



TOWN OF WAYLAND
MASSACHUSETTS
01778

TOWN BUILDING
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May 2, 2016

VIA ELECTRONIC MAIL
AND BY HAND

Nan Balmer, Town Administrator
Wayland Town Building
41 Cochituate Road
Wayland, MA 01778

RE: Carroll School, 39 & 45 Waltham Road, Wayland, Massachusetts

Dear Nan:

You have sought my advice concerning the Town's authority to (1) regulate through zoning an educational facility that The Carroll School (the "School") may construct and operate at the above-referenced property; (2) regulate traffic generated by the School; and (3) enter into a payment in lieu of taxes agreement with the School. Your request arises in the context of the School's plan to acquire the property in near future and use it for educational purposes, including athletic fields for the School.

Zoning

In Massachusetts, a municipality's ability to regulate the use of land and buildings for educational purposes by nonprofit educational corporations is limited. Massachusetts General Laws Chapter 40A, Section 3, Paragraph 2 provides in pertinent part that: "[n]o zoning ordinance or by-law shall...prohibit, 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 and determining yard sizes, lot area,

setbacks, open space, parking and building coverage requirements. Under the Town's Zoning Bylaw, educational uses are allowed in all zoning districts, as matter of right, subject to limited site plan review and approval by the Building Commissioner. The purpose of the site plan review and approval process is the reasonably regulate the use, but may not be used to prohibit it. Under Section 198-606.3 of the Zoning Bylaw, when reviewing and acting on a site plan application for the principal use of land or a building or structure for educational purposes which is exempt from regulation under Massachusetts General Laws Chapter 40A, Section 3, "the Building Commissioner shall apply reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements as set forth in this Zoning Bylaw, except to the extent that the applicant shows that the regulation is unreasonable and unrelated to a legitimate municipal concern and will substantially detract or diminish the applicant's ability to conduct the exempt use." Whether a particular zoning regulation substantially detracts from or effectively prohibits an exempt educational use is determined on case by case basis. Since the School has not presented any specific plans to the Town, I cannot comment on the applicability or effect of the Town's Zoning Bylaw on the School's planned facilities.

Traffic Regulation

The limited exemption from regulation through zoning available to educational uses does not limit the Board of Selectmen's authority as the Town's Traffic Commission or the Board of Public Works' authority relative to traffic calming measures (i.e., speed bumps, speed humps, speed tables and speed cushions). The Selectmen may adopt reasonable regulations and orders concerning traffic on Town ways generated by the School. If traffic calming measures on Town ways are appropriate for such traffic, the Board of Public Works may install them.

Payment in Lieu of Taxes

Nonprofit educational organizations which are organized for charitable purposes and actually operate as a public charity are exempt from real and personal property taxes under Massachusetts General Laws Chapter 59, Section 5, Clause Third (c). If the School qualifies for this exemption, its personal and real

property at the above-referenced address will not be taxable. If the School's property is not taxable, the Town, acting through the Board of Selectmen, on the advice of the Board of Assessors, may enter into a payment in lieu of taxes agreement ("PILOT") with the School. The amount of the payments is negotiable. The legal basis for the Town's authority to enter into a PILOT with the School is Massachusetts General Law Chapter 40, Section 4.

The exemptions available to the School discussed above relate only to zoning and property taxes. The Wetlands Protection Act, the Massachusetts Department of Environmental Protection's Wetlands Regulations and the Town's Wetlands and Water Resources Protection Bylaw apply to any work done in protected resources areas. Likewise, Title V and the Board of Health's Septic System Regulations apply to any subsurface wastewater disposal system constructed on the site.

Please contact me if additional clarification of these matters is needed.

Thank you very much.

Very truly yours

Mark J. Lanza

Mark J. Lanza
Town Counsel

MJL/ms