members,

The Brookline Preservation Commission held a public hearing on the issue of establishing a Settlement Neighborhood Conservation District on Tuesday, October 30, 2012. It had previously discussed the issue at a meeting on October 9th, when the commission voted to support the idea of designating a neighborhood conservation district in the area of Loveland Road, Ackers Avenue, Akers Terrace, Doran Road and a section of Eliot Street, but wished to hold a public hearing before submitting a letter of support to create such a district.

After hearing from the proponents and others residents and property owners within the area of the proposed district, the Preservation Commission voted the following:

“That the Commission is of the opinion that the neighborhood has a character that warrants preserving for the benefit of the neighborhood, the community and the Town of Brookline;

That the zoning and other regulations currently in place may not be adequate to provide the appropriate protection desired by a majority of residents;

That it is of the opinion that the proposed Neighborhood Conservation District (NCD) could be a valuable tool for preserving the historic and architectural integrity of the neighborhood;

That there should be a significant level of support from residents in order for this NCD to be designated; and

That the Commission encourages the petitioners to work with those opposing the designation to revise the article in order to obtain a significant level of support so that the warrant article creating an NCD may be passed at Town Meeting.”

ARTICLE 6

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

In November, 2011, Town Meeting added Neighborhood Conservation Districts (NCD) to its arsenal of land use planning tools which also includes zoning and Local Historic Districts (LHD). The NCD enabling legislation presents a menu of options which individual neighborhoods can adopt to regulate areas not covered by zoning such as compatibility with the neighborhood layout, circulation patterns and architectural compatibility. It can provide much more flexibility than an LHD which has mostly uniform guidelines focused on preservation. LHD guidelines are very detailed and regulate items such as when and how to replace windows, porches and may prohibit changes even if they seem compatible with the neighborhood. NCDs can be flexible and designed to meet the specific needs and desires of a neighborhood.

A large majority of the Advisory Committee felt that the Settlement neighborhood would be an appropriate neighborhood to apply this tool. As ultimately proposed, only demolitions, new buildings and exterior expansions of 30% or more would be subject to its provisions and would require design review. Therefore, the vast majority of projects requiring a building permit would be exempt from the design review of the NCD Commission.

Generally, the impetus for an NCD should come from within and around the affected neighborhood. In this case, the four petitioners are concerned residents of the proposed NCD reacting to trends in the neighborhood and the May 2013 expiration of a demolition delay on a house on Ackers Ave. And while they garnered the support of a large majority of those in the neighborhood, as this Town Meeting approached it became apparent that the timeframes imposed by this Town Meeting provided insufficient time for the proponents to address the concerns of an impassioned and growing minority plus a majority of the Precinct 14 Town Meeting Members to complete its internal conversation.

As a result, the petitioners have requested that the NCD not be moved at this Town Meeting so the neighborhood has more time to complete its conversation. By a 20-1-2 vote, the Advisory Committee supports the petitioners request and recommends NO ACTION on Article 6.

ARTICLE 7

SEVENTH ARTICLE

Submitted by: Merelice

To see if the Town will amend its General By-Laws by adding a new Section 5.11 as follows:

Article 5.11 MORTGAGES, FORECLOSURES, AND PROPERTY POLICY

5.11.1 Title and Purpose

This by-law shall be known as and may be titled the Mortgages, Foreclosures, and Property Policy. The by-law is enacted to promote the health, safety, and welfare of the public, to protect and preserve the quiet enjoyment and health of occupants, abutters, and neighborhoods, and to minimize hazards to public safety personnel inspecting or entering subject properties.

5.11.2 Facilitating Mediation of Mortgage Foreclosures of Owner Occupied Residential Real Property in Town of Brookline

This establishes a Mediation Program to address all issues reasonably related to a foreclosure on the subject property, including but not limited to reinstatement of the mortgage, modification of the loan, and restructuring of the mortgage debt, including the reduction and forgiveness of mortgage debt.

5.11.3 Definitions. For the purposes of this By-Law, the following words shall, unless the context clearly requires otherwise, have the following meanings:

- a. *commercially reasonable alternative* – an alternative based on a comparison of the net present value of receiving payments pursuant to a modified mortgage loan or the likely financial recovery from other foreclosure alternatives to the anticipated net recovery following foreclosure incorporating an assessment of the borrower’s current circumstances, including without limitation the borrower’s current income, debts and obligations.
- b. *creditor* – a person or entity that holds, owns, or controls, partially, wholly, directly, or indirectly, or in a nominee capacity, a mortgage loan secured by residential property, including, without limitation, a mortgagee, an originator, holder, investor, assignee, successor, trust, trustee, nominee holder, Mortgage Electronic Registration System, or mortgage loan servicer, including, but not limited to, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation or any other Government Sponsored Entity. The term “creditor” shall also include any servant, employee, subcontractor, or agent of a creditor.

- c. *good faith effort* – an effort by each party upon being present and fully taking part in the mortgage mediation conference as required and defined by this By-Law in an effort to negotiate and agree upon a commercially reasonable alternative to foreclosure.
- d. *homeowner* – an individual mortgagor, his or her assignee, successor, or a trust or trustee who owns and resides in residential real property located in the city, and for whom such residential real property is his/her principal residence.
- e. *mortgage mediation conference* or *mediation conference* or *mediation* – the formal discussion(s) and negotiation(s) undertaken by the parties in a good faith effort to negotiate and agree upon a commercially reasonable alternative to foreclosure and held at a location mutually convenient to the parties. Both the homeowner/mortgagor and lender/mortgagee must be physically present for the mortgage mediation conference unless telephone participation is agreed upon.
- f. *Mediation Program* or *Program* – the foreclosure mediation program established in the Town of Brookline pursuant to this By-Law and described in Section 6.
- g. *Mediation Program Manager* – a neutral not-for-profit organization experienced in the mediation of the residential foreclosure process, familiar with all programs available to help homeowners avoid foreclosure, and knowledgeable of the mortgage foreclosure laws of the Commonwealth. Mediation Program Manager(s) shall execute an appropriate user agreement with the municipality authorizing the receipt and use of personal and financial information for the purposes of the Mediation Program only. Such Mediation Program Manager(s) shall ensure the security and confidentiality of any and all information received or exchanged under the Mediation Program consistent with applicable federal, state, and municipal laws. Access to program information shall be limited to those officers and employees of the organization who require the information to properly perform services under the municipality's Mediation Program, and that the organization or individual and/or its officers and employees shall not access, modify, use or disseminate any Mediation Program information for purposes unrelated to the Mediation Program and the Mediation Program Manager(s) shall provide the municipality with evidence that it maintains sufficient safeguards to protect against the loss or unauthorized dissemination of private or confidential information.
- h. *mediator* – an individual (a) whose training complies with the qualifications standards for neutrals specified in the guidelines for training mediators adopted by the Supreme Judicial Court of Massachusetts pursuant to Rule 8 of the Uniform Rules for Dispute Resolution; and (b) who has completed training on foreclosure mediation; and (c) who has a working knowledge of all federal, state, and municipality programs available to help homeowners retain their homes.

- i. *mortgagee* – an entity to whom real property is mortgaged, the mortgage creditor or lender including, but not limited to, mortgage loan servicers, lenders in a mortgage agreement and any agent or employee of the mortgagee acting outside of his/her authority, or any successor in interest or assignee of the mortgagee’s rights, interests or obligations under the mortgage agreement.
- j. *mortgage loan* – a loan to a natural person (or to a nominee trust or any such other entity commonly recognized under Massachusetts law as a lawful borrower) made primarily for personal, family or household purposes secured wholly or partially by a mortgage on residential property.
- k. *mortgage loan servicer* – an entity which administers or services or at any point administered or serviced the mortgage loan; provided, however that such administration or servicing shall include, but not be limited to, calculating principal and interest due on the mortgage loan, assessing fees and costs onto a mortgagor’s loan account, collecting regular payments from the mortgagor, acting as escrow agent for the owner of the mortgage loan or foreclosing on a mortgage loan in the event of a default.
- l. *Mortgagor or homeowner* – the holder of a mortgage loan that is secured wholly or partially by a mortgage on residential property.
- m. *residential property* – real property that is owner-occupied as a principal or primary residence, located within the Town of Brookline, that is either a single-family dwelling or a structure containing not more than four (4) residential units, and shall also include a residential condominium unit or a residential co-op unit occupied by an owner as an owner's principal or primary residence.
- n. *non-judicial mortgage foreclosure* - a foreclosure process under the “power of sale” contained in a mortgage pursuant to G.L. c. 183, s. 21 and G.L. c. 244.
- o. *the parties* – the homeowner/mortgagor and the creditor/mortgagee or their successors or assignees.

5.11.4. Notwithstanding any general or special law to the contrary, all non-judicial mortgage foreclosures in the Town of Brookline pertaining to residential property which is occupied as the owner’s principal residence shall be required to engage in a municipality-approved Mediation Program as set out in this By-Law, and shall obtain a certificate verifying the mortgagee’s good faith participation in the Mediation Program.

5.11.5. The Town of Brookline shall establish a Mediation Program relative to mortgage foreclosures in accordance with this By-Law and promulgate regulations as necessary and appropriate to implementing such a Mediation Program involving mortgagees, creditors, mortgagors, homeowners, utilizing municipality-approved Mediation Program Manager(s) and mediators to mediate between the mortgagee and a mortgagor who owns residential real property in the Town of Brookline which is occupied by the mortgagor as

his or her principal residence. Such mediation shall be facilitated by a municipality-approved Mediation Program Manager according to procedures established by this By-Law. Said Mediation Program may only relate to the mediation of mortgage foreclosures of residential real property in the Town of Brookline that is the mortgagor's principal residence.

5.11.6. Pursuant to this Act, the Town of Brookline shall establish a Mediation Program to provide mediation for all foreclosures of mortgages on owner-occupied residential property with no more than four (4) units that is the primary residence of the owner-occupant. The Mediation Program shall address all issues reasonably related to a foreclosure on the subject property, including but not limited to reinstatement of the mortgage, modification of the loan and restructuring of the mortgage debt, including the reduction and forgiveness of mortgage debt. Mediation conferences conducted pursuant to the Mediation Program shall use the calculations, assumptions and forms that are established or made available through (i) the Federal Deposit Insurance Corporation and published in the Federal Deposit Insurance Corporations Loan Modification Program Guide available on the Federal Deposit Insurance Corporation's publicly accessible website, (ii) the Home Affordable Modification Program; (iii) any modification program that a mortgagee may use which is based on accepted principles and the safety and soundness of the institution and recognized by the National Credit Union Administration, the Division of Banks or any other instrumentality of the commonwealth; (iv) the Federal Housing Agency; or (v) similar federal programs.

The Town of Brookline shall provide for a means of evaluating and selecting qualified Mediation Program Managers. The municipality shall also provide for a means of assessing and evaluating annually the municipality's Mediation Program including reports and data related to (a) the number of mortgagors who are notified of mediation; (b) the number of mortgagors/homeowners who attend mediation and who receive counseling or assistance; (c) the number of certificates of completion issued under the Mediation Program, (d) the results of the mediation process, including the number of loans restructured, number of principal write-downs, interest rate reductions and, to the extent such information is available, the number of mortgagors/homeowners who default on mortgages within a year after successful mediation conferences, (e) any such other information as the municipality may determine to be necessary and or helpful in assessing the value of a Mediation Program and any adjustments that may need to be made thereto.

The Town of Brookline may terminate a Mediation Program Manager's participation in the Mediation Program for good cause, as determined by the appropriate municipal official and subject to any applicable rules and regulations developed by the municipality. In such case, the Mediation Program Manager shall promptly deliver to the municipality all records and information in its possession for appropriate preservation and storage.

5.11.7. Except for financial information otherwise permitted by law to be disclosed, any financial statement or information provided to the Town of Brookline or its approved

independent counseling agencies or provided to the mortgagee or mortgagor during the course of mediation in accordance with this By-Law shall be confidential and shall not be available for public inspection. Any financial statement or information to reasonably facilitate the mediation conference(s) shall be made available as necessary to the mediator and to the attorneys or representatives, if any, of the parties to the mediation. Any financial statement or information designated as confidential under this section shall be kept separate and apart from other papers and matters not the subject of the mediation.

5.11.8. For the purpose of the Mediation Program established by the Town of Brookline, the municipality shall receive a copy of all notices filed pursuant to G.L. c. 244 § 35A(g),(h), within ten (10) days of receipt by the Commissioner of the Division of Banks pursuant to G.L. c. 244, §35A(k) that relate to residential properties in the Town of Brookline. The municipality shall thereafter promptly notify the creditor/mortgagee and the mortgagor/homeowner of their rights and responsibilities under this By-Law regarding mediation. It is the intent and purpose of this By-Law that a mediation conference take place within forty-five (45) days of the mortgagor/homeowner receiving notice of his or her right to cure as provided in G.L. c. 244, §35A (g) and (h). The Town of Brookline shall refer the matter for mediation to an approved Mediation Program Manager who shall have the responsibility of assigning a mediator and scheduling the parties to immediately commence mediation pursuant to this By-Law. The mediation shall proceed with the parties' good faith effort to negotiate and agree upon a commercially reasonable alternative to foreclosure as defined in G.L. c. 244, §35A(c). The mediation conference shall continue without delay until completion, but shall in no way constitute an extension of the foreclosure process, nor an extension of the mortgagor/homeowner's right to cure period. Notwithstanding the limitation in the previous sentence, the mediation conference may be extended by mutual agreement of the parties which the mediator shall document.

5.11.9. The mediation program established by this By-Law shall include, and be limited to, the following steps:

(a) the parties shall participate in a mandatory loan/mortgage mediation conference at a location mutually convenient to the parties. All parties present at said mediation conference must have authority to enter into any agreements renegotiating the mortgage that is the subject of the foreclosure, or to otherwise resolve the pending foreclosure.

(b) said mediation conference shall be scheduled at a time and place to be determined by the Mediation Program Manager, but not later than forty-five (45) days following the mortgagor/homeowner's receipt of his or her statutory notice of right to cure under G.L. c. 244, §35A (g) and (h). The parties will be noticed under the mediation program by certified and first class mail at the parties' last known address(es). if any, or if none, then to the address to which the tax collector last sent the tax bill for mortgaged premises. The notice shall contain the following declaration on the first page in Spanish, in any other language which the lender knows is the debtor's primary language, and any other language deemed appropriate by the Mediation Program Manager: "This is an important

notice concerning your right to live in your home. Have it translated at once."

(c) prior to the scheduled mediation conference, the mortgagor/homeowner shall be assigned a municipality-approved loan counselor. If the mortgagor/homeowner is already working with a municipality-approved loan counselor, no assignment is necessary. However, such loan counselor shall work with the mortgagor/homeowner during the mediation process in accordance with the provisions of this By-Law.

(d) the mortgagor/homeowner shall cooperate in all respects with the requirements of Mediation Program Manager, providing all necessary financial and employment information. The mortgagor/homeowner shall complete any and all loan resolution proposals and applications as appropriate. The mortgagor/homeowner must provide evidence of current income. The creditor/mortgagee's representative must bring and make available, the mortgage, a certified copy of the promissory note in its then-current condition evidencing the debt, all assignments of the mortgage loan whether recorded or unrecorded, as well as a detailed accounting of the outstanding balance on the mortgage loan including all lawful costs and fees assessed to the mortgagor/homeowner's account as of the date of the scheduled mediation.

(e) if after two (2) attempts by the mediation program manager to contact the mortgagor/homeowner as required by this section, the mortgagor/homeowner fails to respond to the Mediation Program Manager's request to appear for the mediation conference, or the mortgagor/homeowner fails to cooperate in any respect with the requirements outlined in this By-Law, the requirements of the By-Law shall be deemed to be satisfied upon verification by the municipality-approved Mediation Program Manager that the required notice was sent; and if so, a certificate shall be issued immediately by the Mediation Program Manager certifying that the creditor/mortgagee has satisfied the mediation requirements of this By-Law.

(f) the mediator shall determine whether the parties have engaged in a good faith effort at the mediation conference.

(g) if, it is determined after a good faith effort made by the creditor/mortgagee and/or homeowner/mortgagor at the mediation conference, that the parties cannot come to an agreement to re-negotiate the terms of the loan in an effort to avoid foreclosure, such good faith effort on behalf of the creditor/mortgagee and/or of the homeowner/mortgagor shall be deemed to satisfy the requirements of this By-Law. A certificate certifying such good faith effort pursuant to this By-Law shall be issued immediately to the party(s) that made a good faith effort and without delay by the Mediation Program Manager to the party(s) authorizing the creditor/mortgagee and/or homeowner/mortgagor to proceed with its rights under Chapter 244 of the General Laws.

5.11.10. Notwithstanding any provisions of G.L. c. 244, s. 14 relating to the power of sale, no sale in the Town of Brookline shall be effective to foreclose on any mortgage under this By-Law, unless all notices required by G.L. c. 244, § 14 specifically reference that a certificate from a municipality-approved Mediation Program Manager has been

issued verifying that the creditor/mortgagee, its assignee or any person identified in G.L. c. 244, §14, has successfully participated in a mediation program in accordance with this By-Law.

5.11.11. No entry by foreclosure in the Town of Brookline shall be effectual unless the memorandum or certificate recorded as required by G.L. c. 244, § 2 includes as an attachment or exhibit a copy of a certificate from a municipality-approved Mediation Program Manager verifying that the creditor/mortgagee has participated in mediation with the mortgagor/homeowner as required by this By-Law.

5.11.12. A creditor/mortgagee's failure to comply with any section of this By-Law shall result in a fine of \$300.00 owed to the Town of Brookline, for each instance of a violation, to be charged to the creditor/mortgagee in accordance with G.L. c. 40, s. 21. Every calendar day of non-compliance with the sections of this By-Law shall constitute a separate violation subject to the penalties described under this section, up until the end of the right to cure period given under a lawful notice pursuant to G.L. c. 244, §35A (g) and (h). Said fine or fines under this section shall be recovered by indictment or complaint pursuant to G.L. c. 40, s. 21. Any fines assessed pursuant to this By-Law shall not be charged to the mortgagor/homeowner either directly or indirectly by the creditor/mortgagee

5.11.13. The Town of Brookline is hereby authorized to enact and from time to time to revise by By-Law, a reasonable and appropriate mediation registration fee to be charged to the creditor/mortgagee for the services attendant to administering the Mediation Program established under this By-Law.

5.11.14. In the event any part of this By-Law shall be held invalid, such invalidity shall not invalidate the whole By-Law but the remaining provisions of this By-Law shall not be affected thereby.

5.11.15. This By-Law shall take effect no later than sixty (60) days from its passage

5.11.16: Securing and Maintaining Vacant Properties and Foreclosing Properties

Subsection (a) Unsecured and unmaintained properties and especially vacant properties present a danger to the safety and welfare of public safety officers, the public, occupants, abutters and neighborhoods, and as such, constitute a public nuisance. This section is enacted to promote the health, safety and welfare of the public, to protect and preserve the quiet enjoyment and health of occupants, abutters and neighborhoods, and to minimize hazards to public safety personnel inspecting or entering such properties.

Subsection (b) The following words and phrases, when used in this section, shall have the following meanings:

- a. *building* – any combination of materials having a roof and enclosed within exterior walls or firewalls, built to form a structure for the shelter of persons or property or as otherwise defined under the municipality’s applicable zoning bylaw.
- b. *certificate of closure* – certificate issued by the director to the owner of a vacant or foreclosing property upon compliance with the provisions of paragraph (c) herein.
- c. *director* – the director of health and housing inspection or other municipal official designated by the municipality under this By-Law.
- d. *days* – consecutive calendar days
- e. *fire chief* – the chief of the Town of Brookline Fire Department or his or her designee.
- f. *foreclosing* – the process by which real property, placed as security for a real estate loan, is prepared for sale to satisfy the debt if the borrower defaults.
- g. *initiation of the foreclosure process* – taking any of the following actions:
 - i. taking possession of a residential property pursuant to G.L. c. 244, s. 1;
 - ii. Commencing a foreclosure action on a property in any court of competent jurisdiction, including without limitation filing a complaint in Land Court under the Servicemembers Civil Relief Act - Public Law 108-189 (50 U.S.C.S. App. § 501-536);
 - iii. In any instance, where the mortgage authorizes mortgagee entry to make repairs upon mortgagor's failure to do so.
- h. *local* – within twenty (20) miles of the property in question
- i. *mortgagee* – the creditor, assignee or current holder of a mortgage on real property including but not limited to, a mortgage loan servicer, any lender(s) a mortgage and any agent, subcontractor or employee of the mortgagee acting without his or her authority, or any successor in interest and/or assignee of the mortgagee’s rights, interests or obligations under a mortgage.
- j. *owner* – every person, entity, service company, property manager or real estate Broker, who alone or severally with others has legal title to any real property, including but not limited to a dwelling, dwelling unit, mobile dwelling unit, or parcel of land, vacant or otherwise, including a mobile home park; or has care, charge or control of real property, including but not limited to any dwelling, dwelling unit, mobile dwelling unit, or parcel of land, vacant or otherwise, including a mobile home park, or any administrator, administratrix, executor,

- trustee or guardian of the estate of the holder of legal title; or is a mortgagee of any such property who has initiated the foreclosure process as defined in this section;; is an agent trustee or other person appointed by the courts and vested with possession or control of any such property; or is an officer or trustee of the association of unit owners of a condominium. Each such person is bound to comply with the provisions of these minimum standards as if he were the owner. However, "owner" shall not mean a condominium association created pursuant to General Laws chapter 183A to the extent that such association forecloses on or initiates the foreclosure process for unpaid assessments due or owing to the association; or every person who operates a rooming house; or is a trustee who holds, owns or controls mortgage loans for mortgage-backed securities transactions and has initiated the foreclosure process; or
- k. *property* – any real property, or portion thereof, located in the Town of Brookline, including buildings or structures situated on the property; provided, however, that "property" shall not include property owned or under the control of the Town of Brookline, the Commonwealth or the United States of America.
 - l. *secured, securing* – making the property inaccessible to unauthorized persons.
 - m. *vacant* – any property not currently legally occupied and not properly maintained or secured.

Section (c) Any owner of a vacant and/or foreclosing property shall forthwith:

Provide written notification to the director and the fire chief of the status of such property, including in such notice, the name, address and telephone number of the owner; the location of the property; the length of time the building has been vacant; the estimated time the building will remain vacant; and the nature of the contents of the building; and,

As may be required by the fire chief, file one set of space utilization floor plans for any buildings on said property with the fire chief and one set of said plans with the director. The owner shall certify space utilization plans as accurate twice annually, in January and July; and

Remove from the property, to the satisfaction of the fire chief, hazardous material as that term is defined in G.L. c. 21K, as that statute may be amended from time to time; and

At the discretion of the fire chief or director, secure all windows and door openings and ensure that the building is secured from all unauthorized entry continuously in accordance with the United States Fire Administration, National Arson Initiative Board Up Procedures or provide twenty-four (24) hour on-site security personnel on the property. When a vacant or foreclosing property is located within a complex of buildings owned by a single owner, twenty-four (24) hour on-site security shall be provided within the building or within the complex wherein the building is located; and

Where a property is vacant, post “No Trespassing” signs on the property; and

Maintain the property in accordance with {appropriate Chapter of these Ordinances}, free of overgrowth trash and debris, and pools of stagnant water, and ensure that structures are maintained in a structurally sound condition; and

If the property is vacant, drain all water from the plumbing and turn off all electricity between September 15 and June 15 of each calendar year to guard against burst pipes and fires; and

Maintain the property in accordance with the minimum requirements of the Massachusetts State Sanitary Code, the Massachusetts State Building Code and all specialized codes incorporated therein, and any Town of Brookline Ordinances concerning the maintenance of property and the Town of Brookline Zoning Ordinances; and

Provide the fire chief and director with the name, local address, and telephone number of a responsible person who can be contacted in case of emergency. The owner shall cause the name and contact number to be marked on the front of the property as may be required by the fire chief or director; and,

Maintain liability insurance on the property and furnish the director with a copy of said certificate of insurance; and

Provide a cash bond acceptable to the director, in the sum of not less than ten thousand (\$10,000.00) dollars, to secure the continued maintenance of the property throughout its vacancy and remunerate the Town of Brookline for any expenses incurred in inspecting, securing, marking or making such building safe. A portion of said bond shall be retained by the Town of Brookline as an administrative fee to fund an account for expenses incurred in inspecting, securing, and marking other such buildings that are not in compliance with this Section. Any owner of a vacant or foreclosing property providing a bond pursuant to this section must also provide bonds for all other vacant or foreclosing properties it owns in the Town of Brookline.

Once the property is no longer vacant or is sold, provide proof of sale or written notice and proof of occupancy to the director and fire chief.

Upon satisfactory compliance with the above provisions the director shall issue a certificate of building closure. Said certificate shall be valid for the length of time prescribed by the director and noted thereon; provided, however, the certificate shall be subject to continued compliance with the provisions of this section.

Section (d) Signs/Markings – When required pursuant to this section signs or markings shall be applied on the front of the property, and elsewhere as the fire chief may require, at or above the second floor level and shall not be placed over doors windows or other

openings. All signs/markings shall be visible from the street and when requested by the fire chief shall be placed on the sides and rear of the property. Signs/markings shall be a minimum of 24 inches by 24 inches, with lines of 2 inch width, and shall have a reflective background, or be painted with reflective paint in contrasting colors. Signs/markings shall be applied directly on the surface of the property, and shall state the date of posting and the most recent date of inspection by the fire chief and director.

Section (e) Enforcement – Failure to comply with any provision of paragraph (c) above shall be punished by a fine of five hundred (\$500.00) dollars with each day of violation constituting a separate offence. This section may also be enforced by civil, criminal process or non-criminal process including injunctive relief. The director and or the fire chief shall be enforcing persons for purposes of this section.

Section (f) The director or fire chief, upon being informed of the existence of a vacant or foreclosing property without a certificate of building closure, shall cause notice to issue to the owner of the status of said property and shall order said person to immediately obtain a certificate of building closure. If any person fails to comply with said order, the fire chief or director may enter the premises to inspect, secure, and mark the property, and/or remove rubbish or overgrowth, or to abate a stagnant pool of water. The fire chief or director may also seek enforcement pursuant to section (e).

Section (g) Expenses – The owner of a vacant or foreclosing property who fails to obtain a certificate of building closure as required herein, shall be liable to the Town of Brookline for expenses incurred by the Town of Brookline in securing such property, for removing rubbish and overgrowth and/or for abating stagnant pools of water. The director shall provide the owner with a written statement of all costs associated with inspecting, securing, and marking the property, and removing rubbish or overgrowth, or abating stagnant pools of water. If the owner fails to pay or reimburse the Town of Brookline within seven days of notice of expenses the Town of Brookline shall draw down upon the bond paid by the owner as required in subsection 10, above. If there is no bond available, the director shall record the notice of claim in the {county} District Registry of Deeds (or the Land Court Department) forthwith, establishing a lien on the property for the balance due

Section (h) No owner of a vacant or foreclosing property shall allow said property to become or remain unsecured, or to contain an accumulation of rubbish, or to contain overgrowth, or to have a stagnant pool of water. If it appears that any vacant or foreclosing property is unsecured, contains rubbish, overgrowth, or a stagnant pool of water, the director shall send written notification to the owner, requiring that the owner promptly secure the property, remove the rubbish or overgrowth, or abate the stagnant pool of water.

If the owner fails to comply with any order issued pursuant to this provision (h), the fire chief or director may immediately seek to obtain the proceeds secured by the bond filed pursuant to paragraph (c)(11) herein and shall enter upon the premises and cause the

property to be inspected, secured, and marked, or to remove rubbish, overgrowth, or stagnant pools using said proceeds.

Section (i) All unsecured vacant or foreclosing properties shall be immediately referred to the director for a determination relative to whether the property is a nuisance or dangerous pursuant to chapter 139 and procedures promulgated thereunder.

Section (j) Notices required pursuant to this section shall be served in the following manner:

Personally on any owner as defined in this section or on the contact person specified pursuant to paragraph (c)(9); or ,

Left at the last and usual place of abode of any owner, or contact person as specified pursuant to paragraph (c)(9), if such place of abode is known and is within or without the commonwealth; or,

By certified or registered mail, return receipt requested, to any owner, or the contact person specified pursuant to paragraph (c)(9).

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Many aspects of the foreclosure crisis have created serious and negative effects on the well-being of homeowners, tenants, neighborhoods, and the overall economy across the Commonwealth. To date, Federal and State provisions to solve this crisis are falling short of the need.

Every city and town that recognizes the problem and mandates solutions can build toward a community, state, and national consciousness that puts a higher priority on solving this core problem. Although Brookline itself has fared better than neighboring communities, the town can set an example -- through pre-foreclosure mortgage mediation and post-foreclosure property security and maintenance -- that could spare cities and towns from the degradation and tragedy many are facing.

Pre-foreclosure mediation has been shown to lead to a significant percentage of mutually agreed-upon loan modifications. Post-foreclosure registration and cash bonds have had a significant impact on the financial health of Worcester which enacted comparable legislation.

Motion to be Offered by the Petitioner (Merelice, TMM-6)

Moved that the Town adopt the following resolution:

"Whereas families, neighborhoods, communities, and the general economy have been and continue to be devastated by the foreclosure crisis;

"Whereas the foreclosure crisis has increased the number of homeless families and has disrupted tenants in foreclosed properties;

"Whereas Massachusetts is the only New England state that is not using pre-foreclosure mediation programs;

"Whereas pre-foreclosure mediation has a clear record of benefiting both the lending institution and homeowner, leading to a high percentage of mutually agreed upon loan modifications and providing better alternatives to foreclosure;

"Whereas stemming the tide of foreclosures leads to stabilizing life at home, at work, and at school and, thereby, in the community and economy;

"Whereas the state legislature has failed to sufficiently address the broad scope of the ongoing foreclosure crisis and its threat to economic recovery;

"Whereas it appears that towns and cities throughout the Commonwealth need to convey an urgent message to all levels of government that emergency action is needed;

"Whereas Brookline can be in the leadership of communities fighting foreclosures that could better be addressed by other actions;

"Whereas Warrant Article 7 for the November 2012 Special Town Meeting is complex and needs revisions to better contribute toward solutions;

"Therefore be it resolved that Brookline supports the concept of pre-foreclosure mediation under appropriate circumstances and considers this Resolution an important step in joining other cities and towns to forward and advocate for its implementation."

Explanation

As is the case with every Warrant Article, Town Meeting is preceded by a series of meetings with town committees and boards who review the Article, raise relevant questions, and make recommendations. The consequence of the various review meetings I have attended is a growing understanding of the complexities embedded in this Article, requiring more time for further research and adjustments. At the same time, the foreclosure crisis deserves urgent attention which this more straightforward Resolution is designed to address.

SELECTMEN'S RECOMMENDATION

Article 7 is a petitioned article that calls for the Town to establish a mortgage foreclosure mediation program. At its core, the proposed by-law would require the Town to manage a mediation process involving a homeowner who is in danger of being foreclosed upon and the holder of a mortgage, which in most cases are banks. The public policy rationale for such a proposal, according to the petitioner, is to help avoid the serious and negative effects on the well-being of homeowners, tenants, neighborhoods, and the overall economy caused by foreclosures.

Fortunately, Brookline has seen very few foreclosures during the Great Recession. Approximately nine foreclosures a year have occurred in Brookline, well below the levels seen in communities harder-hit by the economic downturn such as Lawrence and Springfield. In fact, Springfield adopted a mediation program because of the negative impacts the housing crisis was having on its community. With such a low frequency of foreclosures in Brookline, the need for such a by-law is limited. In addition, the proposed by-law is extraordinarily complex and would need to be improved upon in many areas if it were to move forward.

The Board is supportive of efforts to have a statewide program established, similar to the programs available in all other New England states. However, developing a program for just Brookline is not justified. Therefore, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 23, 2012, on the resolution offered by the Petitioner, which is as follows:

VOTED: That the Town adopt the following resolution:

Whereas families, neighborhoods, communities, and the general economy have been and continue to be devastated by the foreclosure crisis;

Whereas the foreclosure crisis has increased the number of homeless families and has disrupted tenants in foreclosed properties;

Whereas Massachusetts is the only New England state that is not using pre-foreclosure mediation programs;

Whereas pre-foreclosure mediation has a clear record of benefiting both the lending institution and homeowner, leading to a high percentage of mutually agreed upon loan modifications and providing better alternatives to foreclosure;

Whereas stemming the tide of foreclosures leads to stabilizing life at home, at work, and at school and, thereby, in the community and economy;

Whereas the state legislature has failed to sufficiently address the broad scope of the ongoing foreclosure crisis and its threat to economic recovery;

Whereas it appears that towns and cities throughout the Commonwealth need to convey an urgent message to all levels of government that emergency action is needed;

Whereas Brookline can be in the leadership of communities fighting foreclosures that could better be addressed by other actions;

Whereas Warrant Article 7 for the November 2012 Special Town Meeting is complex and needs revisions to better contribute toward solutions;

Therefore be it resolved that Brookline supports the concept of pre-foreclosure mediation under appropriate circumstances and considers this Resolution an important step in joining other cities and towns to forward and advocate for its implementation.

ADVISORY COMMITTEE'S RECOMMENDATION

At the time of this writing, it is unclear what motion may or may not be offered by the petitioner. The Advisory Committee will provide a report and recommendation in the Supplementary Mailing.

XXX

ARTICLE 7

BOARD OF SELECTMEN’S SUPPLEMENTAL RECOMMENDATION

At its October 30, 2012 meeting, the Selectmen reconsidered Article 7 for the purpose of reviewing the amendment made by the Advisory Committee to the resolution approved by the Board. By a vote of 5-0, the Selectmen recommend FAVORABLE ACTION on the amended Article 7 moved by the Advisory Committee.

ADVISORY COMMITTEE’S SUPPLEMENTAL RECOMMENDATION

BACKGROUND:

Article 7, submitted by Petitioner Merelice, proposes that Town Meeting pass a Resolution expressing its support for the concept of pre-foreclosure mortgage mediation in appropriate circumstances.

The petitioner originally submitted a By-Law proposal for inclusion in the fall 2012 Town Meeting Warrant, which would have established, among other things, a Town administered pre-foreclosure mortgage mediation program for all Brookline property owners. The petitioner was moved to submit the By-Law proposal by the “tide of foreclosures” in Massachusetts and the economic impact that those foreclosures have had both in individual communities and on the state’s broader economy. Article 7 was also submitted as a means to have Brookline make a statement and participate in an effort to induce the State Legislature to pass a comprehensive statewide program addressing mortgage foreclosures. For several consecutive sessions the Massachusetts Alliance Against Predatory Lending (MAPL) has advocated for passage of a bill that would establish such a program; the bill has garnered support in the Legislature, but has not been passed into law. The petitioner and MAPL believe that passage of local versions of the bill pending before the State Legislature would apply the pressure necessary to ensure eventual passage of the bill at the State House.

During the deliberative process leading up to this Town Meeting, the petitioner’s By-Law proposal was revised into a Resolution. To be clear the motion before Town Meeting is for passage of a Resolution and not a By-Law. The transition to a Resolution was done in light of widespread concern by several Town Boards and Commissions, including the sub-committee of the Advisory Committee which adjudicated the original version of Article 7, about various aspects of the proposed By-Law.

DISCUSSION:

The collapse of the housing market in the United States has affected communities across the country. Many factors led to the housing bubble and subsequent crash including changing government policies, loose loan underwriting standards and negligence on the part of both lenders and borrowers. Individual borrowers have often been frustrated in their attempts to obtain mortgage relief from financial institutions when they encounter financial difficulty. In some instances institutions have been overwhelmed with the sheer number of defaulted loans and, in other cases, a loan originated and subsequently sold and securitized is governed by contracts that the servicers of the loans cannot change regardless of the sometimes common sense solutions that exist to deal with problems. Finally, there have been occasions when a combination of these and other factors have prevented loan alteration or modification from occurring.

The Resolution before Town Meeting would have Brookline "support the concept of pre-foreclosure mortgage mediation under appropriate circumstances". The Resolution would also have Town Meeting acknowledge the impact that the foreclosure crisis has had on families, communities, and the economy both in Massachusetts and across the country, and urge the State Legislature to implement a statewide pre-foreclosure mortgage mediation program and address this important issue.

Pre-foreclosure mortgage mediation is a process that requires lenders to offer borrowers the opportunity to work with a trained mediator to attempt to restructure or otherwise modify a mortgage on terms that reflect the current financial situation of the borrower. The goal of pre-foreclosure mediation is, where appropriate and possible, to avoid an outcome where borrowers lose their homes.

As acknowledged by the Petitioner, Brookline has remained relatively unaffected by the broader housing and foreclosure crisis as our assessed values have not dropped and houses and condominiums do not languish on the market even if they have been foreclosed on. According to the Town's Finance Director, 45 Brookline residences have gone through the entire foreclosure process during the past five years--an average of nine per year--and where foreclosures have occurred there is no evidence that neighborhoods have been adversely affected. .

Jurisdictions elsewhere in the United States, and in the Commonwealth, have not had the same experience as Brookline. Springfield, Lawrence and Lowell, for example, have high rates of foreclosures and there is broad agreement that the large number of foreclosures in these municipalities has negatively impacted neighborhoods, municipal finances and the local housing market. According to the petitioner, pre-foreclosure mortgage mediation program have been established successfully elsewhere in the United States, including all other states in New England.

In discussions about the originally proposed By-Law concern was raised as to whether it was appropriate for Brookline to adopt a By-Law that addressed a problem in Town that does not really exist. The Article that is before Town Meeting currently mitigates this concern simply because it is a Resolution and not a By-Law. The Resolution also makes

clear that establishment of a state-wide mediation program is most appropriate, as opposed to the establishment of individual mediation programs in municipalities throughout the Commonwealth. Finally, the inclusion of the phrase ‘in appropriate circumstances’ in the resolved clause, addresses the concern about the establishment of a blanket requirement which would offer mediation to all borrowers regardless of the circumstances that led to their participation in the foreclosure process.

It is the belief of the Advisory Committee that Brookline has the unique opportunity to help sister communities that have been adversely affected by sharp declines in housing values and by the broader housing crisis. Passage of this resolution would send a message to the State Legislature that pre-foreclosure mortgage mediation is an important concept; a tool that can literally help save neighborhoods. The ultimate goal of forcing the legislature to enact a state-wide solution incorporating mandatory pre-foreclosure mortgage mediation can only be achieved by communities in the state working together and this resolution is an important step in furthering that process.

RECOMMENDATION:

By a vote of 16 in Favor and 4 Opposed and 1 Abstention, the Advisory Committee recommends FAVORABLE ACTION on Article 7, as amended below:

VOTED: That the Town adopt the following Resolution:

Whereas families, neighborhoods, communities, and the general economy have been and continue to be devastated by the foreclosure crisis;

Whereas the foreclosure crisis has increased the number of homeless families and has disrupted tenants in foreclosed properties;

Whereas Massachusetts is the only New England state that is not using pre-foreclosure mediation programs;

Whereas pre-foreclosure mediation has a clear record of benefiting both the lending institution and homeowner, leading to a high percentage of mutually agreed upon loan modifications and providing better alternatives to foreclosure;

Whereas stemming the tide of foreclosures leads to stabilizing life at home, at work, and at school and, thereby, in the community and economy;

Whereas the state legislature has failed to sufficiently address the broad scope of the ongoing foreclosure crisis and its threat to economic recovery;

Whereas it appears that towns and cities throughout the Commonwealth need to convey an urgent message to all levels of government that emergency action is needed;

Whereas Brookline can be in the leadership of communities fighting foreclosures that could better be addressed by other actions;

~~"Whereas Warrant Article 7 for the November 2012 Special Town Meeting is complex and needs revisions to better contribute toward solutions;~~

"Therefore be it resolved that Brookline ~~commits to~~ supports the concept of state-wide pre-foreclosure mortgage mediation under appropriate circumstances and considers this Resolution an important step in joining other cities and towns to ~~forward~~ advance and advocate for its implementation."

ARTICLE 8

EIGHTH ARTICLE

Submitted by: Nancy Heller

To see if the town will amend the General By-Laws as follows:

By adding the following Article:

Article 8.32 Prohibition on the Use of Polystyrene Based Disposable Food Containers
Effective December 1, 2013, polystyrene food or beverage containers shall not be used in the Town of Brookline to package or serve food or beverages if that packaging takes place on the premises of food service establishments, as defined in Article 8.10.2, within the Town of Brookline.

In the event that compliance with the effective date of this by-law is not feasible for a food service establishment because of either unavailability of alternative non-polystyrene containers or economic hardship, the Director of Health and Human Services may grant a waiver of not more than six months upon application of the owner or the owner's representative. The waiver may be extended for one (1) additional 6 month period upon the showing of continued infeasibility as set forth above.

And by adding a reference to this Article 8.32 in the General By-Laws, Article 10.2 Prosecutions and Enforcement, by including Article 8.32 under the list of by-laws enforceable by the Director of Health and Human Services.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

In June, 2011, the National Institute of Environmental Health Sciences (NIEHS), part of the U.S. Dept of Health and Human Services, added styrene, the chemical found and released from polystyrene (commonly known as Styrofoam) products such as to-go containers and cups, to its list of materials that are reasonably anticipated to be carcinogens, as toxic chemicals may leach out of these products into the food that they contain. The NIEHS added styrene to its list of likely carcinogens based on human cancer studies, laboratory animal studies, and mechanistic scientific information. Styrene is found in many products, including food and beverage containers, rubber, plastics, insulation, and cigarette smoke. While this list is not a regulatory statement, it has been a factor in regulatory decision-making and could mean that the federal government will at some future date regulate or ban the use of polystyrene.

This product is not only harmful to human health but it is also detrimental to the environment. Polystyrene, a petroleum product, does not biodegrade but rather crumbles

into fragments. If strewn as trash on land, it will have an indefinite life, and could break into pieces that choke and clog animal digestive systems. This product remains in landfills indefinitely, takes up more space than paper, and eventually can re-enter the environment when landfills are breached by water or mechanical forces.

While polystyrene can technically be recycled, it is cumbersome to do so. Brookline has an extensive recycling program, but single stream curbside recycling does not include polystyrene containers. About twice per year, our residents may take their collected polystyrene to the DPW facility, where it is picked up by a Rhode Island company. In Rhode Island, the polystyrene is compressed or “densified” into large blocks, then transported to China or India where facilities using complex chemical processes turn the polystyrene into pellets that are used to make new polystyrene. In this way, polystyrene can be recycled, but the carbon footprint of transporting this material is staggering.

While this warrant article only applies to food and beverage containers in Brookline, it begins to tackle the problem at a local level and furthers the process of educating people about the dangers of polystyrene. Great Barrington, MA banned polystyrene containers 22 years ago. In Great Barrington, all to-go coffee, such as from Dunkin’ Donuts, is sold in heavy paper cups.

The first such ban was enacted in Portland, Oregon in the late 1980’s. In the following years, many municipalities nation-wide have either an ordinance in place or are currently working on one. Other major cities include: Los Angeles, Oakland, Santa Monica, Seattle and San Francisco. Philadelphia and New York City are currently working on getting an ordinance passed through city council. In California alone, the number of municipalities which have tackled this issue is approaching 100 and the list keeps growing. Several counties in that state have adopted county-wide bans. California is poised to become the first state in the nation to pass a state-wide ban. Many other states are also considering state-wide bans.

Anecdotally, I have observed that food from the cafeteria at the Museum of Science is no longer placed in polystyrene containers, but in containers which are biodegradable. The MacDonald chain ceased to use polystyrene packaging several years ago, and now wraps all food in paper products.

Unlike the situation in 1990 when Great Barrington enacted its ban, today there are many alternative recyclable food containers, some of which are biodegradable: such alternative containers do not contain human health risks or negative impacts on the environment. Biodegradable containers are often made from PLA, a plastic substitute derived from plant starch, from bamboo, a fast-growing and renewable resource, and palm fiber. These plastic substitutes can match polystyrene in durability, strength, and flexibility.

It makes sense for Brookline Town Meeting to protect our citizens with this bylaw. It also makes sense that in addition to any police officer, the Director of Health and Human Services and the Commissioner of D.P.W. or their designees have the authority to enforce this by-law.

For a fuller description of polystyrene, please see: <http://www.earthresource.org/campaigns/capp/capp-styrofoam.html>.

For a copy of the Great Barrington bylaw, please see Great Barrington Bylaws, Section 102.2 Polystyrene containers.

For an example of an ordinance from a California city: <http://www.cityofalamedaca.gov/Go-Green/Styrofoam-Ban>

SELECTMEN'S RECOMMENDATION

At their October 16, 2012 meeting, the Selectmen unanimously recommended FAVORABLE ACTION on the following vote:

VOTED: That the Town amend the General By-Laws as follows:

By adding the following Article:

Article 8.32 Prohibition on the Use of Polystyrene Based Disposable Food Containers

Effective December 1, 2013, polystyrene foam (expanded or "blown" polystyrene) food or beverage containers shall not be used in the Town of Brookline to package or serve food or beverages if that packaging takes place on the premises of food service establishments, as defined in Article 8.10.2, within the Town of Brookline. This prohibition shall not apply to trays for uncooked meat, poultry, or fish.

In the event that compliance with the effective date of this by-law is not feasible for a food service establishment because of either unavailability of alternative non-polystyrene foam containers or economic hardship, the Director of Health and Human Services may grant a waiver of not more than six months upon application of the owner or the owner's representative. The waiver may be extended for one (1) additional 6 month period upon the showing of continued infeasibility as set forth above.

And by adding a reference to this Article 8.32 in the General By-Laws, Article 10.2 Prosecutions and Enforcement, by including Article 8.32 under the list of by-laws enforceable by the Director of Health and Human Services.

Members of the Board are seeking further information, and the Selectmen will include a full recommendation in a Supplemental mailing.

November 13, 2012 Special Town Meeting

8-4

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation by the Advisory Committee under Article 8 will be provided in the Supplemental Mailing.

XXX

ARTICLE 8

BOARD OF SELECTMEN’S SUPPLEMENTAL RECOMMENDATION

Article 8 is a petitioned article that calls for the prohibition on the use of polystyrene-based (aka Styrofoam) disposable food containers. This product is harmful to human health, the environment, and animal health:

- Human health – the National Institute of Environmental Health Sciences added styrene, the chemical found and released from polystyrene products such as “to-go” containers and cups, to its list of materials that are reasonably anticipated to be carcinogens, as toxic chemicals may leach out of these products into the food that they contain.
- Environment – since polystyrene is a petroleum product, it does not biodegrade; it crumbles into fragments. It remains in landfills indefinitely, takes up more space than paper, and eventually can re-enter the environment when landfills are breached by water or mechanical forces.
- Animal health – if disposed of as trash on land, it will have an indefinite life and could break into pieces that choke and clog animal digestive systems.

The Board understands the hazards this product poses, but was also concerned about the impact its banning could have on local businesses that would need to find replacements. After review of the article with the Petitioner, the Board feels comfortable that the burden on local businesses will be minimal if the amended version offered below is approved. The two changes to the original article are as follows:

1. The words “foam (expanded or “blown” polystyrene)” are added in the first sentence after the word “polystyrene”. This is recommended because it is the foam, or “blown”, polystyrene that is not recyclable and ends up in a landfill. Items that are currently picked up with recyclables in Brookline (e.g., “P6” containers such as lids on coffee cups and clear covers on food take-out orders) are ultimately turned back into energy because the Town’s residual plastic material is taken to a waste-to-energy plant. .
2. The words “[T]his prohibition shall not apply to trays for uncooked meat, poultry, or fish” are added to the end of the first paragraph. This is recommended because there are other public health issues (leakage, spoilage) with alternative trays used for packing uncooked meat, chicken, and fish. In addition, a suitable replacement has not been found. In fact, Whole Foods, a business with a nationally well-recognized environmentally-friendly track record, experimented with various products in their attempt to get rid of the styrofoam containers, but none have been deemed worthy of being a successful replacement.

Similar bans have been approved in cities such as Los Angeles, Oakland, Santa Monica, Seattle, and San Francisco. Closer to home, Great Barrington has had a ban for 22 years with the same exclusion. In addition, California and other states are considering state-wide bans. Businesses in these places have not been harmed by such a ban, further evidence of why the amended version of the article being offered should be adopted. Brookline prides itself on being on the forefront of initiatives that help the environment and contribute to healthy living. Whether it was smoking in restaurants or trans fats, Brookline has proudly advanced initiatives that are now commonplace.

The Selectmen thank the Petitioner for bringing the article forward and raising consciousness of the issue. The Board recommends FAVORABLE ACTION, by a vote of 4-1 taken on October 30, 2012, on the following:

VOTED: That the Town amend the General By-Laws as follows:

By adding the following Article:

Article 8.32 Prohibition on the Use of Polystyrene Based Disposable Food Containers

Effective December 1, 2013, polystyrene foam (expanded or “blown” polystyrene) food or beverage containers shall not be used in the Town of Brookline to package or serve food or beverages if that packaging takes place on the premises of food service establishments, as defined in Article 8.10.2, within the Town of Brookline. This prohibition shall not apply to trays for uncooked meat, poultry, or fish.

In the event that compliance with the effective date of this by-law is not feasible for a food service establishment because of either unavailability of alternative non-polystyrene foam containers or economic hardship, the Director of Health and Human Services may grant a waiver of not more than six months upon application of the owner or the owner’s representative. The waiver may be extended for one (1) additional 6 month period upon the showing of continued infeasibility as set forth above.

And by adding a reference to this Article 8.32 in the General By-Laws, Article 10.2 Prosecutions and Enforcement, by including Article 8.32 under the list of by-laws enforceable by the Director of Health and Human Services.

ROLL CALL VOTE:

Favorable Action

DeWitt

Mermell

Benka

Goldstein

No Action

Daly

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

BACKGROUND:

Article 8 asks Town Meeting to amend the Town's By-Laws by adding Article 8.32 to prohibit the use of polystyrene-based disposable food containers. The petitioner stated that she filed this petition after a visit to Great Barrington where polystyrene-based food containers, if that packaging takes place on the premises of retail sale, have been banned since September 1, 1990. Great Barrington exempts containers for raw meat, fish and poultry. The current article asks for a similar ban of disposable polystyrene food or beverage containers, but without that exemption.

DISCUSSION:

Polystyrene (#6 Plastics) is a petroleum-based plastic found in disposable plates and cups, meat trays, egg cartons, carry-out containers, aspirin bottles and compact disc cases. Styrofoam, a trademarked brand owned by the Dow Chemical Company, is its most familiar form and is composed of expanded polystyrene beads. These beads are about 95 percent air, which gives Styrofoam both buoyant and insulating properties, the latter of which is excellent for containing hot liquids. Polystyrene, however, can also be a clear or colored plastic, such as the lid for a hot cup.

The biggest environmental health concern associated with polystyrene involves styrene, the chemical found in and released from polystyrene. Styrene has been listed by the National Institute of Environmental Health Sciences (NIEHS) as a potential carcinogen since June 2011. The 12th Report on Carcinogens (2011) by the National Toxicology Program, headquartered at the NIEHS, notes that styrene is "reasonably anticipated to be a human carcinogen." People may be exposed to styrene in the workplace (e.g., in the fabrication of boats, cars and truck parts) and in the environment. It is found in many products, including food and beverage containers, rubber, plastics, insulation and cigarette smoke. Of particular concern to the petitioner is that styrene may leach from polystyrene containers used for food products, particularly when hot liquids are poured into the polystyrene containers.

The evidence for a link to cancer is largely through laboratory studies with mice, in which styrene caused lung tumors. The limited evidence for cancer from styrene in humans comes from occupational studies showing increased risks for leukemia and lymphoma for workers exposed to styrene, though no causal relationship has been established and more research needs to be done.

There is evidence that workers exposed to styrene at levels above 100 ppm (which is twice the level considered safe), may suffer from neurological symptoms (e.g. drowsiness, light headedness, headaches, and balance disturbances).

The other major concern is that #6 plastics (polystyrene) often end up either in landfills, where it will last indefinitely and potentially leach into the groundwater, or be burned. #1 PETE (polyethylene terephthalate) and #2 HDPE (high density polyethylene) plastics

make up much of our recycled and recyclable plastics (about 70%). #6 plastics, which account for only about 1% of the plastic in our recycle bins, are largely treated as garbage. The recycling of post-consumer plastic waste in the U.S. is relatively low – under 10%, with the vast majority ending in landfills.

Clint Richmond, a town meeting member from Precinct 6, member of the Green Caucus and of the Solid Waste Advisory Committee (SWAC) reported to the Advisory Committee that rigid polystyrene (code 6) that goes to Brookline’s recycling center in Avon MA (Waste Management) is neither recycled nor separated, but is part of the waste stream that is incinerated as trash in their Saugus facility. The Solid Waste Advisory Committee supports this article.

The petitioner of this article noted that there are alternatives to using polystyrene containers for take-out food. These include the recyclable #1 and #2 plastics, which do not leach or degrade, as well as paper containers and wax paper. #6 polystyrene drink cup lids can be replaced easily with better recyclable lids (already in use in many places).

Dr. Alan Balsam, Director of Health and Human Services, advised the petitioner to submit the article with a start date of December 1, 2013 to allow time to prepare and train his staff. He noted that this along with other new initiatives (including new by-laws regarding transfats, daycare providers) he expects to need an additional part-time, 20-hour-a-week staff member at a cost of approximately \$24,000.

Brian Houghton, Vice President of the Massachusetts Food Association, representing large supermarket chains, including Shaws/Star markets, Johnny’s Food Master, Stop & Shop and Trader Joe’s, appeared at the Advisory Committee public hearing. He requested that the original article be modified to mirror Great Barrington’s exemption of packaging for raw fish, meat and poultry.

Kara Brewton, Interim Director of Planning and Community Development, reported that her department sent two mailings to Brookline’s licensed food vendors and the only businesses responding were the large food chains. Anecdotally she reported one local restaurant, doing a take out business, simply asked “ Can we wait until everything is used up?” The article enables Dr. Balsam to grant a 6-month waiver to businesses needing more time to comply with the by-law, with an additional 6-month hardship waiver. Some establishments, in effect, could have up to 2 years to comply with this by-law once adopted.

The Advisory Committee reviewed the Selectmen’s vote on an amended article, which restricted the ban to only Styrofoam (and not other #6 polystyrene products) with an exemption of local packaging of raw meat, poultry and fish. The Advisory Committee was not persuaded that there were not suitable, readily available alternatives for other #6 polystyrene products. The Advisory Committee motion does, however, contain the meat tray exemption.

RECOMMENDATION:

By a vote of 17-1-2, the Advisory Committee recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town amend the General By-Laws as follows:

By adding the following Article:

Article 8.32 Prohibition on the Use of Polystyrene Based Disposable Food Containers

Effective December 1, 2013, polystyrene food or beverage containers shall not be used in the Town of Brookline to package or serve food or beverages if that packaging takes place on the premises of food service establishments, as defined in Article 8.10.2, within the Town of Brookline. **This provision shall not apply to the packaging of uncooked meat, uncooked poultry and/or uncooked fish.**

In the event that compliance with the effective date of this by-law is not feasible for a food service establishment because of either unavailability of alternative non-polystyrene containers or economic hardship, the Director of Health and Human Services may grant a waiver of not more than six months upon application of the owner or the owner's representative. The waiver may be extended for one (1) additional 6 month period upon the showing of continued infeasibility as set forth above.

And by adding a reference to this Article 8.32 in the General By-Laws, Article 10.2 Prosecutions and Enforcement, by including Article 8.32 under the list of by-laws enforceable by the Director of Health and Human Services.

It should be noted that two members of the ad hoc subcommittee voted to support the Petitioner's original wording for a prohibition on the use of polystyrene based disposable food containers with no exemptions.

ARTICLE 8

ADVISORY COMMITTEE’S REVISED SUPPLEMENTAL RECOMMENDATION

BACKGROUND:

Article 8 asks Town Meeting to amend the Town’s By-Laws by adding Article 8.32 to prohibit the use of polystyrene-based disposable food containers. The petitioner stated that she filed this petition after a visit to Great Barrington where polystyrene-based food containers, if that packaging takes place on the premises of retail sale, have been banned since September 1, 1990. Great Barrington exempts containers for raw meat, fish and poultry. The current article asks for a similar ban of disposable polystyrene food or beverage containers, but without that exemption.

DISCUSSION:

Polystyrene (#6 Plastics) is a petroleum-based plastic found in disposable plates and cups, meat trays, egg cartons, carry-out containers, aspirin bottles and compact disc cases. Styrofoam, a trademarked brand owned by the Dow Chemical Company, is its most familiar form and is composed of expanded polystyrene beads. These beads are about 95 percent air, which gives Styrofoam both buoyant and insulating properties, the latter of which is excellent for containing hot liquids. Polystyrene, however, can also be a clear or colored plastic, such as the lid for a hot cup.

The biggest environmental health concern associated with polystyrene involves styrene, the chemical found in and released from polystyrene. Styrene has been listed by the National Institute of Environmental Health Sciences (NIEHS) as a potential carcinogen since June 2011. The 12th Report on Carcinogens (2011) by the National Toxicology Program, headquartered at the NIEHS, notes that styrene is “reasonably anticipated to be a human carcinogen.” People may be exposed to styrene in the workplace (e.g., in the fabrication of boats, cars and truck parts) and in the environment. It is found in many products, including food and beverage containers, rubber, plastics, insulation and cigarette smoke. Of particular concern to the petitioner is that styrene may leach from polystyrene containers used for food products, particularly when hot liquids are poured into the polystyrene containers.

The evidence for a link to cancer is largely through laboratory studies with mice, in which styrene caused lung tumors. The limited evidence for cancer from styrene in humans comes from occupational studies showing increased risks for leukemia and lymphoma for workers exposed to styrene, though no causal relationship has been established and more research needs to be done.

There is evidence that workers exposed to styrene at levels above 100 ppm (which is twice the level considered safe), may suffer from neurological symptoms (e.g. drowsiness, light headedness, headaches, and balance disturbances).

The other major concern is that #6 plastics (polystyrene) often end up either in landfills, where it will last indefinitely and potentially leach into the groundwater, or be burned. #1 PETE (polyethylene terephthalate) and #2 HDPE (high density polyethylene) plastics make up much of our recycled and recyclable plastics (about 70%). #6 plastics, which account for only about 1% of the plastic in our recycle bins, are largely treated as garbage. The recycling of post-consumer plastic waste in the U.S. is relatively low – under 10%, with the vast majority ending in landfills.

Clint Richmond, a town meeting member from Precinct 6, member of the Green Caucus and of the Solid Waste Advisory Committee (SWAC) reported to the Advisory Committee that rigid polystyrene (code 6) that goes to Brookline's recycling center in Avon MA (Waste Management) is neither recycled nor separated, but is part of the waste stream that is incinerated as trash in their Saugus facility. The Solid Waste Advisory Committee supports this article.

The petitioner of this article noted that there are alternatives to using polystyrene containers for take-out food. These include the recyclable #1 and #2 plastics, which do not leach or degrade, as well as paper containers and wax paper. #6 polystyrene drink cup lids can be replaced easily with better recyclable lids (already in use in many places).

Dr. Alan Balsam, Director of Health and Human Services, advised the petitioner to submit the article with a start date of December 1, 2013 to allow time to prepare and train his staff. He noted that this along with other new initiatives (including new by-laws regarding trans fats, daycare providers) he expects to need an additional part-time, 20-hour-a-week staff member at a cost of approximately \$24,000.

Brian Houghton, Vice President of the Massachusetts Food Association, representing large supermarket chains, including Shaws/Star markets, Johnny's Food Master, Stop & Shop and Trader Joe's, appeared at the Advisory Committee public hearing. He requested that the original article be modified to mirror Great Barrington's exemption of packaging for raw fish, meat and poultry.

Kara Brewton, Interim Director of Planning and Community Development, reported that her department sent two mailings to Brookline's licensed food vendors and the only businesses responding were the large food chains. Anecdotally she reported one local restaurant, doing a take out business, simply asked "Can we wait until everything is used up?" The article enables Dr. Balsam to grant a 6-month waiver to businesses needing more time to comply with the by-law, with an additional 6-month hardship waiver. Some establishments, in effect, could have up to 2 years to comply with this by-law once adopted.

The Advisory Committee reviewed the Selectmen's vote on an amended article, which restricted the ban to only Styrofoam (and not other #6 polystyrene products) with an exemption of local packaging of raw meat, poultry and fish. The Advisory Committee was not persuaded that there were not suitable, readily available alternatives for other #6 polystyrene products. The Advisory Committee motion does, however, contain the meat tray exemption.

RECOMMENDATION:

By a vote of 17-1-2, the Advisory Committee recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town amend the General By-Laws as follows:

By adding the following Article:

Article 8.32 Prohibition on the Use of Polystyrene Based Disposable Food Containers

Effective December 1, 2013, polystyrene food or beverage containers shall not be used in the Town of Brookline to package or serve food or beverages if that packaging takes place on the premises of food service establishments, as defined in Article 8.10.2, within the Town of Brookline. **This provision shall not apply to the packaging of uncooked meat, uncooked poultry and/or uncooked fish.**

In the event that compliance with the effective date of this by-law is not feasible for a food service establishment because of either unavailability of alternative non-polystyrene containers or economic hardship, the Director of Health and Human Services may grant a waiver of not more than six months upon application of the owner or the owner's representative. The waiver may be extended for one (1) additional 6 month period upon the showing of continued infeasibility as set forth above.

And by adding a reference to this Article 8.32 in the General By-Laws, Article 10.2 Prosecutions and Enforcement, by including Article 8.32 under the list of by-laws enforceable by the Director of Health and Human Services.

ARTICLE 9

NINTH ARTICLE

Submitted by: Jessica Arconti

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

Article 8.XX PLASTIC BAG REDUCTION ACT

Section 1.

The following words shall, unless the context clearly requires otherwise, have the following meanings:

“Commissioner”, the Commissioner of the Department of Inspectional Services.

“ASTM D6400”, the American Society for Testing and Materials (ASTM) International “Standard Specification for Compostable Plastics”.

“ASTM D7081”, ASTM International “Standard Specification for Biodegradable Plastics in the Marine Environment”

“Compostable plastic bag”, a plastic bag that (1) conforms to the current ASTM D6400 for compostability; (2) is certified and labeled as meeting the ASTM D6400 standard specification by a recognized verification entity; and (3) conforms to any other standards deemed acceptable by this section.

“Checkout bag”, a carryout bag provided by a store to a customer at the point of sale.

“Department”, the Brookline Department of Inspectional Services.

“Home compostable plastic bag”, a plastic bag that conforms to the EU 13432 standard for compostability.

“Marine degradable plastic bag”, a plastic bag that conforms to the current ASTM D7081 standard specification for marine degradability.

“Person”, an individual, trust, firm, joint stock company, corporation, cooperative, partnership, or association.

"Recyclable paper bag", a paper bag that is 100 percent recyclable overall and contains at least 70 per cent recycled content, and displays the word "Recyclable" in a highly visible manner on the outside of the bag.

“Reusable bag”, a bag with handles that is specifically designed and manufactured for multiple reuse and is either (1) made of cloth or other fabric; or (2) made of durable plastic that is at least 2.25 mils thick; or (3) made of other durable material.

“Retail establishment”, any retail store that satisfies at least one of the following requirements:

(a) a retail space of 2,500 square feet or larger or at least three (3) locations under the same ownership within the City of Brookline that total 2,500 square feet or more; or

(b) a retail pharmacy with at least two locations under the same ownership within the City of Brookline; or

(c) a full-line, self-service supermarket that had annual gross sales in excess of \$1,000,000 during the previous tax year, and which sells a line of dry grocery, canned

goods or nonfood items and some perishable items;

Section 2.

- (a) If a retail establishment provides plastic checkout bags to customers, the bags shall comply with the requirements of being compostable or home compostable plastic bags, as well as marine degradable plastic bags.
- (b) Nothing in this section shall be read to preclude any establishment from making reusable checkout bags available for sale to customers or utilizing recyclable paper bags as defined in this section at checkout.
- (c) The enforcement and penalty provisions of section two shall apply to this chapter.
- (d) The commissioner shall promulgate rules and regulations to implement this section.

Section 3.

Audits and Violations:

- (a) Each Retail Establishment located in the City of Brookline shall comply with this act.
- (c) Violation of any of the requirements of this act shall subject a retail establishment to the penalties set forth by the Brookline Town Council.
 - (1) If it is determined that a violation has occurred, the City of Brookline shall issue a warning notice to the Retail Establishment for the initial violation.
 - (2) If it is determined that an additional violation of this Chapter has occurred within one year after a warning notice has been issued for an initial violation, the City of Brookline shall issue a notice of infraction and shall impose a penalty against the retail establishment.
 - (3) The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:
 - A) \$50 for the first offense
 - B) \$100 for the second offense
 - C) For the third and all subsequent offenses there shall be a mandatory Court appearance and such penalty as may be determined by the Court pursuant to _____
 - (4) No more than one (1) penalty shall be imposed upon a Retail Establishment within a seven (7) calendar day period.
 - (5) A Retail Establishment shall have fifteen (15) calendar days after the date that a notice of infraction is issued to pay the penalty.
 - (6) The penalty shall double after fifteen (15) calendars days if the Retail Establishment does not pay the penalty; or fails to respond to a notice of infraction by either denying or objecting in writing to the infraction or penalty.

Section 4.

All of the requirements set forth in this act shall take effect 90 days after its effective date.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION
BAN PLASTIC BAGS IN BROOKLINE

“WARNING: TO AVOID DANGER OF SUFFOCATION, KEEP THIS PLASTIC BAG AWAY FROM BABIES AND CHILDREN. DO NOT USE THIS BAG IN CRIBS, BEDS, CARRIAGES, AND PLAYPENS.”

–CVS Pharmacy plastic bag warning

To the Members of the Brookline Town Council:

As citizens of one of the most educated and informed communities in the country, it is a travesty that we have not yet put a ban on the distribution of single-use plastic bags in Brookline.

It is estimated that 300 million tons of plastic are produced each year, quite a terrifying number, considering it is 15 million tons more than the yearly amount of meat consumed worldwide.¹ Furthermore, while meat is consumed and digested, plastic is accumulating at that rate, and has a toxic degradation process that takes thousands of years. Plastic is accumulating in our trees, watersheds, rivers, oceans, ponds, and even our back yards. The only way to stop our plastic suffocation is to stop the accumulation at its source.

If a plastic mass with the square mileage of Texas floating and stretching across the Pacific Ocean is not enough to scare humanity into making changes, what will be our impetus? We cannot continue to allow the plastics industry to hide behind recycling. Recycling is simply an excuse for allowing plastic production to continue and should be considered an evasion, not a solution. It is up to small governments, not the Federal Government, who is subject to lobbying pressures and corruption, to make positive changes for our ill-fated environment.

The prosperity of humanity, society, and our economy depend on the health of our environment. Banning plastic bags in Brookline is the crucial first step in putting our community on the map as a sustainable, economical, and forward thinking township.

SELECTMEN'S RECOMMENDATION

Article 9 is a petitioned article that aims to reduce the use of plastic bags. It was originally filed by a resident who has moved out of Town. Its cause has been taken up by Town Meeting Members Andrew Fischer and Clint Richmond, and we thank them for pushing forward with the discussion. As originally filed, the by-law would go into effect

¹ Moore, Charles, and Cassandra Phillips. *Plastic Ocean: How a Sea Captain's Chance Discovery Launched a Determined Quest to save the Oceans*. New York: Avery, 2011. Print

without any ramp-up time for merchants and restaurants to source and incorporate alternative bags for their customers. Additionally, other language in the original petition was unclear about who would be responsible for enforcement of this ban.

The amended version being proposed, and supported by a majority of the Selectmen, specifically identifies the Health Department as the enforcement body, does not go into effect until December 1, 2013, and gives the Director of Public Health the ability to grant waivers for food service establishments up to 12 months due to unavailability of alternative checkout bags or economic hardship.

As with Article 8, the Board had concerns about how the proposed article would impact local businesses. If merchants or restaurants were to switch from plastic to paper bags, a significant portion of the increase in cost would be the extra freight charge due to the extra bulk and weight of paper bags. This additional cost in freight of paper bags reflects a concern voiced by the Solid Waste Advisory Committee, the Health Department and some of the Selectmen as to whether simply banning plastic bags may have an unintended consequence of having a larger impact to our carbon footprint. One letter of support from a merchant who would be affected by this ban (a retail store over 2,500 square feet) noted they were already encouraging customers to switch to reusable bags. If this article passes, the Selectmen strongly encourage petitioners of this article to assist the business community to educate consumers to switch to reusable bags rather than rely solely on paper bags.

A minority of the Board of Selectmen share not only these concerns, but others, about the practical impact of the proposed article, given the reality in Brookline. The article permits two substitutes for the current plastic checkout bags: paper bags or so-called "compostable" plastic bags. As noted above by the majority of the Board, quite apart from their expense, paper bags actually appear to have a greater carbon footprint than the current plastic bags. So-called "compostable" bags, the other permitted alternative, are not compostable under the actual conditions that exist in Brookline. The test for "compostability" assumes constant high heat that exists in specialized municipal and industrial composting facilities, which are not available to the Town. Moreover, although citizens might logically assume that "compostable" bags could be added to yard waste, the bags would in fact be a contaminant and could force the diversion of yard waste to the solid waste stream. Last but not least, the proposed article targets pharmacies and supermarkets, and (because of the 2,500 square foot threshold) does not affect most of the other businesses that use plastic checkout bags. The irony is that supermarkets are in fact recycling plastic bags, including those in which newspapers are delivered, non-checkout bags, and those from the other merchants who make no effort to recycle but who could continue to distribute plastic bags. Because so-called "compostable" bags cannot be intermingled with recyclable bags, the warrant article would almost certainly mean the end of plastic bag recycling in Brookline and the diversion of both plastic bags and "compostable" bags to the solid waste stream. The minority of the Board agrees with the Solid Waste Advisory Committee and recommends No Action on the article.

Therefore, the Selectmen recommend FAVORABLE ACTION, by a vote of 3-2 taken on October 16, 2012, on the following (a “red-lined” version of the vote follows the “clean” version):

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

Article 8.XX PLASTIC BAG REDUCTION

Section 1.

The following words shall, unless the context clearly requires otherwise, have the following meanings:

“Director”, the Director of Public Health Services or his/her designee.

“ASTM D6400”, the American Society for Testing and Materials (ASTM) International “Standard Specification for Compostable Plastics”.

“ASTM D7081”, ASTM International “Standard Specification for Biodegradable Plastics in the Marine Environment”.

“Checkout bag”, a carryout bag provided by a store to a customer at the point of sale. Checkout bags shall not include bags, whether plastic or not, in which loose produce or products are placed by the consumer to deliver such items to the point of sale or check out area of the store.

“Compostable plastic bag”, a plastic bag that (1) conforms to the current ASTM D6400 for compostability; (2) is certified and labeled as meeting the ASTM D6400 standard specification by a recognized verification entity; and (3) conforms to any other standards deemed acceptable by this section.

“Department”, the Brookline Department of Public Health.

“Marine degradable plastic bag”, a plastic bag that conforms to the current ASTM D7081 standard specification for marine degradability; and conforms to any other standards deemed acceptable by the Director, provided additional, Director-approved standards are as stringent as ASTM D7081.

“Person”, an individual, trust, firm, joint stock company, corporation, cooperative, partnership, or association.

“Reusable check-out bag”, a bag with handles that is specifically designed for multiple reuse and is either (1) made of cloth or other machine washable fabric; or (2) made of durable plastic that is at least 2.25 mils thick; or (3) made of other durable material.

“Retail establishment”, any retail store that satisfies at least one of the following requirements:

(a) a retail space of 2,500 square feet or larger or at least three (3) locations under the same name within the Town of Brookline that total 2,500 square feet or more; or

(b) a retail pharmacy with at least two locations under the same ownership within the Town of Brookline; or

(c) a full-line, self-service supermarket that had annual gross sales in excess of \$1,000,000 during the previous tax year, and which sells a line of dry grocery, canned goods or nonfood items and some perishable items;

Section 2.

- (a) If a retail establishment as defined in section 1 provides plastic checkout bags to customers, the plastic bags shall comply with the requirements of being compostable plastic bags, as well as marine degradable plastic bags.
- (b) Nothing in this section shall be read to preclude any establishment from making reusable checkout bags available for sale to customers or utilizing recyclable paper bags as defined in this section at checkout.
- (c) The Director may promulgate rules and regulations to implement this section.

Section 3.

Penalties and Enforcement:

- (a) Each Retail Establishment as defined in Section 1, above, located in the Town of Brookline shall comply with this by-law.
 - (1) If it is determined that a violation has occurred the Director shall issue a warning notice to the Retail Establishment for the initial violation.
 - (2) If an additional violation of this by-law has occurred within one year after a warning notice has been issued for an initial violation, the Director shall issue a notice of violation and shall impose a penalty against the retail establishment.
 - (3) The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:
 - A) \$50 for the first offense
 - B) \$100 for the second offense and all subsequent offenses. Payment of such fines may be enforced through civil action in the Brookline District Court.
 - (4) No more than one (1) penalty shall be imposed upon a Retail Establishment within a seven (7) calendar day period.
 - (5) A Retail Establishment shall have fifteen (15) calendar days after the date that a notice of violation is issued to pay the penalty.

Section 4.

All of the requirements set forth in this by-law shall take effect December 1, 2013. In the event that compliance with the effective date of this by-law is not feasible for a food service establishment because of either unavailability of alternative checkout bags or economic hardship, the Director may grant a waiver of not more than six months upon application of the owner or the owner's representative. The waiver may be extended for one (1) additional six-month period upon showing of continued infeasibility as set forth above.

ROLL CALL VOTE:

Favorable Action

Daly
Mermell
Goldstein

No Action

DeWitt
Benka

“RED-LINED” VERSION OF RECOMMENDED VOTE:

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

Article 8.XX PLASTIC BAG REDUCTION ~~ACT~~

Section 1.

The following words shall, unless the context clearly requires otherwise, have the following meanings:

~~“Commissioner”, the Commissioner of the Department of Inspectional Services.~~

~~“Director”, the Director of Public Health Services or his/her designee.~~

“ASTM D6400”, the American Society for Testing and Materials (ASTM) International “Standard Specification for Compostable Plastics”.

“ASTM D7081”, ASTM International “Standard Specification for Biodegradable Plastics in the Marine Environment” ”.

~~“Checkout bag”, a carryout bag provided by a store to a customer at the point of sale. Checkout bags shall not include bags, whether plastic or not, in which loose produce or products are placed by the consumer to deliver such items to the point of sale or check out area of the store.~~

“Compostable plastic bag”, a plastic bag that (1) conforms to the current ASTM D6400 for compostability; (2) is certified and labeled as meeting the ASTM D6400 standard specification by a recognized verification entity; and (3) conforms to any other standards deemed acceptable by this section.

~~“Checkout bag”, a carryout bag provided by a store to a customer at the point of sale.~~

“Department”, the Brookline Department of ~~Inspectional Services.~~ Public Health.

~~“Home compostable plastic bag”, a plastic bag that conforms to the EU 13432 standard for compostability.~~

“Marine degradable plastic bag”, a plastic bag that conforms to the current ASTM D7081 standard specification for marine degradability.; ~~and conforms to any other standards deemed acceptable by the Director, provided additional, Director-approved standards are as stringent as ASTM D7081.~~

“Person”, an individual, trust, firm, joint stock company, corporation, cooperative, partnership, or association.

~~“Recyclable paper bag”, a paper bag that is 100 percent recyclable overall and contains at least 70 per cent recycled content, and displays the word “Recyclable” in a highly visible manner on the outside of the bag.~~

“Reusable check-out bag”, a bag with handles that is specifically designed ~~and~~ manufactured for multiple reuse and is either (1) made of cloth or other machine washable fabric; or (2) made of durable plastic that is at least 2.25 mils thick; or (3) made of other durable material.

“Retail establishment”, any retail store that satisfies at least one of the following requirements:

- (a) a retail space of 2,500 square feet or larger or at least three (3) locations under the same ~~ownershipname~~ within the ~~CityTown~~ of Brookline that total 2,500 square feet or more; or
- (b) a retail pharmacy with at least two locations under the same ownership within the ~~CityTown~~ of Brookline; or
- (c) a full-line, self-service supermarket that had annual gross sales in excess of \$1,000,000 during the previous tax year, and which sells a line of dry grocery, canned goods or nonfood items and some perishable items;

Section 2.

- (a) If a retail establishment as defined in section 1 provides plastic checkout bags to customers, the plastic bags shall comply with the requirements of being compostable ~~or home-compostable~~ plastic bags, as well as marine degradable plastic bags.
- (b) Nothing in this section shall be read to preclude any establishment from making reusable checkout bags available for sale to customers or utilizing recyclable paper bags as defined in this section at checkout.
- (c) The ~~enforcement and penalty provisions of section two shall apply to this chapter.~~
- ~~(d) The commissioner shall~~ Director may promulgate rules and regulations to implement this section.

Section 3.

~~Audits and Violations:~~

Penalties and Enforcement:

- (a) Each Retail Establishment as defined in Section 1, above, located in the ~~City Town~~ of Brookline shall comply with this ~~act.~~ by-law.
- ~~(e) Violation of any of (1) If it is determined that a violation has occurred the requirements of this act shall subject a retail establishment to the penalties set forth by the Brookline Town Council.~~
- ~~(1) If it is determined that a violation has occurred, the City of Brookline~~ Director shall issue a warning notice to the Retail Establishment for the initial violation.
- (2) If ~~it is determined that~~ an additional violation of this ~~Chapter~~by-law has occurred within one year after a warning notice has been issued for an initial violation, the ~~City of Brookline~~Director shall issue a notice of ~~infraction~~ violation and shall impose a penalty against the retail establishment.
- (3) The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:
 - A) \$50 for the first offense
 - B) \$100 for the second offense
- ~~C) For the third~~ and all subsequent offenses ~~there shall be a mandatory Court. Payment of such fines may be enforced through civil action in the Brookline District Court.~~ appearance and such penalty as may be determined by the Court pursuant to _____
- (4) No more than one (1) penalty shall be imposed upon a Retail Establishment within a seven (7) calendar day period.

(5) A Retail Establishment shall have fifteen (15) calendar days after the date that a notice of ~~infraction~~violation is issued to pay the penalty.

~~(6) The penalty shall double after fifteen (15) calendar days if the Retail Establishment does not pay the penalty; or fails to respond to a notice of infraction by either denying or objecting in writing to the infraction or penalty.~~

Section 4.

All of the requirements set forth in this ~~act~~by-law shall take effect ~~90 days after its~~December 1, 2013. In the event that compliance with the effective date; ~~of this by-law is not feasible for a food service establishment because of either unavailability of alternative checkout bags or economic hardship, the Director may grant a waiver of not more than six months upon application of the owner or the owner's representative. The waiver may be extended for one (1) additional six-month period upon showing of continued infeasibility as set forth above.~~

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation by the Advisory Committee under Article 9 will be provided in the Supplemental Mailing.

XXX

ARTICLE 9

BOARD OF SELECTMEN’S SUPPLEMENTAL RECOMMENDATION

At its October 30, 2012 meeting, the Selectmen reconsidered Article 9 for the purpose of reviewing the amendment made by the Advisory Committee to the version of Article 9 approved by the Board. (The amendment is the deletion of the definition of “person”.) By a vote of 3-2, the Selectmen recommend FAVORABLE ACTION on the amended Article 9 moved by the Advisory Committee.

ROLL CALL VOTE:

Favorable Action

Daly

Mermell

Goldstein

No Action

DeWitt

Benka

ADVISORY COMMITTEE’S SUPPLEMENTAL RECOMMENDATION

BACKGROUND:

Town Meeting Member Clint Richmond is substituting for the proponent for Article 9 since the original proponent has moved out of town. Article 9 seeks to ban the distribution of single use plastic bags in Brookline. The article is applicable to “checkout bags” (generally described as bags provided at the point of sale) distributed by retail establishments of over 2,500 square feet; retail establishments with at least three locations in Brookline that total over 2,500 square feet; retail pharmacies with at least two locations in Brookline under the same ownership; and full line self-service supermarkets with annual gross sales in excess of \$1,000,000 during the previous tax year. It allows for the use and distribution of plastic bags if they are both compostable and marine degradable.

DISCUSSION:

Environmental groups have been attempting to pass a statewide ban on plastic bags since 2009 but have been unsuccessful. The hope is that if individual communities such as Brookline passed local bans it might encourage the passage of statewide legislation. The negative features of the bags were described as follows:

- they are lightweight, fly around and get stuck in trees;
- they are inexpensive because they rely on natural gas for their production (which is only encouraging FRACKING);
- polyethylene bags (which are the vast majority of bags used) are not biodegradable;
- polyethylene bags degrade into micro particles and these “micro plastics” last forever, pollute the environment and may be absorbed into the food chain with potentially negative health consequences;
- because they are not biodegradable when they get into waterways and the ocean they are consumed by marine animals and may be contaminating the food chain;
- because they are lightweight plastic children can choke or be suffocated by the bags and approximately 25 children a year die as a result of accidents with the bags;
- there are easy substitutes available (paper and reusable bags);
- approximately 20 million bags are distributed in Brookline and very few of them are recycled.

While recycling programs have been established by several of the chain grocery stores in Brookline there was a feeling that recycling does not really eliminate the plastic, it just gets changed into something else. The consensus of the Advisory Committee is that the bags are bad for the environment; we have other reasonable alternatives; we need to start somewhere to eliminate the use of non-biodegradable plastic bags; and this article is a good place to start.

During the discussion of the Article the Advisory Committee considered information provided by the Coolidge Corner Merchants Association supporting the article as well as information from the Planning Department which reported that they had notified merchants and tried to survey food vendors about Articles 8 and 9 and had not received any negative feedback about article 9. Only a few non-grocery merchants would fall under the article and they either expressed support the article or did not think the ban would pose a problem.

The use of biodegradable/compostable bags as an alternative does not appear to be practical at this time because such bags are not presently available as “check out” bags. There was some discussion about whether or not compostable bags would be compatible with the composting that is taking place in Brookline both in individual households and Town wide. Presently available compostable bags require high heat which is not compatible with our present practices.

The Advisory Committee also discussed the relative carbon-footprints of plastic bags and paper bags. There was some concern that paper bags would have a larger carbon footprint because they are heavier, their production requires more resources and their transportation is more costly. Paper was also felt to be more bulky and to take up more space in landfills.

The Advisory Committee considered information about enforcement of the article, which would assigned to the Department of Public Health and while enforcement might be challenging because many plastic bags are not labeled clearly, the consensus was that enforcement was possible and would not be burdensome.

The Advisory Committee also considered information provided by those opposed to the article, included industry groups. The main points in opposition to the Article were:

- compostable bags would not really be compostable in Brookline;
- paper bags have a relatively larger carbon foot print;
- the increased cost of paper bags (one cent for plastic vs four cents for paper);
- the potential use of a greater number of plastic bags in areas of the grocery store such as the produce and meat departments;
- and the success of recycling and reuse.

While there was some disagreement about the extent of actual recycling (estimates ranged from 5% to 15%) reuse and repurpose of the bags is extensive and may be as high as 75% of all distributed bags. Some members of the Advisory Committee also felt that the lighter plastic bags were easier to carry.

RECOMMENDATION:

By a vote of 15 in favor, 6 opposed and 1 abstention the Advisory Committee Recommends FAVORABLE ACTION on the following:

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

Article 8.XX PLASTIC BAG REDUCTION

Section 1.

The following words shall, unless the context clearly requires otherwise, have the following meanings:

“Director”, the Director of Public Health Services or his/her designee.

“ASTM D6400”, the American Society for Testing and Materials (ASTM) International “Standard Specification for Compostable Plastics”.

“ASTM D7081”, ASTM International “Standard Specification for Biodegradable Plastics in the Marine Environment”.

“Checkout bag”, a carryout bag provided by a store to a customer at the point of sale. Checkout bags shall not include bags, whether plastic or not, in which loose produce or products are placed by the consumer to deliver such items to the point of sale or check out area of the store.

“Compostable plastic bag”, a plastic bag that (1) conforms to the current ASTM D6400 for compostability; (2) is certified and labeled as meeting the ASTM D6400 standard specification by a recognized verification entity; and (3) conforms to any other standards deemed acceptable by this section.

“Department”, the Brookline Department of Public Health.

“Marine degradable plastic bag”, a plastic bag that conforms to the current ASTM D7081 standard specification for marine degradability; and conforms to any other standards deemed acceptable by the Director, provided additional, Director-approved standards are as stringent as ASTM D7081.

~~“Person”, an individual, trust, firm, joint stock company, corporation, cooperative, partnership, or association.~~

“Reusable check-out bag”, a bag with handles that is specifically designed for multiple reuse and is either (1) made of cloth or other machine washable fabric; or (2) made of durable plastic that is at least 2.25 mils thick; or (3) made of other durable material.

“Retail establishment”, any retail store that satisfies at least one of the following requirements:

- (a) a retail space of 2,500 square feet or larger or at least three (3) locations under the same name within the Town of Brookline that total 2,500 square feet or more; or
- (b) a retail pharmacy with at least two locations under the same ownership within the Town of Brookline; or
- (c) a full-line, self-service supermarket that had annual gross sales in excess of \$1,000,000 during the previous tax year, and which sells a line of dry grocery, canned goods or nonfood items and some perishable items;

Section 2.

- (a) If a retail establishment as defined in section 1 provides plastic checkout bags to customers, the plastic bags shall comply with the requirements of being compostable plastic bags, as well as marine degradable plastic bags.
- (b) Nothing in this section shall be read to preclude any establishment from making reusable checkout bags available for sale to customers or utilizing recyclable paper bags as defined in this section at checkout.
- (c) The Director may promulgate rules and regulations to implement this section.

Section 3.

Penalties and Enforcement:

- (a) Each Retail Establishment as defined in Section 1, above, located in the Town of Brookline shall comply with this by-law.
 - (1) If it is determined that a violation has occurred the Director shall issue a warning notice to the Retail Establishment for the initial violation.
 - (2) If an additional violation of this by-law has occurred within one year after a warning notice has been issued for an initial violation, the Director shall issue a notice of violation and shall impose a penalty against the retail establishment.
 - (3) The penalty for each violation that occurs after the issuance of the warning

notice shall be no more than:

A) \$50 for the first offense

B) \$100 for the second offense and all subsequent offenses. Payment of such fines may be enforced through civil action in the Brookline District Court.

(4) No more than one (1) penalty shall be imposed upon a Retail Establishment within a seven (7) calendar day period.

(5) A Retail Establishment shall have fifteen (15) calendar days after the date that a notice of violation is issued to pay the penalty.

Section 4.

All of the requirements set forth in this by-law shall take effect December 1, 2013. In the event that compliance with the effective date of this by-law is not feasible for a food service establishment because of either unavailability of alternative checkout bags or economic hardship, the Director may grant a waiver of not more than six months upon application of the owner or the owner's representative. The waiver may be extended for one (1) additional six-month period upon showing of continued infeasibility as set forth above.

ARTICLE 10

TENTH ARTICLE

Submitted by: Department of Planning and Community Development

To see if the Town will amend Sec. 4.07, Table of Use Regulations, in the Zoning By-Law by adding a new Use 32A, Domestic Household Animal Day Care Center.

Principal Uses	Residence					Business			Ind
	S	SC	T	F	M	L	G	O	I
<p>32A. Domestic Household Animal Day Care Center, including grooming, training, walking and other accessory services, and excluding overnight kenneling. No outdoor facilities for the animals shall be permitted. Studies by recognized experts shall be submitted to ensure, to the satisfaction of the Board of Appeals, that the use will be constructed so as to safeguard nearby properties against undue noise, odor and improper waste disposal. A recommendation from the Director of Public Health shall be required to address the size and location of the facility and any potential impacts. Additionally, annual licenses issued by the licensing authority are required, with the recommendation of the Director of Public Health, the Police Department's Animal Control Officer, and the Director of Parks and Open Space.</p>	No	No	No	No	No	SP	SP	No	SP

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The Planning and Community Development Department is submitting this article at the recommendation of the Zoning By-Law Committee. It will create a new use 32A (domestic household animal day care facilities). Since this use did not exist when the Table of Uses was formulated in the 1960s, and there is a growing trend to provide animal day care facilities, it should be added to the Table of Uses now.

A warrant article addressing both a veterinarian office (Use #20A) use and a domestic animal day care use (Use #32A) was submitted to the Spring 2012 Town Meeting. At that time, the change to Use 20A, veterinarian office, to allow it in a local business district by special permit was approved. However, after further discussion by the Planning & Community Development Department, the Public Health Department, the Director of Parks and Recreation, and the Town's Animal Control officer, it was felt that more time was needed to formulate protective rules and regulations to attach to the existing kennel licensing procedures, prior to approving use 32A. As a result of those discussions, a special permit for a domestic household animal day care facility now requires a recommendation from the Director of Public Health addressing possible impacts and requires an annual license from the licensing authority, as well. Further protections, which were in the initial warrant article, have been kept requiring a study by recognized experts to ensure, to the satisfaction of the Board of Appeals, that the use will be constructed so as to safeguard nearby properties against undue noise, odor and improper waste disposal. The annual license will require input, and inspections when necessary, from the Director of Public Health Department, the Town's Animal Control officer, and the Director of Parks and Recreation.

PLANNING BOARD REPORT AND RECOMMENDATION

This article allowing animal daycare is being submitted by the Department of Planning and Community Development at the recommendation of the Selectmen's Zoning By-Law Committee. A two part version of this article was submitted to Spring 2012 Town Meeting. The part which allowed a Veterinarian Hospital Use (Use #20A) in a local business district by special permit was approved. The part related to establishing a new use category for Domestic Household Animal Day Care was referred back to the Planning and Community Development Department and Zoning By-Law Committee for further study. The Health Department had requested more time *to evaluate the process that would be used to ensure* no negative impacts to a neighborhood would result.

Currently, animal daycare is allowed only if it has a veterinary component. A use for a stand-alone animal daycare facility does not currently exist in our Zoning By-Law's Table of Uses, and when a use is not included in the Table, it is prohibited. This warrant article proposes that the new animal day care use be allowed in local business, general business and industrial districts by special permit.

There are two other use categories in the Table of Uses involving animals: a veterinarian office (Use #20A) and the keeping of farm animals (Use 57). Under the veterinarian office (Use #20A), studies by recognized experts addressing noise, odor and waste disposal impacts are required, and this condition has been included for the new domestic animal daycare use as well, since impacts are similar. Additionally, at the request of the Brookline Public Health Director, a condition has been added allowing the Health Director to impose restrictions on the number, size, and location of animal daycare facilities. Annual licenses are also required with recommendations from Public Health, the Police Department's Animal Control Officer and the Director of Parks and Open Space.

The Planning Board supports this amendment. When the Zoning By-Law was formulated in the 1960s, this type of use wasn't contemplated, and more requests for animal daycare facilities are likely in the future because of current demand for this use. With annual licensing and oversight of the relevant departments, adequate controls to regulate and oversee these facilities will be in place.

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

SELECTMEN'S RECOMMENDATION

Article 10 was submitted by the Department of Planning and Community Development to address the issue of allowing animal day cares in a business district, which was raised under Article 14 of the May, 2012 Annual Town Meeting. That article addressed both veterinarian office use and domestic animal day care use. While the change to allow veterinarian offices in a local business district by special permit was approved, the change to domestic animal day care use was not. After discussion by the Planning and Community Development Department, the Public Health Department, the Director of Parks and Open Space, and the Town's Animal Control officer, it was determined that more time was needed to formulate protective rules and regulations to attach to the existing kennel licensing procedures, prior to approving changes to domestic animal day care use in a local business district. As a result, both the Selectmen and the Advisory Committee recommended, and Town Meeting approved, the referral of the new use category for Domestic Household Animal Day Care back to the Planning and Community Development Department and Zoning By-Law Committee for further study of possible safeguard regulations

This Article 10 addresses the concerns raised last Spring. It requires a study by recognized experts to ensure, to the satisfaction of the Zoning Board of Appeals (ZBA), that the use will be constructed so as to safeguard nearby properties against undue noise, odor and improper waste disposal. In addition, the annual license will require input and inspections, when necessary, from the Director of Public Health Department, the Town's Animal Control officer, and the Director of Parks and Recreation.

As stated in the Planning Board’s Recommendation, this type of use was not contemplated when the Zoning By-Law was formulated in the 1960s, and more requests for animal daycare facilities are likely in the future because of current demand. With annual licensing and oversight of the relevant departments, adequate controls to regulate and oversee these facilities will be in place. The Selectmen agree and recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 9, 2012, on the following:

VOTED: That the Town amend Sec. 4.07, Table of Use Regulations, in the Zoning By-Law by adding a new Use 32A, Domestic Household Animal Day Care Center.

Principal Uses	Residence					Business			Ind
	S	SC	T	F	M	L	G	O	I
32A. Domestic Household Animal Day Care Center, including grooming, training, walking and other accessory services, and excluding overnight kenneling. No outdoor facilities for the animals shall be permitted. Studies by recognized experts shall be submitted to ensure, to the satisfaction of the Board of Appeals, that the use will be constructed so as to safeguard nearby properties against undue noise, odor and improper waste disposal. A recommendation from the Director of Public Health shall be required to address the size and location of the facility and any potential impacts. Additionally, annual licenses issued by the licensing authority are required, with the recommendation of the Director of Public Health, the Police Department’s Animal Control Officer, and the Director of Parks and Open Space.	No	No	No	No	No	SP	SP	No	SP

ADVISORY COMMITTEE'S RECOMMENDATIONBACKGROUND:

This zoning article was submitted at the recommendation of the Zoning By-Law Committee in order to create a new Use 32A (domestic household animal day care facilities). This use did not exist when the Table of Uses was formulated in the 1960s, and there is a growing need to provide animal day care facilities for the convenience of town pet owners.

Article 14 of the May 2012 Annual Town Meeting proposed (in part) establishment of a domestic animal day care use. However, after discussion by the Planning & Community Development Department, the Public Health Department, the Director of Parks and Recreation, and the Town's Animal Control officer, it was felt that more time was needed to formulate protective rules and regulations to attach to the existing kennel licensing procedures prior to establishing this use. Therefore Town Meeting referred this portion of Article 14 back to the Planning and Community Development Department and Zoning By-Law Committee for further study of possible safeguard regulations.

As a result of those discussions, Article 10 has now been submitted, allowing Use 32A for a domestic household animal day care facility in L, G and I zoning districts via issuance of a special permit that will require a recommendation from the Director of Public Health addressing possible impacts, and an annual license from the licensing authority (the Town Clerk) as well. The annual license will require input, and inspections when necessary, from the Director of Public Health Department, the Town's Animal Control officer, and the Director of Parks and Recreation. Further protections, which were in the initial warrant article, have been kept, requiring a study by recognized experts to ensure, to the satisfaction of the Board of Appeals, that the use will be constructed so as to safeguard nearby properties against undue noise, odor and improper waste disposal.

DISCUSSION:

It seems clear that there is a demand for animal day care centers that will be convenient for town residents to utilize, and that the establishment of the proposed new Use 32A is worth adding to our Zoning By-Law. The only point of contention was raised by the Brookline Chamber of Commerce and the Coolidge Corner Merchants Association, business groups urging that animal day care facilities not be permitted in G zoning districts. Their reasoning was that in such congested locations which often have limited parking and significant foot traffic, the dropping off and picking up of animals at curbside and the likelihood of several dogs on leash being walked at the same time along crowded sidewalks would create unpleasant and unsafe conditions for pedestrians, retailers, and the animals. Although they could cite no empirical evidence to support this contention it nonetheless seemed to be a reasonable concern. On the other hand, not all G districts (or portions thereof) are sufficiently congested so that nearby animal day care facilities would be problematic; hence a general G district prohibition did not appear justified. It was suggested that excluding these facilities only from such busy G districts

centered at (say) Coolidge Corner, Washington Square and Brookline Village might satisfy concerns relating to congested streets and sidewalks.

However, it was pointed out that with the ongoing transformation of business districts from largely retail to more service-oriented uses, and in recognition of the community value in meeting the needs of pet owners in locations convenient (within walking distance if possible) to where they live, it would be poor policy to eliminate animal day care facilities in the denser and busier parts of town. Furthermore, even the busy Coolidge Corner G-1.75 (CC) zoning district includes many wide and uncongested sidewalks where animal day care use could be permitted without ill consequences, and, fairly recently, Washington Square retailers actually sponsored a doggie "Wagathon," actively inviting dog owners to bring their pets into that business district. Moreover, the proposed Use 32A mandates annual licensing hearings at which complaints concerning congestion-related nuisances or public safety issues could be addressed, and conditions such as limiting the number of dogs being walked at any one time could be imposed.

RECOMMENDATION:

The Advisory Committee recognizes the need for establishing animal day care centers as a permitted use, and agrees that the accompanying safeguard provisions that include Board of Appeals review of the required Special Permit application along with the requirement of input and inspections from the Director of Public Health Department, the Town's Animal Control officer, and the Director of Parks and Recreation at the time of annual license renewal, are sufficiently protective so that new Use 32A should be permitted by Special Permit in L,G and I zoning districts. Accordingly, by a vote of 20 in favor, 3 opposed, and 1 abstention, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Selectmen.

XXX

ARTICLE 11

ELEVENTH ARTICLE

Submitted by: Department of Planning and Community Development

To see if the Town will amend Article IX, Administration and Procedure, in the Zoning By-Law by adding a Sec. 9.12, Administrative Review for Day Care Centers, as follows:

§9.12 – ADMINISTRATIVE REVIEW FOR DAY CARE CENTERS

1. Prior to the issuance of a building permit from the Building Department, an applicant shall submit to the following departments - Planning and Community Development, Building, Transportation, Public Health, and Parks and Open Space - a description of the number of children and employees; operating hours, location of outdoor play activities (whether on-site or at a public playground); employee and drop-off/pick-up parking, and if requested, a site plan showing the location of outdoor play space and parking.
2. After review, the departments above may submit to the applicant, with copies to the Planning and Community Development Department, written recommendations for suggested improvements to the proposal, especially to improve safety and/or mitigate any negative impacts to the surrounding area.
3. Within 14 business days of receipt of the required information, the Planning Director, or designee, shall indicate in writing to the Building Commissioner that the procedural requirements, as stated above, have been met. If within the above stated time period, such statement is not received by the Building Commissioner, a building permit may be issued if all other applicable regulations have been met. Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This warrant article is being submitted by the Planning and Community Development Department at the recommendation of the Zoning By-Law Committee. It is modeled after Section 9.11 of the Brookline Zoning By-Law, Administrative Site Plan Review Requirements for Educational Uses in Residence Districts, which requires submission of information and advisory recommendations.

This administrative review for day care centers would enable the Town departments to obtain valuable information about a proposed day care center related to its operating characteristics, number of children and employees, outdoor play space, parking and drop-off/pick-up spaces. Before an applicant can receive a building permit for a day care, it is

mandatory that the above information be submitted. With the Town recommendations advisory, this amendment would not conflict with MGL Chapter 40A, Section 3, which allows day care centers in all zoning districts and prohibits requiring a special permit for the use. The Planning and Community Development Department, in its experience, has found that applicants often appreciate recommendations for improvements to operations and safety. Often issues are raised that the applicant never considered. Additionally, the Health Department, which regulates day care centers; the Parks and Open Space Division, which oversees the use of the public playgrounds in Town; and the Transportation Division, which manages public parking and street circulation, will have access to this valuable information and can also make its own recommendations for improvements.

The current use table in the Brookline Zoning By-Law prohibits day care centers from locating in single family zones and requires a special permit for the use in other residential zones. The Planning and Community Development Department and Zoning By-Law Committee are aware that this also needs to be addressed, because the state statute does not allow requiring a special permit for day care use. However, more time is needed to consider which requirements should appropriately be attached to day care use, since the state statute allows reasonable regulations related to the “bulk and height of structures, yard sizes, lot area, setbacks, open space, parking, and building coverage”. This will be addressed at a future Town Meeting.

PLANNING BOARD REPORT AND RECOMMENDATION

This article is related to child care facilities and is being submitted by the Department of Planning and Community Development at the recommendation of the Selectmen’s Zoning By-Law Committee. The Building Commissioner raised the issue that our Zoning By-Law conflicts with MGL 40A, Sec. 3, which states that a child care facility use can neither be prohibited outright nor require a special permit, although reasonable dimensional and parking regulations are allowed. In our Zoning By-Law, Use #15, Day Care Center, is currently prohibited in single family districts, allowed by special permit in all other residential districts, and allowed by-right in business and industrial districts.

Before significant changes to the Zoning By-Law related to child care facilities are made, the Planning Department believes it is important to have the opportunity to formulate reasonable dimensional and parking requirements. The statute allows municipalities to regulate bulk and height of structures, yard setbacks, lot area, open space, and parking, in order to protect neighborhoods. The language in the state statute for child care centers is very similar to that for religious and non-profit educational uses.

The proposed zoning amendment, which would create a new section, §9.12, Administrative Review for Day Care Centers, would be an interim measure until reasonable regulations consistent with the state statute are formulated. The proposed article is similar to the existing section, §9.11 of the Brookline Zoning By-Law,

Administrative Site Plan Review Requirements for Educational Uses in Residence Districts, which requires submission of prescribed information and advisory recommendations from the Planning Director, before a building permit may be issued.

For day care facilities, the submission of basic information would be mandatory, including operating characteristics, number of children and employees, outdoor play space, parking, drop-off/pick-up plan and use of public playgrounds. This information would be submitted to the following departments: Planning and Community Development, Public Health, Parks and Open Space, and Transportation. Within 14 days of the receipt of the required information, suggestions from the preceding departments would be incorporated into a written advisory recommendation from the Planning Director to the applicant before the applicant could receive a building permit. Because the recommendations are advisory, there would be no conflict with MGL Chapter 40A, Section 3.

Administrative review has worked well with educational and religious institutions, and the Planning Board believes the same will hold true for child care facilities. Prior applicants have often been appreciative for suggestions about operating characteristics, some of which have never have been considered by them. Often, where practical, the recommendations have been adopted, especially ones related to safety issues.

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

SELECTMEN'S RECOMMENDATION

Article 11 was submitted by the Planning and Community Development Department at the recommendation of the Zoning By-Law Committee. Modeled after Section 9.11 of the Brookline Zoning By-Law, Administrative Site Plan Review Requirements for Educational Uses in Residence Districts, it requires submission of information and advisory recommendations, in this case for day care centers. Administrative review for day care centers will enable Town departments to obtain valuable information about a proposed day care center, including number of children and employees, outdoor play space, parking and drop-off/pick-up spaces. The Health Department, which regulates day care centers; the Parks and Open Space Division, which oversees the use of the public playgrounds in Town; and the Transportation Division, which manages public parking and street circulation, will have access to this valuable information and can also make its own recommendations for improvements.

As proposed, this information must be submitted before an applicant can receive a building permit for a day care. Since the Town's recommendations would be advisory, this amendment would not conflict with MGL Chapter 40A, Section 3, which allows day care centers in all zoning districts and prohibits requiring a special permit for the use.

The current use table in the Zoning By-Law prohibits day care centers from locating in single family zones and requires a special permit for the use in other residential zones. The Planning and Community Development Department and Zoning By-Law Committee are aware that this also needs to be addressed, because the state statute does not allow requiring a special permit for day care use. However, more time is needed to consider which requirements should appropriately be attached to day care use, since the state statute allows reasonable regulations related to the “bulk and height of structures, yard sizes, lot area, setbacks, open space, parking, and building coverage”. This will be addressed at a future Town Meeting.

As noted in the Planning Board’s Recommendation, administrative review has worked well with educational and religious institutions, and the Planning Board believes the same will hold true for child care facilities. Prior applicants have often been appreciative for suggestions about operating characteristics, some of which had not previously been considered by them. The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 9, 2012, on the motion offered by the Advisory Committee.

ADVISORY COMMITTEE’S RECOMMENDATION

BACKGROUND:

Article 11 has been submitted by the Department of Planning and Community Development at the recommendation of the Zoning By-Law Committee. The Planning Board voted unanimously to recommend Favorable Action.

Under Brookline’s current Zoning By-Law, Day Care Centers (Use #15) are prohibited in single family districts, allowed by special permit in all other residential districts, and allowed by-right in business and industrial districts. Approximately six months ago, the Building Commissioner raised the issue that this is in conflict with MGL 40A, Sec. 3, which states that a child care facility use can neither be prohibited outright nor require a special permit, although reasonable dimensional and parking regulations are allowed. While changes will ultimately be required to bring the Zoning By-Law for child care facilities into compliance with the State statute, the Planning Department has proposed the creation of a new section, Section 9.12, Administrative Review for Day Care Centers, as an interim measure until reasonable dimensional and parking requirements can be formulated.

The information collected under a mandatory Administrative Review would be similar to that of educational uses in residential districts and would consist of operational data, number of children and employees, outdoor play space and/or the use of public playgrounds, as well as plans for parking and drop-off/pick-up. Within 14 days of submitting this information to the Planning and Community Development, Public Health, Parks and Open Space, and Transportation Departments, the Planning Director will issue

advisory recommendations incorporating comments from the various departments. The goal is to mitigate the impact of these projects without restrictions on Use by working with the applicant to incorporate suggestions of the Town Departments.

DISCUSSION:

The Planning Board has found that most applicants respond positively to suggestions from the administrative review process and usually adopt those that are feasible. The multi-disciplinary aspect of the administrative review proposed in Article 11 will be a valuable tool to mitigate potential issues arising from these uses, particularly in residential neighborhoods where they have been previously prohibited or allowed only by special permit. The Department of Planning and Community Development noted that similar reviews have resolved potentially problematic issues related to drop-off and pick-up by obtaining Transportation Board feedback early in the design process. Finally, because the recommendations are advisory, there would be no conflict with MGL Chapter 40A, Section 3.

RECOMMENDATION:

By a unanimous vote of 24-0, the Advisory Committee recommends FAVORABLE ACTION on Article 11 as submitted:

VOTED: That the Town amend Article IX, Administration and Procedure, in the Zoning By-Law by adding a Sec. 9.12, Administrative Review for Day Care Centers, as follows:

§9.12 – ADMINISTRATIVE REVIEW FOR DAY CARE CENTERS

1. Prior to the issuance of a building permit from the Building Department, an applicant shall submit to the following departments - Planning and Community Development, Building, Transportation, Public Health, and Parks and Open Space - a description of the number of children and employees; operating hours, location of outdoor play activities (whether on-site or at a public playground); employee and drop-off/pick-up parking, and if requested, a site plan showing the location of outdoor play space and parking.
2. After review, the departments above may submit to the applicant, with copies to the Planning and Community Development Department, written recommendations for suggested improvements to the proposal, especially to improve safety and/or mitigate any negative impacts to the surrounding area.
3. Within 14 business days of receipt of the required information, the Planning Director, or designee, shall indicate in writing to the Building Commissioner that the procedural requirements, as stated above, have been met. If within the above stated time period, such statement is not received by the Building Commissioner, a building permit may be issued if all other applicable regulations have been met.

ARTICLE 12

TWELFTH ARTICLE

Submitted by: Board of Selectmen

To see if the Town will authorize and empower the Board of Selectmen to lease the town-owned property known and numbered as 27 Ackers Avenue, in accordance with the requirements of General Laws, Chapter 30B and Chapter 40, §3, for not more than thirty years and upon such other terms and conditions determined by the Board of Selectmen to be in the best interest of the town, or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The Town-owned property at 27 Ackers Avenue is a two-story, one bedroom single family home located on Warren Playground. The ten-year lease for the property expired on November 1, 2012. General Laws Chapter 30B requires that the Town now issue a request for proposals to lease the property for another term. General Laws Chapter 40, §3 now permits the Board of Selectmen to lease town-owned property for up to thirty years. The Town intends to issue a request for proposals in accordance with c.30B by the end of the year.

SELECTMEN'S RECOMMENDATION

Article 12 asks Town Meeting to authorize the Selectmen to lease 27 Ackers Ave. At the 2002 Annual Town Meeting, similar authorization was approved for a lease of up to 10 years, the maximum allowable term at that time. That lease for the property is now expired and Massachusetts General Laws (MGL) Chapter 30B requires that the Town issue a request for proposals (RFP) to lease the property for another term.

MGL Chapter 40, Section 3 now permits the Board of Selectmen to lease Town-owned property for up to 30 years. However, the Selectmen do not believe that a long-term lease of that timeframe makes sense for a small, single-family home and expect to have a lease agreement with a much shorter timeframe. The Town intends to issue a RFP in accordance with Chapter 30B by the end of the year. Once the winning bid is chosen, the Board will then negotiate the terms of the lease.

The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 9, 2012, on the following:

VOTED: That the Town authorize the Selectmen to lease the land and building located at 27 Ackers Avenue upon the request of the Building Commissioner, and upon such other terms and conditions the Selectmen determine to be in the best interest of the Town.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Article 12 is Selectmen's petition asking Town Meeting to authorize them to lease the town-owned property at 27 Ackers Avenue. General Laws Chapter 30B requires the Town to issue a request for proposals to lease the property for another term; General Laws Chapter 40, Section 3 now permits the Board of Selectmen to lease town-owned property for up to thirty years. The specific terms and conditions of the lease are at the discretion of the Selectmen.

27 Ackers Avenue is a small, two-story, one-bedroom, one-and-one-half bath home located on Warren Playground. The approximately 800 square foot house does not fall within the proposed Settlement Neighborhood Conservation District, nor does it have any official historic designation.

The current tenant, a Heath School teacher, has leased the property for the last 10 years. That agreement was structured as a five year lease with an option to renew for an additional five years. That lease will expire on November 1, 2012.

The Town Assessor determines the value for town-owned properties, using a cost approach which assigns value to the land and the building; the later factors in replacement cost and depreciation. The rent for 27 Ackers in 2002 was \$800/month. That rent compounded 3% yearly and is now \$1016 per month. The rent payment does not include utilities. The town has been responsible for all of the building maintenance; and, it is in good condition.

DISCUSSION:

Although Article 12 asks Town Meeting to authorize the Selectmen to enter into a lease, the details of which are at their discretion, there was some discussion about the viability of the town continuing to own and maintain the building. A few members suggested that it might be in the town's best interests to explore selling the property instead of continuing to spend resources on it. It has a one time sale value in addition to subsequent taxes a homeowner would pay. Other members of the committee were less inclined to consider suggesting a sale of the property because of it's location in a public park, its potential historic or educational value, and its possible use as affordable housing.

Committee members noted that because the house is situated in a public park, if the building was sold, the town would have to either have to lease the land to a new owner or petition the state to divide the parcel, under Article 97 of the Massachusetts Constitution. Article 97 seeks to encourage protection of public lands.

The Director of Public Buildings informed the committee that there are currently efforts underway to craft a rental policy for all town-owned properties. The policy will likely include suggested boilerplate terms and conditions, as well as guidelines for lease lengths and fees. The policy or discussions around the policy may also include the conditions under which the town might consider selling a property. All seemed to agree that any decisions with respect to the sale of public property ought to follow a thoughtful and deliberate process.

There was a general consensus that the length of the lease for a property like this one ought to be short enough to offer the town flexibility in determining its value and use. Therefore, the Advisory Committee recommends a lease term of 3 years with an option to renew for an additional 3 years. The committee also generally agreed that while the terms of the expiring lease were likely reasonable 10 years ago, the building should be appropriately re-appraised for a new lease term.

RECOMMENDATION:

By a vote of 16-1-0, the Advisory Committee recommends FAVORABLE ACTION on the following vote:

VOTED: That the Town authorize the Selectmen to lease the Town-owned property known and numbered as 27 Ackers Avenue, in accordance with the requirements of General Laws, Chapter 30B and Chapter 40, section 3, for not more than three years with an option to renew for three years, and upon such other terms and conditions determined by the Board of Selectmen to be in the best interest of the town, or act on anything relative thereto.

XXX

ARTICLE 13

THIRTEENTH ARTICLE

Submitted by: Board of Selectmen

To see if the Town will authorize and empower the Board of Selectmen to lease the town-owned property known and numbered as 15 Newton Street (the Carriage House and garage and contiguous site occupied by the Larz Anderson Auto Museum, a Massachusetts non-profit corporation) in accordance with the requirements of General Laws, Chapter 30B and Chapter 40, §3, for not more than thirty years and upon such other terms and conditions determined by the Board of Selectmen to be in the best interest of the town, or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The lease with the Transportation Museum for the Carriage House and adjacent property at Larz Anderson Park expired on December 31, 2011. While there was a provision in the lease to renew under the same terms and conditions, the Museum declined given their difficulty in meeting the financial aspects of those terms. In fact, the Museum has outstanding unpaid obligations from the prior lease which have been the subject of discussion with the Town. The Town and the Museum have been finalizing a resolution of these obligations. The Board of Selectmen intends to issue a revocable license for the Museum so they may continue to occupy the premises until a new lease is competitively procured under the provisions of Chapter 30B of the Massachusetts General Laws.

In order to enter into a new long-term lease, Town Meeting must authorize the Selectmen to do so. If approved, it is the intent of the Board of Selectmen to issue a competitive Request for Proposals for lease of the property to a Massachusetts not-for-profit corporation who will use the premises for cultural and educational purposes.

SELECTMEN'S RECOMMENDATION

Article 13 asks Town Meeting to authorize the Selectmen to lease Town-owned property located at 15 Newton St, the Larz Anderson Carriage House currently occupied by the Auto Museum. At the 2001 November Special Town Meeting, similar authorization was approved for a lease of up to 10 years, the maximum allowable term at that time. Subsequent to that, at the May, 2002 Annual Town Meeting, special legislation was approved that would allow for a 25-year lease for both 15 Newton St. and 29 Avon St. The rationale behind a 25-year lease for those properties was that they are unique properties which would be better served if the rental agreement were extended beyond the current 10-year limit. In situations where the tenant's financial obligation to the

community is to provide some form of rent that would be applied toward the maintenance of the premises, a longer term would allow the tenant the opportunity to gain loan support from a financial institution or fundraising from private entities. That bill was ultimately approved as Chapter 357 of the Acts of 2004. The Transportation Museum ultimately declined extending the lease past the original 10-year term under the same terms and conditions given their difficulty in meeting the financial aspects of those terms. As a result, the lease expired on December 31, 2011.

The Museum had outstanding unpaid obligations from the prior lease that have been the subject of discussion with the Town. The Town and the Museum have finalized a resolution of these obligations. The Board of Selectmen has issued a revocable license for the Museum so they may continue to occupy the premises until a new lease is approved. In addition, any new lease must be competitively procured under the provisions of Chapter 30B of the Massachusetts General Laws (MGL). The Town and the Museum have reached agreement on the terms to repay the outstanding financial obligations of the lease, thus making the Museum eligible to submit a proposal for future lease of the property.

In order to enter into a new long-term lease, Town Meeting must authorize the Selectmen to do so. If approved, it is the intent of the Board of Selectmen to issue a competitive Request for Proposals (RFP) for lease of the property to a Massachusetts not-for-profit corporation who will use the premises for cultural and educational purposes. MGL Chapter 40, Section 3 now permits the Board of Selectmen to lease Town-owned property for up to 30 years. The Board must determine the specific length of the lease as part of the RFP process to meet the needs of the successful bidder while protecting the interests of the Town.

The Selectmen recommend FAVORABLE ACTION, by a vote of 4-0 taken on October 2, 2012, on the following:

VOTED: That the Town authorize the Selectmen to lease the Town-owned property known and numbered as 15 Newton Street (the Carriage House and garage and contiguous site now occupied by the Larz Anderson Auto Museum, a Massachusetts non-profit corporation) upon the request of the Building Commissioner, and upon such other terms and conditions the Selectmen determine to be in the best interest of the Town.

ROLL CALL VOTE:

Favorable Action

DeWitt

Daly

Mermell

Benka

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Article 13 is a Selectmen's petition asking Town Meeting to authorize them to lease the town-owned property at 15 Newton Street for up to thirty years. The property includes the Carriage House, garage and adjacent property, which are currently occupied by the Larz Anderson Auto Museum, a non-profit corporation. The specific terms and conditions of the lease will be determined by the Board of Selectmen.

Isabel Anderson, who donated the property to the town in her will, specified that it be used "for purposes of public recreation, or for charitable purposes, or for purposes of education." The Board of Selectmen intends to issue a competitive Request for Proposals for a lease of the 15 Newton Street property to a Massachusetts non-profit corporation which will use the premises for cultural and educational purposes.

The property appears in the State and National Register of Historic places.

Although Isabel and Larz Anderson opened their carriage house for public viewing on Sunday's during their lifetime, the auto museum came into existence in 1949 shortly after Isabel Anderson's passing. Since the museum opened it has been housed at the 15 Newton Street location, with the exception of an approximately 5 year period beginning in 1977. What was then called the Museum of Transportation at Larz Anderson Park closed at the end of 1977 and re-opened a year later in downtown Boston as part of a consortium with the Children's Museum. Although the collection was located downtown for a number of years, the museum continued to use the carriage house at Larz Anderson Park in some capacity during that time. The museum returned to the Larz Anderson Park location in 1982. Its collection still features 14 of the Anderson's vintage automobiles, along with a collection of horse carriages, sleighs and bicycles.

The previous two leases the town entered into with the Larz Anderson Auto Museum were for 10 years each. The last of these leases expired on December 31, 2011, when the museum opted not to renew the lease under its current terms and conditions. The Museum is currently operating at 15 Newton Street under a Revocable License Agreement they have with the Town.

The museum did not renew the lease under the same terms and conditions because they had financial difficulties meeting their obligations under those terms. The previous lease was not a strict cash payment lease; the town and museum representatives met each year to discuss value of services and capital improvements the museum had made. As a result of that lease model, as of September 2012, the museum owed the town \$160,000.

They have since entered into a Payment Agreement with the town which includes a \$60,000 payment for heating system improvements, and a \$1013 payment on the first day of each month starting in the fall of 2012 and ending in 10 years (2022.) The museum has

already made the lump sum payment of \$60,000, and initial, monthly payments as required under that agreement.

In order to become eligible to bid for a new, long-term lease under GL Chapter 30B, which the museum would like, it must continue to comply with the terms of the Payment Agreement and the Revocable License Agreement. The town is not forgiving any amount due, nor is it waiving any right to proceed with a collection action should the museum fail to make agreed on payments.

Using the MDC/Mass Horticultural, Brandegee, and Higgins Armory in Worcester as comparables, the Town Assessor assessed the value for the Carriage House at \$90,000 a year or \$50,000 if the lessee pays utilities, and agrees to perform specific maintenance responsibilities.

As a result, under the Revocable License Agreement, which will expire upon the execution of a long-term license agreement, the town has tentatively agreed with the museum to a minimum rent of \$24,000 a year (\$2000/mo) in addition to event permit fees. The license terms also include the non-cash value of public benefits such as free resident access once a month to all, free displays for Brookline Public School groups, and four days a year of free access to the carriage house for Town-sponsored events. The town currently favors the public benefit value over the promise of capital improvements, which were in the prior lease.

DISCUSSION:

Although the warrant article asks only whether Town Meeting will authorize the Board of Selectmen to enter into a long-term lease agreement up to thirty years for the 15 Newton Street property, there was concern regarding the large amount still owed the town by the current resident, and the timely collection of rent from tenants at this or any town-owned site.

The committee generally acknowledged that the terms of the prior lease, in which town and museum officials met to value in-kind services, volunteer work, and capital improvements after they were preformed had helped create the problem. Town and museum representatives have both demonstrated an interest in resolving current payment issues, as well as exploring viable options moving forward.

Consequently, there was discussion about the likelihood that the museum will continue to lease the property. The committee considered the fact that museum's board of directors would like to not only meet their remaining financial obligations to the town, but to secure a new lease term of thirty years. A possible long lease term for the museum would enhance their strategic planning efforts, reassuring donors and potential donors that the museum will continue to actively promote the museum's goal of "continued support of the community through educational outreach and the preservation of our permanent collection of early automobiles."

With some exception, the committee seemed satisfied with the terms of the Payment Agreement between the town and the museum, as well as the Revocable License Agreement for the property, which no longer includes volunteer work and services, or capital projects. Given the long history of the museum on the site, the Anderson's enthusiasm for their cars, and their generous gift to the town, the committee generally supported a scenario in which the museum would have the opportunity to enter into a new, long-term lease of the site. As one committee member summed it up, the Larz Anderson Auto Museum is a good fit for that space.

There were a few members who felt that authorizing the Selectmen to enter into a 20 year lease, instead of a 30 year lease, would provide the museum or any lessee sufficient security and strategic planning opportunities, while offering the town more flexibility and control of the property. The majority of the committee, however, felt that providing the Selectmen the option of entering into a 30 year lease with the museum or any qualified non-profit was reasonable.

RECOMMENDATION:

By a vote of 14-2-1 the Advisory Committee recommends FAVORABLE ACTION on the vote offered by the Selectmen.

XXX

ARTICLE 14

FOURTEENTH ARTICLE

Submitted by: Board of Selectmen

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

AN ACT AUTHORIZING THE TOWN OF BROOKLINE TO GRANT 11 ADDITIONAL LICENSES FOR THE SALE OF ALL ALCOHOLIC BEVERAGES TO BE DRUNK ON THE PREMISES

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. (a) Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the Town of Brookline may grant 1 additional license for the sale of all alcoholic beverages to be drunk on the premises, pursuant to section 12 of chapter 138, provided, however, that such license is issued to an establishment that holds a common victuallers license pursuant to section 2 of chapter 140 of the General Laws, to be used at a parcel depicted on page 59 of the Town of Brookline Assessor's Atlas as block number 238, lot number 01. The license shall be subject to all of said chapter 138 except said section 17.

(b) Once issued, the licensing authority shall not approve the transfer of the license to any other location but it may grant the license to a new applicant at the same location if the applicant files with the licensing authority a letter from the department of revenue and a letter from the division of unemployment assistance indicating that the license is in good standing with the department and that all applicable taxes, fees, and contributions have been paid.

(c) If the license granted under this section is cancelled, revoked or no longer in use, it shall be returned physically, with all of the legal rights, privileges and restrictions pertaining thereto, to the licensing authority, which may then grant the license to a new applicant at the same location under the same conditions as specified in this act provided that the applicant files with the licensing authority a letter from the department of revenue and a letter from the division of unemployment assistance indicating that the license is in good standing with those entities and that all applicable taxes, fees, and contributions have been paid.

SECTION 2. (a) Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the Town of Brookline may grant a total of 2 additional licenses for the sale of all alcoholic beverages to be drunk on the premises, pursuant to section 12

of chapter 138, provided, however, that such licenses are issued to establishments that hold a common victuallers license pursuant to section 2 of chapter 140 of the General Laws, to be used at parcels depicted on page 29B of the Town of Brookline Assessor's Atlas as block number 138, parcel numbers 01 and 02. The licenses shall be subject to all of said chapter 138 except said section 17.

(b) Once issued, the licensing authority shall not approve the transfer of the licenses to any other location but it may grant the licenses to new applicants at the same location if the applicants file with the licensing authority a letter from the department of revenue and a letter from the division of unemployment assistance indicating that the licenses are in good standing with the department and that all applicable taxes, fees, and contributions have been paid.

(c) If the licenses granted under this section are cancelled, revoked or no longer in use, they shall be returned physically, with all of the legal rights, privileges and restrictions pertaining thereto, to the licensing authority which may then grant the licenses to new applicants at the same locations under the same conditions as specified in this act provided that the applicants file with the licensing authority a letter from the department of revenue and a letter from the division of unemployment assistance indicating that the licenses are in good standing with those entities and that all applicable taxes, fees, and contributions have been paid.

SECTION 3. (a) Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the Town of Brookline may grant a total of 5 additional licenses for the sale of all alcoholic beverages to be drunk on the premises, pursuant to section 12 of chapter 138, provided, however, that such licenses are issued to establishments that hold a common victuallers license pursuant to section 2 of chapter 140 of the General Laws, to be used at parcels depicted on page 9 of the Town of Brookline Assessor's Atlas as block number 045, lot numbers 01, 11 and 02-01. The licenses shall be subject to all of said chapter 138 except said section 17.

(b) Once issued, the licensing authority shall not approve the transfer of the licenses to any other location but it may grant the licenses to new applicants at the same locations if the applicants file with the licensing authority a letter from the department of revenue and a letter from the division of unemployment assistance indicating that the licenses are in good standing with the department and that all applicable taxes, fees, and contributions have been paid.

(c) If the licenses granted under this section are cancelled, revoked or no longer in use, they shall be returned physically, with all of the legal rights, privileges and restrictions pertaining thereto, to the licensing authority which may then grant the licenses to new applicants at the same locations under the same conditions as specified in this act provided that the applicants file with the licensing authority a letter from the department of revenue and a letter from the division of unemployment assistance indicating that the licenses are in good standing with those entities and that all applicable taxes, fees, and contributions have been paid.

SECTION 4. (a) Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the Town of Brookline may grant up to 3 additional licenses for the sale of all alcoholic beverages to be drunk on the premises, pursuant to section 12 of chapter 138, provided, however, that such licenses are issued to establishments that hold a common victuallers license pursuant to section 2 of chapter 140 of the General Laws.

(b) A license under this section shall not be transferable to any other person, corporation or organization for a period of 3 years from the date of original issuance or 3 years from the enactment of this legislation, whichever is later. Any transfer in violation of sections (a) or (b) of this section shall render said license null and void.

(c) If a license granted under this section is revoked or no longer in use at the location of original issuance, it shall be returned physically, with all of the legal rights and privileges pertaining thereto, to the licensing authority which may then grant the license to a new applicant only at the same location under the same conditions as specified in this act provided that the applicant files with the licensing authority a letter from the department of revenue and a letter from the division of employment assistance indicating that the license is in good standing with those entities and that all applicable taxes, fees, and contributions have been paid.

SECTION 5. This act shall take effect upon its passage.

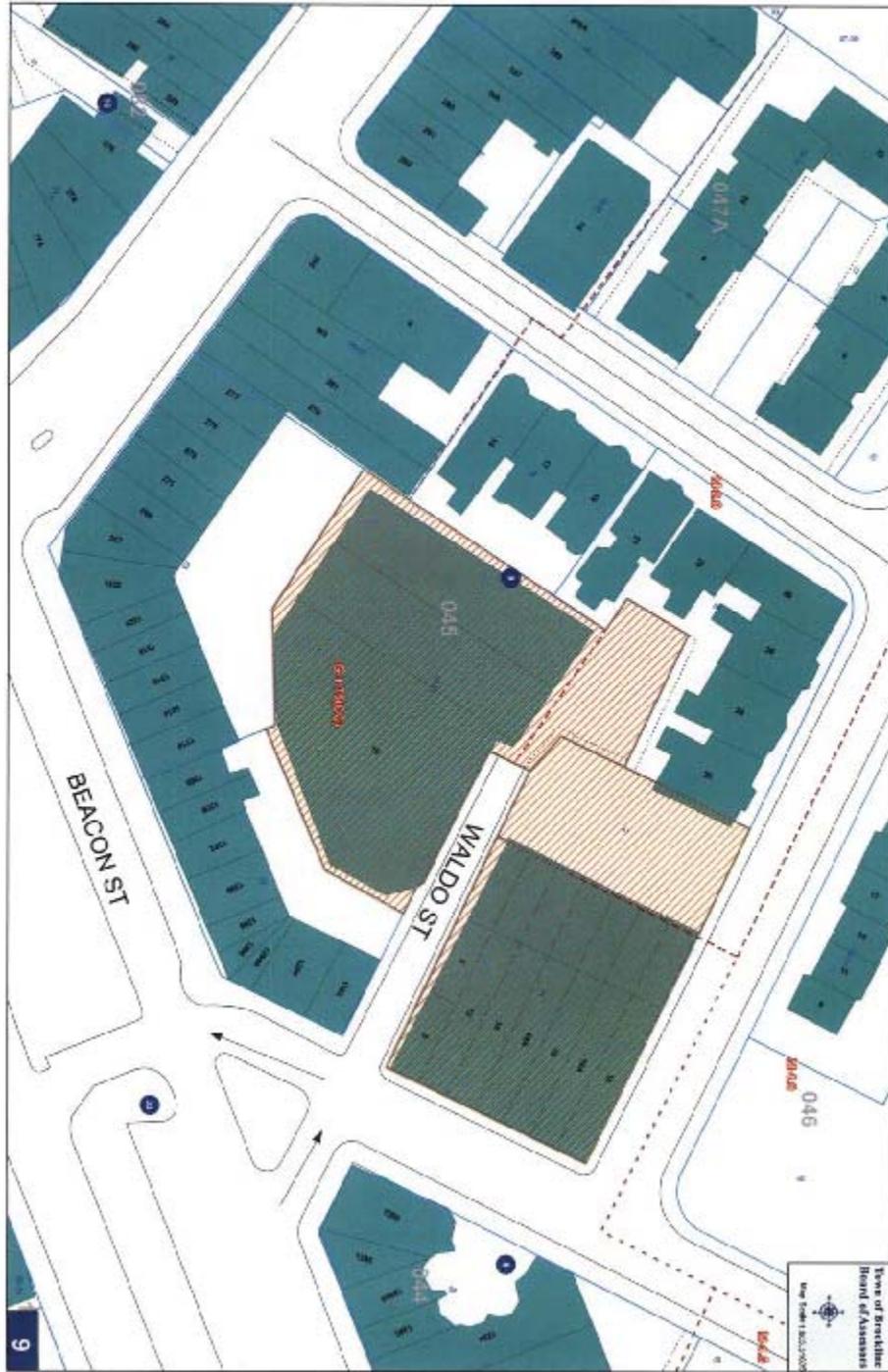
or act on anything relative thereto. The General Court may make such amendments as are within the scope of the general public objectives of this petition.

MAP 1



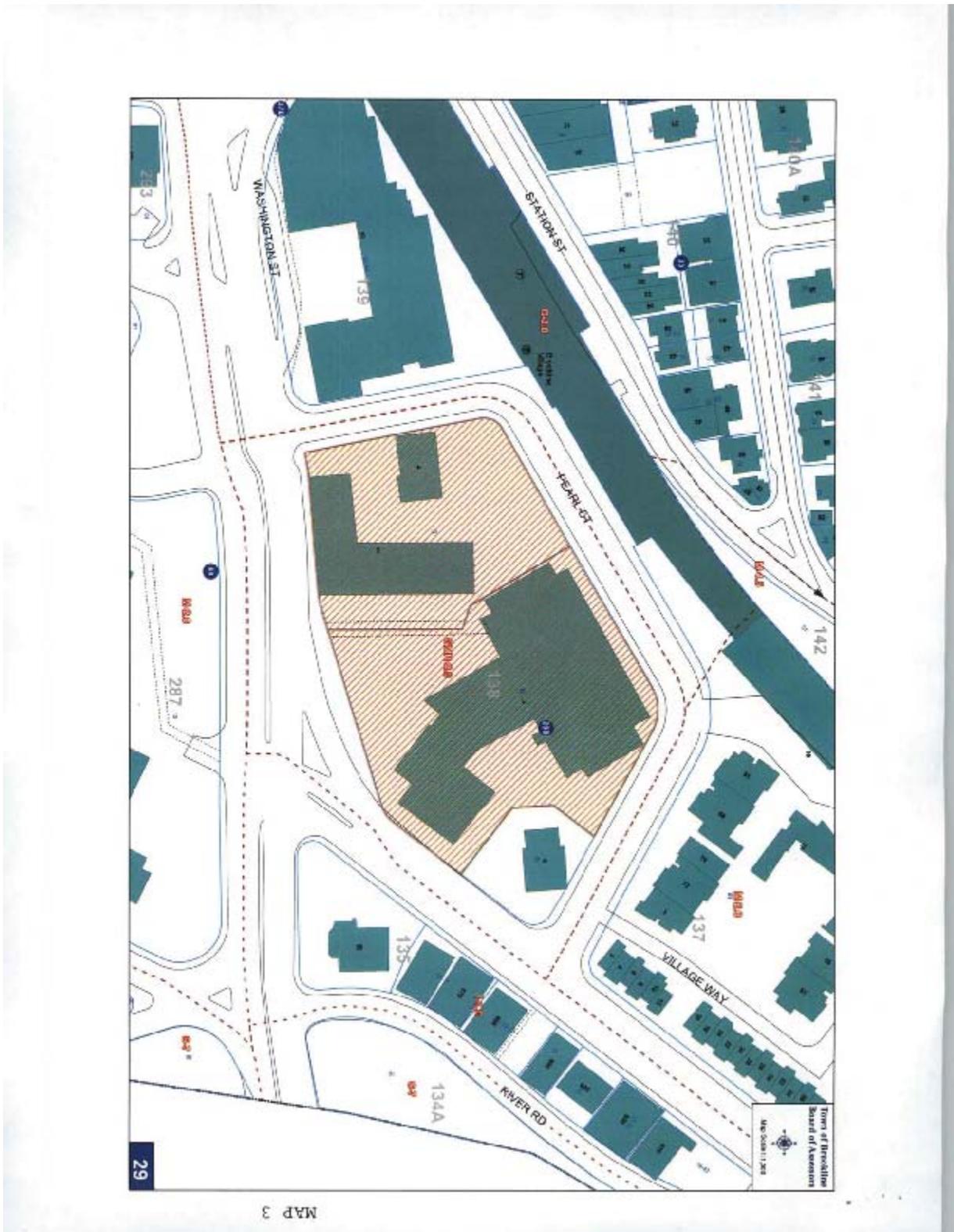
MAP 1

MAP 2



MAP 2

MAP 3



PETITIONER’S ARTICLE DESCRIPTION

As of the submission of this warrant article, the Town has available only one unclaimed liquor license pursuant to the Town’s quota established by G.L. c. 138, § 17 (which establishes municipalities’ liquor license quotas based on their population as determined by the census). The Town is concerned that the unavailability of new licenses will detrimentally impact the economic vibrancy of the Town by significantly reducing the likelihood of redevelopment of underutilized sites.

The petition is intended to secure additional liquor licenses for the Town in order to assure the availability of licenses for the several parcels of land within the Town expected to undergo redevelopment within the foreseeable future, namely, a parcel in Cleveland Circle formerly the site of the Circle Cinema (*see* Map 1), certain parcels in Coolidge Corner in the vicinity of Waldo St. (*see* Map 2), and certain parcels on Brookline Place in Brookline Village (*see* Map 3).

In addition, given the impending unavailability of liquor licenses, section 4 of the petition is intended to request several additional liquor licenses unrestricted by location that the Board of Selectmen could issue based upon its determination of the public need and the common good.

SELECTMEN’S RECOMMENDATION

Article 14 is a Home Rule Petition that would increase the Town’s liquor license quota. It is one of the outcomes of the work of the Selectmen’s Licensing Review Committee, which has worked diligently over the past two years on issues related to the various licenses awarded by the Selectmen. As of the writing of this Recommendation, the Town has only one available liquor license pursuant to the Town’s quota under Massachusetts General Laws (MGL) Chapter 138, Section 17, the statute that establishes municipalities’ liquor license quotas based on their population as determined by the census. The Town is worried that the having no additional licenses will have a detrimental impact on the economic vibrancy of the Town by significantly reducing the likelihood of redevelopment of underutilized sites.

Currently, the Town is working on three significant redevelopment efforts at the following locations:

- the former site of the Circle Cinema in Cleveland Circle
- parcels in Coolidge Corner in the vicinity of Waldo Street
- parcels on Brookline Place in Brookline Village

It is believed that in order to have desired redevelopment in these locations, additional “on premise” liquor licenses are required. Specifically, the article calls for one additional

license for the Circle Cinema area, two licenses for the Waldo St. area, and five licenses for the Brookline Pl. location. In addition, given the impending unavailability of liquor licenses, Section 4 of the article is intended to request three additional liquor licenses unrestricted by location that the Board of Selectmen could issue. Those three would not be transferable to any other person, corporation or organization for a period of three years from the date of original issuance or three years from the enactment of this legislation, whichever is later. If approved by Town Meeting and, ultimately, by the State Legislature, the petition would increase by 11 the number of liquor licenses available to the Town.

The Selectmen strongly support Article 14, as it will aid in the redevelopment efforts of three prominent commercial sites, thereby improving these currently underutilized sites and the surrounding neighborhoods and further increasing the Town's tax base. Therefore, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 9, 2012, on the following:

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

**AN ACT AUTHORIZING THE TOWN OF BROOKLINE TO GRANT 11
ADDITIONAL LICENSES FOR THE SALE OF ALL ALCOHOLIC BEVERAGES TO
BE DRUNK ON THE PREMISES**

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. (a) Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the Town of Brookline may grant 1 additional license for the sale of all alcoholic beverages to be drunk on the premises, pursuant to section 12 of chapter 138, provided, however, that such license is issued to an establishment that holds a common victuallers license pursuant to section 2 of chapter 140 of the General Laws, to be used at a parcel depicted on page 59 of the Town of Brookline Assessor's Atlas as block number 238, lot number 01. The license shall be subject to all of said chapter 138 except said section 17.

(b) Once issued, the licensing authority shall not approve the transfer of the license to any other location but it may grant the license to a new applicant at the same location if the applicant files with the licensing authority a letter from the department of revenue and a letter from the division of unemployment assistance indicating that the license is in good standing with the department and that all applicable taxes, fees, and contributions have been paid.

(c) If the license granted under this section is cancelled, revoked or no longer in use, it shall be returned physically, with all of the legal rights, privileges and restrictions pertaining thereto, to the licensing authority, which may then grant the license to a new applicant at the same location under the same conditions as specified in this act provided that the applicant files with the licensing authority a letter from the department of revenue and a letter from the division of unemployment assistance indicating that the license is in good standing with those entities and that all applicable taxes, fees, and contributions have been paid.

SECTION 2. (a) Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the Town of Brookline may grant a total of 2 additional licenses for the sale of all alcoholic beverages to be drunk on the premises, pursuant to section 12 of chapter 138, provided, however, that such licenses are issued to establishments that hold a common victuallers license pursuant to section 2 of chapter 140 of the General Laws, to be used at parcels depicted on page 29B of the Town of Brookline Assessor's Atlas as block number 138, parcel numbers 01 and 02. The licenses shall be subject to all of said chapter 138 except said section 17.

(b) Once issued, the licensing authority shall not approve the transfer of the licenses to any other location but it may grant the licenses to new applicants at the same location if the applicants file with the licensing authority a letter from the department of revenue and a letter from the division of unemployment assistance indicating that the licenses are in good standing with the department and that all applicable taxes, fees, and contributions have been paid.

(c) If the licenses granted under this section are cancelled, revoked or no longer in use, they shall be returned physically, with all of the legal rights, privileges and restrictions pertaining thereto, to the licensing authority which may then grant the licenses to new applicants at the same locations under the same conditions as specified in this act provided that the applicants file with the licensing authority a letter from the department of revenue and a letter from the division of unemployment assistance indicating that the licenses are in good standing with those entities and that all applicable taxes, fees, and contributions have been paid.

SECTION 3. (a) Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the Town of Brookline may grant a total of 5 additional licenses for the sale of all alcoholic beverages to be drunk on the premises, pursuant to section 12 of chapter 138, provided, however, that such licenses are issued to establishments that hold a common victuallers license pursuant to section 2 of chapter 140 of the General Laws, to be used at parcels depicted on page 9 of the Town of Brookline Assessor's Atlas as block number 045, lot numbers 01, 11 and 02-01. The licenses shall be subject to all of said chapter 138 except said section 17.

(b) Once issued, the licensing authority shall not approve the transfer of the licenses to any other location but it may grant the licenses to new applicants at the same locations if the applicants file with the licensing authority a letter from the department of revenue and

a letter from the division of unemployment assistance indicating that the licenses are in good standing with the department and that all applicable taxes, fees, and contributions have been paid.

(c) If the licenses granted under this section are cancelled, revoked or no longer in use, they shall be returned physically, with all of the legal rights, privileges and restrictions pertaining thereto, to the licensing authority which may then grant the licenses to new applicants at the same locations under the same conditions as specified in this act provided that the applicants file with the licensing authority a letter from the department of revenue and a letter from the division of unemployment assistance indicating that the licenses are in good standing with those entities and that all applicable taxes, fees, and contributions have been paid.

SECTION 4. (a) Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the Town of Brookline may grant up to 3 additional licenses for the sale of all alcoholic beverages to be drunk on the premises, pursuant to section 12 of chapter 138, provided, however, that such licenses are issued to establishments that hold a common victuallers license pursuant to section 2 of chapter 140 of the General Laws.

(b) A license under this section shall not be transferable to any other person, corporation or organization for a period of 3 years from the date of original issuance or 3 years from the enactment of this legislation, whichever is later. Any transfer in violation of sections (a) or (b) of this section shall render said license null and void.

(c) If a license granted under this section is revoked or no longer in use at the location of original issuance, it shall be returned physically, with all of the legal rights and privileges pertaining thereto, to the licensing authority which may then grant the license to a new applicant only at the same location under the same conditions as specified in this act provided that the applicant files with the licensing authority a letter from the department of revenue and a letter from the division of employment assistance indicating that the license is in good standing with those entities and that all applicable taxes, fees, and contributions have been paid.

SECTION 5. This act shall take effect upon its passage.

The General Court may make such amendments as are within the scope of the general public objectives of this petition.

MAP 1



MAP 1

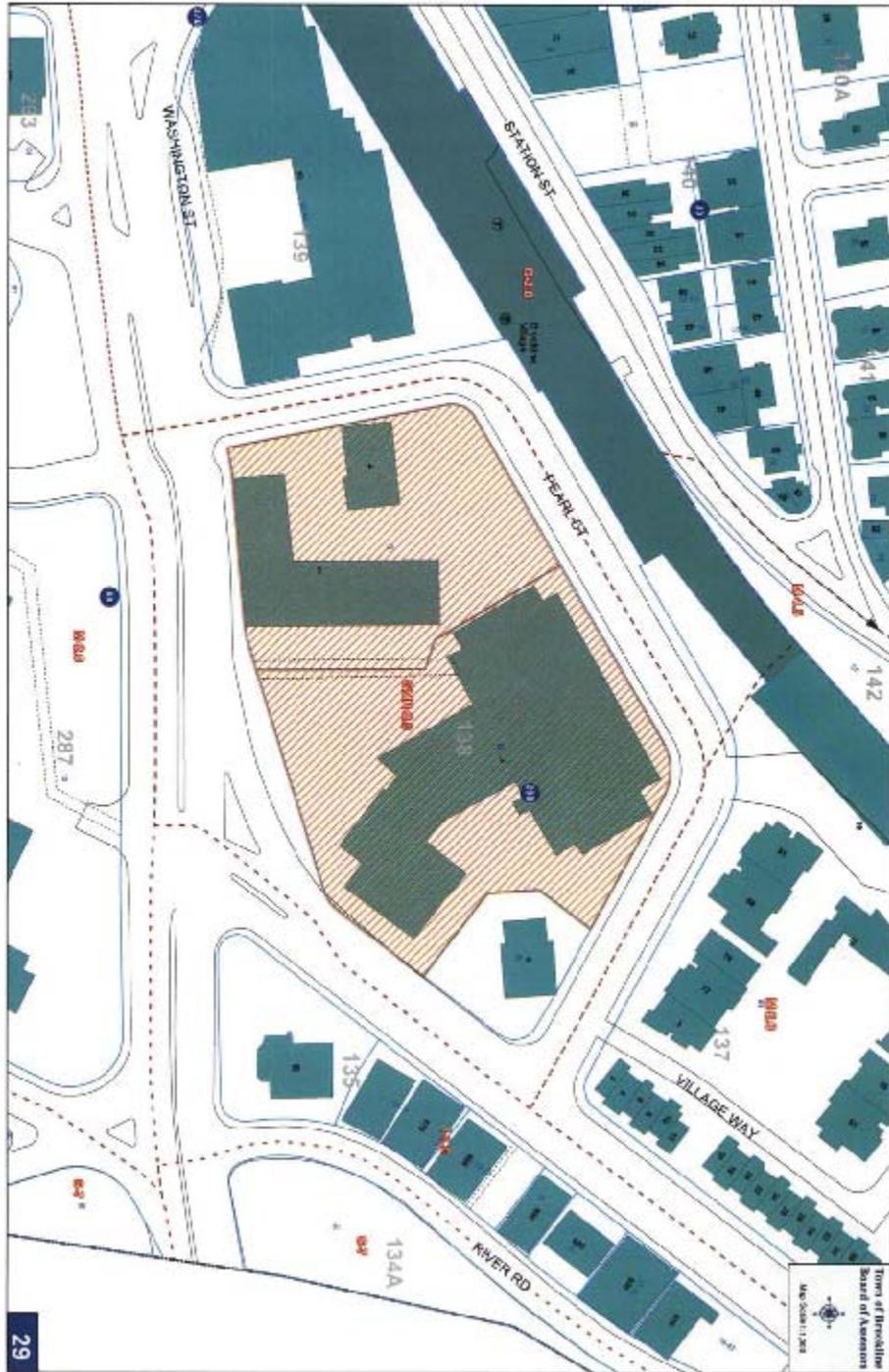
November 15, 2011 Special Town Meeting
14-12

MAP 2



MAP 2

MAP 3



MAP 3

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Any Massachusetts business that wants to sell liquor must obtain a license to do so from its municipality's licensing board; in the Town of Brookline, that licensing board is the Board of Selectmen. The maximum number of licenses that a municipality can issue is determined by state law. Section 17 of MGL Ch. 138 sets the quota of liquor licenses based on population: The licensing board can issue one "full liquor" license for the sale of liquor to be served on the premises (called a "pouring" license) for every 1,000 persons in the municipality. Additional pouring licenses are allowed for the sale of beer and wine only, and these are based on a ratio of one license for every 5,000 persons. The same ratio also applies both for full liquor licenses and for beer and wine licenses for liquor to be consumed off the premises (that is, for liquor sold in package stores). All municipalities are subject to these restrictions, with the exceptions of Cambridge, which has been given the authority to set its own cap, and Boston, which has a "hard cap" that is not based on population.

According to the 2011 REPORT OF THE QUOTA SUBCOMMITTEE OF THE BROOKLINE BOARD OF SELECTMEN'S LICENSING REVIEW COMMITTEE (Quota Subcommittee Report), the Town of Brookline has quotas of 63 full liquor pouring licenses and 12 beer and wine pouring licenses, and these may be issued only to businesses with a common victualler's license. The Town also has quotas of 12 full liquor licenses and 12 beer and wine licenses for the sale of liquor in package stores, for a total quota of 99 liquor licenses.

Article 14 was submitted by the Board of Selectmen and seeks legislation to increase the Town's quota of full liquor pouring licenses by 11. This warrant article for a home rule petition was filed after a recommendation by the Town's Licensing Review Committee and in response to proposed developments in commercial areas in the Town. Brookline currently has only one unassigned pouring liquor license.

DISCUSSION:

The Advisory Committee supports the Selectmen's efforts to increase the quota of full liquor pouring licenses for the Town from 63 to 74. Given that the Town has only one remaining pouring liquor license available to allocate, and since much development these days includes restaurants and other food purveyors, the lack of additional liquor licenses discourages entry into the Brookline market by potential businesses.

In other municipalities with a burgeoning restaurant business, the cap on licenses has resulted in the growth of a very costly secondary market. Persons in possession of licenses will sell their licenses, which they are in fact not authorized to do, to others who would like to open a restaurant that serves alcohol but who cannot obtain a license from the municipality. In Cambridge, where the city itself has set the quota, a full liquor pouring license can be sold for up to \$250,000. In Boston, a full liquor pouring license

can be sold for anywhere between \$175,000 to \$450,000, while beer and wine pouring licenses can cost \$25,000 to \$35,000. The Advisory Committee is not aware of a significant secondary market in Brookline currently. It was informed, however, of an anecdotal story that the offering price of a Brookline property was increased by \$150K to account for the "market value" of a liquor license, underscoring the value a license might attain in a *de facto* secondary market in the Town. Not only is this type of secondary market unauthorized, the large financial burden limits the types of businesses that can enter the market to those with substantial financial resources, such as chain restaurants, while making entry into the market potentially prohibitive for smaller businesses.

To alleviate the situation in Brookline, the Selectmen are proposing to follow the path of several other municipalities, including Somerville, Braintree, and Woburn, by filing special legislation to increase the number of pouring liquor licenses available to the Town. According to Town Counsel, the proposal was drafted based on the advice of the General Counsel of the House Chairman of the Legislature's Joint Committee on Consumer Protection and Professional Licensure, which reviews such legislation for referral to a vote by the Legislature. The two elements that apparently make approval more likely are 1) tying the licenses to specific locations or businesses and 2) requesting these licenses for areas that are a focus of economic development.

The legislation drafted by the Selectmen thus proposes:

1. One full liquor pouring license for the Cleveland Circle Cinema site. The developer has stated that they want at least one restaurant that serves alcohol, and even if the restaurant is not located in Brookline, the Selectmen have determined that the license nonetheless would be needed to transport liquor through the part of the hotel that is located in Brookline.
2. Two full liquor pouring licenses for the B-2 site in Brookline Place. Children's Hospital, which will develop the site, has informed the Town that it would like to include at least 2 restaurants, of which at least one will be serving liquor.
3. Five full liquor pouring licenses for the Durgin-Waldo site. While this site has the least concrete plans for redevelopment, the Town is working on transforming the site; and since the Town's marketing experts have emphasized "food, food, food" as part of new economic development in Town, it is envisioned for this site.
4. Three full liquor licenses, not yet attached to any particular site, but that have the following restrictions: the license cannot be transferred to another business within the first three years of either the original date of issue to a business or the enactment of this special legislation, whichever is later. After that, if the business moves from that location, the license must be returned to the Town, which can only reissue it to another business at that same location. Thus, if a restaurant obtains such a license and later moves to a different location, it cannot use the license at that new location.

During the hearing by the Subcommittee on Public Safety, Chief of Police Daniel O’Leary was asked whether adding more licenses would be a burden on the police. He responded that he did not feel it would have a large impact, and also noted that compliance generally is strong. Selectman Betsy DeWitt added that the Town has very good compliance enforcement procedures.

During the full Advisory Committee hearing on the Article, a question was raised as to whether increasing the number of licenses would be viewed unfavorably by restaurants currently holding liquor licenses, which might face stiffer competition as a result; but, according to the Quota Subcommittee Report, the majority of current licensees who provided input expressed support for increased availability, considering it good for the restaurant business overall.

There was some discussion of the restrictiveness of the types of licenses proposed. Some Advisory Committee members felt that, given the importance of liquor licenses for economic development, it would be worthwhile pursuing whether the designated areas could be expanded, in light of proposals recently deemed acceptable for other municipalities (for example, the 2011 approval of 2 licenses for each of 4 “liquor zones” in Woburn). Town Counsel, however, stated that the General Counsel for the Joint Committee’s House Chair emphasized that keeping licenses restrictive would increase the likelihood of approval by the Joint Commission. Another concern was expressed that tying 5 of the total number of proposed licenses to the Durgin-Waldo site might be too many. Yet there is no certainty that we would be granted the full 5 licenses requested for that site even with an approval.

There was also some discussion of the outmoded and cumbersome nature of the quota system, stemming from the time of Prohibition, and likely having a negative impact on economic development. Overhaul of this outdated system has been discussed by other municipalities, and in fact, legislation has been filed to abolish State quotas. A suggestion was made to work with other municipalities to produce legislation to overhaul the system, which the Quota Subcommittee of the Town’s Licensing Review Committee also proposed.

RECOMMENDATION:

This article addresses site-specific needs of the Town of Brookline and represents the beginning of what may be a one to two year process. By a vote of 22 in favor, 3 opposed, with no abstentions, the Advisory Committee recommends FAVORABLE ACTION on the vote offered by the Selectmen.

ARTICLE 15

FIFTEENTH ARTICLE

Submitted by: Thomas Vitolo

To see if Town Meeting will adopt the following resolution regarding the study of “solar ready” roofs on municipal buildings:

WHEREAS, the cost of solar photovoltaic (PV) panel installation has been steadily declining, and

WHEREAS, though short-term market fluctuations will determine the best time to install solar PV panels, in the long term such installations are likely to provide a financially advantageous revenue stream to the Town, and

WHEREAS, through its Town Meeting and Board of Selectmen, Brookline has committed to reducing greenhouse gas emissions and carbon footprint, and

WHEREAS, a "solar ready" roof is structurally capable of supporting solar PV panels and, with the exception of the PV panels and the inverter, has most or all equipment necessary for a PV installation already installed, and

WHEREAS, it is expected that making a roof "solar ready" at the time of new construction or major roof repair can minimize solar installation costs and maximize solar production potential when solar PV panels are installed, and

WHEREAS, Brookline has a municipal roof repair and restoration program which systematically improves a portion of the 850,000 square feet of roof surface on an annual basis.

NOW, THEREFORE be it resolved that the Selectmen establish a committee, the purpose of which is to study the potential costs and benefits of a policy requiring some or all Town-owned roofs be made "solar ready" at the time of construction or substantial renovation. The name of the committee shall be the Selectmen's Municipal Solar Roofs Committee. The responsibilities of the committee shall include:

1. To formulate a set of design, engineering, and construction guidelines with which a Brookline municipal roof shall comply to be considered “solar ready”;
2. to determine or estimate the additional costs of making a new municipal roof "solar ready" at the time of new construction;

3. to determine or estimate the additional costs of making an existing municipal roof "solar ready" at the time of substantial renovation;
4. to determine or estimate of the costs of making an existing municipal roof "solar ready" were it not being constructed nor renovated concurrently; and
5. to determine and detail, to the extent possible, any non-financial costs or benefits resulting from the installation of solar PV panels on Town-owned roofs.

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 his/her nominee
3. the Chair of the School Committee, or his/her nominee
4. the Chair of the Building Commission, or his/her nominee
5. two Town staff members, upon recommendation of the Town Administrator, from departments such as:
 - Town Administrator's Office
 - Finance Department
 - Planning Department
6. the Chair of the Climate Action Committee, or his/her nominee
7. two members at large with special consideration given to people with the following skills:
 - Relevant regulatory, public policy, and/or business expertise
 - Relevant engineering or trade expertise.

No member shall be disqualified because she or he is not a resident of the Town.

The Committee shall be established no later than March 31, 2013, and shall be dissolved following the acceptance of its report by the Board of Selectmen.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

MARKET TREND

The ability to generate electricity using solar photovoltaic (PV) panels is not a new technology. Its cost has historically been significantly higher than simply burning fossil fuels to create steam, and as a result the pace of PV installation has been snail-like. That has changed recently, for a number of apparently permanent reasons. Environmental considerations including those related to atmospheric chemistry (carbon emissions, acid rain, smog), geology (mountaintop removal mining, and hydro-fracking induced earthquakes), and hydrology (ash pond leaching, aquifer exhaustion, cooling water

shortages) have stimulated a growing list of environmental regulations that have driven up the cost of fossil fuel generated electricity. Public health studies connecting the air and water pollution released by fossil fueled power plants to negative human, animal, and plant health outcomes are voluminous. Public policies such as emissions restrictions, effluent requirements, renewable portfolio standards, feed-in-tariffs, tax credits, and more continue to increase the cost of fossil fuel generated electricity and continue to provide incentives for the construction of new renewable electricity generation.

Additionally, the unsubsidized price of solar panels has fallen precipitously. The price of solar panels fell 60% between the summer of 2008 and 2011¹, and continue to fall². As a result of public policies and changing energy economics, the amount of PV installed in America is growing at an enormous rate:

	United States ³⁴	Massachusetts ⁵
2007	500	4
2008	850	7
2009	1,250	17
2010	2,150	40
2011	4,000	75
2012	8,200 ⁶	168

Installed grid-tied PV installations (MW_{DC})

In both the United States and within Massachusetts, the amount of installed solar panel generation capacity has increased by a factor of ten over the past four years, and the amount installed per year continues to increase. The market trend is clear: PV installations are increasing in number and size every year.

POTENTIAL

While PV is effective in many places, it can't be installed everywhere. PV panels need to be installed on an even surface, preferably one that is secure from interference from people, animals, and shade. One ideal location is the roof of a building because in addition to having the aforementioned properties, it is often otherwise unused space. The Town of Brookline's buildings have a cumulative area of over 850,000 square feet --

¹ United Nations Environment Programme and Bloomberg New Energy Finance, *Global Trends in Renewable Energy Investment 2011: Analysis of Trends and Issues in the Financing of Renewable Energy*, 2011.

² *Solar prices drop more, pressuring panel makers*, Reuters, April 15, 2012. http://www.msnbc.msn.com/id/47043457/ns/business-going_green/t/solar-prices-drop-more-pressuring-panel-makers/

³ Larry Sherwood, *U.S. Solar Market Trends*, 2008 – 2012.

⁴ IMS Research, *PV Demand Database - Quarterly – Q3'12*, August 17, 2012.

⁵ Massachusetts Department of Energy Resources, *Renewable Energy Snapshot*, August 2012.

⁶ 2012 numbers are estimates based on sales in January – June 2012 (United States) and January – July 2012 (Massachusetts).

nearly 20 acres. The entire surface isn't appropriate for PV; some if it is shaded, some is angled away from the sun, some is covered by mechanical units or other equipment, etc. Nevertheless, the Town owns a substantial amount of roof space that is appropriate for siting solar panels.

OPPORTUNISM

The solar panel market is constantly in flux. Prices, while trending downward, do fluctuate due to supply chain inefficiencies, national trade policies, and so forth. Furthermore, national, state, and even regional policies, subsidies, and grants are created, eliminated, or modified constantly. As a result, the opportunity to secure a grant or subsidy that results in a financial gain for the Town may be short lived. By having "solar ready" roofs, Brookline may be in the position to seize opportunities from which it wouldn't otherwise be prepared to benefit. A "solar ready" roof is one that has undergone solar-specific design, surveying, and preparation for a solar PV installation at a later date – it has the necessary wiring or conduits pre-installed, has been determined to be structurally capable of holding the panels, and so forth. While there is no single definition, a number of resources exist detailing the process and components.⁷⁸

FISCAL RESPONSIBILITY

Despite underfunded pension and other post-employment benefit (OPEB) obligations, it's clear that Brookline's finances are in excellent shape. The fiscal health of Brookline is a testament to the efforts of the Selectmen, a tireless Advisory Committee, and dozens of Town staff who insist on prudent spending. The prospect of making Town-owned roofs "solar ready" relates to a number of capital improvement program (CIP) evaluation criteria⁹, including:

- Eliminates a proven or obvious hazard to public health and safety
- Supports adopted plans, goals, objectives, and policies
- Reduces or stabilizes operating costs
- Prolongs the functional life of a capital asset of the Town by five years or more
- Replaces a clearly obsolete facility or maintains and makes better use of an existing facility
- Provides new programs having social, cultural, historic, environmental, economic, or aesthetic value
- Utilizes outside financing sources such as grants.

The electricity generated by PV sited on Town property would replace coal- or gas-fired generation, and the corresponding hazardous pollution. It would support greenhouse gas emission reduction goals adopted goals and objectives resolved by Town Meeting. PV generated electricity could reduce and stabilize operating costs by reducing the amount of electricity Brookline must purchase on the market. Solar panels on roofs typically

⁷ National Renewable Energy Lab, *Solar Ready Buildings Planning Guide*, December 2009.

⁸ City of Boston Department of Neighborhood Development, *Design, Construction, and Open Space Unit Residential Design Standards*, November 2010.

⁹ *Town of Brookline Capital Improvement Program (CIP) Policies*, May 4, 2004.

prolong the lifetime of the roofing material because the PV panels absorb the impact and wear caused by the elements instead of the roofing material. Since much of the area of the Town's roofs is unutilized, PV would clearly make better use of that space. PV has environmental value. If having "solar ready" roofs makes the installation of PV possible when and where it wouldn't be otherwise, then being "solar ready" is a component of each of the CIP evaluation criteria above. Regarding the last criterion, being "solar ready" may enable Brookline to be better positioned to capitalize on outside funding sources like grants or subsidies by allowing Brookline a shorter study period before applying, or by sending a clear signal to the funders that Brookline has put some of its own skin in the game.

ENVIRONMENTAL STEWARDSHIP

Brookline Town Meeting has a long history of including environmental considerations in spending decisions. Brookline was an early adopter of hybrid automobiles, purchasing its first two Toyota Prius vehicles in FY2002 following a warrant article passed by Town Meeting. The trend has continued, with an electric vehicle charging station located at Town Hall. In June 2003, the Board of Selectmen negotiated an electricity contract that required a portion of the generation to be renewable, the first community in the state to do so. In addition to environmentally focused resolutions focused on fuel economy, the use of green cleaning products, invasive species proliferation, and gasoline powered leaf blowers, Brookline Town Meeting voted to create the Climate Action Committee in 2008. Brookline was granted Green Community status in July 2011 in part due to legislation enacted by Town Meeting. The Board of Selectmen and the Town Meeting have a long and storied history of environmental stewardship.

CARE AND CONSIDERATION

Solar PV's market share is exploding, and Brookline municipal buildings provide many acres of rooftop suitable for PV installation. Having "solar ready" roofs allow for the opportunity of PV installations at lower cost to the Town because the Town will be in a position to act more quickly on lower PV prices or on grants and subsidies. PV installations on Town roofs meet a number of CIP evaluation criteria. PV installation is consistent with Brookline's tradition of environmental stewardship. We know that making a roof "solar ready" will add cost at the time of construction or repair of a roof, but will save the Town money should the Town install PV later. We don't know the details though – and that is why a careful study is warranted. Brookline should develop a policy on "solar ready" municipal roofs, but only after developing a more complete understanding of the costs, avoided costs, benefits gained, and benefits foregone. This resolution will ensure that Brookline can pursue a solar PV strategy that is in harmony with both our financial and environmental goals.

SELECTMEN'S CLIMATE ACTION COMMITTEE RECOMMENDATION

This article is being submitted by Thomas Vitolo. The purpose of this resolution is to support the creation of a committee to evaluate the potential costs and benefits of a policy requiring town-owned roofs be made "solar ready" when they are constructed or substantially renovated. This committee would create guidelines for solar ready roofs and

determine what the additional costs would be for such roofs, whether created through new construction or renovation.

The Selectmen's Climate Action Committee supports this warrant article. The Committee sees no draw back to analyzing the feasibility of a solar-ready municipal roof requirement, and a committee, as set forth in the proposed article, with a very specific charge, would be able to gather the needed information to make an informed decision on how and whether to move forward. The Climate Action Committee supports increasing the number of photovoltaic installations in Brookline, including on municipal building roofs. Municipal solar installations would reduce the amount of electricity the town uses from non-renewable energy sources, which would be a clear reduction in greenhouse gas emissions.

Therefore, the Selectmen's Climate Action Committee unanimously recommends **FAVORABLE ACTION** on Article 15 as submitted.

SELECTMEN'S RECOMMENDATION

Article 15 is a petitioned article that, as originally filed, asks the Selectmen form a committee to study the potential costs and benefits of a policy requiring some or all Town/School building roofs be made "solar ready". The Board agrees with the petitioner that, given the current market conditions, the issue of making municipal roofs "solar ready" should be examined; however, the Board believes that the Building Commission should take a more active role than as originally prescribed.

After discussions with the petitioner and the Chair of the Building Commission, the Board is recommending that a joint committee of the Board of Selectmen and the Building Commission be established to examine the issue. The Board discussed the Advisory Committee's vote to refer the issue to the Building Commission since Section 3.7.2 of the Town By-Laws already ask the Commission to consider green elements during the capital project review process. The Board ultimately decided that having a separate committee to study the costs and benefits of a solar readiness program underscores the importance of exploring this issue.

The Board thanks the petitioner for bringing this to their attention, and thanks the Chair of the Building Commission for her work on the revised language. The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 16, 2012, on the following:

VOTED: That Town Meeting adopt the following resolution regarding the study of "solar ready" roofs on municipal buildings:

WHEREAS, the cost of solar photovoltaic (PV) panel installation has been steadily declining, and

WHEREAS, though short-term market fluctuations will determine the best time to install solar PV panels, in the long term such installations are likely to be financially advantageous to the Town, and

WHEREAS, through its Town Meeting and Board of Selectmen, Brookline has committed to reducing greenhouse gas emissions and carbon footprint, and

WHEREAS, a “solar ready” roof is structurally capable of supporting solar PV panel and, with the exception of the PV panels and the inverter, has most or all equipment necessary for a PV installation already installed, and

WHEREAS, making a roof “solar ready” at the time of new construction or major roof repair can minimize solar installation costs and maximize solar production potential when solar PV panels are installed, and

WHEREAS, Brookline has a municipal roof repair and restoration program which systematically improves a portion of the 850,000 square feet of roof surface on an annual basis.

NOW THEREFORE be it resolved that the Selectmen ask the Building Commission to jointly establish a committee, the purpose of which is to study the potential costs and benefits, including non-financial costs, of making Town-owned roofs, for which plans do not include the immediate installation of solar panels, “solar ready” at the time of construction or substantial repair, and to establish policy guidelines for the concept of “solar ready” in this context. Potential topics for the committee to discuss could include:

1. Formulating a set of design, engineering, and construction guidelines to make a Brookline municipal roof “solar ready”;
2. Determining or estimating the likely additional costs and future savings when making a new municipal roof “solar ready” at the time of new construction;
3. Determining or estimating the likely additional costs and future savings when making an existing municipal roof “solar ready” at the time of substantial renovation;
4. Considering the methods by which existing roofs might be made “solar ready” even if they are not ready for replacement and the likely costs of such projects
5. Comparing costs and benefits of a solar readiness program with the costs and benefits of other “green” programs.

The committee established by the Board of Selectmen and the Building Commission should include input from such Town staff, members of other Boards and Commissions, and people with expertise in the technical or financial aspects of solar panels and building projects as are necessary to address the questions set out herein.

No member shall be disqualified because she or he is not a resident of the Town.

The Committee should be established by March 31, 2013, and should report back to the Building Commission and to the Board of Selectmen no later than September 30, 2013.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND/DISCUSSION:

As originally proposed, this petitioned article seeks Town Meeting approval on a resolution to our Board of Selectmen, asking that they create a committee to study the potential costs and benefits of a policy requiring some or all Town-owned roofs to be made "solar ready" at the time of construction or substantial renovation.

Please note that the use of the word solar is actually referring to solar photovoltaic or the generation of electricity through means of solar power.

The article initially advocated the formation of the "Selectman's Municipal Solar Roofs Committee" consisting of nine members, including a member of the Board of Selectman, the Chair of the Advisory Committee, the Chair of the School Committee, the Chair of the Building Commission, two town staff members upon the recommendation of the town administrator, the Chair of the Climate Action Committee and two members at large with special consideration given to people with skills in either regulatory public policy and/or business expertise and relevant engineering or trade expertise. The proposal allowed all Chairs of Committees to delegate responsibility to nominees.

By the time Article 15 was discussed by the Advisory Committee, it had been amended (in draft form) to propose a study committee to be jointly formed by the Board of Selectmen and Building Commission. In the amended version, the original article's prescriptive language for the make-up of the committee has been modified and "responsibilities" of the committee have become proposed "topics" for the committee's consideration.

The Advisory Committee's discussion of Article 15 centered on a number of issues, including the use of photovoltaic panels on municipal roofs, the potential benefits of such use, the ever changing State Building Code, the difficulty in predicting what the technology may be in the future, the difficulty in identifying future costs, and many other items. There was also considerable dialogue as to the role of the Building Department and the Building Commission in energy conservation matters.

General consensus was reached on the desirability to generate electricity through solar photovoltaic methods on Town-owned buildings, provided a reasonable payback period for the installation of such technology is obtainable. This provision is important and similar to the Advisory Committee's Capital Subcommittee's review of requests for

replacement windows. New windows should meet certain payback requirements to be approved.

Despite the Advisory Committee's agreeing with the petitioner on the desirability of the Town's pursuing "Green" options, there was disagreement as to the advisability and appropriateness of setting up a new committee when the Town has a Building Department and Building Commission composed of building and design professionals, with the Commission not only charged with the stewardship of Town-owned properties but also required under the Town By-laws (Section 3.7.2 - "Project Procedures") to utilize environmental and sustainability goals and objectives including design and construction practices that explicitly consider Green Technologies, site selection, waste minimization, energy efficiency, water conservation, indoor environmental quality, and other environmental and health factors that may provide financial, environmental, and occupant health and productivity benefits.

Dan Bennett, our Building Commissioner stated, "pursuant to Town Bylaw 3.7, ...all projects are reviewed and evaluated to incorporate appropriate Green Considerations." The Commissioner is supportive of investigating alternative and renewable energy, green technologies and energy efficiencies for Town buildings and structures. The Building Commissioner stated in a recent memo to the Town Administrator that he believes solar photovoltaic panel installations can be investigated in conjunction with the Town's Roof Replacement Program.

The Advisory Committee believes that at the very least, it is appropriate to present the Building Commission with the opportunity to decide on how to best pursue the objectives of Article 15. This opportunity can be accomplished with a simple referral of the Article to the Commission and a request that it report back to Town Meeting next Spring. The Commission may very well decide that it would be best served by a study committee, but in arriving at such a conclusion via its own deliberations, the Commission would be afforded the autonomy and respect that the Advisory Committee believes it, as well as other Town citizen Boards and Commissions, merit.

Finally, the Advisory Committee makes two more observations. First, the Selectmen can establish a Municipal Solar Roofs Committee at any time, with or without Building Commission collaboration. If, however, Town Meeting is asked to become involved with such an effort through a warrant article, then it seems reasonable to request that the study committee's findings or recommendations be reported back to Town Meeting. Second, the Town, through the Building and Planning Departments and with the oversight of the Selectmen's Office, has started to investigate installing PV on at least five Town-owned sites already recommended by a consultant, as part of an MAPC solar initiative.

The Advisory Committee recognizes and applauds the high level of environmental stewardship the Town has shown through such examples as the adoption of hybrid vehicles, the creation of the Climate Action Committee, our Green Community status, and the adoption of Town by-law Section 3.7.2, among other examples, and it believes that the Town should continue to utilize all energy saving methods available, being

November 13, 2012 Special Town Meeting

15-10

mindful of the balance between capital expenditures and payback period.

RECOMMENDATION:

The Advisory Committee by a Vote of (14-3-0) recommends FAVORABLE ACTION on the following:

VOTED: To refer the subject matter of Article 15 to the Building Commission with the request that the Commission, a) review Sec 3.7.2 of the Town Bylaws and b) determine how to best incorporate consideration of solar-ready roofs, including a cost-benefit analysis, into the capital project review process; and c) report back to the next Annual Town Meeting.

XXX

ARTICLE 16

SIXTEENTH ARTICLE

Submitted by: Patricia Connors and Cornelia van der Ziel

To see if the Town will adopt the following resolution:

**Resolution Calling on Congress to End the War in Afghanistan,
Reduce the Military Budget and Bring Our Troops and Tax Dollars Home**

WHEREAS, the financial resources available for non-military use by governments at the local, county, state and federal levels in the United States are limited to a degree not seen for decades;

WHEREAS, the federal deficit is projected to be \$1.2 trillion in fiscal year 2012;

WHEREAS, U.S. military spending has more than doubled since 9/11 and military outlays in 2012 are expected to reach \$716 billion, up from \$294 billion in 2000;

WHEREAS, Congress has appropriated over \$571 billion for the war in Afghanistan since 2001—more than for World War II—including \$111 billion in fiscal year 2012, most of it borrowed against our national debt;

WHEREAS, according to the National Priorities Project, the taxpayers of Massachusetts and Brookline have paid \$17.4 billion and \$213.2 million, respectively, for the Afghanistan War since FY 2001;

WHEREAS, U.S. troops, including those from Brookline and other Massachusetts municipalities, have served valiantly in Afghanistan;

WHEREAS, over 2000 U.S. troops have been killed and over 17,000 wounded in the Afghanistan War according to the Department of Defense;

WHEREAS, thousands of civilians have been killed in this war, and the ongoing warfare poses great and unnecessary harm to the people of Afghanistan and Pakistan;

WHEREAS, since 2001, more U.S. soldiers have killed themselves than have been killed in the Afghanistan War, the suicide rate as of July, 2012 averaging one per day, and a high percentage of returning veterans suffer from physical and/or psychological wounds;

WHEREAS, a majority of Americans believe that we should not be at war in Afghanistan, a March, 2012 New York Times/CBS News poll showing more than two-thirds opposed;

WHEREAS, the US-led NATO military coalition is not scheduled to end its combat mission in Afghanistan until the end of 2014;

WHEREAS, under a July, 2012 agreement between the U.S. and Pakistan, NATO supply convoys have permission from Pakistan to cross its territory into Afghanistan until the end of 2015;

WHEREAS, the “Enduring Strategic Partnership Agreement,” executed between the U.S. and Afghanistan in May, 2012, leaves the way open for the U.S. to keep forces in Afghanistan until 2024;

Whereas, the U.S. government has spent more than \$20 billion training and equipping a nearly 340,000-member Afghan security force on the assumption that it will be strong enough to fight the Taliban on its own by the end of 2014 but attacks by Afghans on the NATO troops training them have escalated sharply in 2012, thereby raising questions as to the tenability of this NATO exit strategy;

WHEREAS, educational services, medical care, housing, other essential public services, infrastructure repairs and family and private sector financing throughout the Commonwealth of Massachusetts have been cut while our financial resources have been diverted from the constructive economy to the war in Afghanistan and to the general increase in the military budget;

NOW, THEREFORE, BE IT RESOLVED that the Town of Brookline calls on U.S. Senator John Kerry, U.S. Senator and Congressperson to:

- oppose further funding of the war in Afghanistan and take leadership in Congress to bring all of our troops, both combat and noncombat forces, safely home,
- substantially reduce overall military spending and redirect our federal tax dollars to the pressing educational, employment, health, housing, infrastructure, energy and environmental needs of our town, state and country,
- support federal funding for the over 2 million Iraq and Afghanistan war veterans—particularly the thousands who have come home disabled or otherwise physically or psychologically wounded—to ensure they receive health care, housing, jobs, education and other support services they deserve; and

BE IT FURTHER RESOLVED that Town officials shall notify the following of this action by Town Meeting: the President of the United States, Secretary of Defense, Secretary of State, Governor Deval Patrick, all U.S. senators and representatives from Massachusetts, and the Brookline TAB and major Boston-area newspapers and television stations.

or take any action relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The WHEREAS clauses speak for themselves and provide a complete explanation for the RESOLVED clauses.

SOURCES for WHEREAS clauses

the federal deficit is projected: <http://www.nytimes.com/2012/07/21/us/politics/in-black-liquor-a-cautionary-tale-for-deficit-reduction.html>

U.S. military spending: <http://www.usatoday.com/news/opinion/story/2012-08-02/defense-spending-budget-Pentagon/56721082/1>

Congress has appropriated: costofwar.com

more than for World War II: <http://www.fas.org/sgp/crs/natsec/RS22926.pdf>

most of it borrowed: costsofwar.org

according to the National Priorities Project, the taxpayers: costofwar.com

U.S. troops, including those from Brookline:
<http://www.brooklinepatch.com/articles/veteran-s-day-welcome-home-farewell-and-thank-you#photo-8416089>

over 2,000 troops: <http://www.nytimes.com/2012/07/21/us/us-military-deaths-in-afghanistan.html>; <http://www.defense.gov/news/casualty/pdf>

thousands of civilians: costsofwar.org

since 2001, more U.S. soldiers: Time Magazine, July 23, 2012, at 22

a majority of Americans: <http://www.nytimes.com/2012/03/27/world/asia/support-for-afghan-war-falls-in-us-poll-finds.html>

the US-led NATO military coalition: The Boston Globe, Aug. 1, 2012, at A5

under a July, 2012 agreement: The Boston Globe, Aug. 1, 2012, at A5, col. 6

the “Enduring Strategic Partnership Agreement,”:
<http://www.whitehouse.gov/sites/default/files/2012.06.01u.s.-afghanistanspasignedtext.pdf>

the U.S. government has spent:
<http://www.nytimes.com/aponline/2012/08/17/world/asia/ap-as-afghanistan.html?pagewanted=1&r=1&partner=rss&emc=rss>

attacks by Afghans on the NATO troops:

<http://washingtontimes.com/news/2012/aug/17/another-afghan-police-attack-kills-2-us-troops/print/>

MOTION OFFERED BY THE PETITIONERS

VOTED: That the Town adopt the following Resolution:

**Resolution Calling on Congress to End the War in Afghanistan,
Reduce the Military Budget and Bring Our Troops and Tax Dollars Home**

WHEREAS, the financial resources available for non-military use by governments at the local, county, state and federal levels in the United States are limited to a degree not seen for decades;

WHEREAS, the fiscal year 2012 federal deficit is \$1.3 trillion—the fourth consecutive year it has exceeded \$1 trillion—and the total national debt now exceeds \$16 trillion;

WHEREAS, U.S. military spending has more than doubled since 9/11 and military outlays in 2012 are expected to reach \$716 billion, up from \$294 billion in 2000;

WHEREAS, Congress has appropriated more than \$571 billion for the war in Afghanistan since 2001—more than for World War II—including \$111 billion in fiscal year 2012, most of it borrowed against our national debt;

WHEREAS, according to the National Priorities Project, the taxpayers of Massachusetts and Brookline have paid \$17.4 billion and \$213.2 million, respectively, for the Afghanistan War since FY 2001;

WHEREAS, U.S. troops, including those from Brookline and other Massachusetts municipalities, have served valiantly in Afghanistan;

WHEREAS, over 2000 U.S. troops have been killed and over 17,000 wounded in the Afghanistan War according to the Department of Defense;

WHEREAS, thousands of civilians have been killed in this war, and the ongoing warfare poses great and unnecessary harm to the people of Afghanistan and Pakistan;

WHEREAS, a high percentage of Iraq and Afghanistan war veterans suffer from severe physical and/or psychological injuries;

WHEREAS, a majority of Americans believe that we should not be at war in Afghanistan, a March, 2012 New York Times/CBS News poll showing more than two-thirds opposed;

WHEREAS, the US-led NATO military coalition is not scheduled to end its combat mission in Afghanistan until the end of 2014;

WHEREAS, under a July, 2012 agreement between the U.S. and Pakistan, NATO supply convoys have permission from Pakistan to cross its territory into Afghanistan until the end of 2015;

WHEREAS, the “Enduring Strategic Partnership Agreement,” executed between the U.S. and Afghanistan in May, 2012, leaves the way open for the U.S. to keep forces in Afghanistan until 2024;

WHEREAS, the U.S. government has spent more than \$20 billion training and equipping a nearly 340,000-member Afghan security force on the assumption that it will be strong enough to fight the Taliban on its own by the end of 2014 but attacks by Afghans on the NATO troops training them have escalated sharply in 2012, thereby raising questions as to the tenability of this NATO exit strategy;

WHEREAS, educational services, medical care, housing, other essential public services, infrastructure repairs and family and private sector financing throughout the Commonwealth of Massachusetts have been cut while our financial resources have been diverted from the constructive economy to the war in Afghanistan and to the general increase in the military budget;

NOW, THEREFORE, BE IT RESOLVED that the Town of Brookline calls on U.S. Senator John Kerry, U.S. Senator.... and U.S. Representative.... to:

- take leadership to oppose further funding of the war in Afghanistan except as needed to bring our troops safely home,
- substantially reduce overall military spending and redirect, as possible, these federal tax dollars to the funding of pressing educational, employment, health, housing, infrastructure, energy and environmental needs of our town, state and country and to the reduction of the federal debt,
- support federal funding for the over 2 million Iraq and Afghanistan war veterans—particularly the thousands who have come home disabled or otherwise physically or psychologically wounded—to ensure they receive health care, housing, jobs, education and other support services they deserve; and

BE IT FURTHER RESOLVED that Town officials shall notify the following of this action by Town Meeting: the President of the United States, Secretary of Defense, Secretary of State, Governor Deval Patrick, all U.S. senators and representatives from

Massachusetts, and the Brookline TAB and major Boston-area newspapers, television stations and radio stations.

SELECTMEN'S RECOMMENDATION

Article 16 is a petitioned article that asks Town Meeting to adopt a resolution regarding the war in Afghanistan, reducing the military budget, and bringing American troops and tax dollars back home. The Petitioners, in the "whereas" clauses, state that the United States has limited financial resources available for non-military use, has a \$1.3 trillion budget deficit, and continues to borrow resources for the war in Afghanistan that only increases the national debt. In addition, more than 2,000 American troops have been killed and more than 17,000 have been wounded, with many veterans suffering from severe physical and/or psychological injuries.

A majority of the Board agrees with the over-arching sentiment of the resolution: end the war and send our troops home. A by-product of that will be to improve the Country's budget / debt condition. Therefore, the Board recommend FAVORABLE ACTION, by a vote of 3-0-2 taken on October 23, 2012, on the vote offered by the Advisory Committee, which reflects the motion offered by the Petitioners.

ROLL CALL VOTE:

Favorable Action

Daly

Mermell

Goldstein

Abstain

DeWitt

Benka

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Warrant Article 16 calls on Congress to end the war in Afghanistan, reduce the military budget, and bring American troops and tax dollars home.

DISCUSSION:

The Petitioners offered the following reasons for support of their warrant article:

1) The country is deeply in debt as a result of the war in Afghanistan. Despite the fact that carrying out this war has increased our military budget from 294 billion dollars to over 700 billion and the fact that it is the longest war in our history, we

have not defeated the Taliban, which continues to recruit new adherents. Thus, we have no reason to believe that we will overcome them within the foreseeable future.

2) Continuing to fund the war will increase the annual budget deficit and our massive national debt. Ending the conflict will permit us to redirect funds currently spent on war to fund needed domestic programs and to reduce our national debt.

3) The war has not been funded through the usual budget process but through separate appropriations and has led to the current budget crisis in which the country must consider reducing spending on much needed domestic budget items in order to continue to fund the war in Afghanistan.

4) The U.S. didn't/couldn't accomplish the goals of defense and increased democracy in Afghanistan in 11 years of involvement there. How much longer are we going to try?

5) The Taliban was at its weakest two years after our invasion of Afghanistan. Nine years later, the country's government is corrupt, the Taliban has substantially increased in strength, our soldiers are at greater risk from members of the forces they are training and working alongside. Thus the risk from our continued presence seems greater than the risk from leaving. Working toward a political solution is the only way to go.

Some committee members said that concerns about the exact meaning and consequences of immediate and total withdrawal made them reluctant to support the warrant article and asked the following questions:

1) Does "no presence" mean: total, unequivocal disengagement, including withdrawal of the U.S. soldiers whose role is to train the Afghan army?

2) Does early withdrawal run the risk of repeating past errors: e.g., the U.S. supplied arms to the Taliban, to fight the Russians in Afghanistan. After the Russians had been expelled, the U.S. offered no help in developing a stable, democratic government, leaving the Taliban in control of much of the country. Given the results of the past policy of "total disengagement", would reinstating such a policy now protect the interests and safety of the U.S.?

3) Might a withdrawal earlier than the one scheduled for 2014 be disadvantageous to the U.S., perhaps increasing risks to soldiers and civilians? How might this compare to the consequences of our hasty withdrawal from Vietnam (which, in contrast to Afghanistan, had a strong central government)?

RECOMMENDATION:

The following amendments to the warrant article were offered by members of the Advisory Committee:

1) In the fourth “Whereas” clause to substitute “more than” for “over”, so that the clause reads “WHEREAS Congress has appropriated more than \$571 billion for the war in Afghanistan...” and

2) Under “NOW BE IT RESOLVED”, to substitute “U.S. representative” for “Congressperson”.

Both proposed changes passed by a vote of 16 in favor, 1 opposed, and 1 abstaining.

An additional amendment to add “radio stations” to the list of those to be notified of passage of the warrant article was passed by a vote of 16 in favor, 1 opposed, and 3 abstaining.

While much time and effort can be expended debating the fine points and wording of this, or any, resolution; the intent is a statement of purpose.

The Advisory Committee, by a vote of 16 in favor, 1 opposed and 3 abstaining, recommends FAVORABLE ACTION on the following amended resolution, which is the motion offered by the Petitioners:

VOTED: That the Town adopt the following Resolution:

**Resolution Calling on Congress to End the War in Afghanistan,
Reduce the Military Budget and Bring Our Troops and Tax Dollars Home**

WHEREAS, the financial resources available for non-military use by governments at the local, county, state and federal levels in the United States are limited to a degree not seen for decades;

WHEREAS, the fiscal year 2012 federal deficit is \$1.3 trillion—the fourth consecutive year it has exceeded \$1 trillion—and the total national debt now exceeds \$16 trillion;

WHEREAS, U.S. military spending has more than doubled since 9/11 and military outlays in 2012 are expected to reach \$716 billion, up from \$294 billion in 2000;

WHEREAS, Congress has appropriated more than \$571 billion for the war in Afghanistan since 2001—more than for World War II—including \$111 billion in fiscal year 2012, most of it borrowed against our national debt;

WHEREAS, according to the National Priorities Project, the taxpayers of Massachusetts and Brookline have paid \$17.4 billion and \$213.2 million, respectively, for the Afghanistan War since FY 2001;

WHEREAS, U.S. troops, including those from Brookline and other Massachusetts municipalities, have served valiantly in Afghanistan;

WHEREAS, over 2000 U.S. troops have been killed and over 17,000 wounded in the Afghanistan War according to the Department of Defense;

WHEREAS, thousands of civilians have been killed in this war, and the ongoing warfare poses great and unnecessary harm to the people of Afghanistan and Pakistan;

WHEREAS, a high percentage of Iraq and Afghanistan war veterans suffer from severe physical and/or psychological injuries;

WHEREAS, a majority of Americans believe that we should not be at war in Afghanistan, a March, 2012 New York Times/CBS News poll showing more than two-thirds opposed;

WHEREAS, the US-led NATO military coalition is not scheduled to end its combat mission in Afghanistan until the end of 2014;

WHEREAS, under a July, 2012 agreement between the U.S. and Pakistan, NATO supply convoys have permission from Pakistan to cross its territory into Afghanistan until the end of 2015;

WHEREAS, the “Enduring Strategic Partnership Agreement,” executed between the U.S. and Afghanistan in May, 2012, leaves the way open for the U.S. to keep forces in Afghanistan until 2024;

WHEREAS, the U.S. government has spent more than \$20 billion training and equipping a nearly 340,000-member Afghan security force on the assumption that it will be strong enough to fight the Taliban on its own by the end of 2014 but attacks by Afghans on the NATO troops training them have escalated sharply in 2012, thereby raising questions as to the tenability of this NATO exit strategy;

WHEREAS, educational services, medical care, housing, other essential public services, infrastructure repairs and family and private sector financing throughout the Commonwealth of Massachusetts have been cut while our financial resources have been diverted from the constructive economy to the war in Afghanistan and to the general increase in the military budget;

NOW, THEREFORE, BE IT RESOLVED that the Town of Brookline calls on U.S. Senator John Kerry, U.S. Senator.....and US Representativeto:

- take leadership to oppose further funding of the war in Afghanistan except as needed to bring our troops safely home,
- substantially reduce overall military spending and redirect, as possible, these federal tax dollars to the funding of pressing educational, employment, health,

November 15, 2011 Special Town Meeting

16-10

housing, infrastructure, energy and environmental needs of our town, state and country and to the reduction of the federal debt,

- support federal funding for the over 2 million Iraq and Afghanistan war veterans—particularly the thousands who have come home disabled or otherwise physically or psychologically wounded—to ensure they receive health care, housing, jobs, education and other support services they deserve; and

BE IT FURTHER RESOLVED that Town officials shall notify the following of this action by Town Meeting: the President of the United States, Secretary of Defense, Secretary of State, Governor Deval Patrick, all U.S. senators and representatives from Massachusetts, and the Brookline TAB and major Boston-area newspapers, television stations and radio stations.

XXX

ARTICLE 17

SEVENTEENTH ARTICLE

Reports of Town Officers and Committees

SELECTMEN'S CLIMATE ACTION COMMITTEE REPORT TO TOWN MEETING FALL 2012

I. INTRODUCTION

The Selectmen's Climate Action Committee (CAC) was established in 2008 by the Board of Selectmen, 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. The committee organizes itself into working subcommittees when needed, as they 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

Improving Residential Energy Efficiency through Green Homes Brookline

- *Outreach Success:* With the partnership support of Climate Action Brookline and energy services company Next Step Living, the CAC and the Department of Planning & Community Development saw a substantial increase in the number of Brookline homes having energy assessments and being weatherized through the Green Homes Brookline program. As of 9/30/2012, 1,224 energy assessments and 258 weatherizations (up from 383 assessments and 24 weatherizations as of 9/30/2011) of Brookline homes have been scheduled or completed, surpassing the program's original goal of reaching at least 1,000 homes. This increase can be attributed to both a significant outreach push by Climate Action Brookline and Next Step Living, as

well as the establishment of a deadline for fund availability for Green Homes Brookline.

- *Program Transition:* Staff is working on transitioning the program from one that was funded by the federal Energy Efficiency and Conservation Block Grant (EECBG) program, which expired at the end of September 2012, to one that markets the Mass Save program with no additional subsidy, at least until other funds can be located and secured. Green Homes Brookline encourages all Brookline residents, regardless of housing tenure, to obtain no-cost energy assessments of their homes and, when there is opportunity, weatherize those homes. When EECBG funds were available, energy improvements for households earning between 60% and 120% of area median income were partially subsidized.

Completion of the EECBG Program for the Town of Brookline

- The Town's Energy Efficiency and Conservation Block Grant (EECBG) program was completed on time and under budget. The grant, which funded several different programs (Appendix 3), including Green Homes Brookline, had a final end date of September 27, 2012. The town was successful in spending nearly all of the \$494,400 in grant funds, excepting \$5,407, which was left over after a portion of the LED streetlight replacement project came in below the originally estimated costs. Town staff continues to comply with the reporting requirements to the appropriate federal entities.

Finalizing a New Local Climate Action Plan

- The committee continued the development and finalization of a new Climate Action Plan, available for public viewing and comment in a wiki form on www.brooklinema.gov/cap.
- Hosted a public hearing in April 2012 to gather input from the community regarding the plan's proposed actions.
- Voted to adopt the final Climate Action Plan in September 2012, with plans to bring the final product to the Board of Selectmen for formal adoption late 2012. Despite voting on a "final" Climate Action Plan, the committee emphasizes that the plan's format as a wiki is meant to underscore the plan as a "living document" that can be edited at will and as needs arise.
- *Transition from Plan Development to Plan Implementation:* The committee will now work on those Climate Action Plan actions that have associated liaisons to provide implementation support and perform necessary research and analysis to achieve results. The committee expects to facilitate communication between interested residents and groups on actions listed in the plan, as well as seek out new participants interested in working on climate action activities.

Engaging Residents through Second Annual Climate Week

- The second annual Climate Week was held on the fourth week of January this year. A number of events were held jointly, and the event was co-sponsored by the CAC, CAB, Brookline School Committee, Brookline Department of Public Health, and Brookline Adult and Community Education. Numerous businesses and town departments collaborated in creating special events, including a very popular Winter Market. All events helped to inform and encourage climate-friendly behavior.
- Planning for the third annual Climate Week, to be held from January 26, 2013, to February 3, 2013, has already begun.

Maintaining Green Community Status

- In cooperation with town staff, the Town attained “Green Community” status in 2011, which affirms and publicizes the commitment of the town to sustainability, and qualifies the town to apply for additional funding opportunities for renewable energy or energy efficiency projects. This designation must be maintained by continuing to satisfy the Green Community requirements (Appendix 4), including ensuring the town’s fuel efficient vehicle purchasing policy is followed and that progress is made on the adopted Municipal Energy Reduction Plan.

Strengthening Community Partnerships

- Continued and strengthened a close working relationship with Climate Action Brookline (CAB, formerly known as CCAB). Joint initiatives include Green Homes Brookline and Climate Week.
- Served in an 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 CAB, 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. Bring the finalized Climate Action Plan to the Board of Selectmen for formal adoption, and provide support to groups and residents working on activities listed in the new plan. As implementation of the plan proceeds, refine greenhouse gas reduction estimates. The plan identifies clear, achievable actions to reduce the town’s overall greenhouse gas emissions. These actions provide a road map and policy framework for the committee as it moves forward.

2. Collaborate with CAB on community education and engagement activities to promote lifestyle changes that lead to greenhouse gas reduction.
3. Monitor and support the Green Homes Brookline Program, as it transitions from a program with federal funding to one without, as well as work to expand its focus to include large condominium and apartment buildings.
4. Collaborate with CAB to organize and run Climate Week, to be held January 26, 2013, to February 3, 2013, as well as other events that are part of CAB's public education campaign when needed.
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 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 Action Brookline
Werner Lohe	Conservation Commission
Patricia Maher	Department of Public Health
Linda Pehlke	Brookline Neighborhood Alliance
Ali Tali	Transportation Board
Ben Chang	School Committee
Dan Bennett	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. EECEBG Program

The Department of Energy approved the Town's proposal to use Energy Efficiency and Conservation Block Grant (EECEBG) monies on the following projects:

- Install energy efficiency improvements in several municipal buildings;
- Three LED street light pilot projects, two in residential neighborhoods and one in Brookline Village along Harvard Street;
- Establish Green Homes Brookline, a residential energy efficiency program to provide energy assessments and improvements for Brookline homes;
- Provide supporting funds to CAB for a public education campaign.

This grant ended September 27, 2012, at which point all monies, except for \$5,407 leftover as the last LED streetlight project came in under budget, were expended.

4. 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.

5. 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. 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.

Brookline's Community Greenhouse Gas Emissions Totaled 520,000 Tons CO₂ for CY2008

Brookline's community greenhouse gas emissions (Table 1 and Figure 1) have been steady at roughly 520,000 tons of CO₂ 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 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.

CO₂ 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

In 2008, Brookline's average residential carbon footprint was about 31,000 pounds of CO₂ per year. The average US household had a carbon footprint of 46,000 pounds of CO₂ 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, CO₂ emissions from personal air travel were not included.

Brookline's average commercial carbon footprint was 162,000 pounds of CO₂ per year in 2008, excluding air travel.

Table 1 **Greenhouse Gas Emissions**
CO₂e, 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**
CO₂e, 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

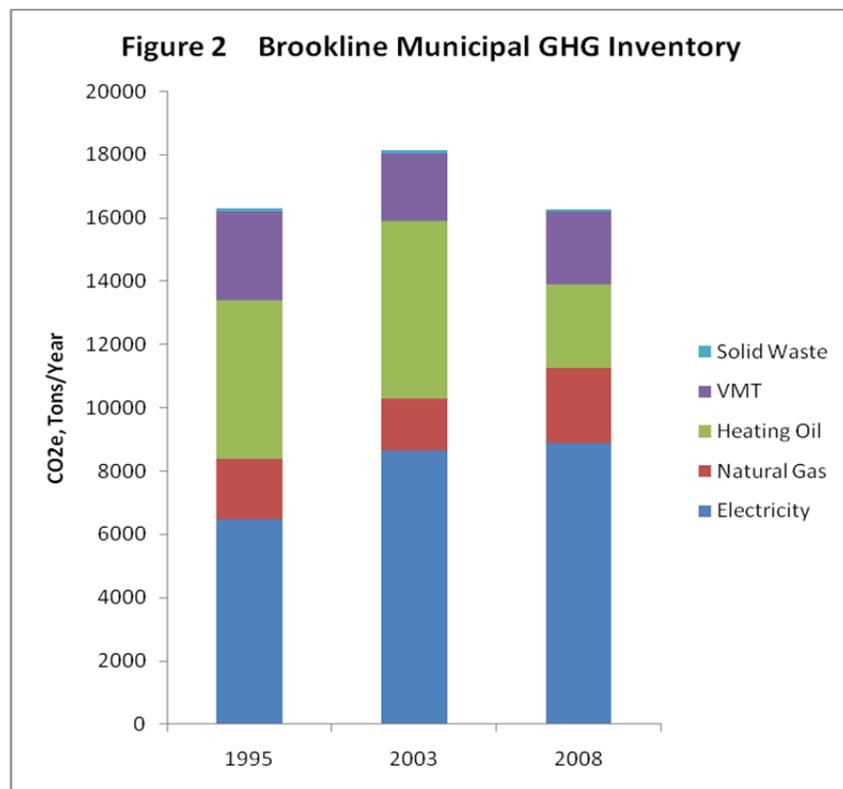
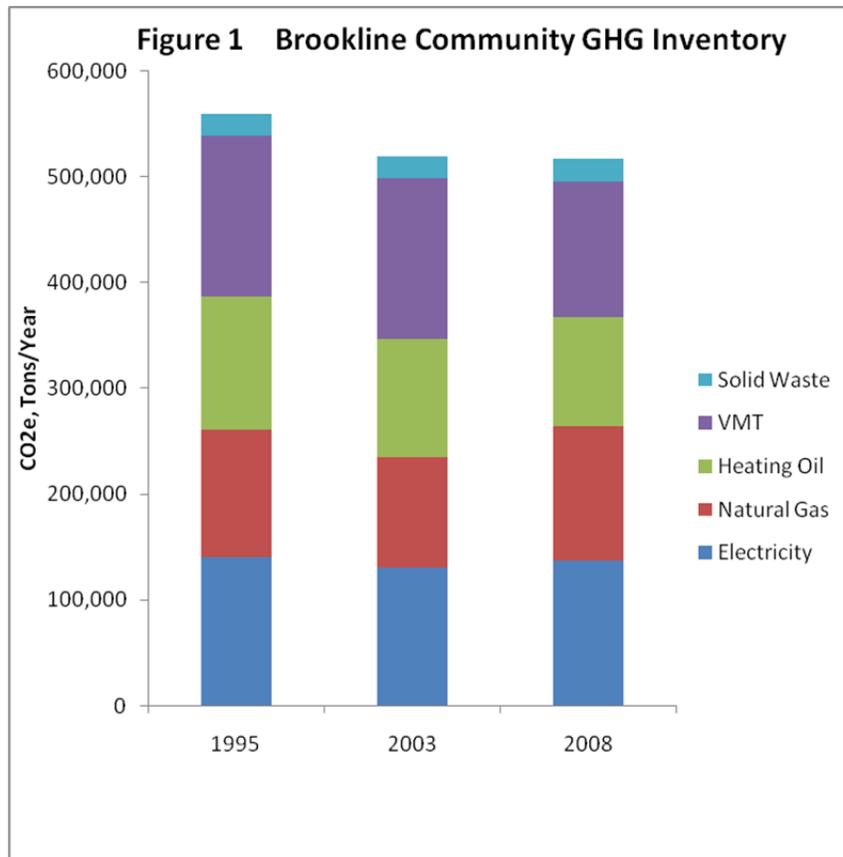
	CO ₂ e, Tons/Year
Electricity	75,688
Natural Gas	89,812
Heating Oil	81,071
Gasoline/Diesel	139,156
Solid Waste	14,176
Total	399,901
Number of Households	25,573
Pounds CO ₂ /Household/Year	31,275

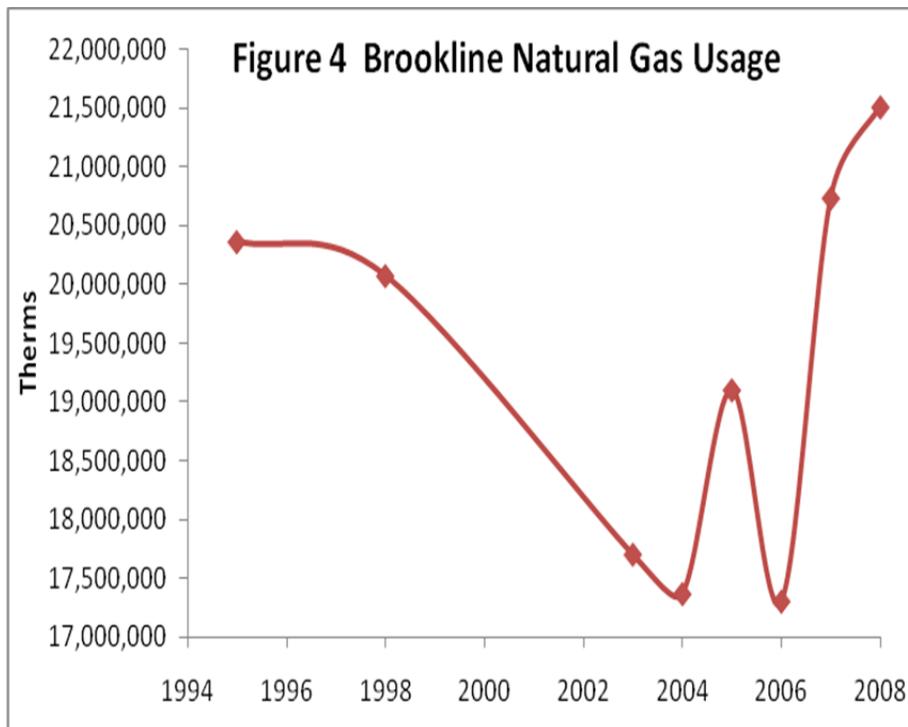
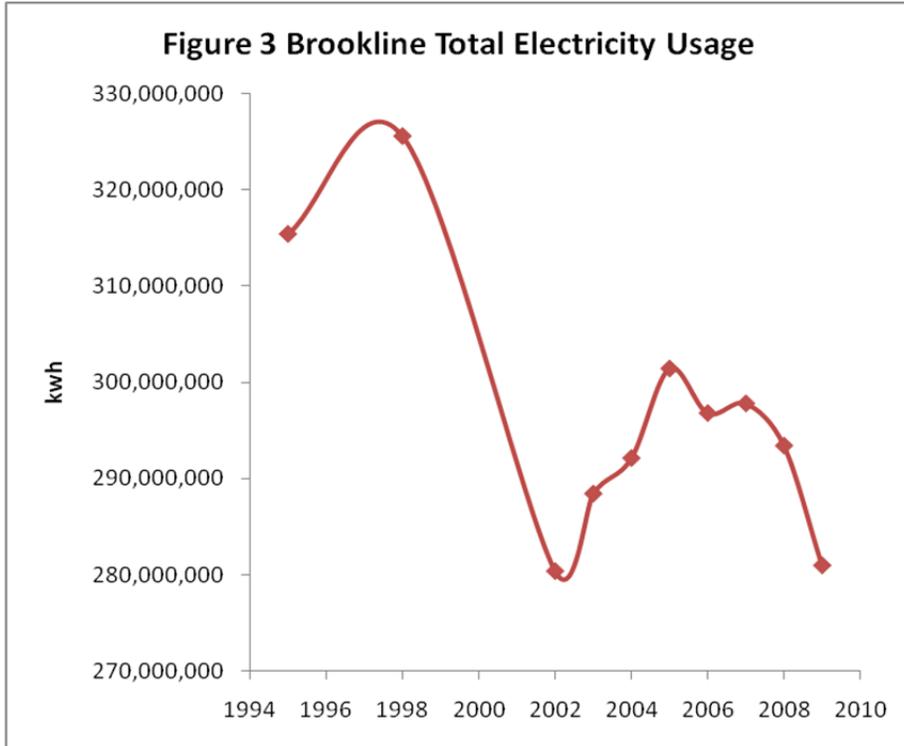
Table 5 Brookline's Commercial Carbon Footprint - 2008

	CO ₂ e, 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 ₂ e, Tons/Year
Electricity	8,901
Natural Gas	2,357
Heating Oil	2,629
Gasoline/Diesel	2,305
Solid Waste	90
	16,282





MODERATOR'S COMMITTEE ON PUBLIC HEARINGS

REPORT TO TOWN MEETING

October 25, 2012

Executive Summary

The Moderator's Committee on Public Hearings recognizes the importance of public hearings in the Town of Brookline's consideration of Warrant Articles. The committee recommends that Section 2.5.2 of the Town By-Laws be amended to require the Advisory Committee (or a subcommittee of the Advisory Committee) and the Board of Selectmen hold at least one public hearing on any Article on the Warrant before voting on that Warrant Article. The committee recommends that the Board of Selectmen adopt a policy that would require all committees that it appoints to hold at least one public hearing before voting on a Warrant Article. Other appointing authorities and independent committees should adopt similar policies. The committee also recommends that Town Counsel explain the guidelines and procedures for conducting a public hearing as part of the training sessions for Town officials, that the Town website offer more accessible information on the public hearings to be held on Warrant Articles, and that Town committees consider holding combined hearings when appropriate.

INTRODUCTION

The Moderator's Committee on Public Hearings was established after the May 2012 Annual Town Meeting voted to refer Article 9 to a Moderator's Committee and asked that the Committee report before the November 2012 Special Town Meeting. Article 9 of the May 2012 Annual Town Meeting would have required all Town committees as defined in section 1.1.4 of the Town's by-laws (i.e. all Town boards, commissions, committees, councils, and trustees) to hold at least one public hearing prior to taking a vote with respect to an article on the Warrant. The petitioners of Article 9, Jonathan Davis and Regina Frawley, placed that article on the Warrant because they were concerned that the Board of Selectmen were no longer holding public hearings on all Warrant Articles and that other Town committees also were not properly conducting public hearings.

SUMMARY OF MEETINGS

The Committee held multiple meetings and one public hearing:

- June 21, 2012: Organizational meeting that included the Moderator's charge to the committee, election of Sean Lynn-Jones as chair and Donna Kalikow as secretary, and discussion of the committee's schedule and agenda.

- July 12, 2012: Meeting with Town Counsel and the chairs of the Board of Selectmen, Advisory Committee, Conservation Commission, and Preservation Commission. Town Counsel explained that “public hearing” is not defined in Massachusetts state law. Each chairperson present explained when and how his or her board, commission, or committee held public hearings. The chairs of the Preservation and Conservation Commissions explained that some of their hearings were required by state law, as are hearings of the Planning Board on zoning amendments.
- July 19, 2012: Discussion of the benefits of public hearings and options available to the committee, which range from doing nothing to recommending a by-law amendment. Mr. Leary circulated a draft policy that might be adopted by the Selectmen. An alternative to a by-law, such a policy would require all committees appointed by the Selectmen to hold a public hearing before taking a vote with respect to a Warrant Article.
- August 27, 2012: Public hearing attended by six Brookline residents and Town Counsel. Article 9 from the May 2012 Annual Town Meeting was distributed at the hearing, along with background information on the Moderator’s Committee, an explanation of the difference between the terms public hearing, public comment, and public meeting, and a list of questions considered by the committee: Should Town committees be required to hold public hearings on Warrant Articles? Is a Town By-Law amendment necessary? Should any requirement apply to some or all Town committees? Could a hearing by a subcommittee satisfy any requirement?
- September 12, 2012: Consideration of and votes on potential recommendations. The committee considered and debated various proposals, including a by-law amendment that would require all Town committees to hold at least one public hearing before taking a vote on a Warrant Article and a by-law that would only require Town committees to inform Town Meeting whether or not they had held a public hearing. The committee voted 5–0 to recommend a by-law amendment that would require the Advisory Committee (or a subcommittee of the Advisory Committee) and the Board of Selectmen to hold at least one hearing on each Warrant Article before taking a vote. The committee also recommended that the Board of Selectmen adopt a policy that would require all the committees that it appoints to similarly hold at least one public hearing on any Warrant Article on which the committee takes a vote. These and other recommendations are explained more fully below.
- October 25, 2012: Approval of the committee’s report

The minutes of the meetings are posted on the Town website. To view them, click on “Boards/Commissions” at www.brooklinema.gov and then on the listing for Moderator’s Committee on Public Hearings.

http://www.brooklinema.gov/index.php?option=com_content&view=article&id=1409:moderators-committee-on-public-hearings&catid=326:boards-appointd-by-selectmen&Itemid=1641

In the course of the meetings listed above, the Moderator's Committee gathered information first and only then turned to concrete proposals and decided on its recommendations. With the help of the office of the Town Administrator, the committee solicited comments from chairs and other members of Brookline Town committees. The committee received comments from the public at the August 27 public hearing and via email.

COMMENTS RECEIVED IN WRITING AND AT THE PUBLIC HEARING

The Moderator's Committee invited chairs and members of Town committees to respond to the following four questions: (1) Does the committee take votes on Warrant Articles? (2) What procedures does the committee follow when deciding to vote on a Warrant Article and in conducting the vote? Does it hold a public hearing? (3) How would the committee be affected by a requirement that all committees hold public hearings prior to taking a vote on a Warrant Article? (4) Would the committee chair, members, or staff like to offer any comments regarding the question of holding public hearings on Warrant Articles?

The committee received many comments, which are posted on the Town website in the "Boards/Commissions" category. Several committee chairs expressed concern that holding a public hearing would be time-consuming and might create additional requirements for public notice. A few questioned whether a public hearing was necessary if a committee (e.g. the Advisory Council on Public Health) was providing expert advice. The School Committee pointed out that it would prefer to have a subcommittee hold any required public hearing prior to a vote on a Warrant Article by the full School Committee. The Planning Board reported that its practice is to hold a public hearing on zoning by-law amendments before voting and reporting to Town Meeting. The Moderator affirmed that he asks all Moderator's Committees to hold at least one public hearing.

The committee held a public hearing on August 27, 2012. At the hearing, a written explanation of the issues and choices confronting the committee was circulated. A copy is appended to this report as Appendix 1.

As the minutes posted on the Town website indicate, members of the public who attended the August 27 public hearing strongly supported requiring Town committees to hold public hearings on Warrant Articles.

ISSUES AND DISCUSSIONS

What is a Public Hearing?

Massachusetts law does not define “public hearing” but the distinguishing feature of a public hearing is that all members of the public who attend will be accorded a right to speak. The precise time limits and procedures will vary.

It is important to distinguish a public hearing from a public meeting or an opportunity for public comment. A public meeting is a meeting that is open to the public, but members of the public are not guaranteed an opportunity to speak. Public comment often refers to a period at or near the beginning of a meeting during which members of the public may comment on any topic, including items that are not on the agenda. It also may mean that the public can comment on the topic under discussion, but without a guarantee that all members of the public will have an opportunity to speak.

Is it Necessary to Define “Public Hearing” in the Town By-Laws?

The committee decided not to offer a legal definition of “public hearing” or to include such a definition in its proposed by-law amendment. After consulting with Town Counsel, the Moderator’s Committee realized that such a definition was unnecessary: the defining feature of a public hearing is that all members of the public in attendance are given an opportunity to speak. The precise format and procedure may vary. Town Counsel can provide guidelines and advice to Town committees.

Article 9 from the May 2012 Annual Town Meeting and Article 5 from the November 2012 Special Town Meeting both refer to a “non-adjudicatory public hearing” in order to distinguish hearings on Warrant Articles from adjudicatory public hearings on personnel, licensing, and disciplinary questions. The Moderator’s Committee felt that the context of the by-law to be amended by Article 4 made it clear that the mandated public hearings would be non-adjudicatory.

Is it Difficult to Hold a Public Hearing?

Some members of Town committees wondered whether it would be complicated or time-consuming to hold a public hearing prior to taking a vote. At the August 27 public hearing, Town Counsel emphasized that the requirements for posting notice for a public hearing were the same as for a public meeting. In each case, the committee must post notice 48 hours in advance.

To be sure, it might take longer to hold a public hearing than to conduct a public meeting with limited or no public comment, but efficiency is not the only goal of democratic processes. Moreover, committees can adopt procedures to limit the length of a public hearing, such as asking groups to designate a spokesperson, imposing reasonable time limits, and asking speakers to avoid repetition. The petitioners of Article 9 from the May 2012 Annual Town Meeting (and Article 5 of the November 2012 Special Town Meeting), Mr. Davis and Ms. Frawley, graciously shared with the committee New Hampshire and Washington state documents on how to run a smooth public hearing.

The Need for Public Hearings

The Moderator's Committee recognizes that public hearings are an essential part of the democratic process of government in Brookline. Public hearings are one of the primary ways in which Brookline residents can make themselves heard. Committees should listen to public input before making decisions. Public hearings often provide new information and perspectives. Preventing or severely limiting public input sends precisely the wrong signal. Town policy should encourage an active and engaged citizenry.

RECOMMENDATIONS

***Recommendation 1:** Amend Section 2.5.2 of the Town's General By-Laws to Require the Board of Selectmen and the Advisory Committee (or a Subcommittee of the Advisory Committee) to Hold at Least One Public Hearing before Taking a Final Vote on any Article in the Warrant.*

At its September 12, 2012 meeting, the Moderator's Committee on Public Hearings voted 5-0 to recommend the following By-Law amendment:

To see if the Town will amend the General By-Laws as follows:

By inserting the following sentence immediately after the first sentence in Section 2.5.2 of Article 2.5 (addition in bold):

SECTION 2.5.2 COMBINED REPORTS

The explanation and relevant data submitted by the petitioners for a petition article shall be included, together with article, in the combined reports. **The Board of Selectmen and the Advisory Committee (or a subcommittee of the Advisory Committee) shall hold at least one duly noticed public hearing prior to a final vote of the Board of Selectmen or the Advisory Committee, as the case may be, on any article in the Warrant.** The Board of Selectmen and the Advisory Committee shall prepare written reports, stating their recommendations and the reasons therefor, for all articles in the Warrant for a Town Meeting. The reports shall be included in the combined reports to be delivered or mailed as follows:

Or act on anything relative thereto.

This Article was placed on the Warrant for the November 2012 Special Town Meeting as Article 4.

The Advisory Committee subsequently voted to amend the Warrant Article (a) to make it clear that only the Advisory Committee—not the Board of Selectmen—could hold a subcommittee hearing to satisfy the requirement that at least one public hearing be held, and (b) to make it clear that the Selectmen and the Advisory Committee each must hold a

separate public hearing instead of attempting to satisfy the by-law's requirement by holding a joint public hearing.

At its October 23, 2012 meeting, the Advisory Committee voted 25–0 to recommend Favorable Action on a motion to insert the following amended sentence into Section 2.5.2 (additions in **bold**):

The Board of Selectmen and the Advisory Committee (or **in the alternative to the full Advisory Committee** a subcommittee of the Advisory Committee) **each** shall hold at least one duly noticed public hearing prior to a final vote of the Board of Selectmen or the Advisory Committee, as the case may be, on any article in the Warrant.

The Moderator's Committee regards the Advisory Committee motion as consistent with the intent of the Moderator's Committee and the new language serves to clarify the by-law amendment.

Explanation of the Proposed By-Law Amendment

The Moderator's Committee concluded that a by-law requiring at least one public hearing before voting on a Warrant Article should apply to the Board of Selectmen and the Advisory Committee, for the following reasons.

First, the Committee recognized that public hearings can provide valuable information during the consideration of Warrant Articles. Members of the public who are not Town Meeting Members rarely address Town Meeting, so the consideration of Warrant Articles by the Selectmen and Advisory Committee prior to Town Meeting is an important opportunity for public input.

Second, for many years it has been the practice of the Board of Selectmen and the Advisory Committee (or a subcommittee of the Advisory Committee) to hold one or more public hearings on articles that have been placed on the Warrant. Amending the Town's By-Laws to require such public hearings would codify that practice and ensure that it continues.

Third, the Board of Selectmen and the Advisory Committee present the overwhelming majority of written reports to Town Meeting. They are already required by Town By-Law to make recommendations to Town Meeting. They are thus in a different category than the other committees that sometimes make recommendations to Town Meeting. It is particularly important that the Selectmen and Advisory Committee conduct public hearings on Warrant Articles. Public input at such public hearings may have a very significant impact on the recommendations in the Combined Reports that Town Meeting Members read and consider.

The amendment is to Section 2.5.2, because that is where the Town By-Laws address the Combined Reports, and such hearings have traditionally been part of the process of

preparing the recommendations of the Selectmen and the Advisory Committee for the Combined Reports.

The by-law amendment would allow the Advisory Committee to satisfy the requirement of a public hearing by having one of its subcommittees hold a public hearing. This provision recognizes that the practice of the Advisory Committee has been to have its subcommittees hold public hearings on Warrant Articles. Given the size of the Advisory Committee (20–30 members), subcommittee hearings generally offer a more effective forum for interaction between the public and members of the Advisory Committee. The Moderator’s Committee did not think the same logic applies to the Board of Selectmen, which has only five members and has traditionally not divided into subcommittees to hold public hearings.

Recommendation 2: Policy on Public Hearings by Other Town committees

Although the Moderator’s Committee is recommending a by-law that requires only the Selectmen and the Advisory Committee to hold public hearings on Warrant articles, the committee recognizes that it would be valuable for other committees to hold public hearings. Such hearings can provide important information and holding them reaffirms the very important democratic principle that the public’s input matters. The elected and appointed officials of the Town of Brookline should make it clear that public input is welcome and encouraged.

The Moderator’s Committee concluded, however, that Town committees other than the Selectmen and Advisory Committee should not be required by by-law to hold public hearings before taking a vote on a Warrant Article. As noted above, the Selectmen and Advisory Committee make the overwhelming majority of recommendations to Town Meeting and are thus in a different category than every other Town committee. (Some committees, such as the Planning Board and Preservation are required by state law to hold public hearings and to report to Town Meeting on certain topics, but they rarely report on other Warrant Articles.)

Instead of a by-law, a standing policy could require other Town committees to hold public hearings before taking a vote on a Warrant Article. A standing policy could be changed more rapidly than a by-law and this flexibility may prove useful if some Town committees can persuasively demonstrate that it is not always appropriate to hold a public hearing on a Warrant Article. (Members of, for example, the Advisory Council on Public Health and the Human Resources Board made such arguments to the Moderator’s Committee.) Many such standing policies and practices currently operate successfully in Brookline. For example, the practice of notifying a petitioner when the Board of Selectmen plans to consider his or her Warrant Article was established by an August 30, 2006 memorandum of the Town Administrator, not by by-law.

The Moderator’s Committee therefore recommends that the Selectmen adopt a standing policy that would require committees that they appoint to hold at least one public hearing

prior to taking a vote on any article included in the Warrant. Such a policy might take the following form:

Standing Policy of the Board of Selectmen with respect to
Public Hearings on Warrant Articles

Before taking a vote expressing an opinion or recommendation on any article included in the Warrant for any Town Meeting, the Board of Selectmen and any of the Boards, Committees or Commissions as defined in Section 1.1.4 of the Town's General By-Laws, that are appointed by the Board of Selectmen, shall hold at least one non-adjudicatory public hearing on the subject matter. Notice of the hearing shall be satisfied by including it as a public hearing on the meeting notice and agenda as required for meetings under the requirements of the Open Meeting Law, G.L.c.30A, §18 et seq. Town Counsel shall issue general guidelines for the conduct of such hearings. Any Board, Commission, or Committee unfamiliar with conducting a public hearing should consult with Town Counsel.

The failure to comply with this policy shall not affect the legality of any Town Meeting action.

Appendix 2 includes a list of committees appointed by the Board of Selectmen.

The Moderator's Committee recommends that other appointing authorities, including the Moderator, and elected committees adopt similar standing policies and urges the Board of Selectmen to encourage such authorities and committees to do so.

If the use of standing policies to encourage Town committees to hold public hearings on Warrant Articles turns out to be problematic, Town Meeting could revisit the issue and consider amending the Town By-Laws to require additional Town committees to hold public hearings.

Recommendation 3: Training Elected and Appointed Officials on How to Hold Public Hearings

Because there is some confusion and uncertainty about what a public hearing entails, the Committee recommends that Town Counsel offer guidelines for conducting public hearings as part of the mandatory educational training for all elected and appointed officials.

Such guidelines would include the requirement that proper notice of any public hearing be provided under Section 3.21.3a of the Town By-Laws, as well as guidelines for conducting the public hearing. Draft Guidelines prepared for the Board of Selectmen on May 2, 2012 illustrate what might be included in such guidelines:

Guidelines for Conducting a Non-adjudicatory Public Hearing

The purpose of the public hearing is to invite members of the public to comment, both in favor or opposed, on the topic of the Warrant Article. It is recommended that the hearing begin with a presentation by either the petitioner or a committee member or staff, giving an overview of the Article. The process should be informal, clear and fair.

The chairperson should state the ground rules before proceeding. A sign-up sheet for speakers will help manage the process. The total time allowed for the topic may be limited, and time limits may be set for each speaker, usually 3–5 minutes. Speakers may be requested not to repeat previous comments and to keep to the subject of the Article. Large groups advocating for the same position may be asked to select several representative spokespersons. If the topic is controversial, with many individuals wishing to speak, a speaker’s list indicating in favor or opposed should be kept and speakers recognized first, in order of signing, then alternately from proponents and opponents.

Recommendation 4: Improving Information on the Schedule for Public Hearings

Many Brookline residents complain that the process by which the Town considers Warrant Articles is complicated and confusing. Multiple committees often hold hearings or other meetings on a Warrant Article before Town Meeting votes. For example, a zoning by-law amendment might be considered by the Zoning By-Law Committee, the Planning Board, the Planning and Regulation Subcommittee of the Advisory Committee, and the Board of Selectmen. Each these Town committees might hold several meetings and vote more than once. Citizens may feel overwhelmed by the number of hearings and meetings and are often unsure whether they have presented their positions to all the appropriate committees.

Although it is the practice of the Advisory Committee and Board of Selectmen to notify the petitioner of a Warrant Article when that Article is scheduled to be considered, other citizens who wish to speak for or against a Warrant Article rarely receive such notifications.

Any citizen who wishes to speak at a public hearing must use the Town Calendar to determine which, if any, Town committees will hold public hearing, and when such hearings will be held. This is a cumbersome process, because most citizens will not know which Committees are likely to hold hearings on a particular Warrant Article. He or she will have to click on multiple committee meetings on various dates to find any hearings on a given Warrant Article.

The Moderator’s Committee therefore recommends:

- (a) that the “Town Meeting” page of the Town website include a prominent subsection called “Public Hearings and Other Meetings on Warrant Articles”;
- (b) that such a subsection include a complete list of all public hearings and meetings held by Town committees on each Warrant Article, updated as soon as hearings

- and meetings are posted on the Town Calendar and accessible to users by clicking on each Warrant Article;
- (c) that each posted hearing on the list include the email address and mailing address to which written comments may be submitted by anyone who is unable to attend the public hearing.

Recommendation 5: Combined Hearings

The Moderator's Committee recommends that Town committees consider holding combined public hearings in order to reduce the number of hearings that members of the public must attend.

The Zoning By-Law Committee and/or the Planning and Regulation Committee of the Advisory Committee might, for example, hold combined hearings on zoning by-law amendments.

In some cases, combined hearings would not be appropriate. The Committee does not recommend that the Board of Selectmen and Advisory Committee (or Advisory Committee subcommittees) hold combined hearings. Those two bodies have different approaches and perspectives and their separate processes of considering Warrant Articles benefit Town Meeting.

ACKNOWLEDGMENTS

The Moderator's Committee on Public Hearings thanks all of the Brookline residents, Town Meeting Members, and members of Town committees that offered their views to the committee. The committee thanks Town Administrator Mel Kleckner and, especially, Patty Parks for their assistance in eliciting the views of chairs and members of Town committees.

Respectfully,

Sean M. Lynn-Jones, chair
Helen Y. Herman
Donna Kalikow
Richard T. Leary

Harry K. Friedman served as a member of the committee until he resigned on October 23, 2012.

Moderator's Committee on Public Hearings

Public Hearing, August 27, 2012

Background

The May 2012 Town Meeting considered Article 9 (attached) and voted to refer the subject matter of that Article to a Moderator's Committee that would report at the Fall 2012 Town Meeting. The Moderator appointed Harry Friedman, Helen Herman, Donna Kalikow, Richard Leary, and Sean Lynn-Jones to the Moderator's Committee on Public Hearings. The other members elected Sean Lynn-Jones as chair.

Public Hearings, Public Comment, and Public Meetings

There is sometimes confusion about the difference between a public hearing, public meeting, and public comment. Generally, the distinguishing feature of a public hearing is that all members of the public who attend will be accorded a right to speak. The precise time limits and procedures may vary. A public meeting is a meeting that is open to the public, but members of the public are not guaranteed an opportunity to speak. Public comment often refers to a period at or near the beginning of a meeting during which members of the public may comment on any topic, including items that are not on the agenda. It also may mean an opportunity for the public to comment on the topic under discussion, but without a guarantee that all members of the public will have an opportunity to speak.

Note that public hearings are held by some Town committees on, for example, personnel, licensing, or disciplinary questions. There is often a statutory requirement that such hearing be held. To distinguish this type of public hearing from a public hearing on a Warrant Article, Article 9 only applies to "non-adjudicatory" hearings.

Possible Recommendations by the Moderator's Committee

The Moderator's Committee could recommend that Town Meeting do nothing regarding public hearings on Warrant Articles. It could recommend that Town Meeting vote on a resolution or on an amendment to the Town By-Laws. It also could make recommendations to the Board of Selectmen or other Town bodies.

Questions that the Moderator's Committee Has Considered

- Should Town committees be required to hold public hearings on Warrant Articles?
- Is a Town by-law amendment necessary?
- Should any requirement apply to some or all Town committees?
- Could a hearing by a subcommittee satisfy any requirement?

Attachments

(1) Article 9 from the May 2012 Town Meeting

(2) Draft Standing Policy for the Board of Selectmen with Respect to Public Hearings on Warrant Articles

APPENDIX 2: Boards, Commissions, and Committees Appointed by the Selectmen

Standing Town Boards/Commissions/Committees

Advisory Council on Public Health
Board of Assessors
Board of Examiners
Brookline Access Television
Brookline Commission for the Arts
Brookline Commission for Women
Building Commission
Broadband Monitoring Committee
Celebrations Committee
Commission for the Disabled
Conservation Commission
Council on Aging
Economic Development Advisory Board
Housing Advisory Board
Human Relations/Youth Resources
Human Resources Board
Information Technology Advisory Committee
Naming Committee
Park and Recreation Commission
Planning Board
Preservation Commission
Registrars of Voters
Retirement Board
Solid Waste Advisory Committee
Transportation Board
Tree Planting Committee
Trustees of Walnut Hills Cemetery
Zoning Board of Appeals

Ad Hoc Selectmen's Committees

Bicycle Sharing Committee
CDBG Advisory Committee
Critical Infrastructure Monitoring System Oversight Committee
Davis Path Special District Zoning Study Committee
Dukakis Recognition Committee
Emerald Necklace Bicycle and Pedestrian Crossings Committee
Fiscal Policy Review Committee
Gateway East Citizen's Advisory Committee
Hancock Village Planning Committee
Licensing Review Committee
Martin Luther King Celebration Committee

Olmsted Hill Construction Oversight Committee
Parking Committee
Parking Meter Task Force
Redistricting Committee
Small Commercial Exemption Study Committee
Waldo St. Area Study Committee
Zoning By-Law Committee

Source: www.Brooklinema.gov

Note that the preceding list does not include committees such as the Audit Committee, Campaigns Committee, Town/School Labor Advisory Committee, and Town/School Partnership, which consist of members appointed or designated by multiple committees or who serve on the committee by virtue of holding another office.

The list changes frequently as new committees are formed and others complete their work.

Elected committees, boards, and commissions include the Board of Selectmen, the Library Trustees, and the School Committee.

Committees appointed by the Moderator include the Advisory Committee and Committee on Town Organization and Structure, as well as Moderator's Committees created by a vote of Town Meeting.

Report from the Dukakis Recognition Committee

In conjunction with a Resolution passed by Town Meeting in May 2011, the Board of Selectmen established the Dukakis Recognition Committee. The committee was made up of the following members:

Selectman Jesse Mermell (Chair)

Rebecca Stone, School Committee

Chris Chanyasulkit, Women's Commission

John Bain, Park & Recreation Commission, Naming Committee

Brian Kane, Public Member

Alden Raine, Public Member

The Committee met four times to discuss ways in which the Town could honor the achievements of Kitty and Michael Dukakis. The Committee discussed the possibility of naming opportunities at several locations in Town, internship programs, recognition at the High School, and other events that could serve to recognize their contributions to the Town. The idea of a naming opportunity at Town Hall was discussed and presented to the Park and Rec Commission, but it was ultimately decided that seeking a dedication at Riverway Park was a more appealing option. Committee members will be working with the Director of Parks and Open Space on the selections available for a dedication, and the Park and Rec Commission will review and approve the final dedication to be installed and presented at the Park.

The Committee also felt that given Michael and Kitty's dedication to public service that an internship program should be established in their honor. They voted to ask that the Town develop an internship program named for Michael and Kitty Dukakis in the Health Dept. and Park and Recreation Division. The Committee recommends that the Town provide funding for the first 5 years of the program (\$1K annually), with the intent that private fundraising opportunities would sustain the program after that time. It was discussed that this program should be included as a request as part of the FY14 budget process and will be voted on as part of the budget vote presented to Town Meeting.

Lastly, the Committee wanted to establish something at the High school that would allow students to be inspired by the Dukakis legacy. The Committee recommends that a book award be established at the High School, to be given annually to one male and one female rising junior in recognition of their commitment to public service. Said book would be chosen by the Dukakis family, and be purchased locally

BOARD OF SELECTMEN

Betsy DeWitt, Chairman
Nancy A. Daly
Jesse Mermell
Richard W. Benka
Kenneth M. Goldstein

ADVISORY COMMITTEE

Harry Bohrs, Chairman