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July 24, 2025

Devens Enterprise Commission
33 Andrews Parkway
Devens, MA 01434

Attention: William P. Marshall, Chair and Members
Neil Angus, Director and Land Use Administrator

Re: Applewild School, Inc. and Use of Property Zoned Open Space

Dear Commission Members and Mr. Angus:

I am writing to you regarding the proposed use by Applewild School, Inc. (Applewild) of property within Devens located in an Open Space District for an educational use.

As discussed more fully below, it is my opinion that it would be entitled to use this space for education purposes notwithstanding the fact that it is in an Open Space District. It would, however, be subject to reasonable rules and regulations.

Applewild proposes to use land located within Devens and within an Open Space District for "educational purposes.", namely a school. As you know, land zoned as Open Space generally is to be used for open space purpose. However, there are exceptions both in Deven's bylaws and state law that could permit the use of this land for educational purposes.

Applewild's Articles of Organization as a non-profit entity under Massachusetts law specifically refer to its activities to "operate and maintain an education institution without profit, to prepare children for high school/secondary school and higher education". Reference is also made as relates to its activities "those activities within the scope of Section 4(a) of said Chapter 180."

G.L. c. 180, section 4 sets forth the purposes of charitable corporations. It includes "(a) for any civic, educational, charitable, benevolent or religious purpose".

Applewild's Bylaws specify that the Purpose and Mission of it is "to prepare children for high school/secondary school and higher education". Bylaw, Article II, Purpose and Mission Statement, Section 2(a).

Thus, it appears that Applewild would qualify as a non-profit educational entity "to prepare children for high school/secondary school and higher education". Bylaw, Article II, Purpose and Mission Statement, Section 2(a).

With respect to its activities in Devens, it is presently engaged in educational activities.

I am advised that the location of its activities or proposed activities is on property zoned as Open Space. Under Permitted Uses, Article VI of the Devens Zoning By-Laws, if a "proposed use does not fit under any use type, it shall not be permitted."

A question then arises as to whether the proposed use falls within a permitted use or not.

Under Article VI.A. subpart m, Open Space and Recreation, uses within that zone are generally to "preserve and enhance the natural beauty and sensitive natural resources of Devens and serve as a buffer and transition zone for other uses."

While it can be questioned as to whether an educational activity falls within those uses, the bylaw in Article VI.D, Exempt Uses, further provides a specific exemption for "religious or educational uses on land owned or leased by a religious sect or denomination, or by a non-profit educational corporation." No Development Permit is necessary to undertake an exempt use by an educational corporation. Applewild would appear to be such an educational corporation.

Its use would be subject reasonable regulations "concerning the bulk and height of structures, yard sizes, lot area, setbacks, and parking requirements". Article VI.D, Exempt Uses.

Without delving unnecessarily deep into it, the Dover Exemption or Amendment, 1950 Mass. Acts c. 325, codified also in G.L. c. 40A, section 3. would also permit an educational use even if it were not specifically permitted under the local zoning.

There is one further item I wish to note.

The above cited sections of Applewild's enacting documents appear to specifically authorize it to "operate and maintain an educational institution (the "School") without profit, to prepare children for high school/secondary and higher education".

Furthermore, its website describes it as "a Private School for students in Preschool through Grade 9 in Fitchburg, MA with a satellite campus in Devens, MA for toddlers through PreK."

That language would be broad enough to include pre-high school, and secondary school, which is another term for high school. If Applewild in the future seeks to expand its class levels this issue should be reviewed. It would not be a difficult step for Applewild to amend its enabling documentation to include higher grades.

After reviewing the law and documents provided, it is my opinion that Applewild would qualify for an educational use and thus is not prohibited under the zoning from operating in an Open Space District.

An educational exemption, even under the Dover Amendment, is not automatic. The particular facts of the applicant must be examined to see whether it qualifies for the Dover Amendment exemption and/or an exemption under local, state or federal law. A guide to apply to the particular facts would include that education is a bona fide goal of the use and the educational use has to be a primary or dominant use. [Citations omitted.]

I would recommend that any communications make it clear that the approval of the educational exemption is based on the specific and unique facts or this situation and shall not be used as a precedent and that Devens reserves all of its rights and authority and does not waive same.

I trust that this provides you with sufficient guidance. If you have any questions or concerns, please do not hesitate to contact me.

Thank you for the opportunity to be of service to Devens.

Very truly yours,

James B. Lampke

JAMES B. ALMPKE