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Dennis Zoning Board of Appeals
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Re: Housing Assistance Corporation/One Love Lane

Dear Members of the Dennis Zoning Board of Appeals:

The Attorney General respectfully submits this letter to assist the Board in evaluating challenges to the conclusion of the Dennis Building Commissioner that the Housing Assistance Corporation's proposed use of One Love Lane is a protected educational use within the meaning of G.L. c. 40A, § 3, known as the Dover Amendment. The Dover Amendment creates a wide umbrella of protection for educational uses of land, and in the view of the Attorney General, HAC's proposal falls comfortably within its spread. Given "the interest which the public as a whole, represented by the Attorney General, has in keeping the zoning regulations of municipalities within lawful bounds and in not allowing them to become instruments of discrimination or oppression," *Attorney General v. Inhabitants of Town of Dover*, 327 Mass. 601, 606 (1951)—and because the project of supporting homeless parents who seek to build a stronger and more stable foundation for their young children is of utmost value to the Commonwealth—the Attorney General offers the analysis below to aid the Board in applying the Dover case law to HAC's project.

I. The Dover Amendment's Protection of Educational Uses of Land

The Dover Amendment precludes a town from adopting a zoning bylaw that "prohibit[s], regulate[s] or restrict[s] the use of land or structures for...educational purposes on land owned or leased by ...a nonprofit educational corporation." G. L. c. 40A, § 3. However, the statute authorizes a municipality to adopt and apply "reasonable regulations" concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. See *Martin v. Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints*, 434 Mass. 141, 147 (2001) (analyzing religious purposes); *Trustees of Tufts College v. Medford*, 415 Mass. 753, 757 (1993) (analyzing educational purposes). The provisions of Section 3 thus "strike a balance between preventing local discrimination against" a set of enumerated land uses while "honoring legitimate municipal concerns that typically find expression in local zoning laws." *Tufts Coll.*, 415 Mass. at 757.

The Dover Amendment is embedded in Section 3 of the Zoning Act, which covers “[s]ubjects that zoning may not regulate.” G.L. c. 40A, § 3. Section 3 limits municipalities’ power to restrict a range of uses—from childcare centers to wheelchair access ramps to solar energy—that the Legislature has deemed sufficiently important that they should be protected from uncertainties that can be introduced by local zoning rules and processes. The educational uses protected by the Dover Amendment are among these public priorities.

Indeed, education—which Massachusetts defines broadly as “the process of developing and training the powers and capabilities of human beings,” and “preparing [them] for activity and usefulness in life,” even in settings that look nothing like traditional schools—is at the heart of the law. *Fitchburg Housing Authority v. Board of Zoning Appeals of Fitchburg*, 380 Mass. 869, 875 (1980) (internal citations omitted). Section 3 was “originally enacted to prevent municipalities from restricting educational...uses of land.” *Tracer Lane II Realty, LLC v. City of Waltham*, 489 Mass. 775, 778-79 (2022) (citations omitted). While Section 3 has since been expanded, educational uses remain central and enjoy a greater level of protection than other, newer additions. *Id.* at 781 (contrasting the greater flexibility § 3 gives municipalities to restrict protected solar arrays).

Under the case law interpreting Section 3, HAC qualifies as a nonprofit educational corporation that can benefit from the Dover Amendment’s educational-use protections. “The proper test in deciding whether a nonprofit corporation is an educational one is whether its articles of organization permit it to engage in educational activities, a question easily answered by a review of documents filed with the State.” *Gardner-Athol Area Mental Health Association, Inc. v. Zoning Board of Appeals of Gardner*, 401 Mass. 12, 15-16 (1987). That HAC may do other kinds of work is irrelevant: “There is nothing in G.L. c. 40A, § 3,...that requires that education be the dominant purpose or primary activity of a nonprofit corporation in order that it may qualify as a nonprofit educational corporation under § 3.” *Id.* at 15. HAC is a G.L. c. 180 nonprofit whose Articles of Organization expressly authorize it to “receive and administer funds for educational and charitable purposes.” Under the governing case law, this is sufficient to qualify HAC as a nonprofit educational corporation for Dover Amendment purposes.

II. Assessing Whether One Love Lane Will Be Used for “Educational Purposes”

An educational nonprofit can claim Dover protection only if it proposes to use its land for “educational purposes.” Not only must the use have as its “bona fide goal something that can reasonably be described as ‘educationally significant,’” but education must be the “‘primary or dominant’ purpose for which the land or structures will be used.” *Regis College v. Town of Weston*, 462 Mass. 280, 285 (2012), quoting *Whitinsville Retirement Society, Inc. v. Northbridge*, 394 Mass. 757, 760, 761 n.3 (1985).

A. Helping families gain skills and learn to navigate systems to obtain and maintain housing is an educationally significant goal.

The SJC has taken a “broad and comprehensive” view of what is “educationally significant” for Dover Amendment purposes for more than 120 years. *McLean Hospital Corporation v. Town of Lincoln*, 483 Mass. 215, 220 (2019), citing *Regis Coll.*, 462 Mass. at

285. “Educationally significant” uses are not “limited only to those facilities closely analogous to traditional schools and colleges.” *Id.*, quoting *Regis Coll.*, 462 Mass. at 286. “Rather, the term ‘educational’ encompasses that which is ‘the process of developing and training the powers and capabilities of human beings.’” *McLean*, 483 Mass. at 220, quoting *Mount Hermon Boys’ School v. Gill*, 145 Mass. 139, 146 (1887). “Thus, the Dover Amendment embraces fully ‘the idea that education is the process of preparing persons for activity and usefulness in life.’” *McLean* at 220, quoting *Fitchburg Hous. Auth.*, 380 Mass. at 874.

HAC has submitted curricular and operational materials illustrating its educational goals and plans. Adult residents of its shelter will be required as a condition of occupancy to complete HAC’s “Ending Homelessness Course,” which is described in its materials in an 11-page document supported by 226 curriculum slides. The course is “designed to provide instruction and coaching in the basic skills needed to obtain and maintain permanent, stable housing” and includes modules on budgeting and financial literacy, navigating various government benefit systems, landlord-tenant law, and life skills such as self-care, cooking, and housekeeping. There is one-on-one guidance on the crucial topic of securing new housing, a form of experiential education that aims not only to solve an immediate housing problem but to serve as training for independent searches in the future. The curriculum is consistent with HAC’s stated organizational goals, which go beyond providing temporary shelter and target the cycle of poverty that trap families in homelessness. *See Housing Assistance: Mission and Impact*, <https://haconcapecod.org/about/mission-impact/>, last visited 9/16/24 (HAC aims “to elevate the Cape and Islands economy and community, empower residents of all ages and income levels, and address the root causes of our housing crisis.”)

The SJC has consistently found such transitional life skills programming to be “educationally significant” for purposes of triggering Dover Amendment protections. In *Fitchburg Housing Authority*, the Court held that preparing formerly institutionalized residents “to live by themselves outside the institutional setting” through “instruction in the activities of daily living,” including money management and cooking, was “a significant educational goal,” and one that was “neither trivial nor unnecessary to these persons.” 380 Mass. 869, at 872, 875. In *Gardner-Athol Area Mental Health Association*, the Court found an educationally significant purpose where “residents would be taught daily living, as well as vocational skills, with the goal of preparing them for more independent living.” 401 Mass. at 14. In *McLean*, the SJC noted that a program “designed to instill fundamental life, social, and emotional skills in adolescent males” experiencing severe emotional dysregulation was “relatively undisputed” given the Court’s “long-standing jurisprudence” on the issue. 483 Mass. at 221. In light of these precedents, it seems evident that HAC’s proposed Ending Homelessness Course and its other stabilization training interventions, all of which target families’ ability to find and keep the housing they need to live independently, are “educationally significant” for Dover Amendment purposes.

- B. HAC’s claim that education is its “primary” or “dominant” purpose at One Love Lane is consistent with both the nature of its program and the case law interpreting the Dover Amendment.

An organization working toward economic empowerment and mobility for Cape Cod families, HAC describes its goal at the One Love Lane property as helping families make a

successful transition to permanent housing, and its methodology for achieving this goal is, as discussed above, “educational” within the meaning of the Dover Amendment case law. Because HAC has a demonstrably educational goal and an education-based methodology for accomplishing it, its use of the site is predominantly educational and qualifies for Dover protection.

That HAC will provide shelter to the homeless families who will participate in its housing stabilization courses is not disqualifying. *Fitchburg Housing Authority, GAAMHA*, and *McLean* all involved residential programs, and the SJC found the educational purposes of the programs be dominant in each. *See also Regis College*, 282, 292 (fact that older adults pay entrance fee of \$700,000 to \$1 million plus \$4000 per month for year-round apartments not dispositive where they must accrue course credit at adjacent college and can use campus facilities). In fact, because the Dover Amendment applies broadly to “nontraditional” educational settings, *see McLean* at 225, fn. 5 (“[t]he use of land for nontraditional education... was anticipated by the drafters of the Dover Amendment”), mixed-use projects are not uncommon. In these circumstances, courts do not attempt to fully disentangle “educational” from “non-educational” uses so that their significance can be measured and compared. As the Court noted in *McLean*, the lines between the two are often not so cleanly drawn, and attempting to extract other uses—in that case, the therapeutic benefits that participants in its program for young men with behavioral disabilities would gain from the education provided by the program—would improperly narrow the “broad and comprehensive” definition of “education.” *McLean* at 225 (refusing to “attempt to sever that which is educational from that which is therapeutic”).

The Supreme Judicial Court’s most recent Dover Amendment decision, *Hume Lake Christian Camps, Inc. v. Planning Board of Monterey*, 492 Mass. 188, 189 (2023), followed the same principle in extending Dover protections to the development of an RV park to host the participants, volunteers, and staff of an evangelical Christian organization’s recreational camps. Applying the same “primary or dominant purpose” test to the religious use clause of the Dover Amendment, the Court declined to require that every use of every building be “intrinsically religious.” *Id.* at 196. Instead, the Court focused on whether the availability of the RV camp made it possible to attract and serve camp attendees who would then enjoy the religious benefits of the camps, thus supporting the religious mission. *Id.* at 198-200. *See also Stanley Street Treatment and Resources, Inc. v. City of Fall River*, No. 2273CV00372, 2024 WL 493561, at *7 (Mass. Super. Jan. 3, 2024) (residential detox program complemented by clinical stabilization and a medication assisted treatment program “can fairly be characterized as a specialized form of education with therapeutic aspects” and is thus Dover-protected); *Brockton Coalition for the Homeless v. Tonis*, No. CA 03-00226, 2004 WL 810296, at *2 (Mass. Super. Mar. 5, 2004) (Dover Amendment protects program like HAC’s: “the term shelter is somewhat misleading” given life skills programming, where applicant “has learned that temporary shelter alone would do little to help a homeless family become independent and to avoid chronic homelessness”); *Congregation of Sisters of St. Joseph of Boston v. Town of Framingham*, No. CA 194216, 1994 WL 16193868, at *2 (Mass. Land Ct. March 31, 1994) (finding it “clear” that Dover Amendment protects housing for homeless families, single mothers, persons with AIDS and other physical disabilities...and persons recovering from addictive habits” who are required to enroll in one of the organization’s life skills courses).

As these cases illustrate, aspects of a project that more closely resemble something other than a school—like an RV park—may *support* a primary educational mission such that the overall project is Dover-protected. Just as the Dover-protected Hume Lake camp offered housing and recreational activities to “boost interest in the camp’s religious offerings” and to “cultivate an environment” in which religious goals would be easier to achieve, 492 Mass. at 202, HAC would likely find it difficult to effectively offer its educational services to homeless families who did not have a safe place to sleep at night. Even if HAC could find a way to provide services to these families without providing shelter, the lack of shelter would make the educational services much harder to effectively deliver. Disentangling the role that housing homeless families has in the project of training them to escape homelessness and avoid it in the future would be the kind of “rather futile exercise” the SJC cautioned against in *McLean* and would improperly impose a requirement that HAC’s project look like a traditional school. 483 Mass. at 225.

It is important to note that the fact that the families who will participate in HAC’s educational programming at One Love Lane will do so as part of the EA shelter program does not change the analysis. The SJC considered and rejected this idea in *McLean*, holding that a determination of whether a use is predominantly educational “does not, and should not, turn on an assessment of the population it serves.” 483 Mass. at 222, 225 (“the type of student who is participating in the program...is precisely what...should not be the foundation of an analysis under the Dover Amendment”). Along the same lines, the delivery of educational programming by social service workers, rather than licensed schoolteachers, does not remove a program from the protections of the statute. *See Fitchburg Hsg. Auth.*, 380 Mass. at 872.

Finally, to the extent that opposition to the Building Commissioner’s Dover Amendment determination is based in doubts about the efficacy of HAC’s methods, these must be resolved in HAC’s favor. The Dover Amendment exists at least in part to ensure that charitable organizations can carry out their missions as they see fit, without judgment or interference from municipal land use regulators. As the SJC reiterated last year in *Hume Lake*, Dover reflects a decision by the Legislature “to foreclose the ‘local exercise of preferences as to what kind of educational and religious uses will be welcome.’” 492 Mass. at 194, *quoting Newbury Junior College v. Brookline*, 19 Mass. App. Ct. 197, 205 (1985). “The focus of [the] analysis,” therefore, “has never been on an organization’s reason for choosing one means of pursuing its goals rather than another.” *Id.* at 200. So long as HAC has a bona fide, educationally significant goal as the primary or dominant purpose of its work at One Love Lane—and in the Attorney General’s view of the case law, it clearly does—then it is entitled to Dover Amendment protection.

III. The Proper Scope of Regulation of Dover-Protected Educational Use

The Board has also been asked to order the Building Commissioner to issue an amended building permit with some or all of the conditions sought by the Planning Board. The following legal principles apply to the Board’s decision on that issue.

The Town is not powerless in regulating an educational use protected by G.L. c. 40A, § 3. The statute “authorizes a municipality to adopt and apply ‘reasonable regulations’ concerning bulk, dimensions, open space and parking, to land and structures for which an educational use is

proposed.” *Trustees of Tufts College v. City of Medford*, 415 Mass. 753, 757 (1993). “Local zoning requirements...which serve legitimate municipal purposes sought to be achieved by local zoning, such as promoting public health or safety, preserving the character of an adjacent neighborhood, or one of the other purposes sought to be achieved by local zoning...may be permissibly enforced, consistent with the Dover Amendment, against an educational use.” *Id.* at 757-758. For example, in *Radcliffe College v. Cambridge*, 350 Mass. 613 (1966), the court refused to construe the Dover Amendment as precluding the application of off-street parking requirements contained in the Cambridge zoning ordinance to the College, ruling that the ordinance did not impede the reasonable use of the college's land for its educational purposes.

The question of whether a local zoning requirement, as applied to a proposed educational use, is “reasonable,” will depend on the particular facts of each case. But it is clear that “a zoning requirement that results in something less than nullification of a proposed educational use may be unreasonable within the meaning of the Dover Amendment.” *Trustees of Tufts Coll.*, 415 Mass. at 757, *citing Radcliffe Coll.*, 350 Mass. at 619 (holding that a parking requirement could be applied, but suggesting that future application might be unreasonable if the result would require the educational institution to provide more parking spaces “than could in reason be deemed necessary to take care of the cars brought to the [area] by the use made of it by the college”). Any consideration of conditions on the building permit should take these cautionary limits into account.

The path from homelessness to housing stability is often very difficult. In the face of an affordability crisis affecting families across the state, housing can be extremely hard to find and keep. At One Love Lane, HAC has a plan to help homeless families secure and sustain housing by guiding them through the experience and equipping them with knowledge and skills they can deploy if they find themselves facing housing insecurity in the future. Every dollar that a homeless services organization like HAC spends fighting for its right to serve these families is a dollar it does not spend helping them. The people of the Commonwealth, whom the Attorney General represents, have a strong interest in seeing this and similar matters proceed to a resolution quickly and smoothly. With this letter, we hope to have offered the Board information and resources that will facilitate such a resolution.

Thank you for your consideration.

Very truly yours,

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