



CITY OF STAMFORD, CONNECTICUT
INTER-OFFICE CORRESPONDENCE

To: Ralph Blessing, Land Use Bureau Director
Vineeta Mathur, Principal Planner
Katherine LoBalbo, Director of School Construction

From: Cynthia Anger, Assistant Corporation Counsel *C. Anger*

Date: December 27, 2024

Re: A24-1828: School exemptions from Zoning Regulations

CONFIDENTIAL ATTORNEY COMMUNICATION

You have asked whether public school buildings located on City-owned property are subject to the City's zoning regulations.¹ You have also asked whether our Zoning Regulations apply to "enabling work" related to construction at Westhill High School.² The short answer to both questions is no.

Our office has previously opined that the City of Stamford is exempt from the application of its Zoning Regulations based upon the general theory of "governmental Immunity."³ Each instance, however, necessitated an individual, independent, case-by-case analysis to ascertain whether the specific facts warrant an exemption from the subject Zoning Regulations.

Historically, most courts have resolved the question of exemption by determining whether the function in issue is governmental or proprietary.⁴ If the former, a municipality is not subject

¹ Our Zoning Regulations define a public school as "Any Building, Structure and/or land principally and regularly used by teachers and students for instructional or educational purposes, which is under the direct supervision and control of the Stamford Board of Education."

² The project's engineers have defined "enabling work" as a temporary construction accessway over adjoining city-owned and privately owned property.

³ MSS #42 (proposed addition to police station), LEC #151 (public works salt storage facility), JHS #58 (Government Center project construction), FHD #65 (police garage exempt, public works vehicle garage on Haig Avenue not exempt.)

⁴ More recent decisions in other jurisdictions have criticized and rejected the governmental-proprietary standard as a test for zoning immunity in favor of a "balancing of public interests" test. § 76:12. Governmental-proprietary test - Criticized and rejected, 4 Rathkopf's The Law of Zoning and Planning § 76:12 (4th ed.). We have not found any cases that suggest that Connecticut has abandoned the governmental-proprietary standard.

to zoning restrictions. A municipality performs a governmental function when doing acts required by legislative mandate, but it acts in a proprietary capacity when performing by legislative permission. A municipal function is governmental when the acts involve benefits to the general public, distinguished from those involving private benefits and in which public benefit is indirect. Comment, "The Applicability of Zoning Ordinances to Governmental Land Use," 39 Tex. L. Rev. 316, 318 (1961). It is well established that providing education to the public is a governmental function. *Board of Education v. Dow Chemical Co.*, 40 Conn. Supp. 141, 143 (Super. Ct. 1984).

The City intends to replace the existing Roxbury Elementary School and the Westhill High School buildings. The new school buildings will be constructed entirely within the boundaries of the City-owned property where the current school buildings are located. Roxbury Elementary and Westhill High School are located in the RA-1 district, where public schools are allowed as of right. It is clear that under the governmental function test and case law, the City is not subject to our zoning restrictions as to the construction and location of these schools.

With regard to the proposed access to Westhill High School, we understand that the City has determined that a temporary construction access over adjoining city-owned and privately owned land will be less disruptive to current school operations. The access will be used exclusively to provide access to the property to facilitate the school's construction. According to Katherine LoBalbo, Director of School Construction, "the high school is an active campus with 2,200 students and hundreds of additional staff arriving and leaving each day. The proposed access allows professional truck and construction vehicles to enter the site separately and be completely separate from the daily drivers (parents staff and students). This first and foremost is a safety measure - eliminating the risk of an accident between the two separate groups, and second, it allows construction activities to be uninterrupted by high volume times on the campus." Under these facts, we believe that the temporary construction access bears a sufficiently close relationship to the school's construction that it is also exempt from our Zoning Regulations under the governmental function standard.

Based on the foregoing, the Roxbury Elementary School and the Westhill High School construction and Westhill High School temporary construction access are exempt from the City of Stamford Zoning Regulations. Our opinion, however, is predicated upon the premise and assumption that the entire property for each school building will be used solely and exclusively for school purposes and that the access to Westhill High School will be used exclusively to access the property upon which the school is located during the construction process. Moreover, we reiterate that any decisions on zoning exemptions should be considered on a case-by-case basis, especially in view of the evolving state of the law.

cc: Thomas Cassone, Corporation Counsel
Amy LiVolsi, Deputy Corporation Counsel