

Social Service PILOT and Comparative Impact Study Committee Joint Meeting with the Board of Selectman Albondi Room, and continued in Conference Room 2,

7:30 PM Memorial Building Framingham, Ma

Minutes

December 13, 2005

Note: If a word or sentence is blue and underlined click for the link.

Attendance: Bob Berman, Yaakov Cohn, Dawn Harkness, Cynthia Laurora., Laurie Lee, Jim Palmer, Wes Ritchie, Nick Sanchez, Steve Orr, John Speranza

Meeting called to order at 7:30 PM. by Chair Berman in the Ablondi room for the joint meeting with the Board of Selectman (This portion of the meeting is available on streaming video on the Town of Framingham website)

Chairwoman of the Board of Selectman Katie Murphy introduced the PILOT committee and the reason for holding the joint session. The BoS requested Town Counsel Chris Perini's opinion on the legality and focus of the PILOT committee.

Mr. Petrini reviewed his report (included in detail below) concerning the PILOT committee's actions to date and future actions, in light of the Fair Housing Act, the Dover Amendment, The American with Disabilities Act and the First Amendment right to study and compile public information. Mr. Petrini offered recommendations to both the BoS and the PILOT committee to ensure the mandate from Town Meeting can be fulfilled while respecting the rights of others and the laws relevant to all.

The Chair thanked Mr. Petrini and asked if any board members had any questions.

John Stasik thanked Mr. Petrini for such a great summary and documentation of the whole issue including Federal, State and Local responsibilities. He added that this issue is being discussed in many communities all over the Commonwealth. He wanted to hear from the PILOT/Impact committee as to where they are going and where the emphasis is.

His opinion is that we are discussing a PILOT program. The services provided by the agencies and the services required by the agencies need to be considered and added up. How does this sum add up for Framingham? What is the economic bottom line? Is a voluntary PILOT program indicated?

Bob Berman, Chair of the PILOT/Impact committee, summarized that the committee is at the point of working on gathering information. We are looking for tangible affects to the Town of Framingham by social service agencies and programs: tangible costs and tangible benefits. A great deal of work is being done reaching out to agencies for information and town departments. We are not getting push back from any Departments just "what you are asking for will take a lot of work: here is the raw data or where you can find the information". We are starting to also consider outside communities and do a comparison to those. We are working on ways to do comparisons of similar information. There are cases of differences in collection of data and we do want to compare apples to apples, not apples to oranges..

Mr. Berman continued that we haven't spent time on PILOT's yet but we will look at the options out there so when we make our final report we will have choices and recommendations.

Dawn Harkness had a question for Mr. Petrini: she introduced herself and said she agreed with much of Town Counsel's analysis of whether our basic mission of gathering information is permissible. She is glad he put a lot of focus on trying to avoid even the appearance of discriminatory intent because if our committee had strictly a history of a non biased approach to gathering data and a non biased approach in our discussions, then she would say we weren't running afoul of the law.

Dawn thinks this committee may have crossed the line, has crossed the line: some members may have crossed the line. She wondered if in his analysis whether some actions have been considered a liability: she gave specific examples. The committee has members of an organization called STEPPS, the first S in Steppes is not study- Study Tax Exempt Private Property Sprawl.. it stands for Stop Tax Exempt Private Property Sprawl. Some members of the committee are members of this organization and their work on this organization has been to try and pull us in a direction to meet that agenda,.. their personal agenda. We have a member of this committee who took an unauthorized visit to a wet shelter to do some investigation. This violated the privacy of people in the shelter and the privacy of the agency that runs the wet shelter. We would not have an unannounced visit... it would violate what you were telling us not to do: to avoid the appearance of discriminatory intent:

Dawn said to Town Counsel that she is curious; when he was doing his analysis did he factor any of these issues into his analysis?

Mr. Petrini was obviously aware of the reporting of some of the activities of members and aware of different views of some members.

He wanted to take each issue separately:

Because one or more members of the committee might be a member of steppes he would not consider that a violation. While he encourages in the memo for people to check their views to the fullest extent possible at the door, he realizes it is impossible to do. It might be an aspirational goal, but something that should be done: just as there are some members who are thought to be more pro social service ,and he thought perhaps Dawn might be one of those: just as it may be difficult for Dawn to divorce herself from her personal views. It is part of the give and take of the first amendment. This committee is a cross section of the town overall and reflect the diverging views of the town. He considered that a positive, although the committee is forced to live with each other and we will have to figure out how to get along. He knows emotions run high. He referred back to his recommendation for decorum and civility and that we need to remember that we are emissaries of the town.

The second issue he is also aware of, generally. He did not conduct interviews. He doesn't know the whys and wherefores. If asked in advance, if that was a wise thing to do he would have said, it was ill advised, he wouldn't recommend it. But, at the same time it was one individual's choice to go there; he did not think it was a vote of the committee. If it had been a vote of the committee, he would have been more concerned about it. And

that is why he tried to take a forward looking approach rather than a looking back in great detail, other than to say that our charge was appropriate. He encouraged the committee to be cautious, but there is a certain amount of first amendment rights that get balanced in this process and everyone has to feel that they retain their rights to speak as well.

The second issue raised was a greater concern than the first. People are always going to have their political personal views; but we need to understand that we are emissaries of the Town. The second issue was greater concern but looking at that in isolation, he didn't feel it crossed the line because it wasn't a vote of the committee.

Dawn followed up. There was one vote of the committee: the vote of the committee to not even look into or investigate whether the action of a member going to the wet shelter, a shelter run by a social service agency, was misconduct. So to the degree that there was a majority vote of this committee saying that said we aren't even going to look into it, she thinks is a vote of the committee. It is recorded how that vote came down and you will find that the members of steppes were on .. those of us who are pro social service agencies voted against that; we felt it should be open and we should at least discuss it. There was a majority of this committee who voted to not look into it. Dawn said she thinks that is a vote of the committee, and that is problematic.

Town Counsel said it could be argued as such. Again, his goal was to look at it as objectively as possible. He wasn't specifically asked to investigate the members' participation or his visit but he thinks he has given a comprehensive analysis in trying to look more forward. He knows there are strong divisions in the committee but said that you folks have to work the best you can to realize you are emissaries of the town, and again encourages decorum of all members.

Bob asked to recognize our clerk Laurie Lee. There was one issue that might have been misunderstood that we would like to straighten out.

Laurie explained that the group has not voted to not publish addresses. They have voted to not identify what any particular address is. Of course they will be willing to consider what is recommended by town counsel but for the record the actual decision of the committee was to not identify addresses.

Town Counsel said we could work these details out later. He is not that concerned with that because everything is public information and we do have first amendment rights. He is happy that we are cautious in our approach.

There was discussion regarding the cooperation of town departments and the type of information being requested. Mr. Sisitsky recommended going through the Town Manager, especially if we are having difficulties with any departments.

Mr. Giombetti asked if the committee is looking for raw data from the departments that will then be analyzed by the committee.

The chair confirmed this

Ms Murphy commented that her impetus for this conference was based on her main concern: that the town could be liable. She wanted to make sure we were on the same page and moving forward in a legally safe way. As town counsel said there are many interpretations and the social service attorney seems to have differing ones. With all the hard work and hours of time put in by the PILOT committee she wanted to be sure everything was being done properly.

Ms. Murphy also wondered about the implications of having the study be narrow and applying to SSA only, rather than other tax exempt properties: schools, colleges, houses of worship. Will that be thought to be discriminatory? She thought from this information tonight, not necessarily so. She also agrees with Mr. Stasik that we need to come out with the benefits, not just costs.

Mr. Petrini emphasized that lawyers will argue their point of view and if needed he will argue and defend his.

Ms Murphy asked if the committee could copy the Board of any conversations with the State and our representatives.

Ms Esty spoke to town counsel, asking if any public information that the committee can gather, that might help the committee in the final showing of the true picture of what we have in our community, should be allowed.

Town Counsel agreed and said that is the first amendment right of individuals.

Ms. Esty continued that she thought the collective input from all members, with any different viewpoints, which might focus on varied issues such as the price of housing to the costs of town services to the benefits the town receives, should be allowed.

Mr. Petrini said he agreed so long as the information used is based on factual and verifiable data with a reliable source. The committee has already done some work on this looking at housing values and they used HUD sources and other objective, well accepted sources; that is fine. There must be some tests that information included in the report is reliable and has a measure of objectivity: not opinion. Facts. Publicly available reasonable facts.

Ms Esty agreed and commented that no fact should be disallowed when viewing this subject. She also hoped the agencies would come forward with all they are doing for the community. It would be a benefit for all.

Ms. Esty also wanted to touch on the broader scope.

Before the turn of the century, the focus 2000 series of meetings came up with several plans. One of them was to work on a focus report that included an analysis of the inventory of all housing and social service ownership and services. The impetus for this

was the cherry sheet and State aid. If it was determined that Framingham was a source of services for the region, the group wanted to ask the State for aid to support this. There was a vote from downtown solutions for \$20,000 to do this study.

This study was then voted down by the board because there was a push to expand it to churches.

The study never happened.

Ms Esty continued that Town Meeting discussed the scope of this study and the inclusion of churches: a member of the PILOT committee had an amendment there to widen the scope to all non profits. That was voted down almost unanimously by town meeting. So broadening the scope of the study would be a mistake.

Mr. Cohn, vice chair of the PILOT committee, wanted to make sure that the request to Mr. Petrini to produce this memo and this meeting isn't at all interpreted to suggest that anything the committee has done has come close to discriminatory or near the red lines he suggest we be careful of.

Mr. Cohn wanted to offer his opinion that there has never been a vote that even suggests discrimination and particularly the vote to drop the wet shelter visit, was not split on any pro or anti social service lines. He guarantees that.

Nick Sanchez asked to speak about an issue that has bothered the committee. The question arises because of a comment that Ms. Esty just made regarding churches. There s one item we have had great difficulty dealing with and I would wonder if you would like to express your opinion on that one particular item: which is the Salvation Army. Do you perceive the Salvation Army as a church or do you perceive the Salvation Army as a social service agency? Because the committee has had a tremendous amount of difficulty in dealing with that particular issue. And maybe we can get some guidance from this committee in this regard.

Ms. Murphy said that interestingly enough, the Salvation Army is a church. Major Triston told us that when she was here. That was news to me, I don't mind admitting that, but the in fact the Salvation Army is a church.

Ms. Esty said it is a church with a social service mission.

Ms Murphy replied that she bets many houses of worship fill that bill, but the Salvation Army is a church. So she thinks that is the answer. She added that her mentioning of churches was only looking at this to head off any possible litigation. She thinks that social service agencies in Framingham is a huge topic and a very broad subject and she is wondering how that would be looked at in a court of law. Is this focused in a discriminatory fashion? She said she is not a lawyer and doesn't necessarily have an answer to that, but as Mr. Petrini has so accurately pointed out, lawyers can argue anything. She would expect that if this ends up in court the plaintiffs would mount a spirited defense.

The BoS voted to re-affirm town meeting's mandate to the PILOT committee and clarify that the committee is a fact finding committee whose report is for informational purposes and for determining the feasibility of a PILOT program.

The BoS' motion further stated that the PILOT Committee's work should not be used for discriminatory purposes or to discriminate against disabled persons.

This motion is more explicitly described as recommendation #1 on page 11 of town counsel's report.

The PILOT committee reconvened in conference room 2

Ms. Lee moved that the committee approve the Property and Income workgroup's proposal (see below) for use of the Warren Group including one month's subscription.

Nick second

Chris Petrini joined the committee

Motion to table the motion until after town counsel is finished speaking with the group.

Vote: 10 in favor 0 opposed 0 abstain

The chair thanked town counsel for his report.

Mr. Petrini said that he thinks he went over the report in detail but if there were any questions he would try to answer them or get answers back to the committee.

Mr. Speranza asked if Mr. Petrini knew of any community doing a PILOT study who has been sued.

Mr. Petrini said he has not heard of any and there are many including Boston that have PILOT's. Worcester has actually separated out their educational PILOT study from the social service one. They decided the education was not worth pursuing. The social service PILOT is still in process and not implemented. To date no one has been sued, although that is not to say it cannot happen.

Mr. Petrini told the committee that as far as the PILOT is concerned he thinks we are on solid ground, although in uncharted territory.

Nick Sanchez was interested in some clarification about the groups or people protected by the laws in Mr. Petrini's report. He wanted to make sure that his understanding is correct, that people living in a wet shelter are not protected by those laws.

Mr. Petrini said that Nick was probably correct, they are not protected.

Nick asked a question regarding conflict of interest. As has pointed out, a member of the committee works for a social service agency. Nick had two issues in this regard.

First, there has always been disclosure of employment by this individual, but if this person had clients who were using the social service agencies, clients in private practice, would that also have to be disclosed?

Mr. Petrini said that he presumes he is speaking of Dawn and would need to hear the context and be asked by either Dawn or the committee for an opinion. An opinion of the State Ethics Commission could also be requested, by the person involved.

Mr. Sanchez 's other concern was the potential for other social service agencies, who do not have employees on the committee, to claim that they have been impacted negatively by the committee and did not have an employee present on the committee, as did the agency that employees Dawn. Essentially only one social service agency has a representative on the committee.

Dawn said that she does not believe that she is representing SMOC at all. She is not an administrator; she doesn't represent SMOC and has always disclosed that she works for them. When she makes comments she is pro social service agencies across the board.

Nick stressed to the chair that he was directing the question to town counsel specifically because one person's perception of themselves is not necessarily how they are perceived by other people. He raised the issue to understand if this issue could, at some point hurt the committee, in the sense that our results could be challenged by social service agencies that are not represented in the committee.

Mr. Petrini said that people claim a lot of things and he can't say that it won't occur but the committee can do things to prevent it:

1. Our charge is not to rank or score the agencies
2. The committee has said they are going to give the agencies an opportunity to come in and speak for themselves

Laurie brought up the issue of the addresses. She summed up that the committee hasn't decided what to publish or what not to publish. The committee has agreed to list the addresses and not identify them or describe a particular function.

Bob Berman added that a number of locations are unknown or confidential and we will not be trying to identify those addresses.

Chris said that his opinion is that this is public information and can be used for review and analysis. The memo states that what we are doing is related to already public information and while he likes to add layers of protection for the town, and wouldn't mind if we did not publish a list of addresses in our report, he doesn't think doing so will tip the balance. This is publicly available information already protected by the first amendment. Whatever the group can do to make it more objective and avoid singling out any specific group, the better off we are. He did not think that listing of the addresses will be enough to give liability.

Jim Palmer thought there was a problem because all the addresses are available on the assessor's website. Some of the addresses are paying taxes; some are not owned by the agency but by a subsidiary. Those are properties owned and not necessarily taxed but they are not providing programs either. How does that fit in?

Mr. Petrini thought that might be a compilation problem. He was not concerned about that.

Jim followed up asking if we can list all of the properties (something unintelligible)

Chris confirmed that we can list all of the properties and if we try to not single anyone out it is better. From his standpoint as town counsel he would prefer we do not publish the addresses but the committee needs to weigh and decide what it needs to do and it is within our rights to do so. The committee should want to do a comprehensive job on the study and if including the addresses is part of that the committee should do what is right for the study.

He is primarily interested in minimizing risk.

Dawn said that she has been thinking of another area of discrimination. It is the issue of retaliation. She does not think many people understand what it is. It is not just an act of discrimination that can get you sued. It is retaliating against someone who complains of discrimination, that is an illegal act. She gave as an example that when she had deep concerns about a member who visited the wet shelter, there were retaliatory charges leveled at anyone who spoke to the press and that she believes those are actions the committee needs to be cautioned about.

Mr. Cohn called for a point of order. He said the issue that was raised was about whether we should concern ourselves with a policy of speaking to the press. It was not retaliatory and the insinuation violates Robert's Rules of Order.

The chair called for legal questions aimed at town counsel.

Dawn continued that there have been other examples. The surveys written are quite extensive. When some agencies complained about the length of them Dawn perceived anger by committee members questioning what they might be trying to hide. When the police department and fire department said the questionnaires were too big, the response was to see how we can help them. Those things are recorded in the minutes. They are things the committee has to be concerned about. Everyone has to be treated the same.

Mr. Petrini reiterated that everyone has first amendment rights. The goal he included in the report about decorum and civility and about being objective as possible, is an aspirational goal. Town Counsel emphasized that he cannot say that any member who has a different view can't express it. He is encouraging decorum. At the same time anyone can choose to file suit on behalf of a social service agency, although he hopes that doesn't happen. But such a suit will need a discriminatory act by the town, not just a collection and assembly of information. If they do that, they may go back to the minutes of the committee and try to paint a negative picture of the committee. But people can't be muzzled. He did not see an issue of retaliation. He did not think any member of the committee is part of a protected class and to say you have been retaliated against does not seem to be the case.

Dawn disagreed. You don't have to be a member of a protected class to be a victim of retaliation. Case law supports this. If she were to get fired for speaking out against discrimination, that is a retaliatory act. That is the fundamental issue here. Dawn said that she may have very strong pro social service views. That is not an illegal opinion to have. There is no discrimination there or discriminatory intent in terms of her particular

viewpoint. However, the viewpoint that says that we have to go after the social service agencies, or we have to go after the people who support those agencies; that is discrimination and retaliation.

Chris said that there could be such cases, but Dawn needs to be careful about over legalizing or over constitutionalizing the internal workings of a committee. Mr. Petrini reiterated that just because someone has a different viewpoint it doesn't make them wrong or committing illegal acts.

Mr. Berman asked for additional questions for town counsel.

Yaakov raised the previous issue of the addresses. That discussion was in the context of a final report. His concern is that along the way we look at particular addresses. How should the committee handle that?

Chris said that it is an open meeting law question. You might need to deal with any issues surrounding the addresses on an individual basis.

Nick asked for clarification between the use of the word "hearings" on page 6 in the footnote and the recommendations to the committee.

Chris said that the hearings in the footnote, that the committee cannot hold, are more legal hearings. The other hearings, which he recommends the committee holds, are more public participation and reports of work done by the committee. He encourages the public hearings.

Wes noted that the committee has the votes to conduct a study of property values all over town. There is no direct connection, necessarily yet of how those values are connected to our charge of social service agencies. Is there a problem legally with collecting this data as a committee and presenting it to the community?

Steve Orr asked for point of order because he didn't understand the question.

Mr. Petrini said he understood. He repeated what Wes said: that in Wes's view, the committee's decision to study properties near or adjacent to social service agencies, or the town in general, has no factual basis to support (in Wes's view) the impact (negative or positive) of social service agencies on these values. (inaudible) There have been studies done that the committee can look at and report on those in their final product. The committee can also state that there has been considerable debate and discussion about this issue. (inaudible) But, the committee members have a right to do what they want, even though some people might disagree, as long as they don't overstep their bounds, i.e. that it is on the investigative and fact finding side, not making discriminatory rules.

The chair asked that only issues for town counsel be discussed, not things the committee will debate later.

Dawn followed up on Wes's point. When she reads the charge to the committee, it asks about the impact of social services on the town. It seems to her that anything that doesn't show a direct impact is outside the scope.

Mr. Petrini said that the motion is not written as constitutional law: "I further move that a comparative impact study of Social Services in Framingham be created that is inclusive of any monetary and environmental impacts on town services such as fire, police, schools and safety"

Mr. Petrini said the motion doesn't say direct impacts. That is more of an interpretation of what the committee wants, a consensus. If there is a different view on this committee maybe that group should write a minority report. But to say that you can't... His main concern is that there will be a chilling effect and the committee will feel that they can't debate these things. These things are open to debate. It is a balancing act.

Dawn followed up with several charts from the property and income group distributed on 12/6/05, stating that they are now part of the public record. She showed the comparison between Framingham and other communities for assessed housing values between 1990-2005. Framingham is at the bottom but there is no evidence presented..(inaudible)

Mr. Petrini commented that this information is probably available at the assessors' website or by anyone searching through public records.

Dawn said it is, but by virtue of it being part of the public record of this group the suggestion is that there is a relationship between the social service agencies and assessed property values. She thought that is going beyond the scope. That this working group is going beyond the scope of our study.

Town Counsel said that he can see why she would disagree with it, but he didn't think it goes beyond the scope just because it is subject to interpretation. It is part of the impact. You may disagree, he may personally disagree; if the majority as a whole feels that it is within the scope (inaudible). The people who disagree can report that and state it. But legalizing and saying that this is discrimination...people have a right to do it. Even though some may disagree with what the majority is doing. As long as it stays within bounds and you don't actually act, or ask for ordinances or instruct the building commissioner to act. Mr. Petrini emphasized that he is concerned with specific acts, not the give and take of first amendment discussion. He understands what she is saying but the committee is solid if it sticks with first amendment discussion.

Jim Palmer asked if it is going beyond the scope to send the addresses to the departments we are requesting information from.

Mr. Petrini did not see a problem, other than all the work the committee has to do. The committee is asked to study the impacts and as long as it is publicly available information, he didn't see how it is a violation of the charge. The committee has to make a determination whether information is anecdotal evidence or real and if it should be included in the report or not.

It is within what a reasonable person would consider as impacts and it is within the first amendment.

The chair asked about dealing with some of the questionable areas such as the Salvation Army or a program run as a rental to a church. Does counsel have any recommendations?

Chris suggested Bob gets that to him in writing.

The committee thanked Mr. Petrini for all his time and effort.

Laurie Lee moved that the committee accept town counsel's report with the recommendations to the committee, subject to a correction for the issue of the addresses not being published.

Nick Sanchez second

When asked why she made this motion, Laurie commented that she thought it would be helpful to the community to mirror the Board of Selectman following town counsel's guidance and formally accept this document.

Discussion and clarification ensued including concern that a committee would not necessarily approve recommendations rather than concrete steps. The chair thought we would follow the recommendations anyway.

Steve Orr supported it as a way to show the public that we as a committee are on the same page as the Board of Selectman. He commented that he thought it was a great thing to reassure the public.

Nick also supported the motion to accept Mr. Petrini's report and thought it was a good thing. It will clarify the legality of our study and put to rest this issue. He thought it would help to accept it.

Jim Palmer thought it was more appropriate to receive it, not accept it.

Steve thought it was appropriate to accept it because town counsel offered his legal opinion and if we accept it we are formally saying we agree.

Yaakov Cohn supported Laurie's motion. He thought there were valuable points in the report that needed something more than just saying we read it.

We thought that what Steve said about the report is more of a policy statement; that we understand and agree with town counsel. But just as we rejected Ginger Esty's policy statement of supporting a call for a moratorium, it is not the business of this committee to offer policy statements. We should not project an image of 'our policy' to the community. This is exactly in line with why we decided not to take a vote on the moratorium.

Bob Berman said that he completely agreed with what Town Counsel said but he didn't see any potential positive or negative to accepting it or approving it or receiving it and thus, will vote to abstain. He wasn't sure what it would do or how it would help us.

Jim Palmer said there is one section regarding recommendations.(inaudible)

Jim offered his replacement of accept with receive as a friendly amendment.

Laurie refused.

Motion: The PILOT committee accepts Town Counsel Chris Petrini's report, with the recommendations to us, with the understanding of the correction regarding the issue of addresses and that the committee has not decided yet on the publication of those addresses.

Vote: 6 in favor 1 opposed 3 abstain pass

Note: Those in favor of this motion subsequently requested that their vote be recorded in the minutes. In favor were: Laurie Lee, Cynthia Laurora, Nick Sanchez, Yaakov Cohn, John Speranza and Steve Orr

Motion to take Warren Proposal off the table

9 in favor 0 oppose 1 abstain

The committee discussed the proposal

Motion: That the committee approve the Property and Income workgroup's proposal (see below) for use of the Warren Group including one month's subscription.

Vote: 7 in favor 1 opposed 2 abstain pass

Some follow up questions regarding the definition of adjacent. Laurie explained that her initial search showed that it might be difficult to get complete data for more than 2 -4 properties and she wanted to allow some leeway for that. If it is possible to get 6 properties adjacent she will come back to the committee and report what seems possible.

Nick Sanchez added that any problems will come back to the committee.

Bob asked what format the data is in. Is it raw data to go into excel or print outs like the other sample we had.

There was discussion about ways to simplify the data access and Laurie asked for any help anyone wants to give.

Laurie passed around the most recent updates to the list of addresses.

Laurie moved that we accept the Salvation Army corps community center into the list of social service addresses for the following reasons:

1. Community centers are part of our SIC codes 8322
2. 11% of their funding is government funding and their hiring and providing practices are run by government standards, not religious
3. The state and town has property classification codes for taxes. Churches are identified as 906. The Salvation Army is 905, which is identified as charitable and non profits.

Wes second

The issue of considering how much of a building is used for SS came up. Are we going to factor that into other properties. Laurie thought yes. When asked how many others are in this situation, she thought that there are obviously the rentals using either offices or square footage and guessed at possibly 6 others.

Dawn was uncomfortable including it because she thought we concluded it was more of a church with a minority social service component to it. She thought we would then have to figure out what % of other churches are social service agencies.

Yaakov thought that if a church has a subsidiary functioning as a SSA, that piece of it would be within our scope.

Nick said he raised the issue with the BoS. He thought the clerk made a good case that there is some significant portion of the SA working as SSA, but he thinks it is opening up a Pandora's Box.

He thinks it is safer, perhaps to use Wes's compromise, to treat this SA as a separate case. He speaks against the motion.

Bob said it was a slippery slope but that the compelling point is the use of the SIC code. He suggested we ask Town Counsel this specific question as discussed.

Jim reminded the group of the history of the SA. He said it is a church.

More discussion ensued.

Laurie withdrew the motion and agreed this should be sent to town counsel,

Motion that the chair put this into writing for town counsel.

Second

Discussion

The chair will word it separately:

1. Here is the information about the Salvation Army
2. How do you suggest we move forward with Churches with % of use

Vote: 10 in favor 0 oppose-0 abstain

The rest of the list of addresses were discussed, numbered and voted on for inclusion or exclusion

Motion to exclude government agencies including those on the list: # 2,3,4, 7,8,10,11,12

second

Vote: 8 in favor 0 opposed 2 abstain

Motion to remove # 5 from the list

second

Vote: 8 in favor 0 opposed 2 abstain

Motion to remove #1 from the list

Vote: 10 in favor 0 opposed 0 abstain

Motion to remove # 9 from the list

second

Vote: 10 in favor 0 opposed 0 abstain

Motion to accept to the list #'s: 14,15,16,17,18

Second

Vote: 10 in favor 0 opposed 0 abstain

Still searching information of: # 13, 6

Motion to remove an address from the list for Counseling for Today's Issues

Second

Vote: 10 in favor 0 opposed 0 abstain

Motion to adjourn

Second

Vote: 7 in favor 3 opposed 0 abstain

Laurie Lee

Clerk, PILOT

Documents:

Proposal for use of Warren Website from the Property & Income Group: We would like to arrange our training with Warren for the end of December and have our months' use with Warren during January. We believe the rate of \$125 for 150 searches will be sufficient, however, if our use is high we will reconsider and ask the group to increase to the 500 search rate or ask for an additional month.

General Use:

- Create Reports of each community in our study
- Establish benchmarks for residential property growth (done with free info)
- Establish benchmarks for commercial property growth. Commercial property sales data is available thus allowing us to determine the growth rates from sales data of commercial property from 1990-2005
- Can search what properties social services own in any community and thus help with the list of services in our comparative communities
- Misc. to be learned and discovered

Specific Use:

- Compare social service properties and adjacent* properties with benchmarks for Framingham
- Assist in determining the 1990 assessed values for social service agencies. We will be looking at residential use properties and hope to create a study of 30-50 sites. This will be in conjunction with the Framingham assessors' database and the 1990 assessed values.
- Assist in determining the 1990 assessed values for properties adjacent* to social service sites. We will do this for the residential sites in the above study. We will consider 2-4 properties adjacent to the site. This will be in conjunction with the Framingham assessors' database and the 1990 assessed values.
- Determine if it is possible to study the growth of sale prices of social service properties and adjacent properties. This will require some searching through the Warren database to see if there is enough information to do this. Properties much have been sold for the years under study: 1990 and 2005 for a valid comparison. If it is possible to use sales from other years to garner information, it will be done.

Adjacent: Jay Grande of the planning board told us they inform neighbors of projects who are within 350' of a property. Since the zoning is different throughout Framingham neighborhoods, a specified distance would not give consistent information. We have decided instead to call adjacent the 2- 4 properties surrounding a site. If an immediate abutter is not available or the information is not complete, we will choose the nearest neighbor.

Note: We will not include any building whose renovation has changed the structure of the building, as such information is available.

TBD: We expect other uses of the Warren site will become clear as we use it and train with Warren employees.

TOWN OF FRAMINGHAM Massachusetts

Office of the TOWN COUNSEL Christopher J. Petrini

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

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

December 12, 2005 Page 2 "*Dedicated to excellence in public service*"

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.

December 12, 2005 Page 3 *"Dedicated to excellence in public service"*

- (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”).

December 12, 2005 Page 4 “*Dedicated to excellence in public service*”

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, 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

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.

December 12, 2005 Page 5 "*Dedicated to excellence in public service*"

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).

December 12, 2005 Page 6 “*Dedicated to excellence in public service*”

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.²

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

² 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.

December 12, 2005 Page 7 "*Dedicated to excellence in public service*"

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

³ lawsuit alleging discriminatory practices under the FHA, ADA or Section 3. 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

³ If a social service agency or 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.

December 12, 2005 Page 8 *"Dedicated to excellence in public service"*

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.

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-mail⁵ 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

⁴ 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).

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

December 12, 2005 Page 9 “Dedicated to excellence in public service”

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. ⁶ 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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One such organization is Guidestar and is available at www.guidestar.org.

December 12, 2005 Page 10 "*Dedicated to excellence in public service*"

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")." ⁷ See **Exhibit 7**. 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

⁷
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." December 12, 2005 Page 11 "*Dedicated to excellence in public service*"

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 and goal of the study, as well as review any guidelines (to the extent

⁸ 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

December 12, 2005 Page 12 *“Dedicated to excellence in public service”*

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.

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.

(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. 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

9

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.

December 12, 2005 Page 13 *“Dedicated to excellence in public service”*

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)