
Commonwealth of Massachusetts Supreme Judicial Court

No. SJC-10919
Appeals Court
No. 2011-P-93

REGIS COLLEGE,

Plaintiff – Appellant,

v.

TOWN OF WESTON, et al.,

Defendants – Appellees.

**APPEAL FROM THE JUDGMENT
OF THE LAND COURT**

**BRIEF OF AMICI CURIAE
CITY SOLICITORS AND TOWN COUNSEL ASSOCIATION AND
MASSACHUSETTS MUNICIPAL ASSOCIATION**

Christopher J. Petrini (BBO No. 556848)
Barbara J. Saint Andre (BBO No. 438030)
Heather W. Kingsbury (BBO No. 660284)
PETRINI & ASSOCIATES, P.C.
372 Union Avenue
Framingham, Massachusetts 01702
(508) 665-4310

Donald V. Rider, Jr. (BBO No. 549777)
CITY SOLICITOR
City Hall, 4th Floor
140 Main Street
Marlborough, Massachusetts 01752
(508) 460-3771

Counsel for Amici Curiae

Counsel for Amici Curiae

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ISSUE PRESENTED

The City Solicitors and Town Counsel Association and Massachusetts Municipal Association adopt the Issues Presented for Review as set forth in the Brief of the Defendants-Appellees, Town of Weston and Weston Zoning Board of Appeals.

STATEMENT OF INTEREST OF AMICI CURIAE

Amicus the City Solicitors and Town Counsel Association (the "CSTCA") is the oldest and largest bar association dedicated to the practice of municipal law in the Commonwealth. The members of the CSTCA include attorneys and their assistants who represent municipal governments as city solicitor, town counsel, town attorney, or corporation counsel. Members of the CSTCA also include attorneys who represent or advise cities, towns, and other governmental agencies in other capacities. CSTCA's mission is to promote better local government through the advancement of municipal law.

Amicus the Massachusetts Municipal Association ("MMA") is a nonprofit, nonpartisan statewide association of 347 member cities and towns. The MMA provides advocacy, training, publications, research, and other services to its members. The MMA is

governed by a Board of Directors composed of mayors, selectmen, managers, councilors, and Finance Committee members from across Massachusetts. It brings municipal officials together to establish unified policies, to advocate these policies, and to share information that increases the efficiency and cost-effectiveness of service delivery to community residents.

The CSTCA and MAA's primary concern in this matter is to ensure that local zoning laws are protected and enforced to the extent permissible in accordance with applicable statutory exemptions, including the second paragraph of G.L. c. 40A, § 3, the Dover Amendment, and that financially motivated commercial projects are not permitted to avoid reasonable zoning restrictions simply because their proponents are educational institutions. Zoning serves important purposes in the public interest, including the protection of neighborhoods against deleterious uses that are inconsistent with the surrounding character such as the proposed Regis East project. Accordingly, exemptions to local zoning are required to be construed narrowly. Application of the Dover Amendment is subject to an established test, and a use

is not entitled to its protection unless education is the primary or dominant use of the proposed facility.

The CSTCA and MMA submit the instant amici curiae brief to urge a ruling that upholds the well-reasoned decision of the Land Court and enables the Town of Weston to apply appropriate zoning regulations to protect a residential neighborhood from bearing the significant impacts that would result from the construction of a large-scale retirement community under the guise of an educational use. A contrary ruling would create dangerous precedent that would promote commercial development with minimal to no educational component if proposed by an educational institution, notwithstanding the harmful impact to the Zoning Act and the deviation of the proposed use from the character of the surrounding neighborhood as established by uses permitted in the zoning district.

STATEMENT OF THE CASE

The CSTCA and MMA adopt the statement of the case set forth in the Town of Weston's brief, including the nature of the case and statement of facts.

ARGUMENT

I. ZONING LAW SERVES SALUTARY PURPOSES, AND EXEMPTIONS SUCH AS THE DOVER AMENDMENT SHOULD BE CONSTRUED NARROWLY TO ACHIEVE THE PUBLIC POLICY OBJECTIVES OF UNITARY ZONING.

The purposes of local zoning are enumerated in Chapter 808 of the Acts of 1975, which established the current Zoning Act, G.L. c. 40A. Section 2A of Chapter 808 provides in part as follows:

The purposes of this act are to facilitate, encourage, and foster the adoption and modernization of zoning ordinances and by-laws by municipal governments in accordance with the provisions of Article 89 of the Amendments to the Constitution and to achieve greater implementation of the powers granted to municipalities thereunder.

This act is designed to provide standardized procedures for the administration and promulgation of municipal zoning laws. This section is designed to suggest objectives for which zoning might be established which include, but are not limited to, the following: - to lessen congestion in the streets; to conserve health; to secure safety from fire, flood, panic, and other dangers; to provide adequate light and air; to prevent overcrowding of land, to avoid undue concentration of population; to encourage housing for persons of all income levels; to facilitate the adequate provision of transportation, water, water supply, drainage, sewerage, schools, parks, open space and other public requirements; to conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and the pollution of the environment; to encourage the most appropriate use of land throughout the city or town, including consideration of the recommendations of the master plan, if any, adopted by the planning

board and the comprehensive plan, if any, of the regional planning agency; and to preserve and increase amenities by the promulgation of regulations to fulfill said objectives.

The extensive powers granted to municipalities in light of the purposes expressly enumerated in Section 2A are not to be narrowly interpreted. Collura v. Arlington, 367 Mass. 881, 885 (1975).

Zoning regulations serve the salutary purposes of stabilizing the use of property and protecting the area from deleterious uses. Enos v. Brockton, 354 Mass. 278, 280 (1968). "The primary purpose of zoning is the preservation in the public interest of certain neighborhoods against uses which are believed to be deleterious to such neighborhoods." Kaplan v. Boston, 330 Mass. 381, 384 (1953).

To those ends, the Zoning Act encourages and even mandates uniformity of uses within a particular district, as codified in G.L. c. 40A, § 4, which provides in relevant part as follows:

Any zoning ordinance or by-law which divides cities and towns into districts shall be uniform within the district for each class or kind of structures or uses permitted.

The basic assumption underlying the division of a municipality into zoning districts is that, in general, each land use will have a predictable

character and that the uses of land can be sorted out into compatible groups. SCIT, Inc. v. Planning Board of Braintree, 19 Mass. App. Ct. 101, 107 (1984).

Massachusetts is a "Home Rule" state when it comes to the authority of municipalities to enact zoning regulations. The Second Article of the Amendments to the Massachusetts Constitution, as amended by the Eighty-Ninth Article of Amendment (commonly referred to as the Home Rule Amendment), provides in section six that: "Any city or town may, by the adoption, amendment, or repeal of local ordinances or by-laws, exercise any power or function which the general court has power to confer upon it, which is not inconsistent with the constitution or laws enacted by the general court." This Home Rule authority has been interpreted in favor of allowing the broadest possible municipal power for each city and town to enact by-laws and ordinances, including zoning by-laws and ordinances, to regulate its affairs. See Grace v. Brookline, 379 Mass. 43 (1979).

In light of the broad powers granted to municipalities with respect to zoning, it follows that statutory limitations on such powers should be narrowly construed. It is a well-established

principle of statutory construction that an exception from the coverage of a statute is ordinarily to be construed narrowly so as to prevent the purposes of the statute from being rendered ineffective. Martin v. Rent Control Board of Cambridge, 19 Mass. App. Ct. 745, 747 (1985). Where the language at issue is an exemption provision, it must be strictly construed. Department of Environmental Quality Engineering v. Hingham, 15 Mass. App. Ct. 409, 411 (1983) (if a strict construction were not given to the exemption language of the Wetlands Protection Act, it would bypass the controls of the statute and undercut its purposes).

This general principle of statutory construction has been extended to the interpretation of exemptions to the generally broad power of municipalities to regulate uses of land, as evidenced by a long line of cases interpreting the power of a local board to vary the application of such regulations. As early as 1926, this Court instructed that

[i]t is manifest from the tenor of the zoning act as a whole. . . that the power of authorizing variations from the general provisions of the statute is designed to be sparingly exercised. It is only in rare instances and under exceptional circumstances that relaxation of the

general restrictions established by the statute ought to be permitted.

Norcross v. Board of Appeal of Building Department of Boston, 255 Mass. 177, 185 (1926). Some exceptions to uniformity are sanctioned by the Zoning Act and involve generally a limited tolerance for nonconforming uses and provision for special permits and variances. SCIT, 19 Mass. App. Ct. at 108. Accordingly, the Dover Amendment should be not be interpreted in a fashion that expands its reach beyond its purpose.

The exemptions for religious and educational uses were added for the purpose of guaranteeing a place for mainstream but sometimes controversial activities. Bobrowski, Handbook of Massachusetts Land Use and Planning Law, § 4.01, 3d ed. (2011) (hereinafter "Bobrowski"). "The Dover Amendment bars the adoption of a zoning by-law that seeks to prohibit or restrict the use of land for educational purposes." Trustees of Tufts College v. Medford, 415 Mass. 753, 757 (1993) (emphasis in original). The Dover Amendment should not be interpreted in such a way that the exemption "swallows the rule", such as the present case, where Regis is attempting to use the Dover Amendment for a

residential use that goes well beyond the intent of the Dover Amendment.

II. THE LEGISLATIVE HISTORY OF THE DOVER AMENDMENT SHOWS THAT IT IS PROPER TO APPLY A CONSISTENT BALANCING TEST TO DETERMINE WHETHER A USE IS PRIMARILY OR PREDOMINANTLY EDUCATIONAL.

"The whole of the Dover Amendment, as it presently stands, seeks to strike a balance between preventing local discrimination against an educational use ...and honoring legitimate municipal concerns that typically find expression in local zoning laws."

Trustees of Tufts College v. Medford, 415 Mass. 753, 757 (1993) (internal citation omitted). To achieve that balance, courts cannot ignore the legitimate municipal interest in preserving the character of neighborhoods and allow the introduction of deleterious or inconsistent uses simply because their proponents are educational institutions. Allowing the Regis East project, which would consist of 11-story buildings with 362 units of housing, would derogate from the interests of the Town of Weston in preserving the single-family residential character of the surrounding area. Moreover, to do so would not further any legitimate educational goal of the institution but would merely generate revenue for

Regis College through the provision of age-in-place housing to elderly residents. Therefore, the Weston Zoning Board of Appeals properly denied Dover Amendment protection to the Regis East project, and the Land Court properly upheld the Board's decision.

Educational uses have historically enjoyed special zoning status, but not entirely without restriction. In 1933, the Town of Dover adopted a zoning by-law that prohibited buildings in a residential district except for certain enumerated purposes, including detached one-family dwellings, churches, and educational use. The by-law was later amended to restrict the construction of educational uses so that they would be permitted only if non-sectarian and not organized or operated for private profit. In 1950, the Legislature, through enactment of Chapter 325 of the Acts of 1950, inserted the following language into G.L. c. 40, § 25, a predecessor to G.L. c. 40A, § 3:

No by-law or ordinance which prohibits or limits the use of land for any church or other religious purpose or which prohibits or limits the use of land for any religious, sectarian or denominational educational purpose shall be valid.

In the seminal case of Attorney General v. Dover, 327 Mass. 601 (1951), this Court considered the question of whether the Dover zoning by-law was valid in light of the adoption of St. 1950, c. 325. Since the by-law would have had the effect of prohibiting sectarian educational uses in a residential district, this Court concluded that it became invalid as of the effective date of the amendment to G.L. c. 40, § 25. The Court's holding in that case confirmed the limitation on a municipality's authority to prohibit the use of land for educational purposes.

However, the Court later noted that, in principle, municipalities may permissibly impose dimensional requirements upon educational facilities without violating the statutory use exemption. See Sisters of the Holy Cross v. Brookline, 347 Mass. 486 (1964). This acknowledgment clarified that the exemption does not grant unfettered permission to educational institutions to maintain and operate educational uses. As interpretation of the Dover Amendment evolved, this Court has continued to recognize the limitations on the scope of the Dover Amendment exemption. In Radcliffe College v. Cambridge, 350 Mass. 613 (1966), for example, the

Court held that the Dover Amendment did not prohibit the City of Cambridge from imposing parking restrictions upon an educational institution because the applicable zoning ordinance did not impede the college's use of land for educational purposes. This holding confirms that the application of the Dover Amendment must strike a balance between a municipality's interest in protecting the purposes of local zoning regulations in the public interest and an educational institution's interest in avoiding unreasonable discrimination.

The Dover Amendment was revised in 1956 to include public educational uses within the exemption from use restrictions. St. 1956 c. 586. The distinction is no longer relevant under the current version of the Dover Amendment, which appears in G.L. c. 40A, § 3 and states in relevant part as follows:

No zoning ordinance or by-law shall . . . prohibit, regulate or restrict the use of land or structures . . . for educational purposes on land owned or leased by . . . a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.

This language was inserted by Chapter 808 of the Acts of 1975 as part of a comprehensive overhaul of the Zoning Act. The current version refines the balancing of municipal and educational interests by eliminating the distinction between sectarian and public educational uses while explicitly authorizing municipalities to impose reasonable dimensional controls. "Local zoning requirements adopted under the proviso of the Dover Amendment 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 as enunciated in St. 1975, c. 808 §2A ...may be permissibly enforced, consistent with the Dover Amendment, against an educational use." Trustees of Tufts College v. Medford, 415 Mass. at 757.

The Report of the Department of Community Affairs is the chief document in the legislative history of the Zoning Act as inserted by St. 1975, c. 808. Trustees of Tufts College v. Medford, 415 Mass. at 758 n.6; Bobrowski at § 4.02 n.5. The Report confirms that the current version of the Dover Amendment

incorporates both the prior statutory language and the case law construing it. The Report contains the following recommendation:

It is unfortunate that the present state of law is such that some communities may have legitimate doubts about the validity of regulations which would impose reasonable controls on institutions presently covered by the Dover Amendment. The Department would encourage the use of such controls where essential to the well-being of the adjacent neighborhood, and where the regulation will not seriously jeopardize the mission of the protected institutions. Thus, the Department proposes to clarify the present language so as to achieve the aims of the general court in passing the original amendment while at the same time precluding unwise restrictions on the power of the communities to regulate the land use activities of churches and educational institutions.

1972 Report on Zoning in Massachusetts: Proposed Changes and Additions to Zoning Enabling Act Chapter 40A, Massachusetts Department of Community Affairs, at 26.

"Education," as that term is used in the Dover Amendment, has been held to constitute "the process of developing and training the powers and capabilities of human beings" and preparing persons "for activity and usefulness in life." Commissioner of Code Inspection of Worcester v. Worcester Dynamy, Inc., 11 Mass. App. Ct. 97, 99 (1980). The courts have also relied on dictionary definitions, including "the act or process

of providing with knowledge, skill, competence, or usu[ally] desirable qualities of behavior or character or of being so provided esp[ecially] by a formal course of study, instruction or training." Harbor Schools, Inc. v. Board of Appeals of Haverhill, 5 Mass. App. Ct. 600, 605 (1977).

Although the broad definition of "education" as set forth in the Dover Amendment allows for inclusion of uses that do not fall within traditional notions of academic instruction, the application of the exemption is subject to an established test. "The key inquiry is whether the facility 'is operated primarily for an educational purpose.'" Bobrowski at § 4.07. "Merely an 'element of education' ...provided not by a formal program or trained professionals" is not within the meaning of the exemption for educational uses.

Whitinsville Retirement Society, Inc. v. Northbridge, 394 Mass. 757, 761 (1985). The Massachusetts appellate court and trial courts have consistently applied this test. See, e.g., Fitchburg Housing Authority v. Board of Zoning Appeals of Fitchburg, 380 Mass. 869, 874 (1980) (analysis turns on whether the dominant use will be educational); Aquarius Sanctuary Center for Higher Learning and Healing, Inc. v. Zoning Board of

Appeals of Town of Littleton, Misc. Case No. 378178 (Land Ct. 2009) ("The Supreme Judicial Court has interpreted the § 3 phrase "for educational purposes" as meaning that the "primary or dominant purpose" of the facility is educational."); Metrowest YMCA, Inc. v. Town of Hopkinton, Misc. Case No. 287240 (Land Ct. 2006) ("The question whether under the Dover Amendment a property is exempt from zoning restrictions for educational purposes turns on whether or not the dominant purpose of the structure is educational....The court must look beyond individual activities, some of which may in isolation constitute educational use, to see whether, in the aggregate, the overall use of the structures in question amount to educational use."); Julia Ruth House, Inc. v. Board of Appeals of Westwood, Misc. Case No. 262911 (Land Ct. 2000) (adult social day care facility did not constitute a protected educational use where it provided only "incidental educational components").

Zoning regulations that give local boards roving discretion to discriminate against uses within a particular district have been consistently deemed "spot zoning" and struck down in light of the established purposes of encouraging uniformity within

districts and preserving the character of the surrounding area. See Smith v. Bd. of Appeals of Fall River, 319 Mass. 341, 344 (1946); SCIT, 19 Mass. App. Ct. at 108. Likewise, such purposes would be eroded if landowners were permitted to introduce uses inconsistent with the surrounding area without satisfying a specific test for exemption and conforming to certain reasonable restrictions.

A qualified educational institution cannot meet the test for exemption if the proposed use of a facility is primarily commercial in nature rather than educational. A multi-unit residential facility whose primary purpose is to generate revenue for the institution and provide housing for the users is not exempt from zoning use restrictions simply because it contains an incidental "educational" component in the broad sense of the term. An element of education is not enough to qualify a use for Dover Amendment protection. The debate over the use of the word "primary" obfuscates to some degree the very purpose of zoning, to define different categories of uses, and divide a municipality into districts where compatible categories of uses are grouped together. Thus, the debate over whether the proposed Regis East

development is "primarily" educational is another way of debating whether the use is categorized, for zoning purposes, as an educational use or a residential use. Determining what zoning by-law category a particular use fits into is a familiar exercise for local officials in interpreting zoning by-laws, and, logically, the category that should be applied is the category that best fits the proposed use, i.e. what is the primary use that is proposed? Thus, whether the statute uses the word "primary", the analysis necessarily requires, as pointed out by this Court in Whitinsville, a determination as to whether the use is educational or residential.

For the foregoing reasons, Regis College's brazen proposal to jettison the well-established test for Dover Amendment protection should be rejected by this Court. Repudiation of the well-established and respected balancing test for determining application of the Dover Amendment in favor of a carte blanche for educational institutions proposing commercial uses would do violence to the intent of the Zoning Act and uproot the certainty and predictability of Dover Amendment precedent.

The type of intrusion on a residential district proposed by Regis College is not within the intent of the Dover Amendment, as it does not further the goals of the educational institution. To hold otherwise would allow educational institutions to construct intrusive uses for revenue-generating purposes by simply allowing the users access to the educational programs intended for the true students of the institution. Incompatible uses cannot be introduced to residential neighborhoods simply because they are located within a college campus.

III. IN THE EVENT THIS COURT WERE TO DECLARE THAT REGIS EAST IS AN EDUCATIONAL USE WITHIN THE MEANING OF THE DOVER AMENDMENT, THE ISSUE OF THE REASONABLENESS OF THE WESTON ZONING BY-LAW'S REGULATIONS, AS APPLIED TO REGIS EAST, SHOULD BE REMANDED TO THE LAND COURT FOR A REASONABLENESS DETERMINATION TO BE PERFORMED BY THE WESTON ZONING BOARD OF APPEALS.

In its Appellant's brief (at 50), Regis requests that this Court "issue a declaration annulling the height, set back and lot area dimensional regulations contained in the By-Law as applied to Regis East." Even assuming the Land Court's decision is erroneous and must be reversed (a proposition that the CSTCA and MMA do not agree with), Regis' request is utterly misplaced.

The Land Court found that it "had jurisdiction under G.L. c. 240, § 14A to address the issue of whether the application of certain provisions of the [Town of Weston's By-Law] to the [Regis East] Project was reasonable." (Appellee's Addendum p. 3.) Regis never appealed that finding. Nor could it. Pursuant to G.L. c. 185, § 1(j $\frac{1}{2}$), the legislature has conferred upon the Land Court exclusive original jurisdiction to adjudicate:

Complaints under section fourteen A of chapter two hundred and forty to determine the validity and extent of municipal zoning ...by-laws

G.L. c. 185, § 1(j $\frac{1}{2}$). Cf. G.L. c. 185, §§ 1(k through s) (over other matters, land court department has original jurisdiction concurrently with this Court, along with superior court). It is thus for the lower court to adjudicate, in the first instance, whether under G.L. c. 240, § 14A the application of certain provisions of the Town's zoning by-law to Regis East was reasonable - assuming, of course, this Court were to declare that Regis East is an educational use within the meaning of the Dover Amendment.

Precisely because the Land Court arrived at the opposite declaration - that Regis East is not an educational use within the meaning of the Dover

Amendment - the Land Court never exercised its exclusive original jurisdiction on the height, set back and lot area dimensional regulations (or any other regulations) contained in the Town's zoning by-law as applied to Regis East. The Land Court adjudged it "not necessary to address the issue of what reasonable requirements of the By-law will be applicable to the [Regis East] Project." (Appellee's Addendum p. 14). Such a necessity would arise now for the Land Court only in the event this Court were to declare that Regis East is an educational use within the meaning of the Dover Amendment. For the reasons set forth herein, as well as in the appellate briefs filed by the Town and the Intervenors, such a declaration would be inapposite. But such a declaration would, in turn, require at most that this matter be remanded to the Land Court. That remand requirement, besides comports with the exclusive original jurisdiction over G.L. c. 240, § 14A complaints conferred by G.L. c. 185, § 1(j $\frac{1}{2}$) upon the Land Court department, would also comport with the "broad construction" this Court has for decades accorded to G.L. c. 240, § 14A stemming from the Land Court department's "competence in the general field"

of land-related matters. Harrison v. Braintree, 355 Mass. 651, 654 (1969).

The amici respectfully submit that Regis' request that this Court "issue a declaration annulling the height, set back and lot area dimensional regulations contained in the By-Law as applied to Regis East" is nothing less than Regis' ultimatum that, unless the Town's zoning by-laws are tailored specifically for educational uses as it defines it, no matter the scope and degree of non-education uses contained within the Regis proposal, those by-laws are unreasonable as applied to Regis East. But this Court has expressly ruled there is no requirement "that, to be enforceable, zoning regulations ... must be 'tailored specifically for educational uses.'" Trustees of Boston College v. Board of Aldermen of Newton, 58 Mass. App. Ct. 794, 809 (2003) (quoting Trustees of Tufts College v. Medford, 415 Mass. 753, 760 (1993)).

The reason why there is no such requirement is that

[l]ocal zoning requirements adopted under the proviso to the Dover Amendment 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 as enunciated in St. 1975, c. 808, § 2A ... may be

permissibly enforced, consistent with the Dover Amendment, against an educational use.

Trustees of Tufts College v. Medford, 415 Mass. at 757-58 (emphasis supplied). Despite this unambiguous precedent, Regis exactly inverts the applicable test by having the educational use enforced against the "legitimate municipal purposes sought to be achieved by local zoning." See id. For Regis, the educational use of land is the ultimate categorical imperative in land use, trumping - indeed, trampling - the promotion of public health or safety, or the preservation of the character of an adjacent neighborhood, "or one of the other purposes sought to be achieved by local zoning as enunciated in" the Zoning Act. Id. For Regis, the educational use of land subjugates all other "municipal purposes sought to be achieved by local zoning." Id. For Regis, the educational use of land is the land use über alles.

Fortunately for the municipalities of Massachusetts, in stark contrast to Regis' inverted analysis stands the true Dover Amendment analysis which seeks, "[t]o the degree reasonably possible, ... to accommodate protected uses with critical municipal concerns." Trustees of Boston

College, 58 Mass. App. Ct. at 809 (quoting Trustees of Tufts College v. Medford, 415 Mass. at 760).

Therefore, in the event this Court were to declare that Regis East is an educational use within the meaning of the Dover Amendment (but only in that event), the CSTCA would request, for all the aforementioned reasons, that this Court remand this matter to the Land Court with instructions that it, in turn, remand this matter to the Weston Zoning Board of Appeals, with instructions that the Board consider the applicability to Regis East of the Weston zoning by-law, including but not necessarily limited to the height, set back and lot area dimensional regulations, and with the Land Court to retain jurisdiction after this matter is considered by the Board. See Campbell v. City Council of Lynn, 415 Mass. 772, 780-81 (1993) (where Land Court summary judgment materials revealed that Lynn zoning officials had taken no clear position regarding zoning ordinance's off-street parking requirement, such that the record was insufficient for this Court to determine whether compliance with any applicable off-street parking requirements could be demanded by city, case was ordered to be remanded by Land Court to Lynn zoning board of appeals in order

for board to consider applicability to the relevant premises of any off-street parking zoning requirements, with Land Court to retain jurisdiction afterwards for entry of new judgment consistent with Campbell and its companion case, Trustees of Tufts College).

CONCLUSION

For the foregoing reasons, the CSTCA and MMA respectfully request that this Court affirm the decision of the Land Court on the grounds that exemptions to the zoning laws must be construed narrowly in accordance with established tests, and the proposed Regis East Project does not meet the applicable test for an exempt educational use under the Dover Amendment because the proposed use is not primarily or predominantly educational. In the event this Court declares that Regis East is an educational use within the meaning of the Dover Amendment (a proposition that the MMA and CSTCA strongly dispute for the reasons outlined above), the CSTCA and MMA respectfully request that the proper procedural disposition of this action would be to remand the case to the Land Court with instructions that it, in turn, remand to the Weston ZBA so that the Board may


consider the Weston zoning by-law's applicability to
Regis East.

RESPECTFULLY SUBMITTED,

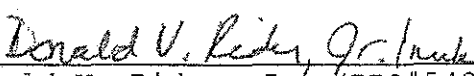
CITY SOLICITORS AND
TOWN COUNSEL ASSOCIATION and

MASSACHUSETTS MUNICIPAL
ASSOCIATION

By its attorneys,



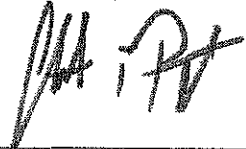
Christopher J. Petrini (BBO#556848)
Barbara J. Saint André, BBO#438030
Heather W. Kingsbury (BBO#660284)
Petrini & Associates, P.C.
372 Union Avenue
Framingham, MA 01702
(508) 665-4310



Donald V. Rider, Jr. (BBO#549777)
City Solicitor
City Hall, 4th Floor
140 Main Street
Marlborough, MA 01752
(508) 460-3771

CERTIFICATE OF COMPLIANCE WITH RULE 16(k)

I certify that the foregoing brief complies with the rules of court that pertain to the filing of briefs, including but not limited to Mass.R.App.P. 16(a)(6), 16(b), 16(e), 16(f), 16(h), 18 and 20.



Christopher J. Petrini

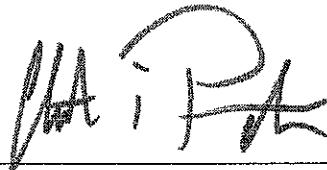
CERTIFICATE OF SERVICE

Christopher J. Petrini, counsel for Amici Curiae, City Solicitors and Town Counsel Association and Massachusetts Municipal Association, hereby certifies that he has served the Brief of Amici Curiae by causing two copies thereof to be delivered by first class mail, postage prepaid to the following counsel of record on this 16th day of September, 2011:

Lisa L. Goodheart
Sugarman, Rogers, Barshak & Cohen, P.C.
101 Merrimac Street
Boston, MA 02114-4737

George X. Pucci
Kopelman and Paige, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110-1109

Catherine J. Savoie
Posternak Blankstein & Lund LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199-8004



Christopher J. Petrini