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**MEMORANDUM**

To: Board of Selectmen  
Social Service PILOT and Comparative Impact Study PILOT Committee

From: Christopher J. Petrini  
Town Counsel

cc: Mark Purple, Interim Town Manager (w/enclosures)  
Edward Noonan, Town Moderator (w/enclosures)  
Glenna J. Sheveland, Esq., Petrini & Associates, P.C. (w/o enclosures)

Date: December 12, 2005

Re: Evaluation of Legal Issues Posed by Activities of Social Service PILOT and Comparative Impact Study PILOT Committee, Including Voluntary Questionnaire Issued to Various Non-Profit Social Service Organizations in the Town of Framingham

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**INTRODUCTION**

This memorandum is in response to a request made by the Board of Selectmen and the Social Service PILOT and Comparative Impact Study Committee's ("PILOT Committee") asking me to review whether liability may be imposed against the Town of Framingham ("Town") under various anti-discrimination laws by virtue of the various activities and inquiries of the PILOT Committee to date. In connection with this analysis, I have specifically examined whether a recent questionnaire which was sent to non-profit social service organizations constitutes a violation of the American with Disabilities Act or Fair Housing Act, or whether it violates the privacy rights of clients served by such programs. For the reasons described below, it is my opinion that the activities of the PILOT Committee to date have not violated various anti-discrimination laws, and that the questionnaire issued by the PILOT Committee does not constitute an unwarranted or substantial invasion of the privacy of the clients or residents who may be served by such programs. However, if the results or findings of the PILOT Committee

are utilized for purposes of enacting or effecting disparate or unequal treatment of such organizations or their clients, including (for example) the enactment of discriminatory zoning enactments that attempts to prohibit the siting of such programs in Town, then liability very likely could be imposed against the Town under various anti-discrimination laws discussed below.

Notwithstanding my opinion that the anti-discrimination laws are not violated by the mere collection, assembly and analysis of information, or the issuance of a report regarding the findings of such an inquiry, I do recommend for the reasons stated herein that the PILOT Committee remain cognizant of the fact at all times that they are representatives and emissaries of the Town in undertaking their mission as described herein, that the topic of their undertaking is a sensitive one and perhaps controversial to some, and that the PILOT Committee members at all times should comport themselves with a high level of decorum, professionalism, and civility that is reflective of the important role that each member has as an emissary or representative of the Town in this important undertaking.

I will appear before the Board of Selectmen and the PILOT Committee at your meetings of December 13, 2005 to discuss this report and its implications and recommendations, and to answer any questions that you may have.

### **EXECUTIVE SUMMARY**

For the reasons discussed in further detail below, I have concluded the following with respect to the research that the Board of Selectmen and the PILOT Committee has asked me to undertake:

- (1) The PILOT Committee's mere review, assembly, analysis and reporting of information (much of which is available in public records) does not directly violate federal and state anti-discrimination laws and is in fact a protected right under the First Amendment;
- (2) The Fair Housing Act and the Americans with Disabilities Act make it unlawful to utilize zoning or land use policies to treat groups of persons with disabilities less favorably than groups of non-disable persons. As long as the Town does not use the information gathered by the PILOT Committee for the development or enactment of such zoning regulations or land use policies there will be no violation of the Fair Housing Act the Americans with Disabilities Act, or G.L. c. 40A, § 3;
- (3) The social service agencies cannot legally be required to answer the questionnaires distributed by the PILOT Committee;
- (4) The privacy rights of residents or clients of social service organizations will not be violated by the PILOT Committee study, insofar as the information requested largely is already available through other sources or public documents. However, I do concur with the decision of the PILOT Committee to not publish the addresses of residential or group homes to avoid any appearance of discriminatory intent and to protect the individual residents' rights to privacy to the extent these privacy rights are implicated.

- (5) I have included in Section IV below a number of recommendations that I believe will help the PILOT Committee conduct its study within the guidelines of the Fair Housing Act, the Americans with Disabilities Act and G.L. c. 40A, § 3, and to perhaps assist the Committee in completing and conducting a comprehensive and unbiased study that fulfills the requirements of Town Meeting and the Board of Selectmen.

### **FACTS**

The PILOT Committee was created by Town Meeting vote at the 2005 Annual Meeting to identify the social service organizations that are currently operating within the Town and within adjacent and similarly situated municipalities and to determine what impacts social services have on the Town's economy, on the neighborhoods in which they are located, and how they impact municipal services. See Exhibit 1 (Town Meeting motion made at Article 19 of Annual Town Meeting creating PILOT Review Committee). In addition, the PILOT Committee was asked by Town Meeting as part of its formative motion to consider the possible benefits of developing a Payment in Lieu of Taxes ("PILOT") Program as a means by which to voluntarily engage non-profit social service organizations in providing services or monetary contributions to the Town as a means by which to offset the cost of providing municipal services to these tax-exempt organizations. The Board of Selectmen discussed the roles of the PILOT Committee and the various appointments to the Committee by the Town Moderator and the Board at its July 26, 2005 meeting. See Exhibit 2 (Minutes of July 26, 2005 Board of Selectmen meeting). In November, the PILOT Committee sent a questionnaire to all social service organizations in the Town, which contained roughly 30 questions inquiring as to the mission of the organization, its general service area, ownership of property, payment of taxes, programs offered, general residency of individuals served by the programs, siting of facilities in the Town, the amount of fees paid to the Town and the types of services provided by the organization. See Exhibit 3 (December 9, 2005 letter from PILOT Committee along with three page questionnaire and one page of terms and definitions from the U.S. Census Bureau website).

The PILOT Committee then began receiving responses, most of which were verbal responses, from non-profit organizations indicating that they were concerned with the time it would take to answer the questions posed and with the legal implications of providing answers to some of the questions. I also have been provided with one written response, which is a copy of a letter from Attorney Samuel Nagler of Krokidas & Bluestien, written to William J. Taylor, President and CEO of Advocates, Inc. See Exhibit 4 (Samuel Nagler letter with attachments). In this letter, Mr. Nagler advised Mr. Taylor that no further information should be provided until such time as the PILOT Committee answers the question of whether it is legal to target only social service agencies for a payment in lieu of taxes (PILOT) program. Mr. Nagler then includes an analysis of various principles under applicable federal and state law, most prominently the federal Fair Housing Act ("FHA").

## ANALYSIS

### **I. The PILOT Committee's Questionnaire, in and of itself, does not violate any State or Federal Fair Housing or Anti-Discrimination Laws.**

#### **A. Fair Housing Act**

As I have indicated in a previous memorandum on this issue to the Building Commissioner, "Congress enacted the FHA as Title VIII of the Civil Rights Act of 1968 to prohibit housing discrimination on the basis, inter alia, of race, gender, and national origin. In 1988, Congress expanded the coverage of the FHA by enacting the Fair Housing Act Amendments. The FHA, as amended, makes it unlawful:

To Discriminate in the sale or rental, or otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap . . . As amended, the FHA applies to zoning ordinances and to the zoning of group homes. . . The use of zoning provisions to discriminate against handicapped persons is proscribed by the FHA." Granada House, Inc. v. City of Boston, 1997 WL 106688 (Mass. Superior Ct. Feb. 28, 1997) (citations omitted). Under the FHA, a plaintiff can establish a violation by showing (1) discriminatory intent; or (2) disparate impact; or (3) that the defendant failed to make reasonable accommodations in rules, policies, or practices so as to afford people with disabilities an equal opportunity to live in a dwelling. See Macone v. Town of Wakefield, 277 F.3d 1, 5 (2002); Oxford House, Inc., 819 F. Supp. at 1182, citing 42 U.S.C. § 3604(f)(3)(B).

As indicated in Mr. Nagler's letter, requesting that only non-profit social service organizations participate in the Town's PILOT Program could establish an appearance of disparate treatment. However, the actual question at this point in time is not whether non-profit social services may be treated differently than other non-profit organizations as part of a yet to be proposed or enacted PILOT Program,<sup>1</sup> which would need to be a purely voluntary program to comply with the law, but whether failure to participate in any such yet to be enacted voluntary PILOT program will keep individuals intended to be protected by the FHA from being afforded

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<sup>1</sup> It is relevant to note that the City of Worcester separately considered the establishment of a PILOT Program applicable to social service organizations and educational facilities in two separate studies, and came to differing conclusions. The study relative to the possible establishment of a voluntary PILOT program applicable solely to educational facilities concluded that the income generated by the presence of educational facilities far outweighed any monetary benefit that could be derived from such a PILOT Program. See Worcester Regional Research Bureau, Will Pilots Fly in Worcester? Taxing Nonprofits and Other Options, Report No. 04-04 (March 24, 2004). See Exhibit 7. However, in a separate study on social service organizations, the City found that a PILOT Program geared to social service organizations was a feasible mechanism by which to attempt to regain lost property tax revenue. See City of Worcester, Mayor's Social Service Task Force Report, Balancing Quality of Life Issues of Neighborhoods and the City with the Fair Housing Rights of Individuals Living with Disabilities (October 2005). See Exhibit 7. It is worth noting that simply because Worcester has not been sued for alleged disparate treatment of social service organizations by virtue of its two studies and its two opposite conclusions does not mean that such a suit will not be filed in the future against Worcester or some other community by one or more social service organization alleging such disparate treatment.

the equal opportunity of living within the Town. No evidence has been proffered that creating a voluntary PILOT program applicable to social service organizations would deprive the residents of these programs from the opportunity of living here in Town. Moreover, it is important to emphasize that the PILOT Committee's charge and activities to date have been limited to the collection, assembly, review and analysis of information, much of which already is publicly available. The members of the PILOT Committee have First Amendment rights to collection, analysis and report on such information. See Houchins v. KQED, Inc., 438 U.S. 1, 11 (1978), citing Branzburg v. Hayes, 408 U.S. 665, 707 (1972) ("There is an undoubted right to gather [information] from any source by means within the law. . .")

The FHA makes it unlawful to utilize zoning or land use policies to treat groups of persons with disabilities less favorably than groups of non-disabled persons. The intent of Framingham's PILOT Program is aimed at determining whether there is a need for a PILOT program. While the PILOT Committee naturally would like as many organizations as possible to respond to the questionnaire to ensure that its analysis and report is as complete as possible, no indication has been given that failure to comply with any of its voluntary requests for information will result in unfavorable treatment of these organizations.

### **B. The Dover Amendment**

As the Board of Selectmen and the PILOT Committee are aware, G.L. c. 40A, § 3, the Dover Amendment (hereinafter, "Section 3" or the "Dover Amendment"), provides that no zoning by-law shall prohibit, regulate or restrict the use of land or structures for educational purposes on land owned or leased by a nonprofit educational corporation. In addition, Section 3 contains a further provision that states that local land use and health and safety laws, regulations, practices, ordinances, by-laws and decisions of a town shall not discriminate against a disabled person. Section 3 further expressly states that the imposition of health and safety laws or land-use requirements on congregate living arrangements among non-related persons with disabilities that are not imposed on families and groups of similar size or other unrelated persons shall constitute discrimination.

### **C. Americans With Disabilities Act**

Section 12132 of the Americans with Disabilities Act (ADA) provides that "[n]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Massachusetts has not resolved the question of whether zoning decisions fall within the ambit of the ADA. Granada House, Inc. v. City of Boston, 6 Mass.L.Rptr. 466 (Mass. Supr. Ct. Feb 28, 1997), is the first Massachusetts case that dealt with this issue and the Superior Court found that zoning as applied to a group home for handicapped persons violated the FHA. Recent court decisions have found that the ADA does apply to prohibit acts of discrimination based on zoning decisions. See, e.g., id.; see also Innovative Health Systems v. City of White Plains, 931 F.Supp. 222 (S.D.N.Y., 1996).

#### **D. Analysis of PILOT Committee's Activities Under Laws Discussed Above**

In reviewing the questionnaire attached as Exhibit 3, I do not see anything that directly violates any of the aforementioned state or federal laws. The questions are not intended to be used for the siting of facilities or group homes and are not intended to regulate the availability of such structures or their associated services. The questions rather are intended to provide information for the possible development of a voluntary PILOT Program. The questionnaire includes questions that relate to zoning, but my understanding is that they have been proffered not to regulate zoning, but rather for purposes of determining tax rates and attempting to understand what factors social service organizations consider when deciding whether and where to site facilities. If an organization finds that responding to any of the questions would be too burdensome or require the creation of information that is not already available to them, they have the choice to respond to the Committee that the information is not available or perhaps offer to provide information that is readily available to the agency and which may be useful to the PILOT Committee. As previously indicated, the PILOT Committee has no legal means by which to require responses to all of the questions asked.<sup>2</sup>

For the reasons described herein, it is my opinion that the PILOT Committee's mere presentation of a questionnaire to various social service organizations in Town in furtherance of the charge given to the Committee by Town Meeting does not constitute a violation of the FHA, ADA or Section 3. While we found no case that directly addresses the issue discussed in this section, the mere study of the impact of social service organizations should not give rise to liability because no action has been taken subjecting members of the protected class to harm. In contrast to the absence of harm to date, members of the PILOT Committee do have the First Amendment right to review, assemble, analyze and report on information available from public sources.

As noted above, the Town could face potential legal liability depending on what it decides to do, if anything, with the PILOT Committee's report once it is issued. Mr. Nagler's analysis set forth at Exhibit 4 does not include any evidence of harm that has been suffered by Advocates or its clients from the mere fact that a Town committee is studying the impact of

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<sup>2</sup> G.L. c. 233, §8 ("Section 8") provides in pertinent part that "[w]itnesses may be summoned to attend and testify and to produce books and papers at a hearing ...before a board of selectmen ... as to matters within their authority..." The same statute allows witnesses to be summoned "before a city council, or either branch thereof, or before a joint or special committee of the same..." Section 8 was interpreted by the Supreme Judicial Court in Bloom v. Worcester, 363 Mass. 136 (1973). In that case, the Supreme Judicial Court acknowledged that Section 8 vests the subpoena power in various committees created by the city council in furtherance of the council's statutorily mandated roles (such as in regards to licensing, elections, and various issues of public health and safety). In Bloom, the City of Worcester had enacted an ordinance which created a Human Rights Committee to investigate possible discriminatory practices that might be carried out in violation of state law. The committee in Bloom was investigatory in nature and was created by the ordinance to hold hearings to determine if discriminatory practices had occurred. In the current instance, the PILOT Committee is not an investigatory body (it is an advisory committee to the Board of Selectmen and Town Meeting), it does not conduct hearings, and most importantly, it is not acting to vindicate rights created under state laws such as G.L. c. 151B (PILOT Programs are not currently addressed in state law). Moreover, unlike committees created by city councils, Section 8 does not expressly grant the subpoena power to committees created by boards of selectmen. Therefore, it is unlikely that the Board of Selectmen could delegate their subpoena power to the PILOT Committee if they wished to do so.

social service organizations in Framingham. The letter and the attachments set forth at Exhibit 4 provides no indication of how the undertaking of a study by the Town of social service programs will result in discrimination against those covered by FHA, the ADA or Section 3.

Notwithstanding my conclusion herein that the mere collection, assembly, analysis and presentation of information does not give rise to liability under the FHA, ADA or Section 3, Mr. Nagler's comments do present an indication of how local social service agencies likely would view implementation of recommendations of the PILOT Committee that adversely impacted people with disabilities covered by the ADA or equal opportunities for living within the Town by individuals protected under the FHA.

Depending on how the Town decides to utilize the information contained in the future report of the PILOT Committee, it is possible that the Town could become embroiled in a lawsuit alleging discriminatory practices under the FHA, ADA or Section 3.<sup>3</sup> If you will recall, Spectrum Health Systems raised claims of potential violations of the ADA and the Rehabilitation Act, 29 U.S.C. §794, based on the Town's refusal to issue a building permit for renovations to a building it intended to use as a methadone clinic. See Spectrum Health Systems v. Rogers, Misc. Case No. 240789 (Mass. Land Ct. May 21, 1999). In the Spectrum case, Spectrum argued that all forms of zoning actions, not just zoning regulations, are governed by the ADA and Rehabilitation Act. In support of their argument, Spectrum cited to several cases from other federal circuits, including Innovative Health Systems, Inc., 117 F.3d 37, 44-46 (2d Cir. 1997) (ADA and Rehabilitation Act apply to city's zoning decisions); Tsombanidis v. City of Westhaven, 129 F. Supp. 2d 136, 151 (D. Conn. 2000) ("a local government or governmental entity using zoning powers in a discriminatory manner violates . . . the ADA"); MX Group, Inc. v. City of Covenington, 106 F. Supp. 2d 914, 920 (6th Cir. 2002) (ADA applies to zoning

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<sup>3</sup> If a social service agency of group of plaintiffs successfully sue the Town, the liability could be substantial. Pursuant to 42 U.S.C. § 3610, the FHA may be enforced by an aggrieved party or the Secretary of Housing and Urban Development. If the respondent is found to have engaged or is about to engage in a discriminatory housing practice, the agency may order relief which may include actual damages and injunctive or other equitable relief. The agency may also impose a civil penalty of up to \$11,000 for a first offense or more if it is not a first offense. Parties may appeal such orders to the federal courts. The agency or the court, as the case may be, "may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs." The United States Attorney General also has the right to commence a civil action in federal district court. See 42 U.S.C. § 3614(a) & (b). In a civil action brought by the Attorney General, the court may award preventive relief, such as an injunction or a restraining order, assess civil penalties not to exceed \$50,000 for the first violation and \$100,000 for the second violation, and award such other relief as the court may deem appropriate, including monetary damages and reasonable attorneys' fees and costs. An aggrieved person may commence a civil action pursuant to 42 U.S.C. § 3613, in a federal district court or in a state court, within two years after the occurrence or the termination of an alleged discriminatory housing practice or the breach of a conciliation agreement.

Similar rights to punitive damages and attorney's fees may also be available under to successful plaintiffs under the ADA. As with the FHA, the ADA provides for certain administrative enforcement as well as allowing for individual suits. A plaintiff who is the subject of unlawful intentional discrimination (as opposed to a practice that is discriminatory because of its disparate impact) may recover compensatory and, in certain cases, punitive damages. In order to receive punitive damages, the plaintiff must show that there was a discriminatory practice engaged in with malice or with reckless indifference to the rights of the aggrieved individuals. The amount that can be awarded in punitive and compensatory damages is capped, with the amounts varying from \$50,000 to \$300,000. Attorneys' fees also are awarded to successful plaintiffs under the ADA.

matters). What can be gleaned from these cases is that the courts are taking an ever more expansive view of what is included under “zoning” and that it is something greater than merely the adoption or implementation of zoning regulations.<sup>4</sup>

Presumably the hesitation expressed by some social service organizations regarding the questionnaire arises from concerns regarding the underlying intent of the PILOT Committee’s questions. By undertaking a “comparative impact study of Social Services in Framingham that is inclusive of any monetary and environmental impacts on town services such as fire, police, schools and safety,” it could be interpreted by some of these organizations that the Town is singling them out for future disparate treatment. See Exhibit 4 (Attorney Nagler letter and associated attachments). As will be further discussed below, any confusion regarding the intent of the study can be greatly decreased by further clarification of the Board of Selectmen envision for the purpose and outcome of the study.

## **II. The PILOT Committee’s Questionnaire and Actions to Date do not Violate any Rights of Privacy.**

According to an October 6, 2005 e-mail<sup>5</sup> sent by Kristen Apgar, General Counsel for the Massachusetts Executive Office of Health and Human Services (“EOHHS”), to Rep. Blumer:

Our consistent legal position on [requests for addresses of specific community residences or group homes operated by the Departments of Mental Health, Mental Retardation, Transitional Assistance, and the Department of Public Health or their contracted agencies] is that we will provide a listing of the number and types of such programs sited in each city and town by agency, but we will not provide the addresses of the residences. We will also provide a listing of the addresses of the corporate offices of the agencies and vendors that operate programs in a community. We do not provide the addresses of individual community residences or group homes, because in our opinion to do so would violate the privacy rights of residents, and in effect identify them by disability or health status. I believe that this legal position would apply equally to the information requests being posed by the PILOT group in Framingham.

See Exhibit 6 (Ms. Apgar 10/6/05 e-mail).

Although it may not be the policy or practice of EOHHS to voluntarily provide this information to the public, much of the address information requested by the PILOT Committee in its questionnaire could be (and has been) obtained from other sources publicly available. Should an organization refuse to make voluntary responses the PILOT Committee on issues which are in the public domain, the PILOT Committee has the legal right to review and utilize public information to perform and complete its study. As a factual matter, the PILOT

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<sup>4</sup> See also William H. Gorgen, The Tension Between Local Zoning and the Development of Elderly Housing: Analyzing the use of the Fair Housing Act and the Americans with Disabilities Act to Override Zoning Decisions, 33 Suffolk U. L. Rev. 317 (2000).

<sup>5</sup> This email was forwarded to the PILOT Committee by Mr. Taylor on October 20, 2005.

Committee has been reviewing and utilizing information from state and federal sources, thereby avoiding any materials that are “subjective” or “based on opinion.”

A review of relevant case law does not support the conclusion that social service organizations or the clients that they serve have any greater legal right to privacy than any other citizen. Although it is true that the participants in these programs have no greater legal right to privacy than any other citizen, it also could be argued that the Town would not advance a legitimate governmental interest by publishing this information in its final report. See McKenna v. Peekskill Housing Authority, 647 F.2d 332 (2nd Cir.1981) (housing authority could not show that legitimate government concern was furthered by restricting occupants privacy rights).

Massachusetts has a separate statutory “right to privacy” codified at G.L. c. 214, § 1B. This section states that “[a] person shall have a right against unreasonable, substantial or serious interference with his privacy. The superior court shall have jurisdiction in equity to enforce such right and in connection therewith to award damages.” “There appears to be no appellate decision as yet in Massachusetts in which the statutory right to privacy under M.G.L.A. c. 214, § 1B has been raised or applied to vindicate informational privacy interests in the personal information and data collected, maintained, and disseminated by government.” 39 MAPRAC § 1252.

Most of the information requested by the PILOT Committee is available through public records. It is my understanding that the Assessor has public records available on line regarding the location and ownership of tax exempt properties within the Town, whether it is used for commercial or residential, and whether permits have been issued that might provide information regarding the total occupancy for the structure. The PILOT Committee as of this time voluntarily has agreed not to publish the residential or group home addresses as part of this study, which will further avoid any appearance of discriminatory intent or effect.

Relevant financial information can be obtained through internet sources that provide financial and service information on non-profit organizations.<sup>6</sup> These internet sources provide extensive information on non-profit organizations including their mission, programs offered, leadership, goals, IRS Form 990, the organization's needs and special programs. Additionally, the Attorney General's Office has a division that deals with charitable organizations (called the Division of Public Charities). The thousands of charities that operate in Massachusetts must register and file public annual financial reports with the Division of Public Charities, and fund-raisers must register with the Division before soliciting donations in Massachusetts on behalf of charities. This reporting mechanism provides the Office of the Attorney General with information necessary to properly oversee charities and their fund-raisers. In addition, these filings also provide accountability to the public as they are available for public review.

In summary, because most of the information requested by the PILOT Committee is available through public and internet sources, it is my opinion that reviewing, analyzing and cataloguing this information in a report would not constitute an invasion of privacy of the

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<sup>6</sup> One such organization is Guidestar and is available at [www.guidestar.org](http://www.guidestar.org).

residents of programs operated by social service organizations, particularly if the addresses of residential care facilities are not included in the PILOT Committee study.

### **III. Propriety of Social Service PILOT Committee's Questionnaire and any Possible Discriminatory Intent of Undertaking Such a Study.**

It is also significant to note that the City of Worcester recently completed a similar study of local non-profit social service organizations and issued a report entitled "Mayor's Social Service Task Force Report, October 2005 ("Mayor's Report")." See **Exhibit 7**.<sup>7</sup> The report states that it had been initiated in response to concerns that neighborhoods in Worcester were being "negatively impacted from a high concentration of these agencies." See Exh. 7, Mayor's Report at 1. The task force assigned to study this issue established as their goal the issuance of a report which would reveal its findings and make recommendations at both a local and state level. See id. At all times, the task force emphasized that the study was to be undertaken with a balanced, respectful, reasoned approach to the issues raised in the study. The task force used the above mentioned state and federal statutes which protect nonprofit social service agencies from discriminatory practices as the framework within which it proceeded.

The task force invited individuals from various state agencies and private non-profit organizations to share their experiences and expertise in understanding the benefits provided by local social service organizations. It also held two hearings to allow the public to air their concerns or to make statements in support on the issues raised. At the conclusion of the study, the task force made recommendations on four different issues, one of which was the development of recommendations for a PILOT Program for the City, another included discussion on the siting of facilities within the City. As the task forces' suggestions, and as the PILOT Committee's suggestions in the current instance, are purely advisory and in no way regulatory in nature, it is difficult to envision how either the circulation of a questionnaire or a study of local social service organizations would implicate the previously mentioned state and federal laws were enacted to insure that all individuals, regardless of handicap, are afforded the equal opportunity of living within the Town, and afforded the right to be free of discrimination because of their disability.

### **IV. Recommendations to the PILOT Committee.**

Based on information provided to me at a recent meeting with Bob Berman and Laurie Lee of the PILOT Committee, it is apparent that the PILOT Committee has made positive strides in furtherance of the Social Services Impact Study. Despite what may be considered to be a relatively straightforward study on the impact of social service organizations in the Town with an aim towards considering the possible development of a voluntary PILOT Program, it is apparent that a perhaps less than totally concise expression of the purpose of the study has led some of the social service organizations to assert that the study is being undertaken for some form of ulterior

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<sup>7</sup> **Exhibit 7** includes three studies, the above mentioned Mayor's Report and the report completed by the Worcester Municipal Research Bureau and entitled "Should Nonprofit Organizations Make Payments in Lieu of Taxes? The Case for and Against," and the report mentioned in footnote 1, also by the Worcester Municipal Research Bureau, entitled "Will Pilots Fly in Worcester? Taxing Nonprofits and Other Options."

discriminatory purpose. After meeting with Mr. Berman and Ms. Lee, they believed it would be helpful to the PILOT Committee if I offered some suggestions and recommendations for future endeavors of the PILOT Committee.

I therefore offer five recommendations for the consideration of the Board of Selectmen and the PILOT Committee. The first two recommendations are legal recommendations that I believe will help insulate the Town from a successful legal challenge, while the last three recommendations are more advisory in nature (rather than purely legal in nature) and perhaps will be of some assistance in helping the PILOT Committee fulfill its objectives, if adopted by the PILOT Committee.

My five recommendations for consideration are as follows:

- (1) The Board of Selectmen should consider providing further definition regarding the purpose and goals of the study, to allow the PILOT Committee to further focus its efforts and to hopefully eliminate any appearance that the study has been undertaken as a means by which to develop strategies for future local regulation of social service organizations. I recommend that the Board of Selectmen consider adopting a motion at tomorrow evening's meeting reaffirming its intention that the PILOT Committee study and the information included in the forthcoming report be used only for the purposes intended--namely for informational purposes and for determining whether the Town should develop and implement a voluntary PILOT Program. This motion may include a reminder that the forthcoming PILOT Committee report should not be used by the Town Meeting or any committee, board or officer within the Town in such a manner that it would effect disparate, unfair or discriminatory treatment of social service agencies or the residents and clients that they serve.
- (2.) Although it is my opinion that the PILOT Committee questionnaire does not violate state or federal law or infringe on the privacy rights of the residents serviced by social service agency programs, I do recommend that the members of the PILOT Committee should always be mindful that their actions should be free of any suggestion of "discriminatory intent." I hope that this memorandum will help provide the PILOT Committee with a more delineated purpose and goal for its study, and perhaps help it establish operating guidelines (formal or informal) by which it will operate to ensure that it does not venture into areas that could embroil the Town in a legal confrontation. I would be glad to review any documents prepared by the PILOT Committee in the future regarding the purpose<sup>8</sup> and goal of the study, as well as review any guidelines (to the extent

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<sup>8</sup> The PILOT Committee has identified its purpose as "to study the impact of social services on all aspects of Framingham. This is inclusive of monetary, environmental, and safety." As part of this undertaking, the PILOT Committee presumably may wish to address how social services impact Framingham's economy. This analysis could be divided into "how social services benefit the Town in generating jobs and revenue and in providing services that would otherwise not be available" and "how social services cost the Town in lost tax revenue, through a decrease in neighborhood property values, and in providing uncompensated municipal services." This could allow

they are prepared) to help ensure the members of the PILOT Committee that they are in keeping with the intent of the anti-discrimination laws discussed herein.

- (3.) The PILOT Committee should consider adopting some of methods used in the Worcester study, specifically by allowing supporters of tax exempt social service organizations to provide input on the services offered by those organizations, so that a comprehensive view can be presented by the PILOT Committee to Town Meeting and the Board of Selectmen. The PILOT Committee should provide the Town's social service organizations with a similar opportunity, like what was done in Worcester, to provide information regarding services provided to the Town and its residents by these agencies.<sup>9</sup> In addition to allowing the social service agencies to be heard, the PILOT Committee should consider holding at least one additional public hearing to allow the public to comment on its draft report (once it is prepared) and to add the public's observations, where appropriate. Finally, the report of the PILOT Committee should set forth the results of its research into the issue of how tax-exempt social service organizations impact the Town (both in providing services to the community and in requiring municipal services) and its recommendations to the Board of Selectmen regarding the implementation of a voluntary PILOT Program.
- (4.) The PILOT Committee also has requested the assistance of various Town departments and divisions to determine the impact of social service organizations on municipal services. As with the case of the questionnaire to social service agencies, some of the requested information may be available directly to the PILOT Committee from public or readily available sources. The PILOT Committee may consider discussing with the Board of Selectmen the information requested from the Town's department or divisions, whether all of this information has been provided, and the additional resources that may be required (if any) to provide the information, to the extent that it is not readily available.
- (5.) Each member of the PILOT Committee should act with the decorum, fairness, objectivity and professionalism commensurate with the fact that they are representatives of the Town in this important undertaking, and not purely as emissaries of their own beliefs or goals. While it is never possible to completely separate one's own personal views when reviewing facts and information, it is a worthwhile goal in this instance, because the actions of the PILOT Committee

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the PILOT Committee to then develop cost comparisons to determine if a PILOT Program is needed and the percentage of property tax that the PILOT Committee recommends be recovered from a voluntary PILOT Program to help pay for municipal services.

<sup>9</sup> It should be noted that Worcester undertook a study to determine whether it should develop a PILOT Program in regards to the tax-exempt schools in the City. The outcome of that study was that the financial benefit derived from those schools greatly outweighed any monies lost from the property tax base. The PILOT Committee may wish to similarly consider the benefits derived from these social service organizations, both financially and by providing services otherwise not able to be offered by the municipality, is greater than the taxes lost by the Town.

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likely will be viewed by the courts as the actions of the Town if suit is commenced against the Town in the future.

### **CONCLUSION**

I hope this memorandum is of assistance to the Board of Selectmen and the PILOT Committee. I look forward to meeting with you tomorrow evening to further discuss this memorandum and the recommendations contained herein, and to answer any questions you may have. Thank you.

*2005.12.08 Town Counsel Memo on PILOT PILOT Committee Questionnaire and FHA (600-122)*