

# EVASHEVSKI

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City Council  
C/O Danielle Leach, Clerk  
[Clerk@cityofmi.org](mailto:Clerk@cityofmi.org)

RE: **MI School Housing Zoning Issue**

Dear Mayor and City Council Members:

School Board President, Jason St. Onge, approached the City some weeks ago regarding the School's desire to build two duplexes for school employee housing on the school property. He noted that he believed that the School was exempt from local zoning but knew that I was unsure about that. Since that time I have spoken with the School's attorney, George Brookover, who sent me the statute and caselaw supporting the School's position. I did my own research as well, including speaking with Keith Lambert who is the Deputy Director of the State Bureau of Construction Codes. I am writing to inform the council of my findings and opinion on this matter.

Michigan State statute MCL 380.1263(3) regarding "building schools; requirements; compliance; review and approval; submission of site plan to local zoning authority" states the following:

The governing board of a public school shall not design or build a school building to be used for instructional or noninstructional school purposes or design and implement the design for a school site unless the design or construction is in compliance with 1937 PA 306, MCL 388.851 to 388.855a. **The superintendent of public instruction has sole and exclusive jurisdiction over the review and approval of plans and specifications for the construction, reconstruction, or remodeling of school buildings used for instructional or noninstructional school purposes** and, subject to subsection (4), of site plans for those school buildings.

A challenge of this statute from a local township went up to the Supreme Court of Michigan in 2003 in a case called *Northville Charter Township v. Northville Public Schools*, 469 Mich 285, 666 NW 2d 213. In that case, the Supreme Court looked at whether local school districts are subject to local zoning and planning ordinances. The Court found that the language of the statute is clear and gives the sole

authority of the school district to develop school construction and site plans to the state superintendent of public instruction. Therefore, what the state superintendent approves is immune from the provisions of local zoning ordinances.

What this means is that the ROS designation and restrictions on building, as well as all other zoning restrictions and regulations do not apply to the school site for both instructional and noninstructional school buildings. That, however, is not where the City's authority ends in this case.

The property at issue was conveyed to the School by way of a deed with a reverter clause. That reverter clause stated:

“In the event that the Grantee [School] herein does not use this property for school purposes, or should desire to discontinue use of this property for school purposes, it shall be offered for sale to the Grantor herein for the same consideration set forth in this Deed.”

The City therefore has the authority to invoke the reverter clause should the School use the property for non-school purposes. This would be separate from the state statute and would simply be a private matter between the City and School. This does not mean that the City has to take the stance now that the proposed housing is not a school purpose. However, it provides the City with the ability to make such a determination as to whether the duplexes are used for “school purposes”, or whether certain contingencies need to be placed on the duplexes to ensure that they are used for school purposes.

Specifically, the City may determine that the duplexes for the sole purpose of housing school employees, or even select school employees (teachers and superintendents only, as an example), is a school purpose. But if in the future, the School decides to rent one of the units to a non-school employee, that may change its use as a school purpose. Therefore, the City could approve the plan under certain circumstances and conditions to meet the school purpose use requirement, and reserve its rights under the reverter clause in the event that the duplexes are ever used for other purposes in the future. This would also prevent any fears of the School being able to build or do anything they want on its property with no ability for the City to intervene.

Sincerely,

Erin K. Evashevski