



SOUTH MIDDLESEX OPPORTUNITY COUNCIL
Organizing Resources for Social Change and Economic Independence

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July 6, 2009

Jason A. Smith
Board of Selectmen
Town of Framingham
Memorial Building
150 Concord Street, Room 121
Framingham, MA 01702

Re: South Middlesex Opportunity Council, Inc. and
South Middlesex Non-Profit Housing Corporation v.
Town of Framingham et al.
Civil Action #1:07-cv-12018-DPW

Dear Mr. Smith:

I am writing on behalf of the Board of Directors of South Middlesex Opportunity Council, Inc. and South Middlesex Non-Profit Housing Corporation (collectively "SMOC") to make a formal offer to settle the above captioned litigation. This letter is addressed to you because I understand that you have been designated as the liaison to SMOC by the Board of Selectmen. We are also copying the Chair of Finance Committee as we understand that the Finance Committee now has a role in this matter.

In October 2007, SMOC filed a comprehensive law suit against the Town of Framingham, and certain individuals, in Federal District Court. Our goal in bringing this action was to end what we saw as a pervasive effort, in violation of state and federal laws, by Town officials and certain individuals to interfere with SMOC's siting of programs for disabled individuals. We did not, as some claim, bring this suit to stifle free speech, discourage individuals from serving in public office, or to financially punish the Town or the individual defendants. Quite simply, we turned to the Federal Court reluctantly, seeking protection for our efforts to provide social services to the most disadvantaged members of our community.

After 18 months of difficult and costly litigation, SMOC's goal remains the same, to carry out our mission of serving disadvantaged people. The parties have now completed discovery and the filing of summary judgment pleadings. For our part, we believe that the hundreds of pages of facts documented in the record by SMOC and the related briefs we have filed, all of which are now publicly available, provide a clear and available source of information for anyone interested in understanding the substance of our claims. On July 29 Judge Woodlock will hold a hearing on the summary judgment motions which may provide some guidance on how he views both the scope of our case and the schedule for the remaining steps in this litigation. If and when this litigation goes to trial, it will surely be a lengthy, costly court proceeding with no guarantee that either side will prevail in a satisfying way.

Our Board is mindful of the effect the financial cost of this litigation has had both on our organization and on the Town. While SMOC has received both generous discounts and significant pro-bono service from our litigation lawyers, our costs have been significant. We are also aware of the ongoing, significant cost of the defendants' legal team. Both sides to the litigation are faced with an unprecedented economic downturn. We are all being asked to do more with increasingly limited resources. The financial cost of the litigation is clearly affecting both SMOC's and the Town's ability to provide needed services to our clients and constituents.

Our Board is also mindful of the community rift which preceded the litigation and which has grown during its course. The need for close cooperation between the Town and SMOC is even greater in difficult economic times and the continuation of this litigation makes such cooperation challenging. A severe recession heightens the need for partnership between SMOC and the Town on a wide range of issues including unemployment and housing assistance, mortgage foreclosure prevention, workforce retraining, fuel and energy assistance, mental health services; veteran support, domestic violence prevention, nutrition and health education, early childhood education, and many other social service support programs. While SMOC continues to work closely with the Town's professionals, particularly with the Police Department on community safety issues, significantly more will be required to manage the community problems resulting from current economic conditions.

We want to emphasize that SMOC has been and continues to be a significant positive economic force in Framingham. In FY 2008 we provided services to approximately 10,000 Framingham residents (about 15% of the Town's population and 27% of all SMOC clients). Additionally SMOC's contributions to the local economy include:

- In FY08, SMOC had 219 Framingham employees who were paid a total of \$4,029,718 in salaries
- SMOC works with 302 Framingham landlords for 400 households through the Section 8 program. (Nearly all of these families are from Framingham).

Annual payments to these landlords average approximately \$5 million per year

- In FY08, SMOC has paid nearly 6 million dollars (\$5,990,547) to Framingham-based vendors (about 17% of total expenditures). This includes almost \$400,000 directly to the Town:
 - \$139,672 for water and sewer
 - \$110,933 for local taxes
 - \$142,119 in real estate taxes
- SMOC sent 123 children into kindergarten in Framingham through their Head Start program this year. These children were far more prepared for public school than they would have been without the program and demonstrably reduce special education costs to the Town.

In light of these changed circumstances and in an effort to begin an improved, collaborative relationship with the Town, SMOC's Board has authorized me to convey this settlement offer. While we remain committed to seeing this litigation through trial, if necessary, we hope that reasonable people on both sides of the case can find a way to resolve our differences short of continuing this expensive of litigation.

At the outset, I want to be clear about several aspects of this settlement offer:

though SMOC believes it has suffered significant financial damage as a result of the actions alleged in our Complaint, this offer does not seek the payment of any damages from any of the defendants, nor does it seek payment of legal fees. The terms of our offer include the provision that all parties would be responsible for their own legal fees and that no damages would be paid by any defendant;

the terms of this settlement offer are predicated on a comprehensive settlement entered into by all parties to the litigation; and

this settlement offer is predicated upon the terms being incorporated into a Settlement Agreement and Consent Decree approved by and filed with the Federal Court. Filing with the Federal Court will afford all parties the comfort of knowing that the terms have been approved by a Federal Court and provide a ready forum to address claims of breach in the near term. The settlement offer does not seek receivership or ongoing active involvement by the Federal Court in local governance issues. We hope that the Leadership Council, which we propose as part of this offer, will eventually restore trust among the parties and minimize the likelihood of any party needing Federal Court intervention in the future.

Subject to the limitations set forth above and with a full reservation of rights with respect to the litigation, SMOC offers to settle the litigation upon the following terms and conditions, all to be incorporated into a Settlement Agreement and Consent Decree:

An affirmative acknowledgment by all defendants that disabled individuals, including individuals in recovery from alcohol and substance abuse and individuals with active substance abuse problems coupled with chronic mental illness (co-occurring disorder), have a right to housing in the Town of Framingham;

An agreement by all defendants to comply in the future with all state and federal laws at issue in the litigation, including without limitation an agreement by all defendants to comply in the future with all state and federal laws at issue in the litigation, including without limitation, the Fair Housing Act, 42 U.S.C. §3601 et seq., the Americans with Disabilities Act, 42 U.S.C. §§12101 et seq., the Federal Rehabilitation Act of 1973, 29 U.S.C. §§ 794 et seq., Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 1983, the Massachusetts Civil Rights Act, G.L. c. 12, §§11H-11I, and the Dover Amendment, G.L.c.40A, § 3;

Establishment by the Town of a Leadership Council. The parties will agree that the Town shall establish a Leadership Council to address the past and future relationship between social service agencies and the Town of Framingham, including the issues that preceded and lead to this litigation, as well as well as litigation between the Town and other social service providers. The Leadership Council would consist of 10 to 15 members including a chair, the number and specific appointments to be mutually agreed to by SMOC and the Town. Membership would include representatives from following groups: the Framingham Board of Selectmen; the Framingham Police Department; the Framingham School Department; the Framingham Clergy Association; the United Way of Tri-County, the Metrowest Chamber of Commerce, the SMOC Board of Directors, other Social Service Organization Board of Directors, and at-large members. The Leadership Council would be chaired by an outside expert, affiliated with neither the Town nor a Social Service provider, with either judicial experience or expertise in fair housing issues. The Settlement Agreement would include a clear mandate to the Leadership Council on the scope of its mission, a time frame for existence, deliberations, and submission of a report to the parties, and a requirement that the Leadership Council hold at least two (2) public hearings.

Establishment by the Town of a Zoning Review Task Force (the "Task Force"). The Task Force would be charged with reviewing the Town of Framingham Zoning By-Law Site Plan Review provisions

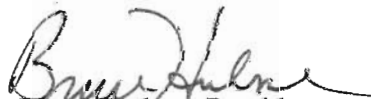
with respect to projects subject to the protection of M.G.L. c. 40A § 3 (the “Dover Amendment”). The Task Force would consist of five (5) members, plus a Chair, mutually agreed to by SMOC and the Town. The Task Force would be chaired by an outside consultant, affiliated with neither the Town nor a Social Service provider, with demonstrable expertise in zoning matters. The Task Force would include the Building Commissioner, the Planning Board Administrator, a representative from SMOC, a representative nominated by the Board of Selectmen, and fifth representative, with demonstrable Fair Housing experience, nominated by SMOC. The Task Force would be charged with (i) reviewing the current Zoning By-Law and Planning Board Rules & Regulations to determine compatibility with the provisions of M.G.L. c. 40A § 3; (ii) developing proposed amendments to the Zoning By-Law and Planning Board Rules and Regulations which would provide for specific, limited submittal requirements, a limited hearing process with timelines, and appropriate rules and regulations for Site Plan Review of Dover Amendment projects which comply with the provisions of M.G.L. c. 40A § 3, and (iii) developing application forms and timelines for such projects. The Task Force would be asked to report to the parties no later than 120 days following its formation. The Board of Selectmen and Planning Board would jointly sponsor appropriate warrant articles at the next scheduled Town Meeting proposing the Zoning By-Law amendments, if any, proposed by the Task Force and would jointly recommend adoption of the Task Force’s proposed amendments. As part of its mandate the Task Force would be required to solicit input and technical assistance from the Attorney General’s office and would seek recommendations from the Attorney General’s office prior to submitting any final report to the parties.

Please be advised that in the interest of transparency we do not consider this to be a privileged communication and expect that this offer will be disclosed to the public. As you know there have been mediation efforts and settlement discussions in the past which have been confidential. All previous efforts have also been unsuccessful. This litigation impacts the entire community and deserves public discussion and scrutiny.

We will also provide a copy of this settlement offer to the Attorney General’s Office because the Attorney General has expressed an interest in this case and has asked to be informed of developments.

I am hopeful that this offer can lead to a productive and constructive dialogue which will ultimately lead to resolution of the litigation. Should you have any questions or wish to discuss any aspects of this offer please contact me.

Very truly yours,



Bruce Hulme, President
South Middlesex Opportunity Council and
South Middlesex Housing Non-Profit
Housing Corporation

cc: Elizabeth Funk, Chair, Finance Committee
Attorney General Martha Coakley
SMOC - Board of Directors