



To: Patrice Garvin, Town Administrator  
Town of Belmont

From: Paul Kominers  
Mina Makarious  
Anderson & Kreiger LLP

Re: Council on Aging MOU

Date: April 28, 2025

This memorandum addresses several questions about the Memorandum of Understanding (“MOU”) between the Friends of the Belmont Council on Aging (“Friends”) and the Select Board concerning the use of The Beech Street Center (a.k.a. Senior Center), including whether a proposed relocation of certain staff supporting recreational programming and adding a service entrance to the Senior Center would violate the MOU. For the reasons described below, it does not.

## **I. The Memorandum of Understanding**

In the 2000s, the Friends fundraised \$1,000,000 towards the construction of the Senior Center. The Senior Center opened in 2009. In June of 2011, the Select Board accepted the final \$50,000 from the Friends pursuant to a Memorandum of Understanding (“MOU”). The MOU stated in relevant part:

The Town gives assurance to the Friends . . . that [the Senior Center] is being held for the primary purpose of operating COA programs, and that at least until the facility is fully depreciated in 2049, COA programs will be given preference over other uses of the facility, and that the facility will not be sold or converted to another use without a two-thirds vote of the Town’s legislative body . . . .

Recently, the Town established a Community Services Department to consolidate the Council on Aging (“COA”), Recreation, and Veterans Services into three divisions under one department. As part of that reorganization, you created a centralized administration supporting all three Divisions.

You plan to relocate three administrative positions associated with the Recreation Division to the Senior Center, in part so that they can support the Council on Aging Division. However, relocating those personnel will also result in some recreation-related use of the Senior Center. You plan to create an additional entrance to serve those users and separate them from users of senior services. Seniors, and Council on Aging Division staff, are still expected to be the primary users of the Senior Center.

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## II. Analysis

### a. Change in Use

Town residents have asked whether relocating these personnel and establishing an additional entrance would constitute “conver[sion] to another use” requiring a Town Meeting vote. It would not.

The MOU requires that the Senior Center’s “use” be as a Town facility “primar[il]y” and “preferential[ly]” supporting COA programming. That language makes clear the possibility of “secondary” or “less preferred” uses, giving the Town flexibility. Had the MOU required that the Senior Center would be held for the “sole” and “exclusive” purpose of operating COA programs, the Town could have had much less flexibility.

Law involving “primary” uses of land or property suggests the same conclusion. For zoning purposes, the existence of a “primary” or “principal” use does not foreclose “secondary,” “accessory,” or “incidental” uses. *See Eastham v. Clancy*, 44 Mass. App. Ct. 901, 902 (1997). In determining whether the “primary” use of land is agricultural for purposes of the G.L. c. 40A, § 3 agricultural exemption, “[p]rimarily” means “chiefly, mainly.” *Id.* (quoting American Heritage Dictionary 1438 (3d ed.1992)). In the c. 61A setting, the Appeals Court has held that adding a principal residence for a farmer to agricultural land does not cause a “change[] ... to another use” triggering the conveyance tax because it is compatible with and even supports the primary use. *Adams v. Board of Assessors of Westport*, 76 Mass. App. Ct. 180, 184 (2010). Here, the relocated employees will provide some support to COA programming. Although this is not necessary for the relocation to be permissible, it is helpful.

The Friends and the Town arguably agreed on the use of “primary” and “preference” in 2011 precisely to give the Town a degree of flexibility. It would have been a near certainty, over the decades the Senior Center is meant to last, that Town departments could be reorganized or consolidated, or that portions of the Senior Center would go unused from time to time if they could not be dedicated to other Town uses.

One hypothetical may be helpful. Imagine that the COA Division were overstaffed, so that one staff member located at the Senior Center was consistently underutilized. It would be sensible to have that staff member use their spare time to support other Community Services programming. If having a staff member at the Senior Center working part-time on other programs amounted to “conver[ting the Center] to another use,” that staff member would have to be moved to a different Town building entirely – no matter how impractical that would be – or Town Meeting would have to approve. That cannot be how the MOU works.

Ultimately, based on your description of the Town’s plans, the Senior Center will still be used primarily for COA programming. There is no “conver[sion] to another use” within the meaning of the MOU. No Town Meeting vote is required.

You have also asked what *would* constitute conversion to a different use. The challenge in answering this question is that uses of a building can be measured in multiple different ways: square footage or hours of the day dedicated to COA vs. other programming, the relative share of on-site staff hours dedicated to either, or whether other uses crowd out COA programming completely (or made them secondary, rather

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than primary), to name a few. In a closer case, a court would likely apply a totality-of-the-circumstances test to assess whether a proposed use requires a Town Meeting vote.

b. Legal Status of Donations

You have also asked whether “the fact that the MOU is with the Friends of the Belmont Council on Aging, and pertains to a donation, carr[ies] any legal or operational significance.” When a municipality accepts a gift in order to carry out a specific charitable purpose, the conditions on the gift are typically binding unless the Town can show that they are infeasible or were not material to the giver’s decision to grant the gift. *See, e.g., Dunphy v. Commonwealth*, 368 Mass. 376 (1975). Here, the conditions memorialized in the MOU are feasible and seem to have been material to the Friends’ decision to make the gift. Although only the last \$50,000 was handed over pursuant to the MOU, a court would likely infer that the entire gift was made on the same conditions.

Importantly, the Town is not bound by the conditions in perpetuity. The conditions apply only until 2049, when the Senior Center is anticipated to completely depreciate, or until Town Meeting votes to approve a change in use. The Town could also ask a court or the Public Charities Division of the Attorney General’s Office to bless a deviation from the MOU conditions, but it is hard to imagine a proposed change that would win approval from those authorities but not from two-thirds of Town Meeting.