

Judge says Framingham put pressure on SMOC

By David Riley/Daily News staff

MetroWest Daily News

Posted Jul 30, 2009 @ 12:53 AM

BOSTON — A federal judge yesterday pointed to evidence of "pay to play" and interference tactics by certain Framingham officials in handling a South Middlesex Opportunity Council project at the center of a lawsuit.

Judge Douglas Woodlock, however, also pressed SMOC to produce evidence to justify individually suing other town officials.

SMOC, a nonprofit social service provider, sued the town and a number of local officials individually in 2007, arguing they had blocked the agency from expanding its programs and violated federal housing law.

Defendants in the suit have filed for summary judgment, meaning Woodlock must decide if the case should be dismissed or go to trial. He listened to arguments on both sides for two hours yesterday in U.S. District Court, but made no decision.

If enough evidence suggests a pattern of interference or intentional discrimination, the case would be put before a jury, Woodlock said.

He suggested that Planning Board members Susan Bernstein and Carol Spack may have overstepped their authority in comments during a site plan review for SMOC's proposal to move its Sage House program for recovering drug addicts.

"Frankly, I think it will be a challenge to contend there wasn't an effort to restrict SMOC," Woodlock said.

He read aloud a comment from 2007 meeting minutes in which Bernstein said a local bylaw on project reviews could be a "silver bullet" for Sage House.

On another occasion, Woodlock said a board member suggested SMOC give up some extra lots or spend a year in court over the project, Woodlock said.

"You'd have to fall off the turnip truck not to understand what's going on here," Woodlock said.

Spack asked SMOC for a fiscal impact assessment and Bernstein asked the nonprofit if it would consider a payment in lieu of taxes, or PILOT, to the town, Woodlock said.

A juror might see the latter as "pay to play," giving SMOC the choice of paying or not receiving a positive vote on its project, the judge said.

"In other settings, that's called extortion," Woodlock said.

Both requests were outside the board's purview, since the project fell under the Dover Amendment, Woodlock said. Dover is a state rule that allows some educational and religious projects to bypass zoning restrictions.

John Davis, an attorney for several Planning Board members, said Bernstein brings up PILOT payments for all sorts of projects, and it indicates no bias or condition for a vote.

The "silver bullet" remark only meant that the board hoped to review SMOC and other Dover Amendment projects more like other proposals, he said.

Taken in the context of numerous hearings and the fact that SMOC's site plan review was approved, Davis said the comments Woodlock noted were insufficient to suggest discrimination or housing law violations by board members.

"I don't think they have necessarily demonstrated that housing was not made available by anything my clients did," Davis said.

Woodlock also asked SMOC attorney Heidi Nadel to explain what evidence there is to individually sue other town officials, such as Planning Board member Ann Welles, whose remarks are quoted just a handful of times in the lawsuit.

Nadel argued that as part of the board, Welles allowed opponents of the project to repeatedly challenge whether it should fall under Dover, and she drew out the review process to coerce SMOC to make concessions.

Woodlock was unconvinced. He said allowing the public to speak and a long process do not amount to discrimination.

"You trivialize your case, frankly, by saying they actually listened to the other side," he said.

Attorneys for other town officials, including Selectmen Jason Smith and Laurie Lee, argued their clients had not been on the board during some of the problems SMOC is claiming.

Woodlock did not schedule another court date.

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