

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

LAND COURT

MISC. DOCKET NO. 08 MISC 383418

SOUTH MIDDLESEX NON-PROFIT)
HOUSING CORPORATION)
and)
SOUTH MIDDLESEX OPPORTUNITY)
COUNCIL, INC.,)

Plaintiff,)

v.)

COMPLAINT

TOWN OF FRAMINGHAM,)
SUSAN S. CRAIGHEAD, STEPHEN)
MELTZER and KARL THOBER, as they are)
Members of the TOWN OF FRAMINGHAM)
ZONING BOARD OF APPEALS)
and not Individually,)

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LAND COURT
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Introduction

1. In this action, the plaintiffs challenge the decision of a local zoning board of appeals denying their administrative appeal and affirming the decision of the local building commissioner that the plaintiffs' proposed use of their property is not an exempt educational use subject to the protection of G.L. c. 40A, §3, otherwise known as the Dover Amendment. By this action brought pursuant to G.L. c. 40A, §17, G.L. c. 240, §14A and G.L. c. 185, § 1(j ½), the plaintiffs (1) appeal the decision of the local zoning board of appeals denying plaintiffs' administrative appeal and affirming the decision of the local building commissioner that the plaintiffs' proposed use of their property is not an exempt educational use subject to the protection of the Dover Amendment and, therefore, requires a Special Permit and Site Plan Review by the Planning Board; and (2) seek a determination that the application of Site Plan

Review and requirement of a Special Permit in connection with the plaintiffs' proposed project is impermissible under the Dover Amendment.

Parties

2. The plaintiff, South Middlesex Non-Profit Housing Corporation ("SMNPHC"), is a Massachusetts non-profit corporation with a usual place of business at 300 Howard Street, Framingham, Middlesex County, Massachusetts.

3. The plaintiff, South Middlesex Opportunity Council, Inc. ("SMOC"), is a Massachusetts non-profit corporation with a usual place of business at 300 Howard Street, Framingham, Middlesex County, Massachusetts.

4. The defendant, Town of Framingham, is a municipal corporation duly organized and existing under the laws of the Commonwealth of Massachusetts with a usual place of business at 150 Concord Street, Framingham, Middlesex County, Massachusetts.

5. The defendant, Susan S. Craighead, resides at 17 Briarwood Road, Framingham, Middlesex County, Massachusetts, and is sued in her capacity as a member of the Town of Framingham Zoning Board of Appeals which has a usual place of business at 150 Concord Street, Framingham, Middlesex County, Massachusetts (the "Board").

6. The defendant, Stephen Meltzer resides at 10 Duggan Drive, Framingham, Middlesex County, Massachusetts, and is sued in his capacity as a member of the Board.

7. The defendant, Karl Thober, resides at 502 Grove Street, Framingham, Middlesex County, Massachusetts, and is sued in his capacity as an associate member of the Board.

The Proposed Project

8. SMNPHC owns the property located at 15 Blandin Avenue in Framingham, Massachusetts (the “Site”), which is located in the General Manufacturing District (“M District”).

9. The Site is approximately 204,343 square feet and contains a 19,175 square foot one-story concrete building previously used as NSTAR’s headquarters and a one-story metal garage. SMNPHC and SMOC (collectively “SMOC”) presently use the Site for warehouse use in conjunction with their non-profit educational purposes.

10. SMOC proposes to demolish the existing buildings at the Site to construct a three-story structure containing approximately 50,000 square feet for use as its administrative headquarters and operational space for certain of its educational and service programs (the “Project”). SMOC also plans to construct a 261 space parking lot in connection with the Project. The Project is intended to replace SMOC’s existing administrative headquarters located at 300 Howard Street in Framingham, Massachusetts.

SMOC and Its Mission

11. SMOC is a regional anti-poverty community action agency that was established in 1965 as part of the nation’s “War on Poverty” in connection with the Federal Economic Opportunity Act of 1964. It serves the greater Metrowest region and provides a broad range of social, rehabilitative, community development, economic development and educational services to disadvantaged and disabled adults and their children throughout the community. It also operates programs in central and western Massachusetts.

12. SMOC's mission is to improve the quality of life of low-income and disadvantaged individuals and families by advocating for their needs and rights; providing services; educating the community; building a community of support; participating in coalitions with other advocates and searching for new resources and partnerships. Education, both traditional and non-traditional, is central to carry out this mission. SMOC's continuum of care assists people to improve the conditions of their lives. Lack of educational opportunities, low wages, unavailability of decent affordable housing, lack of childcare, substance abuse or mental illness, or a combination of these things, contribute to the condition which hold people back from reaching their full potential. SMOC works with each individual and family to correct these conditions and assist them to move to successful community living where they are able to contribute their energy and skills to the improvement of the quality of their own lives and to the betterment of the community at large. At every level of involvement, educating clients and teaching them the skills necessary to develop self-sufficiency is a primary component of all SMOC programs.

13. SMOC offers a complete continuum of care to those it serves which begins with emergency shelter and culminates in sober housing and independent, self-sufficient living. Beyond that, people in recovery are engaged in various levels of supportive programming and education – learning life skills, employment and educational skills that together will enable them to stabilize their lives, maintain recovery and obtain and retain employment. While clients access SMOC's services through multiple programs, the common thread is to provide supportive educational programs and services which help individuals and families reach their full potential as independent contributing members of the community.

SMOC's Educational Use of the Site

14. SMNPHC and SMOC are both non-profit educational corporations organized pursuant to G.L. c. 180, §3. SMNPHC's and SMOC's Articles of Organization permit them to engage in educational pursuits.

15. In connection with the Project, SMOC intends to relocate the central management, finance, property management and human resource offices for SMOC's programs as well as on-site educational service programs, including the following:

- **Behavioral Health:** Mental health, substance abuse, and family stabilization programs, including individual and group counseling, medication evaluations, psychological/social evaluations, driver alcohol education programs, independent living support, vocational support, rehabilitation, community education, and homelessness prevention, as well as the administrative offices for SMOC's behavioral health program.
- **Early development, child care and Head Start:** Administration and staff training for SMOC's early education programs, including administrative offices for Head Start, and family day care services. SMOC Head Start is a comprehensive community based program for income-eligible and disadvantaged three and four year old children and their families, with classroom sites located in Ashland, Framingham, Grafton, Hudson, Marlborough, Medway, Milford, Natick, and Northbridge, with the Framingham site located at leased space within blocks of the Property. This pre-school learning program provides services in early development, health and dental care, mental health, nutrition education, and social services. SMOC's family day care services, with classrooms throughout the community, provide early learning focused child care services, in contrast to custodial day care, to children of families participating in various SMOC programs. While classrooms for the children are off-site, teacher and staff training will occur at the Property as well as all administrative functions of this educational program, just as the Framingham school system locates its administrative headquarters in a building separate from its classroom functions.
- **Voices Against Violence:** Voices provides a 24 hour hotline, crisis intervention, counseling support, advocacy, information and referral, support groups, emergency shelter referral, education regarding legal and medical processes for battered individuals, sexual assault survivors and their families, coordination of the Framingham High-Risk Domestic Violence Case Response Team, as well as staff and community education.

- **Nutrition education and meal planning:** The Framingham/Waltham Women, Infants and Children Program (“WIC”) provides nutrition education and related services for pregnant and parenting mothers and fathers, infants and children; health education to parents of young children about the health risks associated with obesity; administration and staff for WIC on Wheels; and SMOC’s Elderly Nutrition Program, which provides nutrition educational programs to elders.
- **Economic development, career services, and adult education:** Adult education programs including:
 - daytime basic education classes to adult clients from other SMOC programs to assist clients in earning high school equivalency degrees;
 - the Metrowest Career Center, a Career Center open to the general public that offers workshops, career counseling, and participant access to a computer facility for training, career development, and access to other educational programs;
 - the Joan Brack Adult Learning Center, which provides free GED high school equivalency classes, mentoring, and mini-courses on job skill development;
 - Services for Education and Employment (“SEE”), which provides educational and employment support for Department of Mental Health clients;
 - the Knowledge, Empowerment, Hope and Accomplish Program (“KEHA”), a daily/educational program for individuals with psychiatric disabilities, which includes training and education in communication skills, social competency, job readiness career planning and employment support;
 - the Mobile Resource Team, operating out of SMOC’s Metrowest Career Center, which provides on and off-site specialized housing search, education and job search skill training, case management, and employment services to single adults throughout the state with the goal of assisting individuals in obtaining permanent housing and employment;
 - the Young Parents Program, which provides education classes for young parents to help them attain their high school equivalence degree, post-secondary education and permanent employment, as well as developing parenting skills;
 - the Serenity Office Skills Program, a one-month class for low income women to prepare them for jobs as office workers; and
 - the Ready, Willing and Able Program, a structured educational program designed to develop and supervise temporary employment opportunities in

local businesses for previously unemployed individuals. The program offers training to participants in job readiness and aims to acclimate participants to the culture of the work world.

- **Self sufficiency programs:**
 - the Metrowest Helpline, a telephone hotline and drop-in program, staffed during business hours, which provides educational information and referral services for self-advocacy, with no income or geographic limits;
 - the Russian Outreach Program, an educational information and referral service for self-advocacy for the Russian immigrant community;
 - the Family Self-Sufficiency Program, which provides classes, educational case management, employment search support, parenting and budgeting classes for Section 8 housing residents. The program uses self-sufficiency action plans for participants with the goal of developing financial stability, budgeting skills and improved employment, with a goal of transitioning participants from public housing in three to five years;
 - the Weatherization Program, which provides client education on energy conservation and efficiency, and home maintenance training to low income households to assist participants in addressing the economic impact of the current oil and energy cost crisis; and
 - the Home Center, which offers First Time Homebuyer classes, and other services aimed at helping people become homeowners. These evening classes include a series of sessions taught by area accountants, realtors, attorneys, and lenders to individuals and families trying to achieve home ownership for the first time. Tenants, landlords, prospective buyers and current homeowners can access information through the Home Center to maximize housing stability, strengthen investments, and minimize disputes.
 - the Foreclosure Center, which offers clients education and related services on how to avoid or prevent foreclosure, as well as credit counseling.
- **Criminal justice and re-entry programs:** Administration of the Women's Transition Program, Fresh Start Program, and the Re-entry Housing Program, which provide case management, education, employment and health services for men and women recently released from correctional facilities, and administration of re-entry preparation classes.
- **Housing:** The use of the Property will include administration for SMOC's housing programs, including program supported educational housing providing rehabilitation, sobriety education, violence prevention, homelessness prevention, vocational readiness, and training in parenting and self-sufficiency skills.

16. SMOC will also house a small number of client services which are secondary, though central, to its educational mission at the Site, including the Metrowest Harvest food program as well as its rental assistance and the energy voucher programs.

The Dover Amendment

17. General Laws Chapter 40A, § 3, known as the Dover Amendment, provides, in pertinent part, as follows:

No zoning ordinance or by-law shall regulate or restrict... the use of land or structures...for educational purposes on land owned or leased...by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures in determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.

Use Provisions of By-law

18. Pursuant to Section III.G.3.a. and Section III.C.1.b(2) of the Town of Framingham Zoning By-law (the "By-law"), professional or administrative offices are an allowed use by right in the M District. Any such use with greater than 8,000 square feet of gross floor area requires a Special Permit for the Planning Board.

Special Permit Provisions of By-law

19. Section V.E.3.a of the By-law requires the Board to make the following findings in order to approve any application for a Special Permit:

- (1) The specific site is an appropriate one for such a use or structure.
- (2) Adequate and appropriate facilities will be provided for the proper operation of the proposed use, including adequate off-street parking. Except for residences requiring fewer than five stalls, adequacy of proposed off-street parking facilities shall be determined by the Planning Board, in accordance with the provisions of Section IV.A., IV.B., IV.C. and V.E. of this By-Law.

- (3) The use or structure as developed will not create a hazard to abutters, vehicles, or pedestrians.
- (4) The use or structure is consistent with the Intent of the district in which the use is proposed, and with the Purpose and Intent of this By-Law.
- (5) All municipal services necessary to meet the needs of the proposed use must be adequate and sufficient.

Site Plan Review Provisions of By-law

20. Pursuant to Section IV.I.7.b of the By-law, the Board shall approve an application for Site Plan Review if the Board finds that the proposed development is in conformance with the By-law, after considering whether the proposed development will comply, to the extent feasible, with the standards set forth in Sections IV.I.6(a) – (e).

21. Section IV.I.6.a of the By-law sets forth the following traffic impact standards:

- (1) The “level of service” (LOS) of all impacted intersections and streets shall be adequate following project development, or the total value of off-site traffic improvements required or approved by the Planning Board as a condition of approval in any location within the Town affected by the proposed project shall be equal to a minimum of three per cent (3%) of the total development cost of the project. For purposes of this standard:
 - (i) **“level of service”** (LOS) shall be determined according to criteria set forth by the Transportation Research Board of the National Research Council;
 - (ii) **“impacted”** means intersections projected to receive at least five per cent (5%) of the expected traffic generated by the proposed development, either based upon the total anticipated peak hour traffic generated by the proposed project, or based upon the total anticipated average daily traffic counts generated by the proposed project;
 - (iii) **“adequate”** shall mean a level of service of “B” or better for rural, scenic and residential streets and for all new streets and intersections to be created in connection with the project; and “D” or better for all other streets and intersections; and

(iv) “**total development cost**” shall mean the total of the cost or value of land and all development-related improvements, and shall be determined on the basis of standard building or construction costs, such as published in the Engineering News Record or other source acceptable to the Planning Board, for the relevant type of structure and use.

(2) The proposed site plan shall minimize points of traffic conflict, both pedestrian and vehicular. The following guidelines shall be used to achieve this standard:

- (i) Entrance and exit driveways shall be so located and designed as to achieve maximum practicable distance from existing and proposed access connections from adjacent properties.
- (ii) Where possible, driveways shall be located opposite similar driveways.
- (iii) Sharing of access driveways by adjoining properties and uses is encouraged.
- (iv) Left-hand turns and other turning movements shall be minimized.
- (v) Driveways shall be so located and designed as to discourage the routing of vehicular traffic to and through residential streets.
- (vi) Pedestrian and bicycle circulation shall be separated from motor vehicle circulation as far as practicable.

22. Section IV.I.6.b of the By-law sets forth the following environmental impact standards:

- (1) The proposed development shall not create any significant emission of noise, dust, fumes, noxious gases, radiation, or water pollutants, or any other similar significant adverse environmental impact.
- (2) The proposed development shall not increase the potential for erosion, flooding or sedimentation, either on-site or on neighboring properties; and shall not increase rates of runoff from the site to the satisfaction of the Town Engineer and Board of Public Works. Provision for attenuation of runoff pollutants and for ground water recharge shall be included in the proposal. The proposed development shall comply with the latest accepted state and federal Best Management Practices for water quality mitigation and management.

