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ZONING AND LAND USE PLANNING

Are Schools Exempt From Local Zoning Regulations?

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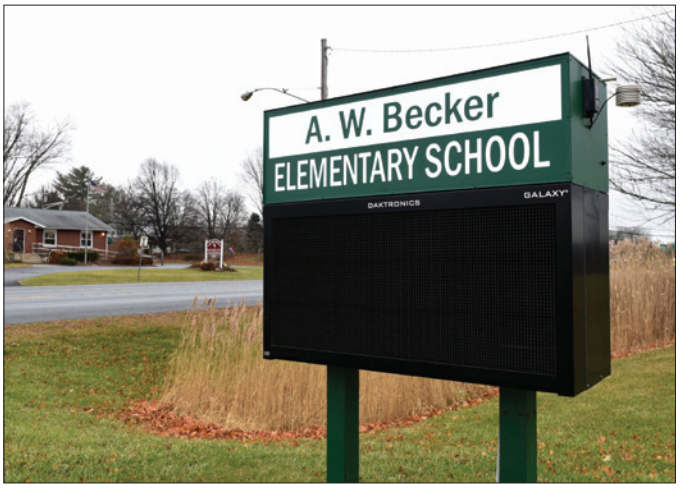
Many land use practitioners and local government officials believe that schools are exempt from all local zoning regulations. Indeed, the generally accepted practice in towns and villages throughout New York is that public and private schools need not comply with the zoning rules applicable to other property owners.

Various court decisions over the years apparently have led to that view. For example, nearly 50 years ago, in *Matter of Board of Education of City of Buffalo v. City of Buffalo*, 32 A.D.2d 98 (4th Dept. 1969), the Appellate Division, Fourth Department, declared that "school districts, in the performance of their purely governmental duties and activities, should not be subject to building code regulations or such other regulatory restrictions as zoning ordinances."

The Appellate Division, Third Department, recently issued a well-reasoned decision, in *Matter of Ravena-Coeymans-Selkirk Central School District v. Town of Bethlehem*, 156 A.D.3d 179 (3d Dept. 2017), that clarified that zoning laws do apply to schools, except in very specific circumstances. The court reviewed and discussed a number of other decisions, including by the New York Court of Appeals, that it explained had been misinterpreted. The Third Department's opinion in *Bethlehem* is one that doubtless will be studied, referred to, and cited for years to come.



WILL WALDRON/TIMES UNION

DIGITAL SIGN outside the A. W. Becker Elementary School in Selkirk

The 'Bethlehem' Case

The case arose when the Ravena-Coeymans-Selkirk Central School District asked the town of Bethlehem whether any local law prohibited it from replacing an existing traditional sign at one of its elementary schools with an electronic message board sign. The town responded that these kinds of electronic signs were expressly prohibited under its zoning laws.

The district then applied for a permit to install an electric sign that already had been donated to the school. The town denied the district's application, but the district nevertheless installed the sign.

The town informed the district that it was in violation of the town's zoning law and that it needed to remove the sign. In response, the district said that, as a public school, it was not subject to the town's zoning requirements. The district also appealed the town's sign permit denial by seeking a variance from the town's zoning board of appeals (the ZBA). After a public hearing, the ZBA denied the district's application for a variance, citing, among other things, traffic safety concerns.

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The district then filed a combined CPLR article 78 proceeding and action for declaratory judgment seeking, among other things, a declaration that it was immune and did not have to comply with the town's zoning law.

The town and the ZBA counterclaimed, seeking an order directing the district to remove the sign.

The Supreme Court, Albany County, rejected the district's immunity argument, dismissed the petition, and directed that the district remove the electronic sign. The district appealed to the Third Department, arguing that, as a public school, it was immune and exempt from all municipal zoning regulations as they applied to the use of real property for school purposes.

The 'Bethlehem' Decision

The Third Department affirmed, concluding that although schools enjoyed some immunity from zoning regulations, that immunity was "not so broad and absolute" as the district contended.

In its decision, the *Bethlehem* court explained that the Legislature has charged the New York State Education Department and local boards of education with the management and control of educational affairs and public schools. The court observed that some courts have interpreted this mandate as the state reserving unto itself the control over and the authority to regulate *all* school matters. The court explained, however, that some of these courts had "incorrectly interpreted prior decisions to extend a full exemption from zoning ordinances where it was not warranted."

According to the *Bethlehem* court, reliance on cases granting schools immunity from all zoning regulations was misplaced, given the Court of Appeals decision in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986). The *Bethlehem* court explained that, in *Bagnardi*, two private universities sought declarations that their respective locality's zoning ordinances, under which each had been denied a special permit to expand into a zoning district where not otherwise permitted, were unconstitutional. The Court of Appeals said that, historically, schools have enjoyed "special treatment with respect to residential zoning ordinances" and have been "permitted to expand into neighborhoods where nonconforming uses would otherwise not have been allowed," because "schools, public, parochial and private, by their very nature, singularly serve the public's welfare and morals," which is the overarching purpose of all zoning laws.

> The Third Department's opinion in Bethlehem is one that doubtless will be studied, referred to, and cited for years to come.

The Court of Appeals added that concerns over inconveniences such as traffic and noise led many municipalities to prohibit the new construction of schools, either in the entire municipality or at least in certain areas, which prompted courts to protect educational institutions from such exclusionary ordinances.

Significantly, the Court of Appeals said, that "[t]hese general rules… were interpreted by some courts to demand a full exemption from zoning rules for all educational and church uses"—an interpretation that was "mandated neither by the case law of our [s]tate nor common sense." The court clarified that it had never intended to render municipalities powerless in the face of an educational institution's proposed expansion, "no matter how offensive, overpowering or unsafe to a residential neighborhood the use might be," and it renewed its rejection of the existence of "any conclusive presumption of an entitlement to an exemption from zoning ordinances" for schools. The court thus concluded that there were "many instances in which a particular educational or religious use may actually detract from the public's health, safety, welfare or morals [and, i]n those instances, the institution may be properly denied." Accordingly, the court held in *Bagnardi* that the presumed beneficial effects of schools and churches "may be rebutted with evidence of a significant impact on traffic congestion, property values, municipal services and the like," because the "inherent beneficial effects … must be weighed against their potential for harming the community."

The *Bethlehem* court was not persuaded by the school district's argument that *Bagnardi* applied only to private schools. It acknowledged that the case involved challenges brought by two private universities, but it pointed out that the Court of Appeals had not limited its holding to private schools; rather, it pointed out that the Court of Appeals had explicitly mentioned

public schools when discussing the beneficial presumption enjoyed by schools generally, and public schools "provide benefits to the community at least as great as those bestowed by private schools."

Moreover, the *Bethlehem* court ruled that *Bagnardi* also could not be narrowly construed to apply solely to circumstances where there was a wholesale exclusion of educational uses in a particular zoning district. It noted that the Court of Appeals had stated that proposed educational uses that were "dangerous to the surrounding area" were "unquestionably within the municipality's police power to exclude altogether." The *Bethlehem* court reasoned that if, in the event of a sufficient safety concern, educational uses of property by a school district could be wholly excluded by local law, then it followed that a school could be "subject to minor curtailment of an accessorial use of real property on the same basis."

The *Bethlehem* court pointed out that its case did not involve matters that required Education Department oversight, such as the selection of building sites and the erection or demolition of buildings (*see* Education Law Sections 401, 407, 408), the sale or acquisition of property (*see* Education Law Sections 402-405), health or safety conditions within a school (*see* Education Law Sections 409-409-I) or any use of a school building (*see* Education Law Section 414. The *Bethlehem* court added that the Education Department does not require review of sign placement, and that the school district had not requested any Education Department review of its request for the sign. Therefore, it found, there was no duplication of review—nor the possibility of conflicting determinations—by state and local entities, and no encroachment by the town or the ZBA on a state agency's authority.

Having concluded that the school district was not immune from and, therefore, was subject to the town's zoning ordinances, the *Bethlehem* court next addressed whether the ZBA had properly denied the district's application for a variance. It noted that the town and the ZBA had not refused the district the opportunity to install any sign but that the ZBA had rejected an application for permission to install an electronic message center sign, which was prohibited in the town and which also failed to comply with at least three additional size and location requirements of the signage provisions of the town's zoning ordinance. The court found that the ZBA had provided "rational reasons" for its determination, including a concern for traffic safety due to the sign's brightness and potential to be more distracting and hazardous to passing motorists than an ordinary sign.

'Bethlehem' makes clear that despite the special treatment afforded schools by the law, they are not entitled to a full exemption from zoning rules and local governments are not powerless to apply their zoning laws to educational institutions.

That determination, the Third Department ruled, was not arbitrary or capricious, and it concluded that the Supreme Court had correctly dismissed the petition and directed the school district to remove the sign. The district sought leave to appeal the Third Department's determination to the Court of Appeals, but the motion was denied. *Matter of Ravena-Coeymans-Selkirk Central School District v. Town of Bethlehem*, 31 N.Y.3d 901 (2018).

Conclusion

The Court of Appeals has ruled that the total exclusion of schools from a residential district serves no end reasonably related to the morals, health, welfare, and safety of the community and, therefore, was beyond the scope of local zoning authority. *Matter of Diocese of Rochester v. Planning Board of Town of Brighton*, 1 N.Y.2d 508 (1956). As *Bethlehem* makes clear, however, despite the special treatment afforded schools by the law, they are not entitled to a full exemption from zoning rules and local governments are not powerless to apply their zoning laws to educational institutions. Municipalities may require that schools obtain special permits and they may impose reasonable conditions directly related to the public's health, safety, and welfare on schools to the same extent that they may impose them on non-educational applicants.