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November 9, 2005

William J. Taylor, President and CEO
Advocates, Inc.
One Clark's Hill, Suite 305
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RE: Questionnaire from the Town of Framingham PILOT/Impact Committee

Dear Bill:

You have forwarded to me a questionnaire sent to you by the Town of Framingham PILOT/Impact Committee (the "Committee"). This was sent to you a few days after you had sent Laurie Lee of the Committee detailed information about your offices, clinics and related programs, and generalized information about your residences, with an explanation as to how federal and state law prohibited you from providing the specific information the Committee was seeking as to the addresses of the residences and the disabilities of the individuals served there.

The questionnaire requests an extensive amount of information, much of which is presumably not readily available, about your properties, your clients, your policies, and the extent to which your clients utilize Framingham services. There is no indication that this information has been requested of any non-profit organizations other than the ones the Committee deems to be social service agencies in accordance with its criteria.

In my opinion, the information you provided to Ms. Lee in your October 20, 2005 e-mail is more than sufficient, and you should not supply any of the information requested in the questionnaire to the Committee until the Committee answers the question it asks in its September 15, 2005 PILOT Action Plan, namely, "Is it legal to target only Social Service Agencies for a PILOT Program? Can just one non-profit type, especially those dealing with social services, be singled out?"

The answer to the question appropriately asked in this PILOT Action Plan entails an analysis of applicable federal and state law, most prominently the federal Fair Housing Act.

The Committee was commissioned by the Board of Selectmen and Town Meeting, and its actions are thus attributable to the Town of Framingham. The Fair Housing Act, which as you

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know was amended in 1988 to add protections for persons with disabilities, makes its unlawful for a municipality to treat groups of persons with disabilities less favorably than groups of non-disabled persons.

The Fair Housing Act defines "handicap" as: "(1) a physical or mental impairment which substantially limits one or more of [a] person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment." The term excludes "current, illegal use of or addiction to a controlled substance", but includes former drug addicts, as well as current drug addicts addicted to lawfully prescribed drugs. As noted in clause (3) above, the definition includes individuals who do not have a condition that substantially impairs their major life activities, but are treated by others as having such a limitation, such as persons who are discriminated against because they are former addicts, or because they are HIV-positive, even though these conditions may have no effect on their activities. The definition of "disability" in the Americans with Disabilities Act ("ADA") is virtually identical to the Fair Housing Act's definition of "handicap". In Section 2 of the ADA, Congress made a finding that, among other things, some 43 million Americans have one or more physical or mental disabilities, that discrimination against individuals with disabilities persists in numerous areas of life including housing, and that "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such form of discrimination against individuals with disabilities continue to be a serious and pervasive social problem."

Courts have recognized that governmental action violates the Fair Housing Act even when there is no discriminatory intent, so long as there is a discriminatory effect. I believe the discriminatory effect of the questionnaire and the PILOT process itself is obvious, wholly apart from the question of whether there is a discriminatory intent. There are presumably numerous non-profits providing residential facilities to their respective clientele in the Town of Framingham, including private schools or colleges providing dormitories and other facilities. However, the Town appears to be targeting those non-profits which service disabled individuals.

The Committee apparently seeks to justify PILOT payments based on increased use of such resources as schools, police, fire and ambulance. However, there is no indication that they have made this inquiry of non-profits which do not serve disabled clients.

Questions are also asked about why you site your programs in Framingham and "the number of people from outside of Framingham that are referred to your Framingham programs by your agency and other agencies for each of the last ten (10) years." Siting decisions are not made in the vacuum by a social service agency. If, for example, Advocates decides to site a program in downtown Framingham because of the accessibility of transportation services for a client who is too disabled to drive, it is unlawful for the Town to penalize the social service agency directly, and the client indirectly, for choosing a location that is a feasible location for the client because of his or her disability.

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The September 15, 2005 PILOT Action Plan also inquires as to how property values have been affected by the proximity of social service agencies. There have been many studies showing that group homes do not depress property values – but even if they did, the Town would be acting unlawfully if it sought to target or penalize social service agencies due to decreased property values due to the stereotyped-based fears or discriminatory conduct of neighbors.

I seriously question what the “end game” of this entire process is. Advocates is currently exempt from property taxes. To the extent the Town seeks to penalize Advocates economically for increased services it provides to Advocates’ clients due to their disability (even assuming that is the case), without imposing similar financial burdens on non-profits who serve non-disabled individuals, it raises significant legal issues under both the Fair Housing Act and other laws protecting disabled individuals. As an agency which has dedicated itself to the housing needs of disabled individuals for the past quarter century, Advocates should not participate in this process until the Town satisfies itself and your funding sources as to its lawfulness.

Sincerely,



Samuel Nagler

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