ARTICLE 3

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

Article 3 of the Warrant for the 2015 Fall Town Meeting proposes amendments to the FY16 budget. The article is required to address three outstanding items:

- Appropriation of a higher state aid amount for Brookline than what was assumed in the budget approved by Town Meeting in May.
- Reallocation of costs associated with Group Health Insurance for override funded school employees and funding for repair and maintenance to expanded school buildings.
- Adjustments to the Water and Sewer budget to reflect the final MWRA Assessment.

The final State budget resulted in an additional $186,917 of Net State Aid which is available for appropriation. As discussed with the School Superintendent and given the adjustments made to the Town/School Partnership formula that resulted in Town departments absorbing costs to support a lower Override amount, it is recommended that the entirety of this additional State Aid be allocated to the Town. The Selectmen propose to spend the additional State Aid as follows:

1. Parks Forestry Vehicle - $94,000
   In August there was an electrical fire in a forestry truck within the main DPW garage on Hammond Street. After exploring repair and insurance options it has been determined that the truck is a total loss and that the insurance claim does not meet the deductible. The recommendation is for the rental of a truck for most of the year ($28,000) and the first year of a lease payment for a replacement vehicle ($66,000). The lease would then be rolled into the Park and Open Space Capital Outlay account for the remaining two years of payments.

2. Diversity Training - $20,000
   The Director of Diversity Inclusion and Community Relations and the Commission for Diversity Inclusion & Community Relations have begun an assessment of the racial climate in Town. This appropriation will support recommended training as a result of the assessment and MCAD training for the Fire Department.

3. Collective Bargaining Reserve - $72,917
   The Town is currently engaged in a proceeding before the Join Labor Management Commission (JMLC). Given the uncertainty of the JLMC process the Board recommends that the balance of remaining state aid be allocated to the Collective Bargaining reserve. While our negotiation team is actively engaged in

bargaining and the desire is to come to agreement on an equitable contract there is a possibility that an arbitration award will require additional funding.

The Group Health budget was built based on a no-override scenario with the Schools building a contingency for these expenses within their appropriation if an override was successful. A commitment was also made to help fund building repair and maintenance costs given the expanded footprint of school buildings and facilities. It is recommended that $100,000 will be reallocated from the School Department budget to the School Plant account within the Building Department's budget and $274,286 be allocated from the School Department budget to the Group Health appropriation.

When the FY16 Water and Sewer budget was voted on by Town Meeting an estimate was used for the MWRA assessments. This estimate was $492,011 higher than the final numbers voted by the MWRA. The rates voted on by the Selectmen in June accounted for this lower number, and it is recommended that Town Meeting amend the Enterprise Fund budget accordingly.

The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on November 3, 2015, on the vote offered by the Advisory Committee.

ARTICLE 6

MOTION OF THE PARK AND RECREATION COMMISSION, TO BE OFFERED BY AMY HUMMEL, TMM-12

VOTED: That the Town:

Clause 1. Dedicate so much of the land known as Larz Anderson Park, consisting of approximately 55.05 acres of active recreational park land as shown on the plan entitled "Plan of Land Showing Dedicated Parkland at Larz Anderson Park", a copy of which is on file with the Town Clerk, for public park purposes under the provisions of Massachusetts General Laws, Chapter 45, Section 3; and authorize said land to be under the care, custody, management and control of the Town's Department of Public Works, Parks and Open Space Division;

Clause 2. Authorize the Commissioner of Public Works or designee, with approval of the Board of Selectmen, to file on behalf of the Town any and all applications deemed necessary for grants and/or reimbursements from the Commonwealth of Massachusetts deemed necessary under the Parkland Acquisitions and Renovations for Communities (PARC) Grant Program, and/or any other grant applications for improvements to said Larz Anderson Park;

Clause 3. Authorize the Commissioner of Public Works or designee, with the approval of the Board of Selectmen, to enter into all agreements and execute any and all instruments as may be necessary to effect the said grants and/or reimbursements received by the Town under paragraph 2 of this vote;

Clause 4. Appropriate the sum of up to $400,000, for improvements to said Park, including all costs incidental or related thereto; and to meet such appropriation, authorize the Treasurer, with the approval of the Selectmen, to borrow said amount under the provisions of M.G.L. Chapter 44, s. 7(25), as amended, provided that any amount so borrowed shall be repaid by the amount of any aid received.

Explanation:
The Park and Recreation Commission put forth this Article to secure grant monies from PARC, and further their work in improving our limited and precious open space. They have sought this sort of funding since the 1960s, and the parks that have benefitted include Harry Downes Field, Cypress Playground, Waldenstein, Amory Courts and Hall's Pond to name a very few. Their goal, which benefits every citizen, is maintaining and updating the park facilities, and protecting parks today and for future generations.

The anticipated grant funding, along with monies approved by 2013 Town Meeting, is intended to preserve and enhance the park per the Larz Anderson Master Plan (1989), a

Horticulture Master Plan (2001), and the Parks, Open Space, and Recreation Strategic Master Plan (2006), the later of which is updated every five to seven years with input of a wide range of representatives from town boards, commissions including the Board of Selectmen, the Advisory Committee, and the public. This careful, inclusive, long-range planning is one reason why the Town has been able to maintain our current parks and in the last ten years, add two new parks for all, despite space and financial constraints.

The act of formally protecting 55 of the approximately 65 acres of Larz Anderson Park under Article 97, a protection most assumed the park already had, in order to secure potential grant monies, is a timely and responsible next step for the Parks and Recreation Commission. Notably, ten acres of the park is purposely excluded from possible Article 97 protection, allowing for some other allowable use, such as Civic Moxie's proposed Isabel School, should the community decide that is best siting for a 9th K-8 school.

The omission of the 10 acres illustrates the balance the commission has tried to strike between their responsibility and desire to protect our open space and the realization that we are currently and again scrambling to solve a long growing and shared student enrollment problem.

Passing Article 6 is in all of our interests, affirmatively protecting precious open space, acknowledging the consistent vision and efforts of the Parks and Recreation Commission for all, while still allowing for the possibility of some School use at Larz Anderson.

ARTICLE 6

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

The Town of Brookline submitted an application and is being considered for a Parkland Acquisitions and Renovations for Communities (PARC) Grant for improvements to Larz Anderson Park. The PARC Program (formerly the Urban Self-Help Program) was established in 1977 to assist cities and towns in acquiring and developing land for park and outdoor recreation purposes. Grants are available for the acquisition of land and the construction, or renovation of park and outdoor recreation facilities. Brookline has applied for and is eligible for the grant maximum of $400,000.

The PARC program is a reimbursement program administered through the Executive Office of Energy and Environmental Affairs, Division of Conservation Services (DCS). Applicants selected to receive grant funding will be required to submit a PARC Project Agreement, State Standard Contract, and billing forms, which will be sent to Applicants with their award letter. It is a requirement that any property acquired or improved with DCS grant assistance include language in the deed so that it is protected open space under Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, dedicated to recreation use in accordance with M.G.L. Chapter 45 Section 3.

Warrant Article 6 must receive an affirmative vote by Town Meeting in order for Brookline to be eligible to receive the grant and enter into said contract. The Executive Office of Energy and Environmental Affairs must receive the approved Town Meeting vote by December 31, 2015. The Commonwealth of Massachusetts DCS PARC grant requires that Brookline:

- vote to borrow funds in anticipation of state reimbursement prior to receiving agreement for reimbursement (M.G.L. Chapter 44, §8C). The draft municipal vote must cite the particular parcel to be acquired or developed/renovated and contain authorization to seek funding and to enter into any contracts for the project;

- dedicate the site for park purposes as under M.G.L. Chapter 45, Section 3; and,

- appropriate 100% of the total project cost.

The language also must ensure that Town officials and/or staff are authorized to enter into said contract and/or submit forms and receipts for reimbursement.

Article 6 designates the project area, approximately 55 acres of land at Larz Anderson Park, as parkland. By designating this area as parkland, this property will be protected

under Article 97 of the State Constitution. Even if the land is already protected by deed restriction, Article 97 or other means, the language as provided and approved by DCS must be voted by Town Meeting. An affirmative vote of Article 6 officially designating this parcel as parkland (as part of this grant cycle), enables the Town to receive and use PARC grant funding towards park improvements. To comply with this policy, municipalities that seek to dispose of any Article 97 land must: obtain a unanimous vote of the municipal Conservation Commission that the Article 97 land is surplus to municipal, conservation, and open space needs; obtain a unanimous vote of the municipal Park Commission if the land proposed for disposition is parkland; obtain a two-thirds Town Meeting or City Council vote in support of the disposition; obtain a two-thirds vote of the legislature in support of the disposition, as required under the state constitution; comply with all requirements of the Self-Help, Urban Self-Help, Land and Water Conservation Fund, and any other applicable funding sources; and comply with the EEA Article 97 Land Disposition Policy.

The boundaries of the project and Article 97 protected area (55 acres) as part of this vote are intentionally outside of the area that the Civic Moxie consultant team, Board of Selectmen and School Committee proposed for consideration of a 9th elementary school at Larz Anderson Park. While it is likely that some or possibly the entire park has some protected status, this vote does not add or subtract any protected status from that which already exists on the 10-acres provided in the attached map as "Leased Properties/Operations Area". At the time of the Board of Selectmen vote there was still need for additional clarification on the exact conditions and protected status of the entire site. New information on a federal grant accepted in 1975 in order to make improvements to the Skating Rink at the Park has recently come to the Board's attention. While a federal grant may not have required state protection under Article 97, it may have required a similar restriction of land. Town records were not readily available at the time of this Board's vote to verify the scope of this restriction.

In light of this information, some Board members did not feel they could vote in favor of the article until the research was completed on the protections currently afforded to this site. This new information has heightened the need to be careful and strategic when considering such grants and the requirements that come with them. The Board of Selectmen agreed that including language that the vote of Town Meeting would be conditional upon receipt of the grant was appropriate. A majority of the Board felt comfortable moving forward with an amended version of the warrant article. On motion it was,

VOTED: That the Town:

Clause 1. Dedicate so much of the land known as Larz Anderson Park, consisting of approximately 55.05 acres of active recreational park land as shown on the plan entitled "Plan of Land Showing Dedicated Parkland at Larz Anderson Park", a copy of which is on file with the Town Clerk, for public park purposes under the provisions of Massachusetts General Laws, Chapter 45, Section 3; and authorize said land to be under

the care, custody, management and control of the Town's Department of Public Works, Parks and Open Space Division;

Clause 2. Authorize the Commissioner of Public Works or designee, with approval of the Board of Selectmen, to file on behalf of the Town any and all applications deemed necessary for grants and/or reimbursements from the Commonwealth of Massachusetts deemed necessary under the Parkland Acquisitions and Renovations for Communities (PARC) Grant Program, and/or any other grant applications for improvements to said Larz Anderson Park;

Clause 3. Authorize the Commissioner of Public Works or designee, with the approval of the Board of Selectmen, to enter into all agreements and execute any and all instruments as may be necessary to effect the said grants and/or reimbursements received by the Town under paragraph 2 of this vote;

Clause 4. Appropriate the sum of $400,000 for improvements to said Park, including all costs incidental or related thereto; and to meet such appropriation, authorize the Treasurer, with the approval of the Selectmen, to borrow said amount under the provisions of M.G.L. Chapter 44, s. 7(25), as amended, provided that any amount so borrowed shall be repaid by the amount of any PARC grant aid received; provided further that if aid in an amount less than the appropriation is received, all action taken under this Article shall be rescinded.

ROLL CALL VOTE:

Favorable Action	No Action
Daly	Wishinsky
Franco	Greene
Heller	

ARTICLE 6

Report of the Conservation Commission

Town of Brookline

Conservation Commission

Marcus Quigley, Chair
Matthew Garvey, Vice Chair
Gail Fenton
Werner Lohe
Roberta Schnoor
Deborah Myers
Pallavi Kalia Mande

Associates
Pamela Harvey
Marian Lazar

November 10, 2015

Dear Town Meeting Members,

On November 3, the Conservation Commission considered and voted to support favorable action on Warrant Article 6, which involves an appropriation request in anticipation of state grant funding for improvements to Larz Anderson Park. As is typically required for these types of grants, Article 6 also requests acknowledgement by Town Meeting that the land in question is "dedicated for public park purposes." We write to share with you the Conservation Commission's perspective on the importance of Larz Anderson Park as a significant open space in Brookline, as well as how the Commission has thoughtfully considered the Park in the Town's open space planning process with regards to its rehabilitation and protection.

Brookline began formal open space planning through the Conservation Commission in the 1970s. Currently, the town adopts an Open Space Plan every five years and, following upon Open Space Plan 2010, is about to embark upon preparing its eighth plan.

The Open Space planning process is led jointly by the Board of Selectmen and the Conservation Commission, and involves all interested parties. The most recent Open Space Plan Committee consisted of 18 members from various boards, commissions, town departments and community interest groups. Several public forums are held to solicit input from Town residents.

For decades, Larz Anderson Park has been identified in Open Space Plans, not only as one of our premier open space parcels, but also as a property protected by Article 97, a provision added to the state constitution in 1972. Only about 15% of the town's land is

"protected" open space and, in most instances, this means the land is regarded as protected under Article 97.

Recent case law on Article 97 has called into question the community's generally accepted understandings of what land is protected under Article 97. In view of this, we expect the next Open Space Plan will include a review of all Article 97 properties in town and a plan to reconfirm their status so that we can protect these precious resources.

Years of community planning processes including the Open Space Plans, the Comprehensive Plan and the Parks and Open Space Master Plan have inventoried the amount of "protected" open space in Brookline and found it wanting. The desire of Brookline residents for more and better open space is layered upon our civic pride in our core legacy of extraordinary open spaces, which are such a distinctive part of Brookline's character. Given the current efforts to site a new school in Brookline, the Commission feels the application for protection of 55 acres within Larz Anderson Park is appropriate.

The majestic landscape of Larz Anderson Park, which reflects the unique history of this property, has long been widely considered and valued as one of Brookline's most significant open space resources. While the next open space planning process will work to solidify the Town's understanding of our Article 97 properties, the Conservation Commission believes that in light of the longstanding history and treatment of Larz Anderson Park, it is important for Town Meeting to confirm in Article 6 that the portion of the park designated in that article is "land dedicated for public park purposes under MGL c. 45, sec. 3."

Sincerely,

Marcus Quigley
Conservation Commission Chair

ARTICLE 8

ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

The Advisory Committee has amended its recommended motion under Article 8 to clarify when Town Meeting Members would be required to complete on-line Conflict of Interest Law training.

The language of the previous motion under Article 8—the language included in the petitioner's Warrant Article—may be confusing, because would require Town Meeting Members to complete the on-line Conflict of Interest Law training "within one hundred and twenty (120) days of their election or the effective date of this by-law, whichever occurs first…" Town Meeting Members elected in 2015 and previous years obviously will not be able to complete the training within 120 days of their election.

To clarify the proposed by-law, the Advisory Committee has amended its motion by deleting "within one hundred and twenty (120) days of their election or the effective date of this by-law, whichever occurs first," and substituting "within one hundred and twenty (120) days after the effective date of this by-law for Town Meeting Members incumbent on that date, and within one hundred and twenty (120) days after their initial election for Town Meeting Members elected subsequent to that date," as shown below.

Thus Town Meeting Members who are incumbents as of May 1, 2016, will be required to complete the online training within 120 days of that date. Town Meeting Members elected after that date will be required to complete the online training within 120 days of the date of their election. Regardless of when they are elected or re-elected, Town Meeting Members will only be required to receive the training once.

RECOMMENDATION:
By a vote of 16–1–0 the Advisory Committee recommends FAVORABLE ACTION on the following motion under Article 8:

VOTED: that the Town will amend the General By-Laws by adding the following Article 2.1.14:

2.1.14 MANDATORY EDUCATIONAL TRAINING FOR TOWN MEETING MEMBERS

All Town Meeting Members shall, within one hundred and twenty (120) days after the effective date of this by-law for Town Meeting Members incumbent on that date, and within one hundred and twenty (120) days after their initial election for Town Meeting Members elected subsequent to that date, complete the on-line Conflict of Interest Law training provided by the State Ethics Commission. In the alternative, Town Meeting

Members may attend an educational training seminar hosted by the Office of Town Counsel. This Article shall not apply to Town Meeting Members who have fulfilled the training requirements set forth in Article 3.20. Town Meeting Members shall not be required to receive such training more than once, unless they are otherwise required to do so as special municipal employees under the provisions of G.L. c. 268A. This by-law shall become effective on May 1, 2016.

ARTICLE 9

ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

CORRECTION TO ADVISORY COMMITTEE REPORT ON ARTICLE 9

The following motion is the Advisory Committee's recommendation under Article 9. An incorrect motion was inadvertently included in the Combined Reports. Changes appear in italics, although the language in the bylaw would not be italicized.

VOTED: That the Town will amend Article 3.17 of the Town's General Bylaws, entitled Public
Works, Department Organization, as follows (new language is underlined):

ARTICLE 3.17
PUBLIC WORKS DEPARTMENT

SECTION 3.17.1ORGANIZATION

There shall be a Department of Public Works in accordance with Chapter 32 of the Acts of 1981, as amended. The Department has the following divisions:
Engineering
Highway/Sanitation
Parks, Forestry, Cemetery & Conservation
Transportation
Water and Sewer

SECTION 3.17.2 PROCEDURES FOR FIXING WATER AND SEWER RATES
The Board of Selectmen shall conduct a public hearing annually, giving notice in accordance with the provisions of M.G.L. c. 30A, s. 20. At least *21* days before such a hearing, the Board shall make known to town meeting members and the general public estimates of any proposed changes *for the coming fiscal year* to any such water and sewer fees, charges, and rates, in order to satisfy the requirements of this bylaw. The estimated changes shall be based on best available information using the most recent available preliminary MWRA water and sewer assessments. The Board of Selectmen shall distribute to all town meeting members and make available to the public an annual report on the operations of the Water and Sewer Division of the Department of Public Works. The report shall enumerate the estimated differential impact of the proposed fees on cost*s to consumers*, as determined by the commissioner of public works.

ARTICLE 10

REVISED PETITIONER MOTION

VOTED: To amend the General By-Laws by amending Article 8.15 and Article 8.31.1 in Part VIII Public Health and Safety as follows:
(Additions are indicated in underlining, and deletions are indicated in strike-out. Revised language from this supplement is in bold.)

ARTICLE 8.15
NOISE CONTROL

SECTION 8.15.3 DEFINITIONS

(m) Leafblowers: Any powered ~~portable~~ machine used to blow leaves, dirt, and other debris off lawns, sidewalks, driveways, and other ~~horizontal~~ surfaces.

Article 8.31
Leaf Blowers

Section 8.31.1: STATEMENT OF PURPOSE
Reducing the use of gasoline and other ~~oil~~ carbon-emitting fuels ~~and reducing carbon emissions into the environment are~~ is a public purpose~~s~~ of the Town; ~~and~~ the reduction of noise and emissions of particulate matter resulting from the use of leaf blowers are public purposes ~~in~~ that protect~~ing~~ the health, welfare, and environment of the Town. Therefore, this by-law shall limit and regulate the use of leaf blowers as defined and set forth herein.

Section 8.31.2: USE REGULATIONS
1. Leaf Blowers.
Leaf blowers are defined as any ~~portable gasoline~~ powered machine used to blow leaves, dirt and other debris off lawns, sidewalks, driveways, and other horizontal surfaces.

2. Limitations on Use.
a. Leaf blowers shall not be operated in the town of Brookline with the following exceptions: ~~except between March 15 and May 15 and between September 15 and December 15 in each year. The provisions of this subsection do not apply to the use of leaf blowers by the Town and its contractors. The provisions of this section also do not apply to nonresidential property owners but only with respect to parcels that contain at least five acres of open space. The provisions of this subsection also shall not apply to the use of leaf blowers by the Town or its designees for performing emergency operations and clean-up associated with storms, hurricanes and the like.~~
Leaf blowers that are neither powered directly nor indirectly by a gasoline, diesel, or propane-powered machine may be operated between March 15 and May 15 and between September 15 and December 15 in each year. The provisions of this subsection

do not apply to the use of leaf blowers by the Town and its contractors. **The provisions of this section also do not apply to nonresidential property owners, but only with respect to parcels that contain at least five acres of open space.** The provisions of this subsection also shall not apply to the use of leaf blowers by the Town or its designees for performing emergency operations and clean up associated with storms, hurricanes, and the like.

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

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

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

(a) a warning or ~~$50.00~~ $100.00 for the first offense;
(b) ~~$100.00~~ $200.00 for the second offense;
~~(c) $200.00 for the third offense;~~
~~(d)~~ (c) ~~$200.00~~ $300.00 for successive violations, plus
~~(e)~~ (d) court costs for any enforcement action.

Each Day of a continuing violation shall be considered a separate violation.

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

ARTICLE 10

ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

CORRECTION TO ADVISORY COMMITTEE REPORT ON ARTICLE 10

The following two underlined sentences should be added at the very end of the report, so that the final paragraph reads as follows:

The Advisory Committee, by a vote of 12-10-1, did not reconsider the vote of NO ACTION taken on its earlier recommendation, and therefore did not vote on the petitioners' revised motion under Warrant Article 10. When it voted against reconsideration, the Advisory Committee was aware of the petitioners' revised motion. The failure of the motion to reconsider thus indicates that a majority of those voting also would have voted No Action on the petitioner's revised motion.

ARTICLE 15

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

Article 15 is a petitioned resolution that seeks to establish a "Blue Ribbon Committee" comprised of Brookline citizens to be appointed by the Moderator and Advisory Committee to study the possible taking by eminent domain of two green buffers near Beverly Road and Russett Road for permanently publicly-accessible recreation space.

At the Spring 2015 Annual Town Meeting, Town Meeting voted Favorable Action on Warrant Article 18, which requested the Board of Selectmen to study the potential taking of the parcels under the power of eminent domain. In response, the Board of Selectmen designated a staff team along with special counsel and a Selectman liaison to study the matter. This decision was based largely on what the Board of Selectmen saw as the major components of the study and the belief that Town staff was in the best position to address those components in the relatively short turnaround time that was proposed under the Article. Those components included analysis of (1) whether recreational space is needed in Precinct 16, where Hancock Village is located; (2) a history of efforts undertaken by the Town to date to protect the green buffer area within Hancock Village; (3) a "benchmark" valuation of the area proposed for a taking; and (4) a review of the legal issues that would likely arise, should the Town elect to proceed with such a taking.

The Board feels that Article 15 is unnecessary, because it represents a duplication of the efforts undertaken by the team comprised of staff, special counsel, and Selectman liaison Nancy Heller. The study under Article 18 has been completed, and the study report has been published and made available to Town Meeting members in these Combined Reports.

The Selectmen wish to note that in connection with the Article 18 study, Eminent Domain expert John Leonard, Esq. of Menard and Walsh, LLP was engaged to provide a legal opinion of the issues the Town would face if the Town elected to proceed with the contemplated taking. Attorney Leonard's memorandum of opinion is attorney-client privileged, and therefore remains confidential. However, a number of risks have been raised by legal counsel in connection with the contemplated taking under both Articles. First, the Town should anticipate a legal challenge to the validity of a proposed taking. Of the number of issues that are likely to be raised by the property owner in such a challenge, the first is a determination of whether the taking was made in good faith. One issue that would weigh significantly in this determination is the fact that Article 18 was submitted after the property owner applied for a comprehensive permit seeking authorization to develop the property under the Affordable Housing Act. This could be seen by the reviewing Court as an effort not to preserve the space for the stated recreational purposes, but instead to prevent the permitted development. In the court case

that has been heavily relied upon by the petitioner of Article 18, the Court found in favor of the Town on this issue, but the circumstances were different. Based on the findings in the Article 18 study report, the Selectmen believe that a taking is at risk of being more closely aligned with another relevant court case which found that the taking was not made in good faith.

If the Town were to find itself in a legal battle with the property owner and the property owner were to prevail, the Town would be responsible for the costs of the litigation, likely amounting to hundreds of thousands of dollars, along with additional damages related to the property owner's inability to move forward with the project during the course of the litigation. On the other hand, if the Town were to prevail on the issue of good faith, a second trial would likely be required to determine the property's fair market value. Although the Chief Assessor has provided the Selectmen with a benchmark valuation of approximately $14.5 million dollars, this figure could be significantly higher based on a number of factors that are raised in the opinion. For example, the benchmark valuation provided by the Assessor does not account for the comprehensive permit that was issued authorizing the construction of multi-family residential housing in the green buffer area. As the study articulates, the legal issues faced by the Town should it proceed with a taking represent "high stakes [and] costly and publicly acrimonious litigation for the Town, all of which must be seriously weighed by the Board [of Selectmen] before electing the volatile and unpredictable eminent domain option in these circumstances."

Given the Town's limited resources, the Board of Selectmen strongly believe that a citizen committee would be unlikely to contribute new information to the discussion. Multiple members of the Board expressed their desire to abstain, so that Town Meeting can decide as a body if a citizen committee is warranted.

By a vote of 0-3-2 taken on November 4, 2015, the Board recommends NO ACTION on the vote offered by the Advisory Committee.

ROLL CALL VOTE:

No Action	Abstention
Wishinsky	Daly
Heller	Franco
Greene	

ARTICLE 17

ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

SUMMARY
Article 17 is a petitioned resolution that urges the Town to request state and federal agencies to deny permits for both the Northeast Direct and the Access Northeast natural gas pipeline projects, to reject investments in the Access Northeast project proposed by National Grid and Eversource, and to deny their consideration for setting electricity rates. In the petitioner's view, these two projects would result not only in creating pipeline capacity far in excess of what will be needed by New England customers but also in subjecting these customers to large increases in their utility bills to pay for the projects' costs.

By a vote of 14–3–2, the Advisory Committee recommends FAVORABLE ACTION on Article 17.

BACKGROUND
Last November, Town Meeting approved a resolution opposing the construction of the Northeast Energy Direct Project of the Tennessee Gas Pipeline and similar projects proposed in the future. This November, Article 17 directs attention to the two largest natural gas transmission pipeline projects under review: Northeast Direct (Tennessee Gas Pipeline division of Kinder Morgan) and Access Northeast (Algonquin Gas Pipeline division of Spectra Energy). Northeast Direct's revised carrying capacity is 1.3 billion cubic feet of natural gas per day; the Access Northeast's is 1 billion cubic feet of natural gas per day. Currently New England is served by five long-distance pipelines that can carry up to 3.6 billion cubic feet of natural gas per day. In addition, four ocean terminals have the capacity to receive 3.2 billion cubic feet of liquefied natural gas per day.

In light of the above, the petitioner contends that the capacity of the two newly proposed pipelines, currently under active review, suggests that the pipelines aren't intended to serve New England so much as to move gas out of the country to Canada where it would be exported as liquefied natural gas to international markets. His research has shown that Eversource and National Grid have proposed to invest in 60% of the Access Northeast project and have asked Massachusetts to include pipeline costs as factors in electricity rates. Finally, the petitioner believes that New England's increased demands for electricity can be met through conservation, greater use of renewable sources, increased efficiency, and imports of natural gas.

Last summer, the Massachusetts Attorney General's (AG) office engaged the Analysis Group to undertake a regional study which, among other matters, would focus on whether more "natural gas capacity is needed to maintain electric reliability." The report,

originally scheduled to be completed by the end of October, is now expected to be released in mid-November.

The AG's office also urged the Massachusetts Department of Public Utilities (DPU) to "consider the interrelationship of gas and electric markets in Massachusetts and to conduct a factual analysis of future demand and cost-effective energy and efficiency resources before making any decisions regarding additional gas capacity investments" and to take into account "lasting consequences for Massachusetts ratepayers" before approving precedent agreements. The DPU did not honor the AG's request.

DISCUSSION:
The Advisory Committee was concerned that in the absence of the AG's report, there was limited information available on whether additional natural gas pipelines were necessary. Representatives from Kinder Morgan and from Spectra Energy did not respond to the subcommittee's requests for information so it is difficult to consider the arguments of "the other side."

Nevertheless, the Committee discussed the current energy market and its implications for natural gas pipelines. When it comes to energy, New England doesn't behave like other regions of the country. Our energy consumption doesn't increase as our economic output increases. We are actually managing to lower our energy consumption. In fact, energy consumption in New England has been falling during the last 10 years. We are using less coal and we are closing nuclear power plants. We are using more renewable sources of energy, although in 2014, renewables provided only 8.6% of New England's electricity generation. Overall, we have a favorable picture.

There also may be a global decline in demand for natural gas—at least temporarily. An October 25th article in the Boston Globe noted a decreased demand worldwide for natural gas due to a number of factors including Japan's nuclear reactors coming back online and China's economic slowdown.

On the other hand, future demands for natural gas are not easily calculable. The current nuclear reactors serving the Northeast are ageing and will require replacement in the next twenty years, or sooner. They might be replaced with next generation nuclear installations, with gas generating electric plants, or with some other alternative. The choice will influence the demand for natural gas. On peak demand days in the summer and winter, the Northeast does not have adequate electricity generation to handle demand and consequently prices increase for ratepayers.

Although it may be to the advantage of the United States to export natural gas to Europe, offering those countries an alternative to natural gas imported from Russia, ratepayers should not be asked to bear the costs associated with such exports.

Conclusion and Basis for Recommendation

There are already two other pipeline projects underway which will bring more natural gas energy to New England. Energy use in the region is atypically in decline compared to the rest of the country, so there is no clear evidence that Massachusetts or New England needs the two additional Northeast Direct and Access Northeast pipelines.

If the energy is not actually for the benefit of the New England region, we should not risk having to help pay for new pipelines in dollars or damage to the environment to further any corporate interest.

The fact that we do not yet have the report from the Attorney General should not prevent us from stating our opinion and general concerns as a Town, given the information we do have. Our vote will be viewed in context and with the "time stamp" of our Town Meeting relative to the Attorney General's report.

Moreover, the fact that neither company would respond to any request for information from Brookline should not make us mute. Their silence speaks for itself.

RECOMMENDATION:

By a vote of 14–3–2, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Board of Selectmen.

ARTICLE 18

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

Article 18 is a non-binding Resolution submitted by petition that seeks to clarify and confirm the Town's commitment on expanding the racial diversity of the Town of Brookline's government workforce. Specifically, the Resolution seeks the Town's commitment to; 1.) have its workforce (both town and school) reflect the 23% makeup of Brookline residents who are "people of color" and 2.) to improve the detail and accuracy of annual data reports on Town employment.

Expanding the diversity of the Town's workforce to better reflect the racial makeup of Brookline's population is clearly a high priority goal of the Board of Selectmen. The only major concern for this Article is whether the clause that seeks a specific percentage of minority employees violates the "hiring quota" restrictions on the evolving legal status of affirmative action. Subsequent to the filing of the original Article, the petitioners agreed to modify the language to eliminate the specific percentage requirement. The Board of Selectmen voted unanimously on October 27 to replace the percentage language with language committing to seek an employee applicant pool that reflects the racial diversity of the metro Boston area.

At the Selectmen's meeting on November 3, the Board took up reconsideration of this Article in order to evaluate the merits of slightly different Advisory Committee language and to consider some additional language to clarify compliance with federal law. Ultimately, the Board felt that modified language was not essential and decided not to reconsider. The original vote of the Board which unanimously recommended favorable action on the motion included on pages 18-4 through 18-5 of the Combined Reports stands.

STUDY OF A PROPOSED EMINENT DOMAIN TAKING OF THE "BUFFER" WITHIN HANCOCK VILLAGE

November 6, 2015

I. SCOPE AND METHODOLOGY

At the 2015 Annual Town Meeting, a Resolution was passed under Warrant Article 18, asking "the Board of Selectmen to study, and consider in good faith the taking under the powers of Eminent Domain the two buffer zones presently zoned S-7 within the Hancock Village property… for a permanently publicly-accessible active recreational space."

In response to the Resolution, the Town Administrator under the direction of the Board of Selectmen established a team consisting of the Planning Director, Director of Parks and Open Space, Building Commissioner, Chief Assessor, Deputy Town Administrator and Town Counsel to conduct an objective analysis of the proposal presented in Warrant Article 18. Town Counsel engaged Special Counsel to provide additional advice to the Board of Selectmen based on his extensive experience and expertise in property acquisition under eminent domain in Massachusetts. Members of the team consulted with the Petitioner, identified and surveyed area residents, conducted extensive research, and reviewed relevant case law to generate this report.

The study is not exhaustive, but instead, is provided with the intent to present relevant and material information for the benefit of decision makers.

II. DESCRIPTION OF THE LAND PROPOSED FOR TAKING

As indicated in **Appendix A: Map of S-7 Area Proposed for Taking,** the land proposed for taking under Article 18 is the area in Hancock Village zoned as S-7, a single-family residential district east and west of Independence Drive. The S-7 area constitutes a portion of the parcels identified as 388A-01-00, 388C-01-00, and 388-01-00 in the Assessor's database, and are part of the 56-acre, 700-unit Hancock Village rental housing complex that straddles Brookline and Boston and is owned by Chestnut Hill Realty. The areas of the complex designated as the S-7 are not discrete parcels with established metes and bounds. Because the boundaries of the area proposed for taking follow

the delineation of the designated S-7 zoning district, this report will refer to the subject property as the "S-7 area" so that the extent of the pertinent area can be easily identified on the Town Assessor's map.

Three roadways intersect the S-7 area: Independence Drive, Thornton Road, and Asheville Road. The total land area within the S-7 zone has been calculated as 6.55 acres. The S-7 area begins west of Independence Drive, bounded by the Baker School parcel on its far left and abutting lots on Beverly Road (about 125,000 square feet). East of Independence Drive, the S-7 area abuts lots on Russett Road and is bounded by the VFW Parkway on its far right. The portion of the S-7 area between Independence Drive and Thornton Road is approximately 48,350 square feet; the portion between Thornton Road and Asheville Road is approximately 138,148 square feet; and the portion between Asheville Road and the VFW Parkway is approximately 66,738 square feet. The western portion is 900 feet long and its depth ranges from 90 to 147 feet. The three eastern portions are 215, 400, and 500 feet long respectively, and range from 70 to 150 feet deep.

Although the grading appears to be flat, contour maps show that the topography undulates gradually. In addition, the majority of the area consists of very shallow ledge. The S-7 area is mostly landscaped with a lawn and about 250 mature trees, located predominantly along the perimeter contiguous to the abutting single-family properties on Beverly and Russett Roads.

The majority of the S-7 area soil is classified as Wet Udorthents, according to U.S. Department of Agriculture's National Conservation Resource Service; however, the Town has confirmed that no wetlands or vernal pools are located within this area. The western portion of the S-7 area is within 350 feet of the D. Blakely Hoar Sanctuary, a 25-acre wooded conservation preserve that hosts various species of birds and other wildlife, wetlands; and a half-mile long walking trail; and the Edith C. Baker School, one of the most populated elementary schools in the town.

III. PLANNING HISTORY AND FUNCTION OF THE S-7 AREA

A timeline of planning, permitting, and conservation actions relative to the S-7 area spanning from the early 1900s to the issuance of the Comprehensive Permit are provided in **Appendix B: Planning History of the S-7 Area.**

Excerpts from official documents relative to the S-7 area are provided in **Appendix C: Excerpts from Sources that Describe the Function of the Land Proposed for Taking.**

A review of Planning Board records dating back to the 1940's indicates that the Hancock Village housing complex has historically consisted of two basic components in Brookline: an area zoned for multi-family (currently M-.05) and a significantly smaller area zoned for single-family homes (currently S-7). The entire property was initially zoned for single-family residences. Prior to purchasing the property, John Hancock Life Insurance sought approval from the Planning Board and Town Meeting to rezone most of the property to general residence, while leaving the northeasterly strip as single-family. That northeasterly strip is what has been and continues to be referred to as "the buffer" and, for the purposes of this study, "the S-7 or S-7 area."

There are relatively few references to "the buffer" or a "buffer" in official documents, since the S-7 area was not the subject of any rezoning during the 1940's when Hancock Village was constructed. However, the S-7 area was, in fact, intended as a buffer of single family homes. Consequently, the term "buffer" is either used without any qualification, or in the context of single-family homes, i.e. the "buffer of single family homes." The 1946 Agreement does not reference "the buffer"—the agreement is strictly and exclusively an agreement pertaining to the rezoned property, exclusive of "the buffer" or S-7 area.

Additionally, none of the references to the "buffer" in official Town records references "green" or "open space." The only reference in any of the available records was found in the minutes of a discussion of John Hancock's Bureau of Housing, dated May 9, 1946: "A 125-foot park is shown as the buffer zone…the park protects our development from anything that might be built on the other side of it…" However, staff has not been able to locate any written documentation that the developers or owners of Hancock Village or the Planning Board stated this in official Town meetings. Similarly, staff has been unable to locate any official documentation that substantiates a local newspaper account dated August 29, 1946 stating that "Another major change substitutes a natural screen of small trees and other shrubbery for a row of detached single houses which had been planned for the so-called buffer strip along the rear of houses fronting on Beverly and Russett roads."[1]

[1] Petitioner's Power point dated April 9, 2015 relative to Warrant Article 18.

As expanded upon in **Appendix B**, Town records indicate that there have been several efforts by the owners of the property to seek Town authorization to create off-street parking within the S-7 area. In rejecting these petitions, Town boards consistently protected the space from encroachment by parking, although not for the express purpose of preserving the S-7 as greenspace. In fact, at its meeting on January 18, 1950, the Planning Board "…decided that….this [would be] a breach of the agreement between the John Hancock Mutual Life Insurance Co. and the Town of Brookline to maintain and use the buffer zone for single houses only…" and voted not to favor the change. [2]

However, the importance of preserving Hancock Village, in particular the S-7 area, has historically been recognized by the Town of Brookline:

- In 2010, the Brookline Conservation Commission prepared The Open Space and Recreation Plan for the Town of Brookline—2010, identifying "Hancock Village" as one of eleven "Priority Unprotected Open Space Parcels of 5+ Acres." Although "the buffer" is not referenced, Hancock Village was first identified in The 2005 Open Space Plan as one of (then) "thirteen large and significant parcels that should have priority for open space protection, whether through out-right acquisition, conservation restrictions, or agreements for protection by other means." [3]

- In 2013, Town Meeting established the Hancock Village Neighborhood Conservation District under Section 5.10.3 of the Town of Brookline General By-laws. In approving the establishment of the Conservation district, Town Meeting agreed that "any further development [in the district] shall be compatible with the existing development of the district and its relationship to the adjacent neighborhood….Any proposed Reviewable Project (including demolition, removal, new construction or other alteration)….shall not have a significant negative impact on historic architectural or landscape elements….significant negative impacts shall include, but not be limited to:…loss of the 'greenbelt' now serving as a buffer to the abutting single-family detached homes."[4]

No other municipal efforts to preserve the S-7 district as undeveloped green space could be identified. However, despite the lack of documentation, there

[2] Final Report and Recommendations to the Town Meeting re: Weld Golf Course (23rd Article)—January 11, 1946
[3] Open Space and Recreation Plan for the Town of Brookline—2010. Page 138.
[4] Town of Brookline General By-Laws, Section 5.10.3, d 1

is little doubt that members of the public, including past and current owners of abutting and nearby properties, believe and/or were under the impression that the buffer area was legally protected as public open space in perpetuity. Further, there is no dispute among those who are familiar with the area that the S-7 area or so-called "buffer" has been used for both passive and active recreational space by tenants of Hancock Village as well as non-tenants, likely since Hancock Village was first developed.

IV. EMINENT DOMAIN

The Power of Eminent Domain

Eminent domain involves the taking of property for a public benefit in exchange for providing the property owner with just compensation for the property that is taken. The Fifth Amendment to the U.S. Constitution provides that "private property shall not be taken for a public use, without just compensation." Thus, the right to the use and enjoy one's property is subject to the State's right of eminent domain. In Massachusetts, this authority comes in part from G.L. c. 79, which provides for a so-called "quick take" process that is outlined below. G.L. c. 79 explicitly provides authority for the Town of Brookline to take private property by eminent domain for a public use.

To exercise the power of eminent domain, the taking authority must meet the following basic conditions: the proposed use for the property must be a legitimate public use, the taking cannot be made in "bad faith", and the property owner must be provided with just compensation.

Procedures and Timeframe

Chapter 79 of the Massachusetts General Law requires that a municipality undertake the following steps in order to take property by eminent domain:

1. The land to be taken must be identified. If necessary, a plan of the land must be obtained from a surveyor for accurate identification;
2. Unless waived by the property owner, an independent appraisal must be obtained before the taking to determine fair market value. This appraisal allows the Town to understand what the property will cost and to budget accordingly. The Town may also need to use engineers and additional experts to determine the fair market value

of the property. The appraisal will be the basis for the "just compensation" offered to the property owner.

3. Town Meeting must vote to both acquire the property and to appropriate sufficient funds to acquire the site (requiring a two-thirds vote). This is the first time that the Town must reveal publicly the site it has chosen to take. The Town is free to provide notice of, discuss and negotiate the acquisition of the property with the property owner at any time.
4. A title examination of the property must be performed to confirm names of owners, mortgagees and other parties with an interest in the subject property.
5. An order of taking, notice, offers, and other associated documents must be drafted. The order must describe the land taken accurately, the property interest taken, and the public purpose for which the property is taken.
6. Relocation obligations under G.L. c. 79A, if any, must be met, which may require that assistance and benefits be provided to displaced residents and businesses as a result of a real estate acquisition by a public or private entity using public funds in a project.[5]
7. The Order of Taking must be executed by the Board of Selectmen.
8. Execution of the Order of Taking must be recorded in the Registry of Deeds within 30 days. Upon recording, title to the property immediately vests in the Town and, generally, all other interests in the subject property are extinguished. The order of taking thus acts like a deed.
9. Notice of the taking and the taking authority's opinion of just compensation (*pro tanto* payment) must be executed and served on every owner, mortgagee or other person with an interest in the property entitled to an award of compensation. Payments must be made within 60 days of the taking or within 15 days of demand for payment by anyone entitled thereto.
10. Displaced residences and businesses must vacate the property within four months of the taking.

This process is designed to occur quickly, so that the public purpose for which the property has been taken may begin without delay. Assuming that all of the necessary steps have been carried out and that the taking has been for a

[5] Since the S-7 does not include any houses or businesses, relocation would not be an issue.

valid public purpose, the legal challenges that remain include whether the taking was done in good faith, and whether compensation for the property was just.

The property owner may accept the municipality's offer as full compensation or as a "*pro tanto*" payment, thereby allowing the property owner to accept the payment while reserving his or her right to challenge the amount of the payment in court within three years of the date of taking. A judge or jury would decide the outcome of the lawsuit seeking just compensation and/or a determination of "bad faith." Such trials typically are a "battle of the experts." Each side typically presents real estate experts and other experts who can provide opinions of the fair market value and the facts supporting these opinions. Like all litigation, these cases can take years, and final resolution will take longer if appeals are filed.

If the former property owner prevails and is awarded additional compensation, the Town would be required to pay interest on the difference between the *pro tanto* offer and the amount awarded by the court. If the Town prevails and the court awards it damages, the former property owner would be required to pay interest to the Town. Interest is calculated from the date that the order of taking is recorded at the registry of deeds to the date that the Town makes a payment pursuant to a final court judgment. In cases that move slowly through the courts, the interest payment can be significant.

Finally, the Town may not reverse the taking—for any reason. If a final Judgment is more than the Town is willing to pay, the Town remains legally obligated to pay the Judgment, typically with interest.

V. PUBLIC USE: NEEDS ASSESSMENT FOR PRECINCT 16

Warrant Article 18 proposes that the Town take the land zoned as S-7 for use as "publicly accessible active recreational open space." The Parks and Open Space Director conducted a preliminary report assessing the need for active as well as passive recreational space in Precinct 16, a copy of which is included in **Appendix D: Park Needs Assessment for Precinct 16**, dated September 12, 2015. The report provides the Director's initial findings that there is in fact a need for space in Precinct 16 for both active and passive recreational use, and that the S-7 area would be a suitable option to respond to that need.

Needs Assessment Methodology

Two methods are typically used to assess park and open space needs in a community: First, demand-based needs (information derived from public input), and second, standards based on level of service targets set by the National Recreation and Park Association (NRPA). If a need for additional or alternative uses is identified, a subsequent study is usually undertaken to identify and analyze existing and potential resources to respond to the identified need. Typically, a needs assessment is accompanied by an analysis of methods to respond to any identified needs. The scope of the Resolution Article predetermines that decision and focuses exclusively on the S-7 area. This study expressly does not seek to identify alternative resources that could meet the asserted need for public open space.

A. Demand-based Needs Assessment

Under the leadership and direction of Selectwoman Nancy Heller, the Parks and Open Space Division interviewed seventeen individuals, including residents and Town Meeting members from Precinct 16 and members of the Greenspace Alliance and the Park and Recreation Commission. A list of participants is included in **Appendix D**.

Those interviewed shared the general belief that the public open spaces in Precinct 16 (the Baker School Playground, D. Blakely Hoar Sanctuary and Walnut Hills Cemetery) do not satisfy the need for recreational use for Precinct 16 residents. Independence Drive, a busy four-lane street, was viewed as a barrier to access the Baker School playground due to traffic volumes and speeds. In addition, the Baker School playground is perceived as mostly inaccessible when school is in session. Most participants felt that the 25-acre Hoar Sanctuary, although an excellent destination for walking, was too isolated and not suitable as a public space for social gathering. Similarly, the Walnut Hills Cemetery is appropriate for walks but not social gatherings or more active recreation. The Hynes Playground in West Roxbury is a popular destination for families, but requires crossing into West Roxbury via the VFW Parkway, another busy roadway.

Among recreational use possibilities, interviewees sought a combination of the following amenities: accessible walking paths, picnic areas and social gathering spaces, benches, open lawn and trees. The S-7 area was described as an opportunity to provide safe, connected routes in the neighborhood

between places for wildlife (D. Blakely Hoar Sanctuary), recreation, walking and cycling, and a safer route to the Baker School. Several people suggested that a connecting path from D. Blakely Hoar Sanctuary to "the buffer" should be provided to improve accessibility to the conservation area. There were also several individuals who felt that a playground would be an important addition to the neighborhood and that the "buffer" area was particularly well-suited for exercise stations due to its length.

The Needs Assessment report states that "while Warrant Article 18 specifically references 'active recreation space,' most interviewees expressed the need for both active and passive recreation space. A passive recreation area is generally a less developed space or environmentally sensitive area that requires minimal enhancement and might include open lawn for picnicking, benches for sitting or reading and paths for walking. Active recreational activities, such as organized sports or playground activities require extensive facilities or development such as: play structures, hard court play areas, athletic fields, and biking facilities."

The interviewees provided important insight into the perspectives of residents and open space advocates. However, it should be noted that their comments were not limited to "active" open space, as identified in the warrant article. Although the sample for the stakeholder interviews for this study was admittedly small, there are existing plans undertaken by the Town that are based on extensive public participation. These plans confirm an overall need for both active and passive open space throughout the Town. The Town's Comprehensive Plan—2010-2015, Open Space Plan 2010, and the Park, Recreation and Open Space Master Plan all confirm both the Town's need for and commitment to creating and preserving open space for both active and passive recreational use.

The Master Plan states:

> Brookline needs additional facilities and public spaces for both active and passive uses. The community survey revealed that Brookline residents strongly favor open space acquisition trailways in and between our parks and open spaces, additional athletic fields and the provision of indoor multi-generational community recreation activities…

B. Level of Service Targets

The Brookline Park, Recreation and Open Space Strategic Master Plan relies on the so-called GRASP™ (Geo-referenced Amenities Standards Program) methodology, which is designed to measure and portray the level of service (LOS) provided by parks and recreation systems. Capacity is only part of the LOS equation, which is typically defined in this context as the capacity of the various components and facilities that make up the system to meet the needs of the community. Other factors are brought into consideration, including quality, condition, location, comfort, convenience, and ambience. Parks, recreation facilities, and open space are evaluated as part of an overall infrastructure made up of various components, such as playgrounds, multi-purpose fields, passive use areas, etc. The results are presented in a series of maps and tables that make up the GRASP™ analysis of the study area. Copies of maps relevant to this study are included in **Appendix D**, as is a discussion of the implications of these maps relative to the availability of recreational resources within Precinct 16

The GRASP analysis confirms that Precinct 16 has a deficit of walkable open space. However, when the school grounds, cemeteries and nature sanctuaries are removed from the map, the limited availability of public park resources is compounded significantly.

Overview of Results

Precinct 16 has limited access to walkable public active open space per the Town's Park, Recreation and Open Space Strategic Master Plan and national standards. There was unanimity among the individuals who participated in the interview process that a neighborhood park for active and passive recreation is needed in Precinct 16. There was also a good deal of sentiment about the environmental, aesthetic and historic importance of "the buffer" and many stated their desire to protect and preserve this six-acre green landscape. Development of "the buffer" as a public park for active and passive recreation would provide a neighborhood destination for passive and active recreation that would meet that need.

While this preliminary study attests to a legitimate public need for recreational areas within Precinct 16, it expressly does not address whether or not the S-7 area is the most appropriate site to meet that demand.

Additional Considerations

If a more comprehensive analysis were deemed necessary, there are additional considerations to be addressed relative to establishing, evaluating and responding to the need for recreational space, most notably, but not exclusively:

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- A more rigorous survey including but not necessarily limited to all households within a ½ mile radius;
- Availability of parking for recreational uses at the S-7 site;
- Distinguishing between demand for active and passive open space as well as the availability of each;
- Addressing the fact that Independence Drive essentially bisects the two components of the S-7 area, separating the S-7 into two distinct areas.

VI. MARKET VALUE

To establish an opinion of just compensation, the Town would need to engage an outside appraiser to conduct an independent appraisal, the cost of which is significant and beyond the scope of this study. Nonetheless, in order to provide the Board of Selectman with a working estimate for valuation, the Chief Assessor has generated an estimated market value for the land if it were for sale on July 1, 2015. The market value estimate does not take the place of the required independent appraisal, and therefore is not offered as the Town's opinion of just compensation. The Chief Assessor's objective was limited to providing a market value estimate of residential land in Brookline if it were available for sale for single family housing as of a set date. The Chief Assessor's market value report is attached as **Appendix E**.

Market Value Methodology

The valuation analysis that is provided estimates the market value of the subject land as if it were vacant and available for development. Because the subject land is not currently available to the open market and the property owner seeks to develop the land under a Chapter 40B comprehensive permit that has been issued by the Zoning Board of Appeals, the analysis is based solely on a hypothetical condition. Again, this is only a working estimate for valuation, and should the Town elect to proceed with a taking of the S-7 area under the power of eminent domain, the valuation process would be substantially different.

The hypothetical market value estimate was made based on an analysis of 25 residential land sales in Brookline over a period of 52 months, from March 2011 through July 2015. The residential property sales ranged in land area from 6,136 square feet to 228,168 square feet, and in price from $390,000 to $7,525,000. Sale prices were adjusted for changes in market conditions between the sale date and the valuation date using the Standard & Poor's Case-Shiller Home Price Index for the Boston Metropolitan Study Area. An explanation of the S&P-CS-Index from the July 2015 composite report is included in **Appendix E: Land Value Estimate of Certain Land in South Brookline.**

Overview of Results

An analysis of residential land sales was used to estimate the subject land value as of July 1, 2015, using a mass-appraisal approach. In total, the 25 sales included 978,008 square-feet of land, representing almost 22.5 acres. The total time adjusted sales price was $49,773,140, or in aggregate, $50.89 per square foot of land, on average.

If the average sale price of available residential land in Brookline was $50.89 per square-foot as of July 1, 2015, under the same or similar conditions, the subject land area of 285,318 square feet would have an estimated market value of $14,520,500 ($50.89 x 285,318 sf.), under the implied right to develop, general assumptions, and without any specific cost of development considerations or consideration of any known or unknown conditions limiting development, now or in the future.

The fact that a Comprehensive Permit has been issued to the property owner was also not incorporated into the analysis.

Just Compensation

The market value estimated by the Chief Assessor should serve only as a current working estimate. The price of actual just compensation could vary substantially. This is complicated by the fact that the property owner has been issued a Comprehensive Permit to construct 161 units on the Hancock Village property.. According to the plan that was approved by the Zoning Board of Appeals, the S-7 district includes 52 units and 193 surface parking spaces, some of which the developer has consistently maintained would support the apartment building in the M-.05 zoning district.

VII. COSTS and FUNDING

Capital Costs Estimate

The Parks and Open Space Division generated an estimated cost to improve the S-7 area to Town standards as both active and passive recreational space based on the recommendations of the seventeen interviewees. The cost estimate is conceptual, using a base plan and a variety of assumptions relative to conditions. The estimated cost includes installation of handicapped accessible entrances at all of the crossings, a six-foot wide walking/jogging path along the extent of the park, picnic areas, exercise stations, play areas, and pedestrian-scale safety lighting at the crossings. The total cost including construction, contingency and design is estimated at $1,565,000, the details of which are set forth in **Appendix D**.

Operating and Maintenance Cost Estimate

Annual maintenance costs for the Town are estimated to be approximately $14,000 for forestry services to include corrective, health and safety pruning and removals as necessary, and $33,000 for annual landscape maintenance activities from March to December. Costs of snow removal, if necessary, should be incorporated into the cost estimate.

VIII. FUNDING SOURCES AND FINANCIAL IMPACT

There are two State funding grant programs that are designed to reimburse communities for costs associated with acquisition of open space: The Land and Water Conservation Fund (LWCF) Grant Program and the Massachusetts Parkland Acquisitions and Renovations for Communities (PARC)[6] Program, both administered by the Executive Office of Energy and Environmental Affairs (EOEEA). While the state has not had a grant round for the former

[6] The PARC grant has a companion grant known as the "Massachusetts Local Acquisitions for Natural Diversity Program, aka LAND grant. The LAND grant provides funding to Conservation Commissions to help acquire land for natural resource protection and passive outdoor recreation purposes. The Town would not pursue a LAND grant for reimbursement to acquire the S-7 area given the intent of Warrant Article 18 is to study the acquisition of the property for active open space.

since FY13, EOEEA advises that it hopes to have a grant round in Fiscal Year 2016. While the maximum LWCF Grant has traditionally been set at $250,000, a maximum award has not yet been established for FY16. The PARC grant, which is active, sets a maximum reimbursement to municipalities of $400,000.

EOEEA has advised that there are currently no federal grants available for the purpose of acquiring land recreational uses.

If the Town proceeds to take the S-7 area by eminent domain, the Town would prepare application(s) for both the LWCF and PARC grants (assuming that they are active) and also avail itself of State Representative Edward F. Coppinger's offer to the Town dated March 24, 2015 to "zealously advocate for state funding or any other government agency, on behalf of said Eminent Domain taking." State Representative Edward F. Coppinger's letter to Town of Brookline Officials dated March 24, 2015 is included as **Appendix F: Letter from Rep. Edward F. Coppinger.**

Evaluation of Financial Impact

The Deputy Town Administrator evaluated the potential impact of a capital expenditure of $14,520,500, based on the Chief Assessor's estimate of value. Her full report is attached herewith as **Appendix G: Capacity in the CIP for Certain Land in South Brookline.**

Because the FY2017-FY2022 Capital Improvement Program (CIP) is still in development, the Deputy Town Administrator based her evaluation on the assumptions used in the FY2016-2021 CIP, with funds borrowed during FY 2017 and debt service commencing in FY 2018. A $14,520,500 million bond to fund the purchase of the S-7 area would cost the Town roughly $1.6 million for the first year of debt service.

The Town's CIP policies call for 6% of the prior year's net revenue to be dedicated to the CIP. The goal is to have the 6% consist of both a debt-financed component and a revenue (or "pay-as-you-go") component, with 4.5% for debt-financed CIP and 1.5% for pay-as-you-go CIP. Adding the cost of a bond used to purchase this land to the debt service schedule would effectively eliminate the availability of tax-financed monies from that 6% financing. This would leave just Free Cash as the funding source for <u>all</u> pay-as-you-go projects, thereby generating a high level of uncertainty to the CIP. The

amount of free cash available for the CIP can fluctuate dramatically from year-to-year.

At a minimum, $1.6M of pay-as-you-go projects would need to be cut from the CIP in FY2018, and in future years there would be less capacity for projects currently contemplated in the debt management plan (such as added capacity to the High School). Borrowing plans for future projects would likely need to be reconsidered or delayed in addition to the reductions in pay-as-you-go projects scheduled in the out-years of the CIP. Given the level of pressure this project would exert on the CIP, it could be more realistic to pursue debt exclusion for funding.

IX. LEGAL ISSUES

Should the Town elect to take the so-called S-7 area under the power of eminent domain, a legal challenge to the validity of the taking can and should be expected. Special Counsel with extensive experience in eminent domain takings was engaged by Town Counsel and requested to prepare an opinion on the legal issues that arise from eminent domain takings.

Special Counsel's opinion is not included with this report because it is confidential and protected from disclosure under the attorney-client privilege. Although the Board of Selectmen could choose to waive this privilege, it is not recommended that they do so, because disclosure of the opinion would be highly likely to compromise the Town's position regarding a potential taking. However, the legal questions analyzed by Special Counsel are discussed briefly below, to provide an understanding of what a legal challenge to the taking would likely involve. These issues include the following: First, whether the taking was for a valid "municipal purpose"; second, whether the taking was made in good faith; and third, what compensation the property owner is entitled to for the taking.

Municipal Purpose

Pursuant to *M.G.L.* c. 40, §14, a Town may take land by eminent domain for "any municipal purpose." Resolution Article 18 proposes taking the so-called S-7 area at Hancock Village for "permanently publicly accessible active recreation space. Because Massachusetts Courts have consistently held that recreational use is a legitimate municipal purpose, it is unlikely that a

challenge on this basis alone would be successful. Nonetheless, whether the Town's taking met the requirement is a judicial question; any declaration of purpose in the Town Meeting vote or vote by the Board of Selectmen would not, standing alone, be conclusive. See*, City of Boston v. Talbot*, 206 Mass. 82 (1910).

Good Faith

A taking by eminent domain, even if proper on its face, can be invalidated if a court finds that the taking was made in bad faith. *Pheasant Ridge Assoc. L.P. v. Town of Burlington*, 399 Mass. 771, 775 (1987). With respect to the eminent domain taking that is contemplated by Article 18, the likely legal question would be whether the taking was made in good faith, or whether the stated public purpose was merely a pretext because the actual purpose of the taking was to thwart the construction of affordable housing. Should a court find that the Town had made the taking in bad faith, the Town would be potentially liable for the challenging party's attorney's fees, costs and expenses, as well as reimbursement for any damages suffered due to the delay necessitated by the Town's taking.

Special Counsel's legal opinion includes his analysis of the likelihood of success, or failure, of a potential bad faith claim based on the material that is provided in this report.

Just Compensation

Any taking by eminent domain must also be accompanied by a payment of just compensation to the property owner in exchange for the taking. This amount would be equal to the property's "fair market value," defined as "the highest price which a hypothetical willing buyer would pay to a hypothetical willing seller in an assumed free and open market," with the hypothetical sale occurring on the date the eminent domain taking is recorded at the Registry of Deeds. In addition, this taking would represent a taking of only a portion of a much larger piece of property, and just compensation for the taking would also need to include the diminution of value of the remaining land, if any. *Kane v. Town of Hudson*, 7 Mass.App.Ct. 556 (1979).

While the Town would customarily extend an offer of payment alongside any eminent domain taking, the offered amount would almost certainly be challenged in court as inadequate. If this occurred, it would necessitate an

additional trial, likely before a jury, where both sides would employ expert witnesses in real estate valuation to argue that their proposed figure more accurately reflects the property's fair market value.

Special Counsel's legal opinion includes his analysis of the issues related to the payment of just compensation for the proposed eminent domain taking, based on the material that is provided in this report.

Conclusion

In concluding, Special Counsel advises us that "the probability of success in eminent domain cases is directly related to the experience of the trial judge; the quality of the attorneys and expert witnesses and the degree of sophistication of the jury in real estate valuation matters . . . the alleged bad faith taking case and the eminent domain damage case represent high stakes [and] costly and publicly acrimonious litigation for the Town, all of which considerations must be seriously weighed by the Board before electing the volatile and unpredictable eminent domain option in these circumstances."

APPENDIX A **Map of S-7 Area Proposed for Taking**

Green dashed line delineates S-7 Area proposed for taking.

Map source: Brookline Tax Atlas

APPENDIX B Planning History of the S-7 Area

Early 1900s	In the early 1900's, the property was owned by Francis C. Welch et al Trs. and Weld Real Estate Trust. An undated map indicates that the property was undeveloped.
1920s	The Weld Golf Club, owned by Weld Golf Course Trust Inc., was created. It was a private golf course, although records from 1927 indicate that Harvard students and faculty were allowed to buy a maximum of 100 tickets per day for a three-week period at $1.50 per ticket.
Between 1927 and 1946 (precise date unknown)	"The area which is proposed to be rezoned from the 4D, single-family residence district, to the 3C, general residence district [and which] was formerly a part of the Weld Golf Course" ceased being "used for any purpose for several years." Presumably this statement applies to what is now the S-7 area as well.
January 11, 1946	The John Hancock Insurance Company entered into an option to purchase the entire property from a Mr. Engstrom subject to the Town supporting a zone change of "substantially the whole of the proposed site of Hancock Village" from a single family zone to a general residential zone. Specifically, according to the Planning Board's Final Report and Recommendations to Town Meeting dated January 11, 1946, approximately 43.13 acres were to be rezoned from 4D to a new 3C zone, with "the strip of land (containing about 8.25 acres) not to be rezoned, situated northeasterly of the area described in this article [which] will be developed for detached single-family residences and will form a buffer strip or area between the present single-family residences on Beverly and Russett Roads and the proposed new 3C district."
March 1946	John Hancock Insurance executed an Agreement relative to the property to be rezoned (i.e. not including the land currently zoned S-7.) The Agreement does not reference the so-called "buffer," which retained its single-family zoning designation. By its express terms, the Agreement addresses only the land that was rezoned from single to multi-family. "The town, at its annual meeting in 1946, voted to amend the by-law by rezoning substantially the whole of the proposed site of Hancock Village so that it became a 3C District, in which attached multiple family dwellings were permitted. A strip on the northerly and easterly boundaries of the site, of uneven width averaging a little over 100 feet wide, was allowed to remain in the 4D District to form a buffer between the detached single residence neighborhood lying to the north and east of the village the more closely built up village."
May 9, 1946	None of the official records identified by the Planning Department references "buffer," "green space," "natural screen," or "open" space." The only reference in any of the examined official documents to something other than a buffer for single family homes or "buffer" without any qualification was found in minutes dated May 9, 1946 from John Hancock's Bureau of Housing: "A 125-foot park is shown as the buffer zone…the park protects our development from anything that might be built on the other side of it…"
January 18, 1950	The Planning Board considered a request by John Hancock Insurance to establish an off-street parking area in a single family district "otherwise referred to as a 'buffer zone.'" "Appearing in opposition….were: Eli H. Clazett, who stated that he represented the Putterham Association and the South Brookline Center…. [and] that this request for change of zone was a breach of the agreement between the Town of Brookline and the John Hancock Mutual Life Insurance Co., as President Clark [of John Hancock Insurance] had stated on many occasions that this buffer zone was to be used solely for single houses." In Executive Session on the same date, the Planning Board "…decided that….this was a breach of the agreement between the John Hancock Mutual Life Insurance Co. and the Town of Brookline to maintain and use the buffer zone for single houses only…" and voted not to favor the change.
January 8, 1958	The Board of Appeals denied a variance for parking at the corner of Independence

	Drive and Russett, finding "that while the proposed variance would be of some help, it would not entirely eliminate the problem, and there is other parking space provided by the Hancock Village within reasonable walking distance which is now being enlarged."
December 28, 1967	The Board of Appeals denied a petition for a variance to create a new accessory parking areas adjacent to 471-523 VFW, "said premises being located in a S-7 (Single Family) District, stating "[t]he burden is on the appellant, we think, to prove that no other solution is possible. This was not done, and the appellant's hardship not proved."
1980s	The single family 4D district was eventually rezoned to the existing S-7 (single family) district, presumably during town-wide rezoning process. In 1985, three parcels were "carved out" of the S-7 zone and three single-family houses were constructed (according to Assessors records): 14, 18 and 22 Independence Drive. These three houses were built as-of-right.
2005	Brookline Comprehensive Plan (2005 – 2010) includes one reference to Hancock Village asserting that the residential complex should be considered as an appropriate location for affordable housing.
2011	The Open Space and Recreation Plan for the Town of Brookline (2010), prepared by the Brookline Conservation Commission, identifies "Hancock Village" as one of eleven "Priority Unprotected Open Space Parcels of 5+ Acres." Although "the buffer" is not referenced, Hancock Village was first identified in the 2005 Open Space Plan as one of (then) "thirteen large and significant parcels that should have priority for open space protection, whether through out-right acquisition, conservation restrictions, or agreements for protection by other means."
Ongoing	Brookline residents have claimed that assurances were made by owners of Hancock Village and others that the buffer would remain as green space or as publicly-accessible open space in perpetuity.
2011-2013	A Neighborhood Conservation District Town Bylaw was established over the parcels that make up the Brookline portion of the Hancock Village complex to conserve an application of the Garden City planning theory espoused by English planner Ebenezer Howard. "Any further development shall be compatible with the existing development of the district and its relationship to the adjacent neighborhood….Any proposed Reviewable Project (including demolition, removal, new construction or other alteration)….shall not have a significant negative impact on historic architectural or landscape elements….Significant negative impacts hall include, but not be limited to:…loss of the 'greenbelt' now serving as a buffer to the abutting single-family detached homes." Town Bylaw, Sec. 5.10.3
June 22, 2012	State determines that Hancock Village is eligible for listing in National Register of Historic Places.
August 2012-February 20, 2015	Zoning Board of Appeals files decision with 70 conditions with Town Clerk granting a Comprehensive Permit to construct 161 rental residential units (20% affordable housing) in 12 buildings and 293 parking spaces. Forty-eight (48) units in eleven (11) buildings and 194 surface parking spaces would be located in the S-7 area.
2014	Hancock Village was identified by Preservation Massachusetts as one of the Commonwealth's ten "most endangered" historic resources.

Sources include:

- Planning Board records from 1940 to 1958. (Note: the Planning Board as opposed to the Board of Appeals was charged with the responsibility for land use decisions during this time frame.)
- Minutes of Meetings of Brookline Long Range Planning Committee 1943-1945
- Planning Board Reports binder from 1945 to 1947

- Agreement by John Hancock Life Insurance Company executed March 11, 1946 relative to the rezoned property
- Town responses to Chestnut Hill Realty's applications to MassDevelopment for a Project Eligibility letter in 2012 and 2013
- Hancock Village Olmsted Correspondence Files (1941-1948) re: John Hancock Housing Job No. 9703
- Owners' petitions to build parking within the buffer (1950, 1958 and 1967)
- Hancock Village Planning Committee binder
- Planning Department files on the Hancock Village property
- Open Space and Recreation Plan for the Town of Brookline 2010
- The Comprehensive Plan 2005-2015
- The Open Space and Recreation Plan for the Town of Brookline (2010
- Neighborhood Conservation Districts, Article 5.10 of the General By-laws
- Petitioner's power point presentation dated April 29, 2015 relative to Warrant Article 18 from 2015 Annual Town Meeting

APPENDIX C

Excerpts from Sources That Describe the Function of the Land Proposed for Taking

EXCERPTS from Planning Board Records
(leather binder #2—March 1940 to…)

"Final Report and Recommendations to the Town Meeting RE: Weld Golf Course Development (23rd Article)—January 11, 1946:
'…The John Hancock Mutual Life Insurance Company holds an option to purchase the property described in the above article and an additional strip on the northeasterly side thereof, said areas together forming a single tract of about 51.38 acres in Brookline. This Company intends to purchase said tract, if the aforesaid article is favorably act upon, and plans to build on the rezoned portion thereof connected single and two-family dwellings. The strip of land (containing about 8.25 acres) not to be rezoned, situated northeasterly of the area described in this article will be developed for detached single-family residences and will form a buffer strip or area between the present single-family residences on Beverly and Russett Roads and the proposed new 3C district.'"

John Hancock Development—May 29, 1946
"The Chairman first took up the matter of new plans for the Garden Village development of the John Hancock Mutual Life Insurance Co., presented by the Ring Engineering Co., Inc., and called attention to the fact that these differed materially from the previous plans, and contained several undesirable features, namely: some buildings were shown as overlapping the buffer zone….After a thorough discussion, it was decided that the plan was not satisfactory to the Board."

January 18, 1950
"The [Planning] Board then considered amendments (d) and (e) as proposed. The Chairman explained that these were requested by the John Hancock Mutual Life Insurance Co. so that it would be possible, if adopted, to establish an Off-Street Parking Area in a Single Family District; otherwise referred to as a 'buffer zone.'

"Appearing in opposition to these proposed amendments were: Eli H. Clazett, who stated that he represented the Putterham Association and the South Brookline Center. He stated that this request for change of zone was a breach of the agreement between the Town of Brookline and the John Hancock Mutual Life Insurance co., as President Clark had stated on many occasions that this buffer zone was to be used solely for single houses."

"Dan Daley also spoke in opposition, expressing the same reasons as Mr. Clazett."

"Many letters were received by the Board in opposition to the change. A show of hands showed thirteen opposing amendments (d) and (e)."

"No one appeared in favor."

January 18, 1950
"In EXECUTIVE SESSION, the Planning Board took up each proposed amendment as follows:
HANCOCK VILLAGE. Proposed amendments (a), (b) and (c).

"The Board decided to take no action until Mr. Philip Nichols appeared at a later meeting and clarified the meaning as expressed in the amendment for 'Accessory Uses.'

"Referring to amendments (d) and (e), it was decided that as the opposition was unanimous, that this was a breach of the agreement between the John Hancock Mutual Life Insurance Co. and the Town of Brookline to maintain and use the buffer zone for single houses only, it was unanimously

VOTED: Not to favor the change."

January 25, 1950—FINAL REPORT ON AMENDMENT TO THE ZONING BY-LAW
"The town, at its annual meeting in 1946, voted to amend the by-law by rezoning substantially the whole of the proposed site of Hancock Village so that it became a 3C District, in which attached multiple family dwellings were permitted. A strip on the northerly and easterly boundaries of the site, of uneven width by averaging a little over 100 feet wide, was allowed to remain in the 4D District to form a buffer between the detached single residence neighborhood lying to the north and east of the village the more closely built up village.

NOTES FROM OTHER CORRESPONDENCE--PLANNING DEPARTMENT'S FILES (ALL RELATE TO EFFORTS BY OWNERS TO CONSTRUCT PARKING IN THE BUFFER)

Board of Appeals—Case No. 583—January 8, 1958 (variance for parking denied)
"John Hancock Mutual Life Insurance Company applied to the Building Commissioner for permission to construct an open-air accessory parking lot on the Hancock Village property at the corner of Independence Drive and Russett Road, Brookline. The permission was denied and an appeal was seasonably taken from the decision of the Building Commissioner."

"Upon the foregoing evidence we find that whatever existing hardship there may be in the enforcement of the Zoning By-Law is not a hardship to the appellant but rather to the tenants of its buildings and to the Fire and Police Departments of the town. The Board finds that while the proposed variance would be of some help, it would not entirely eliminate the problem, and there is other parking space provided by the Hancock Village within reasonable walking distance which is now being enlarged."

Board of Appeals—Case No. 1465—December 28, 1967 (variance for parking denied)
"Westbrook Village Trust applied for a variance from Section 4.30 of Zoning By-Law to allow a new accessory parking area for 93 cars adjacent to 471-523 Veterans of Foreign Wars Parkway, said premises being located in a [sic] S-7 (Single Family) District."

Claim of appellant: "The appellant would be within its rights to build one-family houses on the proposed parking site, but a new road would have to be laid out to give access, and so this is not practical."

"Six persons spoke in opposition, including Representatives Backman and Dukakis, and the President of the Putterham Circle Association. They contended that when the John Hancock Petition to rezone certain land was voted for by the Town, it was represented that a buffer zone of S-7 restriction would be maintained between the development and other land, and that to vary those restrictions so as to allow parking would violate the spirit of the agreement then entered into."

Decision: "The burden is on the appellant, we think, to prove that no other solution is possible. This was not done, and the appellant's hardship not proved. Variance denied."

Letter from Town Counsel to attorney for Hancock Village dated February 2, 2006 re: proposed parking lot
"I am not in a position to overturn [the Building Commissioner's] decision."

EXCERPTS FROM HANCOCK VILLAGE PLANNING COMMITTEE BINDER (with green cover and spine)

Letter from George F. Glacy of 57 South Street dated January 18, 1950
"It was further stated by Hancock that if single dwellings were not built on the buffer strip this buffer area would be maintained for parks and recreation purposes."

Brookline Planning Board—January 11, 1946 RE: Weld Golf Course Development
"The Company has complied with the suggestions of the Planning Board in regard to a buffer zone of one-family houses bordering the present development and the carrying of Grove Street through the property."

Meeting of the Planning Board—September 26, 1945
"Mr. Clark was told by the Planning Board that they would like to see Grove Street extended through the property to the Veterans of Foreign Wars Parkway and that something in the way of a buffer between their development and the adjacent Single Family Zone would be desirable."

Town's Response to MassDevelopment--2013

Page 11—Greenbelt within Single-Family Residence District
"The May 9, 1946 minutes of the Bureau of Housing Development of the Hancock Insurance Company noted that 'a 125-foot park is shown as the buffer zone….[which] protects our development from anything that might be built on the other side of it." [see below]

BUREAU OF HOUSING [of Hancock Insurance Company] MINUTES

May 9, 1946
"The drawings were displayed. A 125-foot park is shown as the buffer zone. This will have to be approved by Brookline. Mr. Sprout brought out that the zoning amendment defined the northeasterly and easterly boundary of the new zone as 'the center line of proposed roads' as shown on a reproduction of the Olmsted plan. Colonel Ring said this street could be shown on a plan without it being built. The park protects our development from anything that might be built on the other side of it. Mr. Bates said that as Mr. Dana of Brookline suggested a buffer strip long ago, Colonel Ring's plan seems very practical."

EXCERPTS FROM POWER POINT DATED APRIL 29, 2015 PREPARED BY PETITIONER

"March, 11, 1946 Commitments by John Hancock Insurance Company 'agrees on behalf of itself, its successors and assigns to and with the Town of Brookline….that building coverage shall not exceed 20% of said area." (Note: the 1946 Agreement does not apply to the buffer.)

Brookline Chronicle, 8/29/46
"100% Single-House Project with Natural Screen In Buffer Strip Now Planned for Hancock Development"

"'Another major change substitutes a natural screen of small trees and other shrubbery for a row of detached single houses which had been planned for the so-called buffer strip along the rear of houses fronting on Beverly and Russett roads…"

John Hancock's own Memo: May 1946
"A 125 foot park is shown as the buffer zone…(which) protects our development from anything that might be built on the other side."

"Twice, in the 1950s, the Insurance Company attempted to add parking along the two green belts. Twice rejected, validating the inviolability of the 1946 agreement, and 'revised' plan submitted and approved by the Planning Board.

References to play equipment in the buffers, and "recently seen uses: football, soccer, bicycling, skating, cross-country skiing, etc."

"It has ALWAYS been used by the neighborhood for active recreation: Football, soccer, ice skating, bicycling, movies, carnivals, sandboxes, merry-go-rounds, through early 60s, etc"

Letter from Herbert L. Shivek dated March 20, 2015
"I well recollect the agreement that the Town made with John Hancock which stipulated that the green space would be perpetual and, due to this agreement, approval was granted to build the apartments at Hancock Village." (The 1946 agreement does not address the "green space." No other agreement could be found.")

TOWN OF BROOKLINE
Massachusetts

DEPARTMENT OF PUBLIC WORKS
PARKS AND OPEN SPACE DIVISION

Andrew M. Pappastergion
Commissioner

Erin Chute Gallentine
Director

Memorandum

To: Mel Kleckner, Alison Steinfeld
From: Erin Gallentine
Date: September 12, 2015
Re: Warrant Article 18: Analysis of Need for Open Space in Precinct 16

Below please find a report of the Parks and Open Space Division pertaining to the Park and Open Space needs of Precinct 16 and whether or not the area zoned as S-7 within Hancock Village and commonly referred to as "the buffer, which is owned privately, could help meet that need if converted to public use. The report is created in response to Resolution Warrant Article 18 of the 2015 Annual Town Meeting, asking the "Board of Selectmen to study and consider use of Eminent Domain for two green space buffer zones along Russett and Beverly Roads…for a permanent publicly-accessible active recreation space." The Division was tasked with the following:

a. Evaluate the need for active public recreational space in Precinct 16
b. Analyze the suitability of referenced buffer zone parcel(s) for active public recreational use
c. Provide a range of costs to convert the referenced buffer zone parcels to active recreational space consistent with Town standards
d. Provide operating and maintenance cost estimates

Methodology
The Division, under the leadership and direction of Selectwoman Nancy Heller, interviewed residents and Town Meeting Members from Precinct 16, members of the Greenspace Alliance, and Park and Recreation Commission members. In addition, the Division references past work and analysis that expresses the Town's open space values and preferences through three planning processes: The Parks, Open Space and Recreation Strategic Master Plan 2006 led by the Park and Recreation Commission and staff, The Open Space Plan 2010, a planning process led by the Conservation Commission, and the Brookline Comprehensive Plan 2005-2015, led by the Town's Department of Planning and Community Development.

Despite its urban character and proximity to Boston, Brookline has a substantial and diverse park system, ranging from small neighborhood playgrounds and public gathering places in commercial areas to grand historic landscapes and natural areas. Home to a working farm that has been in the same family since the 17th century, elegant estate properties from a bygone age, and two renowned Emerald Necklace Parks designed by Frederick Law Olmsted, Brookline highly prizes the grand, dramatic open spaces and natural areas that are rich in history as well as environmental values. Brookline also values the balance of density and accessible open space, in the form of small parks, pedestrian and bicycle-friendly ways and public gathering spaces that make for a vibrant community life in a more urban setting. The environmental, social and public health benefits that accrue from this collection of open space are considerable and its presence contributes greatly to the aesthetic appeal of the community.

Brookline, with approximately 4,355 acres, is surrounded by the City of Boston on three sides and the City of Newton on the southwest. Approximately 13% of Brookline's land area consists of parks, open space and recreation facilities owned and managed by the Town. The Parks and Open Space inventory in both The Master Plan and The Open Space Plan separate the open space properties into ten categories: community parks (11) including the Putterham golf course, historic parks (5), neighborhood parks (12), passive parks (11), school playgrounds (10), conservation areas (4), and other open space including traffic medians and islands, buffers, reservoirs and water supply lands. This report specifically addresses access to active and passive recreational public open space in Precinct 16. The public open spaces in Precinct 16 include the Baker School Playground, D. Blakely Hoar Sanctuary and Walnut Hills Cemetery.

The Need for Public Recreational Space in Precinct 16

Selectwoman Nancy Heller and Director Erin Gallentine conducted four meetings and several phone interviews with a range of residents including: Precinct 16 Town Meeting members (TMMs) and residents, and South Brookline Neighborhood Association (SBNA) members[1] Participants represented a range of interests, ages, family status and community experiences and were asked the following questions:

1. What are the recreational needs of Precinct 16?
2. What are the public recreational resources that the precinct uses?
3. What are the opportunities or possibilities for public recreational use in Precinct 16 that would be within about a 10-minute walk?
4. How has the area known as "the buffer" been used historically?
5. What would you see as being the best and highest use for the area known as "the buffer" if it were public land?

The results of the interviews revealed that a significant majority of participants shares similar opinions about the recreational needs of Precinct 16 and the opportunities to meet that need. The general consensus from the interviewees was that Precinct 16 needs a safe, walkable, multi-generational, and accessible public park to meet the active and passive recreational needs of the neighborhood. While Warrant Article 18 specifically references "active recreation space;" most interviewees expressed the need for both active and passive recreation space. A passive

[1] Participants included: Joyce Stavis Zac (TMM/SBNA), Scott Gladstone (TMM), Deb Abner, Alisa Jonas (TMM), Irene Scharf (TMM), William Pu (TMM), Robin Koocher, Judith Leichtner (TMM), Robert Cook (Planning Board/Walnut Hills Cemetery Trustee), William Varrell, Deborah Dong, Steven Chiumenti (TMM), Nancy Fulton, Thomas Gallitano (TMM), Hugh Mattison (Tree Planting Committee), Arlene Mattison (Greenspace Alliance)

recreation area is generally a less developed space or environmentally sensitive area that requires minimal enhancement and might include open lawn for picnicking, benches for sitting or reading and paths for walking. Active recreational activities, such as organized sports or playground activities require extensive facilities or development such as: play structures, hard court play areas, athletic fields, and biking facilities.

Those interviewed shared the general belief that the public open spaces in Precinct 16 (the Baker School Playground, D. Blakely Hoar Sanctuary and Walnut Hills Cemetery), pose recreational limitations to the residents. The Walnut Hills Cemetery has a very specific and private function and, while some in the neighborhood find it to be a peaceful place to walk and enjoy the landscape, most individuals said that they would not consider it a recreational destination for themselves or their families. The D. Blakely Hoar Sanctuary is considered an excellent location to take a nature walk, but not a destination for social gathering and recreation. A few individuals added that they were not comfortable going to the sanctuary because it was somewhat isolated. The Baker School grounds are generally designated for school use Monday-Friday from approximately 8:00 am to 5:30 pm and considered inaccessible during those times. In addition, residents on the east side of Independence Drive felt that it was also inaccessible due to the high speed and volume of traffic on Independence Drive, which felt like a barrier. For example, one interviewee noted that traffic is a deterrent when considering walking to Baker School from his house, especially having to cross Independence Drive, which can be dangerous. Another said that not only is the Baker School field heavily programmed with sporting events outside of school hours, it is not close enough for children to safely walk or bike to from the east side of Independence Drive. Another interviewee said that while school is in session, recess begins at 10 am and is closed to the public for the majority of the day. One interviewee said that her family would wait until evenings to go to the Baker School Playground, when it became available to the public. The small garden next to Putterham Library was mentioned by several individuals as a small area that was a nice visual amenity, but too small for any meaningful active recreation.

Several of the participants added that while there were other options, such as the larger community parks (Larz Anderson Park and Skyline Park) within one to two miles of the precinct, they also were not easily accessible and certainly not walkable, not only due to distance, but also due to busy streets with difficult crossings. They added that while these are important community resources due to size, distance and programming, they were not the type of spaces that easily foster the local connections and sense of community provided by neighborhood parks. One individual stated that he did not mind the short drive to various parks and personally preferred the larger tracts of land, but noted that walkability would be especially important to the elderly and parents of young children in the neighborhood. In addition, some residents (in particular those east of Independence Drive) stated that they would walk to Hynes Playground in Boston; while it was a popular park destination, it was difficult to access due to the need to cross VFW Parkway and did not build neighborhood connections and a sense of community due to it being outside of Brookline.

Overall, the participants opined that there was a need for a public park in Precinct 16 for active and passive recreation; a gathering place where neighbors form social ties that produce stronger, safer neighborhoods, have the opportunity to live healthier lifestyles, and build the overall sense of community that makes Brookline special. It was noted by several interviewees that many of the residential properties in the precinct had a very small footprint and were limited as far as any recreational use due to size and topography, such as rocky ledge. Additional comments about the need for a neighborhood park included the importance of the physical character of the neighborhood, providing safe places for children to play, opportunities for individuals to be in nature, physical exercise, environmental benefits, more efficient storm water management,

reduction of air and water pollution, and the opportunity for a safe connected route between the neighborhoods, D. Blakely Hoar Sanctuary and the Baker School. The concern about the changing demographics in Brookline was also raised. An increase in young and school age children has impacted the school population town-wide. The Baker School renovation and expansion only 10 years ago was insufficient to accommodate the number of children in the school and in the summer of 2015 additional classrooms were added. The increase in pre-school and school age children does not only impact the schools, but also the parks and open space. There is an even greater need for a neighborhood park to accommodate the changing community.

The Buffer Zone

The S-7 area, consisting of landscaped open space, serves as a buffer between the Hancock Village buildings and the adjacent detached single-family residential developments off Beverly Road to the north and Russett Road to the east. The residential superblocks of Hancock Village were arranged to preserve much of the natural landscape. The community green space at the highest point within Hancock Village, at the southeast corner between Thornton and Asheville roads, allows residents to take advantage of scenic views. To avoid the visual disruption of large surface parking lots, the designers placed discrete clustered parking areas at street edges and within communal garages. The S-7 area is a significant feature of the landscape on the north and east boundaries of the residential development. It maintains mature trees and features long, meandering paths, many with a sight line up the hill, that act as a park space for Hancock Village residents.

The individuals who participated in the interviews discussed the historical uses of “the buffer”. The activities that they either observed or participated in included: walking, biking, running, cross country skiing, sledding, volleyball, birthday/family parties and neighborhood gatherings, play, outdoor movies, barbeques, volleyball, Frisbee, ball playing, reading, sunbathing, birdwatching, and many other activities. Some of the interviewees felt comfortable to use the area as though it were public open space or an extension of their back yards. Other interviewees felt that the area was clearly private and while they observed these activities they were not sure if the individuals using the space were Hancock Village residents, guests of the residents or people from the neighborhood. The opinion as to whether the land was available for public use ranged widely; generally, individuals who were direct abutters viewed the land as open and welcoming and others who lived farther away had the perception that the land was private and intended for private use only.

The interviewees were asked for suggestions to meet the described recreational open space need within the precinct, but largely only had one recommendation, “the buffer”. It was generally described as the best option for public open space that would meet the recreational need of the neighborhood. The individuals interviewed described the primary need and best and highest use of the S-7 area to be a public neighborhood park that would have any combination of the following: accessible walking paths, picnic areas and social gathering spaces, benches, open lawn and trees. The area was described as an opportunity to provide: safe connected routes in the neighborhood to the D. Blakely Hoar Sanctuary); areas for recreation, walking and cycling; and a safer route to the Baker School. Several people suggested adding a connecting path from D. Blakely Hoar Sanctuary to “the buffer” for access and to encourage potential use. There were also several individuals that felt that a playground would be an important addition to the neighborhood and that the area, due to its length, was particularly well suited for exercise stations. One person advocated for a hard court area for basketball or street hockey.

Park and Recreation Needs Assessment of Precinct 16

Analysis of the existing parks, open space, trails and recreation systems helps to determine how they serve the public. The Brookline Park, Recreation and Open Space Strategic Master Plan uses a methodology called **GRASP™** (Geo-referenced Amenities Standards Program). This methodology has been applied in communities across the nation as a way of measuring and portraying the service provided by parks and recreation systems. In this methodology, capacity is only part of the Level of Service (LOS) equation. LOS is typically defined in this context as the capacity of the various components and facilities that make up the system to meet the needs of the community. Other factors are brought into consideration, including *quality*, *condition*, *location*, *comfort*, *convenience*, and *ambience*. Parks, recreation facilities, and open space are evaluated as part of an overall infrastructure made up of various components, such as playgrounds, multi-purpose fields, passive use areas, etc. The results are presented in a series of maps that make up the **GRASP™** analysis of the study area, copies of which are attached herewith.

For Brookline's LOS analysis, a service radius of 1/3 mile has been used, on the assumption that this radius encompasses an area from which the park or playground can normally be reached within an indirect route of approximately ½ mile or a walking time of 10 minutes. While an individual's willingness to walk varies greatly depending on age, health, time availability, quality of surroundings, safety, climate, and many other factors the Town's LOS standard is similar to the access analysis published by the Trust for Public Land that identified a half-mile, or 10-minute, walk to a park as a common national standard.

The *GRASP ANALYSIS WALKABILITY MAP* provides a composite picture of how the park system infrastructure, taken as a whole, offers residents access to recreation opportunities within an easy walk of home. On this map, darker shades represent places where there is greater availability of options, in terms of quantity and quality, for people to get out of their house and walk to. The map shows that over 90% of the town area has some walkable park, open space or recreation facility. This map is relevant because it demonstrates that Precinct 16 has a deficit of walkable open space. However, when the School Grounds, Cemeteries and Nature Sanctuaries are removed from the map, as shown in the *RECREATIONAL OPEN SPACE ACCESS BY PRECINCT MAP*, it further demonstrates the limited availability of public park resources to the neighborhood.

POPULATION ANALYSIS DENSITY PER SQUARE MILE MAP shows the population density in terms of number of persons per square mile for each census tract in Brookline. As the map indicates, densities are much higher in the northern parts of Brookline, ranging to more than 28,000 per square mile in some neighborhoods, and averaging at least 7,500 per square mile throughout the northern area. In the south, densities are consistently lower, less than 7,500 per square mile throughout. This map is useful in comparing the distribution of services shown on previous maps with where people live. It helps to explain why there may be fewer components located in the southern half of Brookline, and supports to some extent the differentiation of levels of service between the two areas. However, regardless of density, all residents deserve access to a basic level of service, within reasonable distance from home. This is where distribution of facilities becomes more important than the quantity or capacity of facilities.

Capital & Maintenance Costs

The attached *HANCOCK VILLAGE BUFFER PRELIMINARY COST ESTIMATE* dated September 17, 2015 shows a range of costs for improving the approximately six acres of land to Town standards as a public active and passive recreational space using the recommendations provided by the residents of Precinct 16 of $1,565,000. The cost estimate is conceptual using a

base plan and a variety of assumptions on conditions. The estimate provides cost to install handicapped accessible entrances at all of the crossings, a six-foot walking/jogging path along the extent of the park, picnic areas, exercise stations, play and pedestrian scale safety lighting at the crossings.

Annual maintenance costs for the Town are estimated to be approximately $14,000 for forestry services to include corrective, health and safety pruning and removals as necessary and $33,000 for annual landscape maintenance activities from March to December. Snow removal costs should be discussed if that would be a requested service of the Public Works Department.

Summary

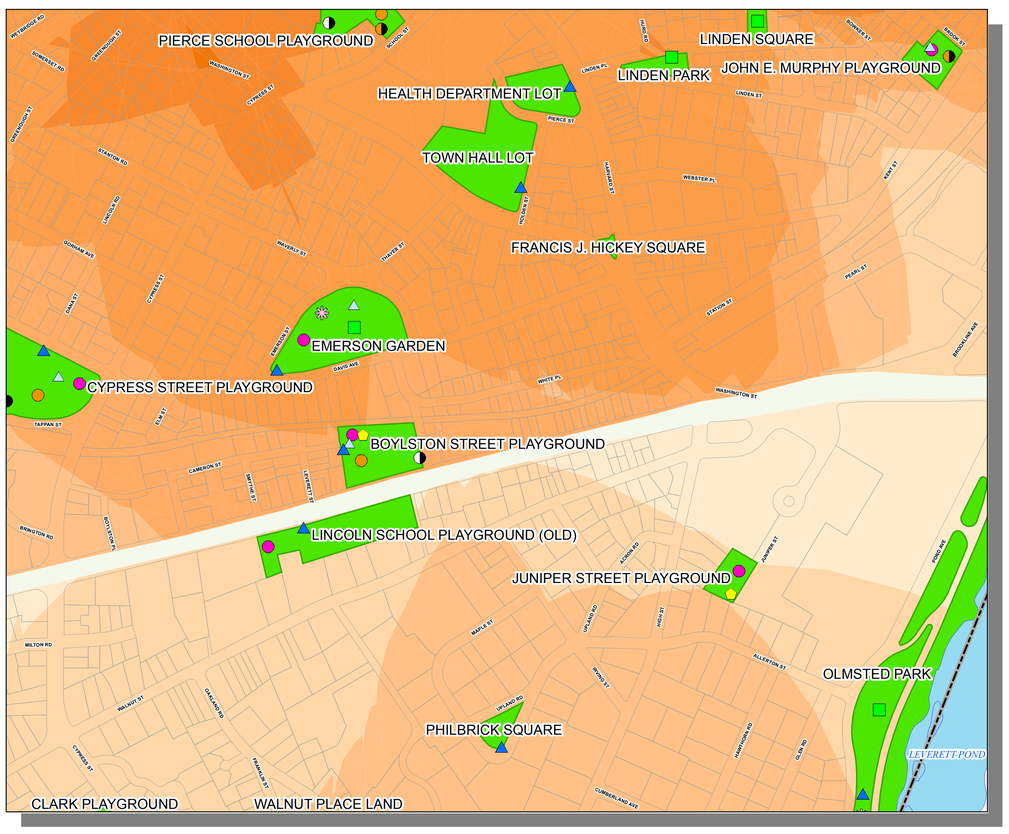
Parks, open space and recreation facilities form an essential component of Brookline's character and have a long and established history in the town. Neighborhood parks also produce important social and community development benefits. They make neighborhoods more livable; offer recreational opportunities for all ages and abilities; and provide places where people can feel a sense of community. Existing parks and conservation lands provide numerous advantages to the community, including environmental protection, passive and active recreation, historic preservation, social benefits, and enhanced aesthetic character. Together, the park and open space system forms a large greenspace system in Brookline. The presence and distribution of greenspace is closely linked with the quality of natural and cultural resources available to the community.

The Park, Recreation and Open Space Master Plan states:

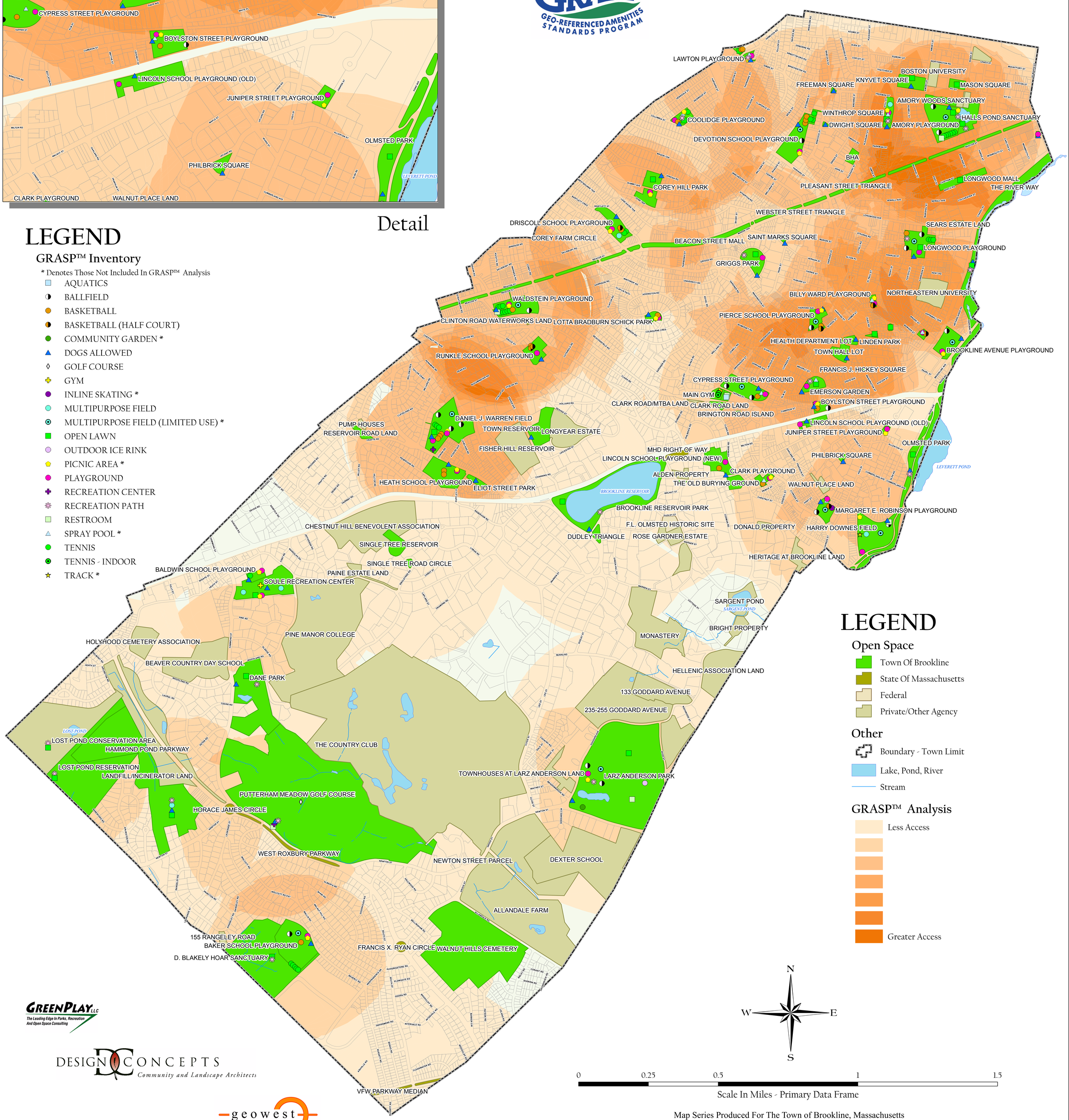
> *Brookline needs additional facilities and public spaces for both active and passive uses. The community survey revealed that Brookline residents strongly favor open space acquisition, trailways in and between our parks and open spaces, additional athletic fields and the provision of indoor multi-generational community recreation activities. In areas of town that are more densely developed, residentially and commercially, the challenge is to maintain the quality of openness along with important natural resource values. Creating more pocket parks and public gathering spaces, enhancing green travel ways for pedestrians and bicycles and a variety of possible zoning modifications to protect openness in the context of built space are some of the recommendations of this Master Plan and the Open Space Plan.*

Precinct 16 has limited access to walkable public open space per the Town's Park, Recreation and Open Space Strategic Master Plan and national standards. Through the interviews it was clear that there is unanimous consensus that a neighborhood park for active and passive recreation is needed in Precinct 16. There was also a good deal of sentiment about the environmental, aesthetic and historic importance of "the buffer" and many stated their desire to protect and preserve this six- acre beautiful green landscape. Development of "the buffer" as a public park for active and passive recreation would provide a neighborhood destination for passive and active recreation that would meet that need.

4.8 GRASP™ ANALYSIS WALKABILITY



Detail



LEGEND

GRASP™ Inventory

* Denotes Those Not Included In GRASP™ Analysis

- AQUATICS
- BALLFIELD
- BASKETBALL
- BASKETBALL (HALF COURT)
- COMMUNITY GARDEN *
- DOGS ALLOWED
- GOLF COURSE
- GYM
- INLINE SKATING *
- MULTIPURPOSE FIELD
- MULTIPURPOSE FIELD (LIMITED USE) *
- OPEN LAWN
- OUTDOOR ICE RINK
- PICNIC AREA *
- PLAYGROUND
- RECREATION CENTER
- RECREATION PATH
- RESTROOM
- SPRAY POOL *
- TENNIS
- TENNIS - INDOOR
- TRACK *

LEGEND

Open Space

- Town Of Brookline
- State Of Massachusetts
- Federal
- Private/Other Agency

Other

- Boundary - Town Limit
- Lake, Pond, River
- Stream

GRASP™ Analysis

- Less Access
- Greater Access

N
W E
S

0 0.25 0.5 1 1.5

Scale In Miles - Primary Data Frame

Map Series Produced For The Town of Brookline, Massachusetts
This Map Is Intended For Planning & Discussion Purposes Only
Please Refer To The Master Plan Document For Map Details
Map Produced By Geowest, Incorporated - Morrison, Colorado - 303.904.9982
Published - July 2005

GREENPLAY LLC
The Leading Edge In Parks, Recreation And Open Space Consulting

DESIGN CONCEPTS
Community and Landscape Architects

geowest
Civic GIS Solutions

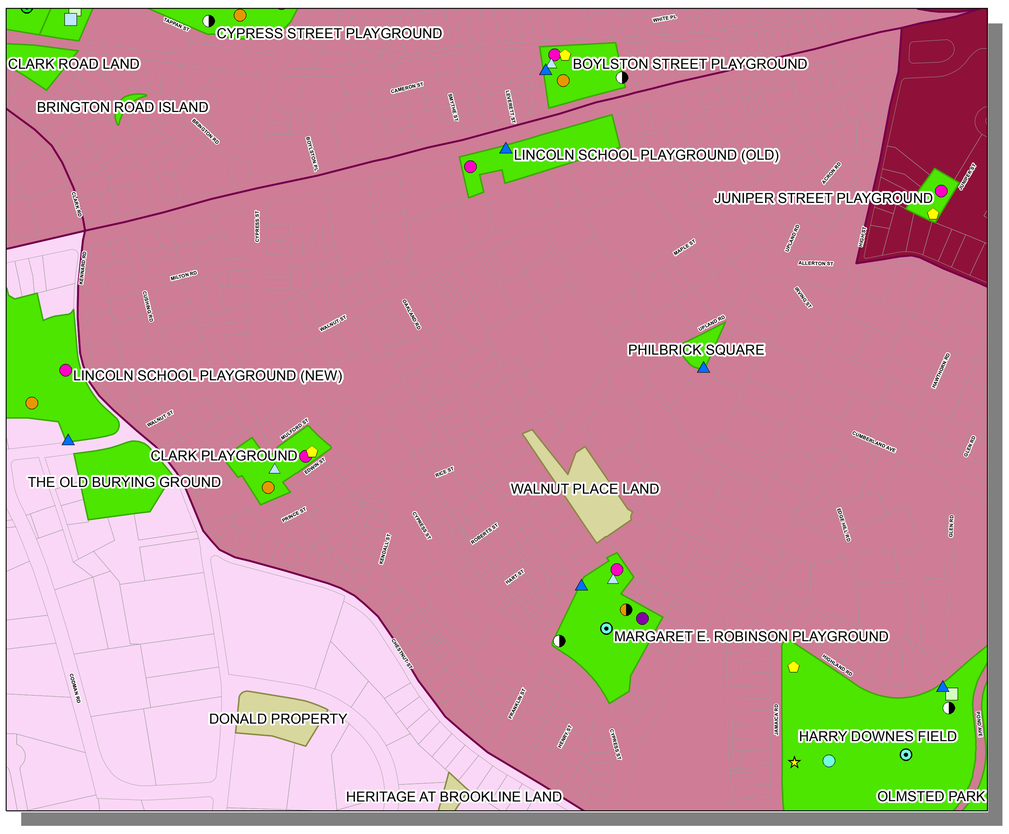
Pressley Associates, Inc.

TOWN OF BROOKLINE MASSACHUSETTS

PARKS, OPEN SPACE & RECREATION MASTER PLAN

Brookline Massachusetts

4.9 POPULATION ANALYSIS
DENSITY PER SQUARE MILE - 2003 FIGURES



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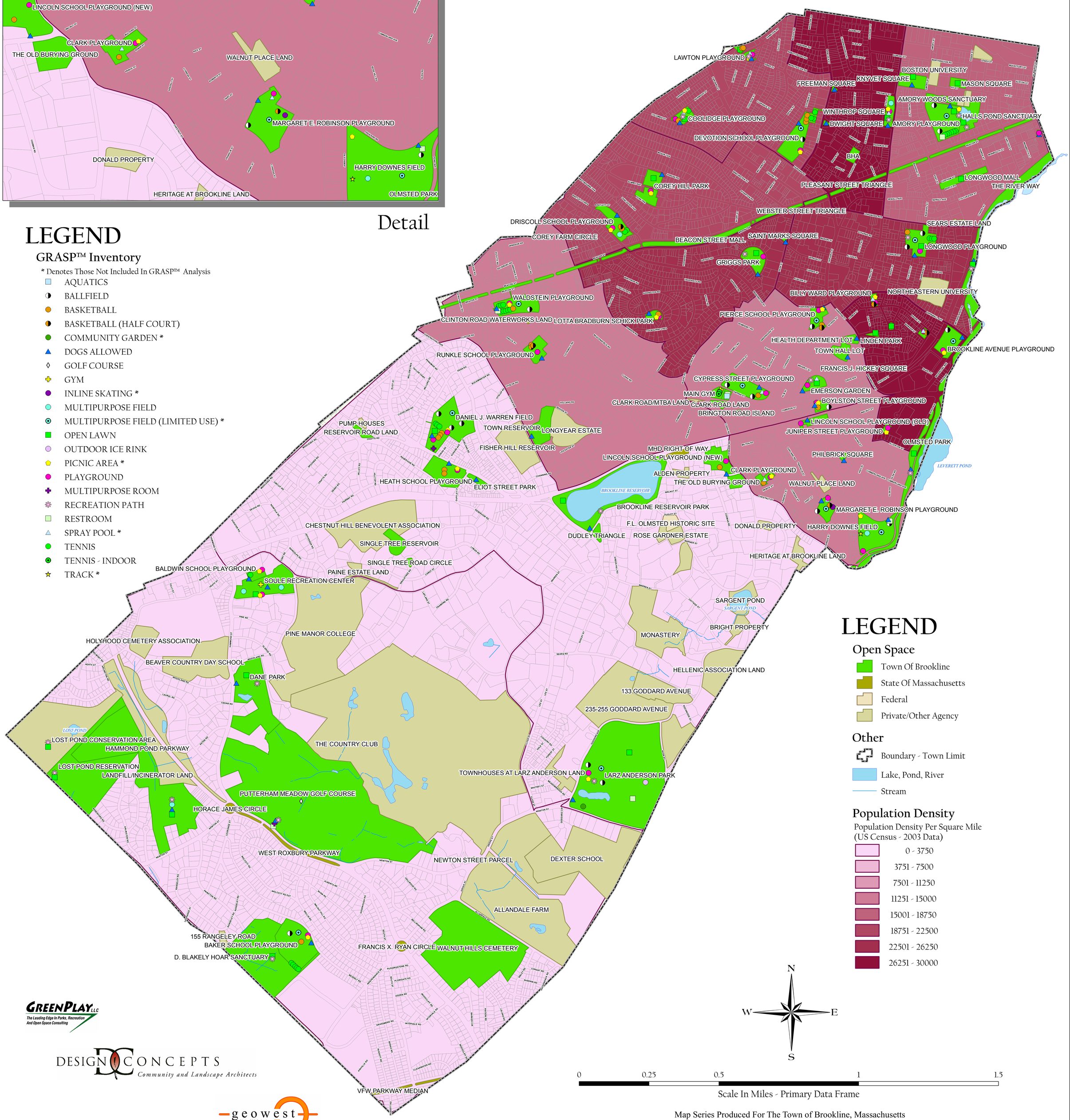

LEGEND

GRASP™ Inventory

* Denotes Those Not Included In GRASP™ Analysis

- AQUATICS
- BALLFIELD
- BASKETBALL
- BASKETBALL (HALF COURT)
- COMMUNITY GARDEN *
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- RECREATION PATH
- RESTROOM
- SPRAY POOL *
- TENNIS
- TENNIS - INDOOR
- TRACK *

LEGEND

Open Space

- Town Of Brookline
- State Of Massachusetts
- Federal
- Private/Other Agency

Other

- Boundary - Town Limit
- Lake, Pond, River
- Stream

Population Density

Population Density Per Square Mile
(US Census - 2003 Data)

- 0 - 3750
- 3751 - 7500
- 7501 - 11250
- 11251 - 15000
- 15001 - 18750
- 18751 - 22500
- 22501 - 26250
- 26251 - 30000

N
W E
S

0 0.25 0.5 1 1.5

Scale In Miles - Primary Data Frame

Map Series Produced For The Town of Brookline, Massachusetts
This Map Is Intended For Planning & Discussion Purposes Only
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TOWN OF BROOKLINE MASSACHUSETTS
PARKS, OPEN SPACE & RECREATION MASTER PLAN

Brookline Massachusetts

Town of Brookline, Massachusetts

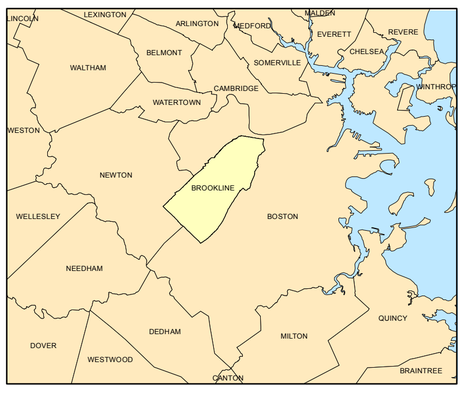
RECREATIONAL OPENSPACE ACCESS BY PRECINCT

Legend

- Voting Precincts
- Selected Openspace*
- OS Buffers 1/3 Mile With School Playgrounds
- Property Lines
- Water Body
- Town Boundary
- Street Edges

*excludes schools, conservation land and cemeteries

LOCUS MAP



DATA SOURCES

OPEN SPACE: Brookline GIS, March 1997. This data layer was developed in house by Brookline GIS staff with the help of the Conservation Commission. It is based upon the Boston Edison street network, the Brookline parcels data layer and the paper plans that the Conservation Commission maintains. Attribute information were derived from the 'OPEN SPACE IN BROOKLINE' publication by the Brookline Conservation Commission.

PROPERTY LINES: This datalayer was developed by the Town's GIS Consulting firm Camp Dresser & McKee, Inc. in 1996 based upon the Boston Edison Company's street network data and the Town's DPW maintained Assessor's map sheets.

STREET EDGES: Boston Edison Company.

STREAMS, RIVERS, PONDS: Boston Edison Company.

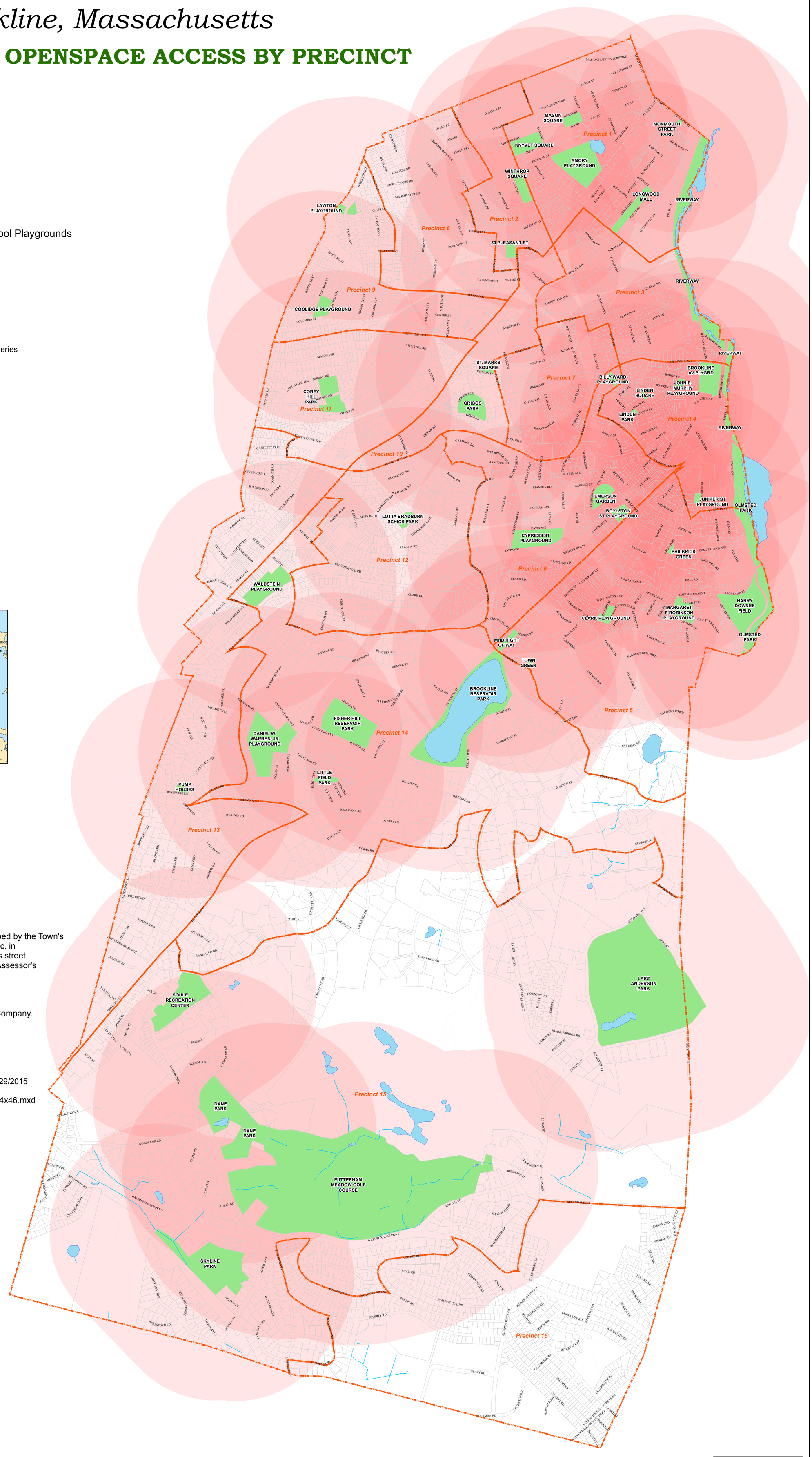
TOWN BOUNDARY: Boston Edison Company. Updated by Camp Dresser and McKee, Inc. and it is based upon Brookline Assessor's map sheets.

Map last modified by Brookline GIS on Date: 10/29/2015

Source document: StandardMaps\OpenSpace34x46.mxd

DISCLAIMER

The Town of Brookline makes no claims, no representations, and no warranties, express or implied, concerning the validity (express or implied), the reliability or the accuracy of the GIS data and GIS data products furnished by the Town, including the implied validity of any uses of such data.



Miles

0 0.15 0.3 0.6

BROOKLINE GIS
"Mapping Our Community"
http://www.town.brookline.ma.us/gis

Hancock Village Buffer
Preliminary Cost Estimate
September 17, 2015

Note: This cost estimate is for funding purposes, and is being done prior to design. Today's dollars are used and inflation is not being carried. A construction contingency is shown separately.

Item		Cost	Subtotal
1.	**Site Preparation and Demo**		
	Construction entrance pad, 8 @ $1,500	$12,000	
	Erosion control, 3,705 LF silt fence @$8/LF + 3 silt sacks @ $500 EA	$31,140	
	Construction fence and gates w/scrim, 6,005 LF @$12/LF	$72,060	
	Tree pruning and removals, 15 days @ $3,000/day	$45,000	
	Tree protection, 50 trees at $150 EA	$7,500	
	General demo and removals, $5000/day for 7 days	$35,000	
	Rock removal by hammer sledge, 100 CY @ $300/CY	$30,000	
	Subtotal		**$232,700**
2.	**Earthwork**		
	Includes strip & stockpile loam, excavation & reuse of material, removal of material to off-site, and rough grade, 375 CY @ $40/CY	$15,000	
3.	**Utilities**		
	Drainage allowance, 2 low areas, based on Waldstein costs	$25,000	
	Lighting, 6 pedestrian scale ornamental lights @ $20,000 EA	$120,000	
	Drinking fountain w/bottle filler, no service necessary, 1 @ $10,000 EA	$10,000	
	Drinking fountain w/bottle filler, incl. service, 4 @ $18,000 EA	$72,000	
	Subtotal		**$227,000**
4.	**Walls and Walk Paving**		
	Native stone retaining walls (for ADA), 100 LF @ $200/LF	$20,000	
	Bit. Conc. Paths, 6 ft. wide, 4.5% slope, 14,460 SF @ $7.25/SF	$104,835	
	Wheelchair ramps & line painting at Thornton Street, LS	$5,000	
	Subtotal		**$129,835**
5.	**Site Improvements**		
	Exercise equipment & surfacing, 2 @ $58,000 EA	$116,000	
	Site Furniture:		
	Picnic sets, 3 @ $8,000 EA	$24,000	
	8 ft. backed benches, 16 @ $2,000 EA	$32,000	
	8 ft. backed gliders, 3 @ $2,500 EA	$7,500	
	6 ft. backed benches, 4 @ $1,800 EA	$7,200	
	Single chairs, 8 @ $1,700 EA	$13,600	
	Side tables, 8 @ $1,500 EA	$12,000	
	Bike bollards, 12 @ $800 EA	$9,600	
	Big Belly receptacles, 4 pairs @ $6,300 EA	$25,200	
	Entry treatments at 5 locations:		
	Feature paving, 250 SF @ $22/SF=$5,500 x 5	$27,500	
	Ornamental piers, 2 @ $4,000 EA=$8,000 x 5	$40,000	
	Decorative fencing, 120 LF @ $150/LF=$18,000 x 5	$90,000	
	Subtotal		**$404,600**

6.	**Play Equipment**		
	Play equipment for ages 2-5 years	$80,000	
	Play equipment for ages 5-12 years	$100,000	
	Processed wood carpet, 7,000 SF @ $5/SF	$35,000	
	Concrete edging, 150 LF @ $40/LF	$6,000	
	Rubberized resilient surfacing for accessibility and wear	$20,000	
	Subtotal		**$241,000**
7.	**Lawns and Planting**		
	Fine grade, loam & seed, 667 SY @ $10/SY	$6,700	
	Planting allowance:		
	50 shade trees @ $500 EA	$25,000	
	30 ornamental trees @ $350 EA	$10,500	
	250 shrubs @ $100 EA	$25,000	
	Subtotal		**$67,200**
Construction Subtotal			**$1,302,335**
Construction Contingency (10%)			**$130,234**
Design			
	Design review process and bid package, 10% of Construction Subtotal	$130,234	
	Subtotal		**$130,234**
Total including construction subtotal, construction contingency, and design			**$1,562,802**
TOTAL SAY			**$1,565,000**

BROOKLINE BOARD OF ASSESSORS

333 Washington Street, Brookline, MA 02445 (617) 730-2060

MEMORANDUM

To: Alison C. Steinfeld, Planning Director
Copy: Mel Kleckner, Town Administrator
Joslin Ham Murphy, Town Counsel
From: Gary J. McCabe. Chief Assessor
Date: October 7, 2015
RE: Appendix E: Land Value Estimate of Certain Land in South Brookline

Per your request, I have prepared a market value estimate of certain land in south Brookline for the purposes of studying the potential financial impact of the Town acquiring the land through eminent domain. The land in question - the subject land - is an area of approximately 6.55 acres, or 285,318 square-feet, as determined by the Planning Department in a memorandum to the Chair of the Zoning Board of Appeals (see attached memo), and contained within multiple parcels currently owned by Hancock Village I LLC. The subject land falls within the S-7 land use zone (single family, 7,000 sq.ft. minimum), and is commonly known as the "buffer zone" between the Hancock Village apartment complex and neighboring residential areas along Russet Road and Beverly Road. A geographic image of the subject land is contained in the attached map as the 'green space' running east and west of Independence Drive.

Because the purpose of the valuation analysis is to estimate the market value of the subject land as if vacant and available for development, and because the land is not currently available to the open market, but is part of a redevelopment plan of the property owner, the analysis is based on a hypothetical condition, which is a condition directly related to a specific assignment, which is contrary to what is known by the analyst to exist on the effective date of the assignment results, but is used for the purpose of analysis. The selected valuation date is July 1, 2015.

The hypothetical market value estimate was made based on an analysis of 25 residential land sales in Brookline over a period of 52 months, from March 2011 through July 2015. The residential property sales ranged in land area from 6,136 square-feet to 228,168 square-feet and in price from $390,000 to $7,525,000. Sale prices were adjusted for changes in market conditions between the sale date and the valuation date using the Standard & Poor's Case-Shiller Home Price Index for the Boston MSA. An explanation of the S&P-CS-Index is attached from the July 2015 composite report.

The attached analysis of 25 residential land sales was used to estimate the subject land value as of July 1, 2015, using a mass-appraisal approach. In total the 25 sales included 978,008 square-feet of land, almost 22.5 acres. The total time adjusted sales price was $49,773,140, or in aggregate, $50.89 per square of land, on average. If the average sale price of available residential land in Brookline was $50.89 per square-foot as of July 2015, under the same or similar conditions, the subject land area of 285,318 square-feet would have an estimated market value of **$14,520,500** ($50.89 x 285,318 sq.ft.), under the implied, right to develop, general assumptions, and without any specific cost of development considerations, or consideration of any known or unknown conditions limiting development, now or in the future.

The current use of the subject land area is as part of a 530 unit apartment complex contained within 44.54 acres in the Town of Brookline. The 'buffer zone' land is not currently improved, beyond landscaping and walking paths. A proposed development plan of the owner would incorporate the S-7 zoned land area for use as new apartment buildings and on-site parking under a comprehensive permit.

TOWN OF BROOKLINE
Massachusetts

DEPARTMENT OF PLANNING
AND COMMUNITY DEVELOPMENT

ALISON C. STEINFELD
Planning Director

MEMORANDUM

To: Jesse Geller, ZBA Chair
From: Alison C. Steinfeld
Date: October 20, 2014
Case: Residences of South Brookline Comprehensive Permit Application

Re: Estimates for As of Right Development

At the request of the ZBA, the Planning Department has estimated the number of single-family homes that could be built as-of-right, per zoning bylaw and excluding other design reviews (NCD), in the S-7 (greenbelt) portion of the Hancock Village property.

The estimates below were provided by Polly Selkoe, Assistant Director of Regulatory Planning; Michael Yanovitch, Chief Building Inspector; and Lara Curtis-Hayes, Senior Planner.

Note: The following estimates are not the basis of the formula for tax assessment. Please contact Chief Assessor, Gary McCabe, to discuss assessment queries.

Size of Area Studied

Total acres: 6.55 acres

Minimum Depth

S-7 / Greenbelt West: 90 feet
S-7 / Greenbelt East: 70 feet

Approximate Length

Baker School to Independence Drive: 880 feet
Independence Drive to Thornton Road: 215 feet
Thornton Road to Asheville Road: 440 feet
Asheville Road to VFW Parkway: 500 feet

Summary of Minimum Dimensional Requirement for S-7 Zoning District

Lot Size: 7,000 sf
Lot width: 65 feet
Frontage: 25 feet
Front yard setback: 20 feet
Side yard setback: 7.5 feet
Rear yard setback: 30 feet

Estimates for Single-Family Development

As of Right Case

8 single-family homes

ANR (Approval Not Required) Development Case

11 single-family homes

8 single-family homes (with VFW Parkway curb cuts)

Subdivision Case

A 40-foot roadway would be required; because of limited depth of the study area, it is unlikely that a subdivision could be developed here.

If you have further questions, we are happy to answer them.

HANCOCK VILLAGE

Market Value Analysis of S-7 Buffer Zone Land at Hancock Village As of July 1, 2015

Total Area per Planning Department: 6.55 Acres 285,318 square-feet

This analysis is based on a Hypothetical Condition, which is a condition directly related to a specific assignment, which is contrary to what is known by the analyst to exist on the effective date of the assignment results, but is used for the purpose of analysis.

Current Use: Part of land owned by Hancock Village Apartment Complex made up of 530 units in the Town of Brookline. Total area in Brookline = 44.54 acres.

Description of the property: Land shown on attached map as within the S-7 buffer zone of Hancock Village Apartment Complex

Market Price Analysis of Residential Land Sales in Brookline, available for development or redevelopment.

Based on the results of the market analysis below, the value of residential land available for development in Brookline as of July 1, 2015, on average, is $50.89 per square-foot.

Property Location	Land Area (Sq,Ft.)	Zoning	Sale Date	Sale Price	TASP*	SP/ SQ.FT.
5 Wellington Ter.	6,136	T-5	06/21/12	425,000	501,500	81.73
58 Cameron St.	6,397	S-10	02/14/14	800,000	840,000	131.31
42 Walnut Hill Rd.	7,499	S-7	11/09/12	495,000	579,150	77.23
26 Intervale Rd.	8,472	S-7	10/15/13	390,000	417,300	49.26
22 Cushing Rd.	10,131	S-7	09/17/13	950,000	1,026,000	101.27
18 Penniman Rd.	10,164	S-10	02/14/14	1,060,000	1,113,000	109.50
220 Wolcott Rd.	11,110	S-10	08/22/14	823,500	856,440	77.09
5 Kennard Rd.	13,647	S-10	01/18/13	600,000	690,000	50.56
93 Fisher Ave.	15,009	S-15	07/19/11	1,000,000	1,180,000	78.62
99 Fisher Ave.	15,117	S-15	03/15/11	1,000,000	1,180,000	78.06
77 Fisher Ave.	16,001	S-15	03/10/11	1,150,000	1,357,000	84.81
1 Olmsted Rd.	17,003	S-15	03/10/11	1,250,000	1,475,000	86.75
15 Cedar Rd.	19,196	S-15	09/20/13	1,725,000	1,863,000	97.05
160 Princeton Rd.	26,287	S-15	01/25/12	615,000	738,000	28.07
77-83 Leicester St.	51,247	S-15	07/15/15	3,400,000	3,400,000	66.35
48 Laurel Rd.	28,054	S-15	06/04/13	1,800,000	1,998,000	71.22
50 Lyman Rd.	33,172	S-25	03/26/13	2,000,000	2,240,000	67.53
324 Heath St.	40,255	S-40	09/07/12	1,400,000	1,624,000	40.34
17 Yarmouth Rd.	40,423	S-40	01/09/13	2,000,000	2,300,000	56.90
50 Yarmouth Rd.	42,055	S-40	04/03/13	2,400,000	2,664,000	63.35
77-83 Leicester St.	51,247	S-15	03/21/14	3,200,000	3,328,000	64.94
407 Warren St.	54,188	S-40	06/14/13	2,500,000	2,775,000	51.21
Off Warren St.	82,906	S-40	02/15/13	2,000,000	2,280,000	27.50
28 Fernwood Rd.	144,124	S-40	04/12/13	7,525,000	8,352,750	57.96
112 Woodland Rd.	228,168	S-40	05/23/13	4,500,000	4,995,000	21.89
TOTALS	978,008			45,008,500	49,773,140	50.89
					TASP Aggregate Mean	SP/SQ.FT.

Indicated Value = **$ 14,520,508** 285,318 sq.ft. x 50.89 $/sq.ft.

*TASP = Time Adjusted Sale Price to July 1, 2015 using the S&P Case-Shiller Home Price Index - Boston MSA

S&P DOW JONES INDICES
McGRAW HILL FINANCIAL

PRESS RELEASE

July Home Price Gains Concentrated in the West According to the S&P/Case-Shiller Home Price Indices

New York, September 29, 2015 – S&P Dow Jones Indices today released the latest results for the S&P/Case-Shiller Home Price Indices, the leading measure of U.S. home prices. Data released today for July 2015 show that home prices continued their rise across the country over the last 12 months. More than 27 years of history for these data series is available, and can be accessed in full by going to www.homeprice.spdji.com. Additional content on the housing market can also be found on S&P Dow Jones Indices' housing blog: www.housingviews.com.

Year-over-Year

The S&P/Case-Shiller U.S. National Home Price Index, covering all nine U.S. census divisions, recorded a slightly higher year-over-year gain with a 4.7% annual increase in July 2015 versus a 4.5% increase in June 2015. The 10-City Composite was virtually unchanged from last month, rising 4.5% year-over-year. The 20-City Composite had higher year-over-year gains, with an increase of 5.0%.

San Francisco, Denver and Dallas reported the highest year-over-year gains among the 20 cities with price increases of 10.4%, 10.3%, and 8.7%, respectively. Fourteen cities reported greater price increases in the year ending July 2015 over the year ending June 2015. San Francisco and Denver are the only cities with a double digit increase, and Phoenix had the longest streak of year-over-year increases. Phoenix reported an increase of 4.6% in July 2015, the eighth consecutive year-over-year increase. Boston posted a 4.3% annual increase, up from 3.2% in June 2015; this is the biggest jump in year-over-year gains this month.

Month-over-Month

Before seasonal adjustment, the National Index posted a gain of 0.7% month-over-month in July. The 10-City Composite and 20-City Composite both reported gains of 0.6% month-over-month. After seasonal adjustment, the National index posted a gain of 0.4%, while the 10-City and 20-City Composites were both down 0.2% month-over-month. All 20 cities reported increases in July before seasonal adjustment; after seasonal adjustment, 10 were down, nine were up, and one was unchanged.

Analysis

"Prices of existing homes and housing overall are seeing strong growth and contributing to recent solid growth for the economy," says David M. Blitzer, Managing Director and Chairman of the Index Committee at S&P Dow Jones Indices. "The S&P/Case Shiller National Home Price Index has risen at a 4% or higher annual rate since September 2012, well ahead of inflation. Most of the strength is focused on states west of the Mississippi. The three cities with the largest cumulative price increases since January 2000 are all in California: Los Angeles (138%), San Francisco (116%) and San Diego (115%). The two smallest gains since January 2000 are Detroit (3%) and Cleveland (10%). The Sunbelt cities – Miami, Tampa, Phoenix and Las Vegas – which were the poster children of the housing boom have yet to make new all-time highs.

"The economy grew at a 3.9% real annual rate in the second quarter of 2015 with housing making a major contribution. Residential investment grew at annual real rates of 9-10% in the last three quarters (2014:4th quarter, 2015:1st-2nd quarters), far faster than total GDP. Further, expenditures on furniture and household equipment, a sector that depends on home sales and housing construction, also surpassed total GDP growth rates. Other positive indicators of current and expected future housing activity include gains in sales of new and existing housing and the National Association of Home Builders sentiment index. An interest rate increase by the Federal Reserve, now expected in December by many analysts, is not likely to derail the strong housing performance."

Graphical Representations of the U.S. Housing Market

Chart 1 below shows the seasonally adjusted changes in home prices from June to July 2015 with cities sorted by price change from highest on the left to lowest on the right. As evidenced by the chart, the strongest price gains are in the west. The only eastern city with a positive gain was Boston, while Los Angeles and Seattle were only western cities with weaker prices in July than in June.

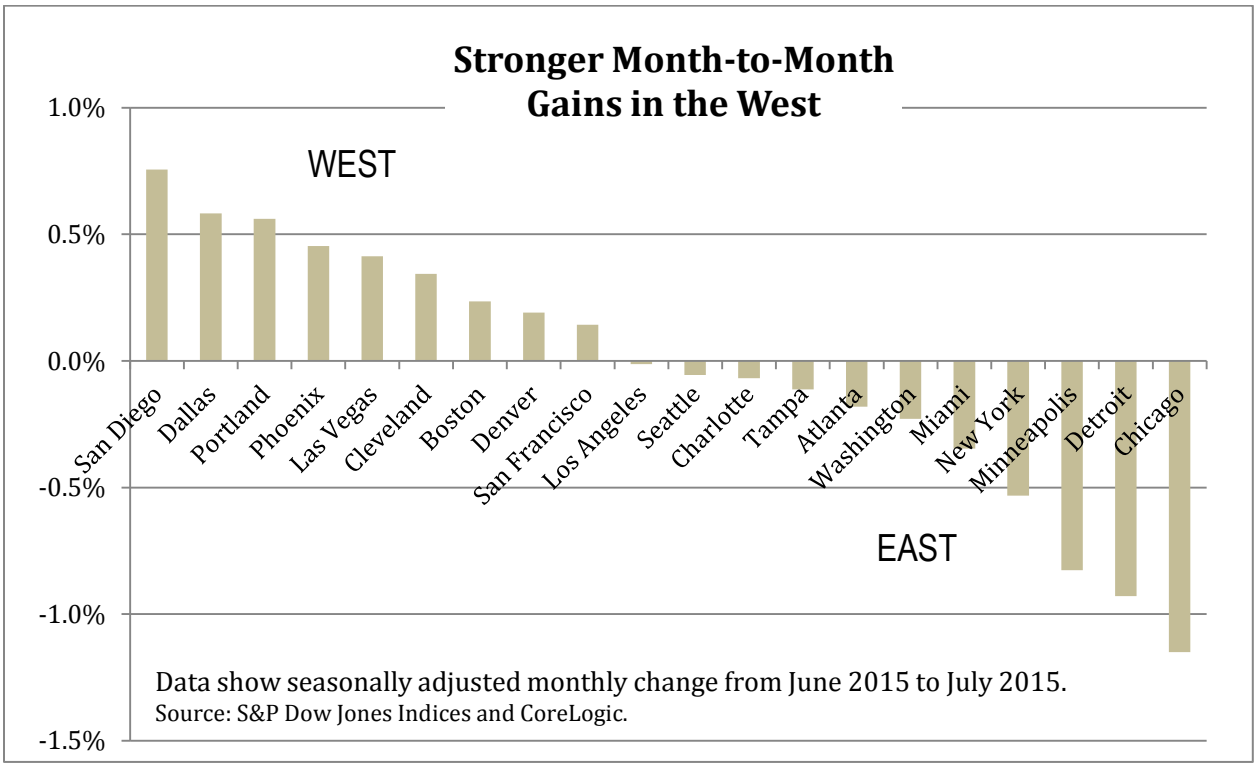


Chart 2 below depicts the annual returns of the U.S. National, the 10-City Composite and the 20-City Composite Home Price Indices. The S&P/Case-Shiller U.S. National Home Price Index, which covers all nine U.S. census divisions, recorded a 4.7% annual gain in July 2015. The 10- and 20-City Composites reported year-over-year increases of 4.5% and 5.0%.

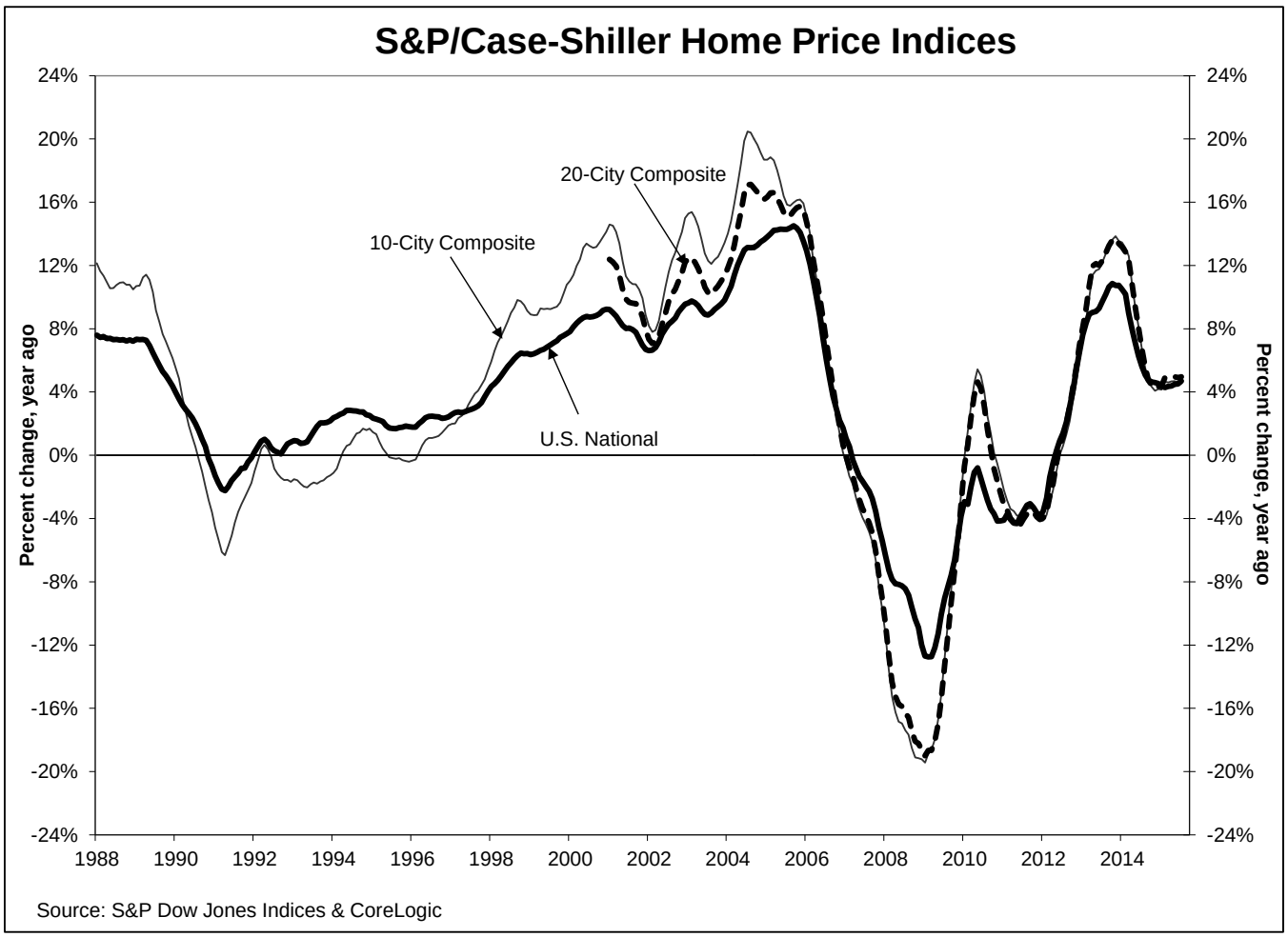


Chart 3 below shows the index levels for the U.S. National, 10-City and 20-City Composite Indices. As of July 2015, average home prices for the MSAs within the 10-City and 20-City Composites are back to their winter 2005 levels. Measured from their June/July 2006 peaks, the peak-to-current decline for both Composites is approximately 11-13%. Since the March 2012 lows, the 10-City and 20-City Composites have recovered 34.4% and 35.7%.

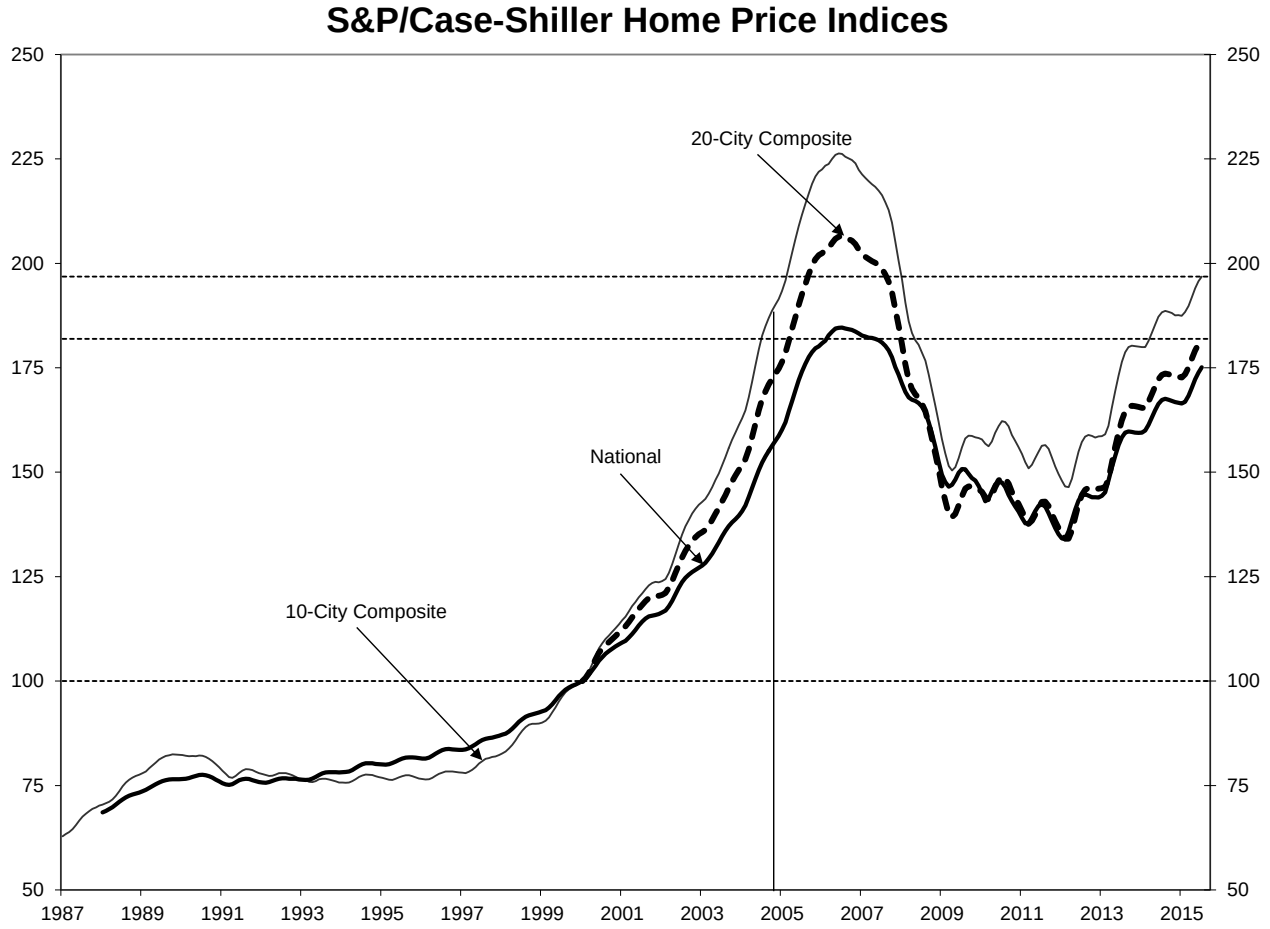


Table 1 below summarizes the results for July 2015. The S&P/Case-Shiller Home Price Indices are revised for the prior 24 months, based on the receipt of additional source data.

Metropolitan Area	July 2015 Level	July/June Change (%)	June/May Change (%)	1-Year Change (%)
Atlanta	125.88	0.8%	1.3%	5.8%
Boston	183.95	1.1%	1.4%	4.3%
Charlotte	134.47	0.1%	0.6%	4.9%
Chicago	133.36	0.9%	1.0%	1.8%
Cleveland	110.47	0.8%	1.4%	3.1%
Dallas	153.47	1.2%	0.9%	8.7%
Denver	171.31	0.7%	1.3%	10.3%
Detroit	103.42	0.7%	1.6%	5.4%
Las Vegas	144.39	0.8%	0.7%	6.2%
Los Angeles	238.24	0.4%	0.8%	6.1%
Miami	201.30	0.4%	0.3%	7.3%
Minneapolis	147.15	0.8%	1.1%	3.6%
New York	180.44	0.5%	1.1%	1.9%
Phoenix	154.03	0.7%	0.9%	4.6%
Portland	184.56	1.3%	1.5%	8.5%
San Diego	214.68	1.1%	0.3%	5.4%
San Francisco	215.84	0.6%	0.4%	10.4%
Seattle	183.31	0.5%	1.1%	7.3%
Tampa	170.88	0.6%	0.3%	5.5%
Washington	214.00	0.5%	0.8%	1.7%
Composite-10	196.85	0.6%	0.9%	4.5%
Composite-20	181.90	0.6%	0.9%	5.0%
U.S. National	175.11	0.7%	0.9%	4.7%

Source: S&P Dow Jones Indices and CoreLogic
Data through July 2015

Table 2 below shows a summary of the monthly changes using the seasonally adjusted (SA) and non-seasonally adjusted (NSA) data. Since its launch in early 2006, the S&P/Case-Shiller Home Price Indices have published, and the markets have followed and reported on, the non-seasonally adjusted data set used in the headline indices. For analytical purposes, S&P Dow Jones Indices publishes a seasonally adjusted data set covered in the headline indices, as well as for the 17 of 20 markets with tiered price indices and the five condo markets that are tracked.

	July/June Change (%)		June/May Change (%)	
Metropolitan Area	**NSA**	**SA**	**NSA**	**SA**
Atlanta	0.8%	-0.2%	1.3%	-0.5%
Boston	1.1%	0.2%	1.4%	0.1%
Charlotte	0.1%	-0.1%	0.6%	-0.2%
Chicago	0.9%	-1.2%	1.0%	-1.3%
Cleveland	0.8%	0.3%	1.4%	0.0%
Dallas	1.2%	0.6%	0.9%	0.1%
Denver	0.7%	0.2%	1.3%	0.3%
Detroit	0.7%	-0.9%	1.6%	-0.6%
Las Vegas	0.8%	0.4%	0.7%	0.2%
Los Angeles	0.4%	0.0%	0.8%	0.1%
Miami	0.4%	-0.3%	0.3%	-0.1%
Minneapolis	0.8%	-0.8%	1.1%	-0.8%
New York	0.5%	-0.5%	1.1%	-0.5%
Phoenix	0.7%	0.5%	0.9%	0.3%
Portland	1.3%	0.6%	1.5%	0.5%
San Diego	1.1%	0.8%	0.3%	-0.3%
San Francisco	0.6%	0.1%	0.4%	-0.4%
Seattle	0.5%	-0.1%	1.1%	0.1%
Tampa	0.6%	-0.1%	0.3%	-0.7%
Washington	0.5%	-0.2%	0.8%	-0.1%
Composite-10	0.6%	-0.2%	0.9%	-0.2%
Composite-20	0.6%	-0.2%	0.9%	-0.2%
U.S. National	0.7%	0.4%	0.9%	0.1%

Source: S&P Dow Jones Indices and CoreLogic

Data through July 2015

For more information about S&P Dow Jones Indices, please visit www.spdji.com.

About S&P Dow Jones Indices

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Appendix F: Letter from Rep. Edward F. Coppinger

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON 02133-1054

EDWARD F. COPPINGER
STATE REPRESENTATIVE
10TH SUFFOLK DISTRICT

STATE HOUSE, ROOM 160
TEL. (617) 722-2304

Committees:
Vice Chair
Steering, Policy and Scheduling

Financial Services
State Administration & Regulatory Oversight

March 24, 2015

Dear Town of Brookline Officials,

If the appropriate Brookline authorities legally and in good faith vote for an Eminent Domain taking of any or all of the two green S-7 "buffer zones" also known as S-7 "green belts" of Hancock Village, I, Edward F. Coppinger, a Massachusetts State Representative representing the 10th Suffolk District in the legislature, including Brookline precincts 14, 15, and 16 of the Town, will zealously advocate for state funding or any other government agency, on behalf of said Eminent Domain taking.

Sincerely,

Edward F. Coppinger

Edward F. Coppinger
State Representative
10th Suffolk District

To Brookline Officials:
If Eminent Domain is voted "I, Edward F. Coppinger, a Massachusetts State Representative representing the 10th Suffolk District in the Legislature, including Brookline precincts 14, 15, and 16 of the Town, will zealously advocate for state funding ..... on behalf of said Eminent Domain taking."

APPENDIX G: Capacity in the CIP for Certain Land in South Brookline

OFFICE OF SELECTMEN

MEMORANDUM

TO: Alison Steinfeld, Planning Director

FROM: Melissa Goff, Deputy Town Administrator

RE: Capacity in the CIP for Certain Land in South Brookline

DATE: 10/13/15

I have been asked about the potential financial impact on the Town's CIP if the Town sought to purchase the land in South Brookline described in Assessor Gary McCabe's 10/7/15 memo and valued at $14,520,500. Because the FY2017-FY2022 is still in development I chose to examine this question within the assumptions used in the FY2016-2021 CIP, with funds borrowed during FY 2017 and debt service commencing in FY 2018. A $14,520,500 million bond to fund the purchase of greenspace would cost roughly $1.6 million for the first year of debt service.

As you know, the Town's CIP policies call for 6% of the prior year's net revenue to be dedicated to the CIP. The goal is to have the 6% consist of both a debt-financed component and a revenue (or "pay-as-you-go") component, with 4.5% for debt-financed CIP and 1.5% for pay-as-you-go CIP. Adding the cost of a bond used to purchase this land to the debt service schedule will effectively eliminate the availability of tax-financed monies from that 6% financing. This leaves just Free Cash as the funding source for <u>all</u> pay-as-you-go projects. This provides a high level of uncertainty to the CIP. The amount of free cash available for the CIP can fluctuate dramatically from year-to-year. At the very least $1.6M of pay- as-you-go projects would need to be cut from the CIP in FY2018 and in future years there will be less capacity for projects currently contemplated in the debt management plan (like the High School). Borrowing plans for future projects would need to be reconsidered or delayed in addition to the reductions in pay-as-you-go projects scheduled in the out-years of the CIP. Given the level of pressure this project would exert on the CIP it may be more realistic to pursue a debt exclusion for funding.