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Dear Attorney O'Brien:

As you know, our firm represents the Andover Board of Education (the "Board"). It is our understanding that the Town of Andover (the "Town") has commenced planning for the construction of a Community Center building at 17 School Road in Andover, Connecticut ("Community Center Building"). It is our further understanding that the preliminary plans for the Community Center Building indicate that the building and its accompanying structures (*e.g.*, septic system) will partially occupy property that the Town has long ago appropriated for use by Andover Elementary School ("School Property"), notwithstanding the fact that the Town has neither sought permission from, nor consulted with, the Board regarding such Town use of School Property.

The purpose of this letter is to notify the Town that the Board has the clear statutory authority to maintain control over School Property. As such, the Board's exclusion from the process of planning for the Community Center Building (including, but not limited to, the plan to use School Property without the Board's permission) contravenes the Board's authority to the extent the Community Center Building and related structures occupy any part of School Property. The further purpose of this letter is to convey the serious risks of liability that both the Board and the Town could face if, in planning for the Community Center Building, proper care is not taken to safeguard the health and safety of Andover's school children and to comply with all laws, rules, and regulations applicable to property used for school purposes.

To be sure, the Board supports construction of the Community Center Building and stands ready to work collaboratively with the Town on this important community

project. However, it imperative that the Town involve the Board in all planning moving forward, not only because the Board has the exclusive right to control School Property, but also because of the need to protect the Town, the Board, and Andover Elementary School students. To help the Town understand the Board's perspective regarding this matter, we provide relevant legal background and suggested next steps below.

Control of School Property

Connecticut law firmly establishes that local boards of education have broad and exclusive authority regarding all properties that are used for school purposes. While towns or municipalities own the buildings and grounds used for school purposes within their respective school districts in accordance with Sections 10-240 and 10-241 of the Connecticut General Statutes,¹ Section 10-220 of the Connecticut General Statutes provides boards of education with expansive authority regarding all properties used for school purposes. In that regard, Section 10-220 expressly provides that the local board of education "shall have the care, maintenance and operation of buildings, lands, apparatus and other property used for school purposes. . . ."

In addition, Section 10-239 of the Connecticut General Statutes further underscores the board of education's authority to control property dedicated for school purposes. That statute provides:

(a) Any local or regional board of education *may provide* for the use of any room, hall, schoolhouse, *school grounds* or other school facility within its jurisdiction for nonprofit educational or *community purposes* whether or not school is in session.

(b) Any local or regional board of education *may grant the temporary use of* rooms, halls, school buildings or *grounds or any other school facilities*

¹ Conn. Gen. Stat. § 10-240 provides, in relevant part:

Each town shall *through its board of education* maintain the control of all the public schools within its limits and for this purpose shall be a school district and shall have all the powers and duties of school districts

(Emphasis added).

Conn. Gen. Stat. § 10-241 provides, in relevant part:

Each school district shall be a body corporate and shall have power to . . . purchase, receive, hold and convey real and personal property for school purposes

under its management or control for public, educational or other purposes or for the purpose of holding political discussions therein, at such time when the school is not in session . . . in each case subject to such restrictions as the authority having control of such room or building, grounds or other school facility considers expedient.

(Emphasis added). As the emphasized language makes clear, the board of education has the authority and discretion to permit the use of school grounds for public, community, or other purposes and may impose any such restrictions that it considers “expedient.”

The Connecticut courts have clearly established that local boards of education have sole and exclusive control over properties used for school purposes. In *Richards v. Planning & Zoning Comm’n of Town of Wilton*, 170 Conn. 318 (1976), the Connecticut Supreme Court explained that while the municipality holds the title to school property and facilities, once a municipal property or facility is committed to use for school purposes, the statutory authority concerning the maintenance and operation of such property inures to the local board of education. The Court in *Richards* expressly found that once properties have been committed to use for school purposes, those properties are “under the control” of the board of education. *Id.* at 324–25.

Similarly, in *Canzonetti v. City of New Britain*, 147 Conn. 478 (1960), the Connecticut Supreme Court ruled that the City could not extend a public roadway across land being used for school purposes without the approval of the local board of education. The Court focused squarely on Section 10-220 of the Connecticut General Statutes, which granted the board of education extensive authority over “the care, maintenance and operations of buildings, lands, apparatus and other property used for school purposes.” *Id.* at 481. The Court found that “[t]he properties here concerned were committed to school use and are under the control of the school committee.”² *Id.* The Court went on to explain that “the law has conferred upon [the school committee] broad powers except for specific limitations not involved here,” and that “[t]he action of the committee, if within those powers, is not subject to control by” the City. *Id.* at 481. The Court therefore concluded that the City had no authority “to take, for street purposes, property actually devoted to school purposes, unless the school committee has approved.” *Id.* at 481.

Finally, Section 76-01 of the Town of Andover Ordinances (revised January 2022) provides, in relevant part:

All town-owned personal property and equipment, *except items under the control of* the Fire Commissioners, the Library Directors, and *the Board*

² At the time of the Supreme Court’s ruling, local boards of education were referred to as “school committees.” *Id.* at 478.

of Education shall be under the authority and control of the Board of Selectmen.

(Emphasis added). Consistent with the applicable laws described above, Section 76-01 indicates that the Board of Education – not the Board of Selectmen – has the authority and control of School Property. The Town has acknowledged such authority and control in the past, as evidenced by the “Memorandum of Agreement Between the Andover Board of Education and the Town of Andover Regarding Shared Use of Andover Elementary School” that you and I developed together in 2019.

Potential Liability Issues Related to Construction and Use of the Community Center Building

Given that boards of education are required to “have the care, maintenance and operation of buildings, lands, apparatus and other property used for school purposes” in accordance with Section 10-220 of the Connecticut General Statutes, it is incumbent upon such boards to ensure that any use of school grounds will not pose a danger to students, staff, or other members of the school community. For this reason, the Board has a legal obligation to consider – and address, as appropriate – environmental issues that could arise in connection with the construction of the Community Center Building, as well as any potential risks related to the use of the Community Center Building, to the extent such construction and use occurs on School Property.

First, construction projects generally raise a host of potential environmental concerns that must be considered. Examples of such concerns include, but are not limited to, the following:

- Appropriate environmental assessment of construction site to assess possible contamination and related construction issues
- Debris and soil management
- Location of septic system to avoid contamination of drinking water and sprinkler system
- Timing of construction to avoid excessive noise during school hours and potential risks related to construction workers, who have not been background-checked in compliance with school-related background check laws, in close proximity to students

With respect to an environmental assessment of the construction site, it is important to note that Section § 10-291 of the Connecticut General Statutes, which governs school building projects, requires certain school building projects for which state assistance is sought to include a Phase I environmental site assessment in accordance with the American Society for Testing and Materials Standard #1527, Standard Practice for Environmental

Site Assessments: Phase I Environmental Site Assessment Process, or similar subsequent standards. Although this requirement does not apply to the Community Center Building, Phase I environmental assessments are intended to assess potential environmental hazards which could warrant a Phase II assessment (ground sampling) and inform decisions regarding clean-up or soil management during construction. Therefore, it would be prudent for the Town to perform a Phase I environmental assessment, and any further assessments as needed, prior to beginning construction on the Community Center Building to help mitigate potential environmental harm to students and staff.

In short, it is in the Town's interest to ensure the considerations described above are factored into all planning related to the construction of the Community Center Building, as the Town (in addition to the Board) could be held liable in the event that non-compliance with applicable laws, rules, regulations, and standards of care causes harm to members of the school community. The Board wishes to partner with the Town in a joint effort to limit these risks.

Second, there are certain requirements that apply to school property which must be taken into account in connection with the use of the Community Center Building once construction has been completed. Examples of such requirements include, but are not limited to, smoking bans on school property and laws relating to the application of pesticides on school grounds. With respect to pesticides, it is important to note that application of pesticides at any pre-K facility or elementary school is prohibited except to eliminate a threat to human health as determined by the local health director, the Commissioner of Public Health, the Commissioner of Energy and Environmental Protection or, in the case of a public school, the school superintendent. Conn. Gen. Stat. § 10-231b. Therefore, the Town must be prepared to ensure that use of the Community Center Building complies with all requirements applicable to school grounds given that the building is anticipated to straddle the line dividing Town and School Property.

Conclusions and Suggested Next Steps

As noted above, the Board supports construction of the Community Center Building and wishes to work collaboratively with the Town on this important community project. However, the Board is legally responsible for implementing the educational interests of the state, and therefore must take all necessary steps to ensure that this project does not jeopardize those interests or otherwise negatively affect the students of Andover Elementary School. Moreover, as the political entity vested with the exclusive authority to control School Property, the Board does have the right to require such collaboration by the Town, including the right to prevent the Town's use of School Property in the event such use would conflict with the Board's legal obligations. Ultimately, however, we believe that the Town's and the Board's interests are aligned with respect to the Community Center Building in that both entities are legally obligated

to protect the Town, the Board, and the students of Andover in connection with this project.

As an immediate next step, we suggest that representatives of the Board and the Town meet to discuss a plan for working together on the Community Center Building project moving forward. Such representatives could include Valerie Bruneau, Superintendent of Schools; an appropriate Town official; and the two of us. Any such plan should include developing an agreement between the Board and the Town that addresses the following, among other, relevant provisions:

- Agreements related to construction (*e.g.*, soil management; timing of construction)
- Location of septic system and hazardous materials
- Agreement on portion of School Property that may be used for the Community Center Building
- Any restrictions on use of School Property (*e.g.*, pesticide use; smoking bans; parking)
- Liability (*e.g.*, identifying party responsible for contamination, clean-up, leaks, property maintenance, visitor management)
- Indemnification
- Insurance requirements
- General acknowledgement that the Board is not permanently relinquishing use of part of the School Property by agreeing to permit use of the School Property for community purposes

Finally, we respectfully request that, outside of any planned meetings as suggested above, communications regarding this matter occur only between you and me as our clients' respective legal representatives unless and until we have agreed on a different plan for communications between Town and Board representatives. Streamlining communications in this manner will help to ensure consistency of messaging and a more efficient collaboration process.

I hope this clarifies the Board's position. I would be glad to discuss these issues with you, and the Board looks forward to a collaborative working relationship with the Town on this matter moving forward.

Very truly yours,


Jessica Richman Smith

Cc: Valerie Bruneau, Superintendent of Schools