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Guidance on Regulation of Religious and Educational Uses of Land Under the Dover Amendment, Massachusetts General Laws c. 40A, §3

For over 50 years, Massachusetts law has exempted educational and religious uses of land from certain local zoning regulations through the so-called "Dover Amendment," Massachusetts General Laws chapter 40A, § 3. The statutory exemption is just one sentence long, but it has been given shape by dozens of court decisions applying it to a variety of real-life situations across the state. This guidance summarizes the law of the Dover Amendment as expressed through that case law. It is intended to help municipalities, developers, and residents to understand the types of land use that are exempted from local zoning requirements under the religious and educational use provision of the Dover Amendment and the practical implications of these exemptions.

What is the "Dover Amendment" and how does it protect religious and educational uses of land?

Since the 1920s, Massachusetts cities and towns have had certain authority to enact zoning by-laws and ordinances to control the use of land in their communities, subject to constraints imposed by the Legislature, the state constitution, and federal law. In 1950, the Legislature passed a law making it illegal for communities to use their zoning laws to restrict religious uses of land, including "religious, sectarian or denominational education[]". St.1950, c. 325, § 1. The Attorney General sued to enforce the new state law against the town of Dover, where a land use dispute had arisen between the town and a religious organization. In the resulting case, the Supreme Judicial Court confirmed that the Legislature has the power to restrict a town's zoning activity. *Attorney General v. Inhabitants of Town of Dover,* 327 Mass. 601, 604 (1951). The Court also declared the town's by-law invalid to the extent it conflicted with the new state law. *Id.* at 608. The state law exempting religious uses from local zoning rules thereafter became known as the "Dover Amendment."

Over time, the Legislature expanded the Dover Amendment, first to protect secular educational uses and then to protect other state priorities like childcare centers, solar energy systems, farms, and accessory dwelling units. The full list of protected uses can be found in Section 3 of the Zoning Act, which is chapter 40A of the Massachusetts General Laws.

The current version of the Dover Amendment protects both religious and educational uses of land and creates balance by allowing cities and towns to impose certain "reasonable" regulations on them. The relevant text is found in the second paragraph of G.L. c. 40A, § 3:

> No zoning ordinance or by-law shall...prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or 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 Guidance focuses on how courts have interpreted this protection of religious and educational uses. Most of the principles outlined below are generally applicable to all use protections contained in the Dover Amendment. *See, e.g., Tracer Lane II Realty, LLC v. City of Waltham*, 489 Mass. 775, 780 (2022) (using the "abundant case law interpreting that section's other paragraphs" when interpreting the solar energy paragraph for the first time); *Petrucci v. Bd. of Appeals of Westwood*, 45 Mass. App. Ct. 818, 825, n.10 (1998) (trial court properly applied "reasonable regulations" caselaw from educational context to childcare use protected by third paragraph of Dover Amendment); 760 C.M.R. 71.03(3) (test for assessing reasonableness of zoning regulations when applied to a religious or educational use applies equally to protected-use accessory dwelling units). However, because uses protected under other paragraphs of the Amendment may be subject to greater, lesser, or different types of regulation, caution is advised when using this guidance in other contexts. *See, e.g.*, G.L. c. 40A, § 3, eighth par. (unlike religious or educational uses, a handicapped ramp cannot be subject to dimensional lot regulations like setbacks or open space requirements); *Tracer Lane*, 489 Mass. at 780 (solar energy uses may be subject to regulations that cannot be applied to educational uses). *But see* G.L. c. 40A, § 3, third par. (like religious and educational uses, childcare centers are subject only to "reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements").

What is the purpose of the Dover Amendment's religious and educational use protections?

The Dover Amendment limits local zoning discretion around religion and education "to foreclose the 'local exercise of preferences as to what kind of educational or religious uses will be welcome'" in a community. *Hume Lake Christian Camps, Inc. v. Planning Board of Monterey*, 492 Mass. 188, 194 (2023) (quoting *Newbury Junior College v. Brookline*, 19 Mass. App. Ct. 197, 205 (1985)). It reflects a legislative decision that religious and educational uses are important to the state and should be "free from local interference." *Crossing Over, Inc. v. City of Fitchburg*, 98 Mass. App. Ct. 822, 829 (2020). At the same time, the Dover Amendment expressly allows certain kinds of reasonable regulation of protected uses, creating a balance between "legitimate municipal concerns that typically find expression in local zoning laws" and the ability of religious and educational nonprofits to carry out their work. *Hume Lake*, 492 Mass. at 194 (citing *Trustees of Tufts College v. Medford*, 415 Mass. 753, 757 (1993)).

What is the legal test for determining whether a use is a religious or educational use protected by the Dover Amendment?

A proposed use of land or structures is protected by the Dover Amendment if both of the following are true:

1. The land is owned or leased by a "religious sect or denomination," a "nonprofit educational corporation," or the Commonwealth or one of its agencies, subdivisions or bodies politic;

2. A bona fide religiously or educationally significant goal is the primary or dominant purpose for which the land or structure will be used.

See G.L. c. 40A, § 3, par. 2. *See also, e.g.*, *Hume Lake,* 492 Mass. at 195; *Regis College v. Town of Weston*, 462 Mass. 280, 285 (2012) (quoting *Whitinsville Retirement Society, Inc. v. Northbridge*, 394 Mass. 757, 760 (1985)).

What qualifies as a "nonprofit educational corporation" under the Dover Amendment?

A nonprofit organization does not need to look like a traditional school or have education as its primary goal or purpose to qualify as a "nonprofit educational corporation" under the first prong of the Dover Amendment test. *Gardner-Athol Area Mental Health Association, Inc. v. Zoning Board of Appeals of Gardner*, 401 Mass. 12, 16 (1987); *see also Regis Coll.*, 462 Mass. at 285. So long as a nonprofit corporation's articles of organization allow it to engage in educational activities, the organization is considered "educational" for Dover Amendment purposes. *Gardner-Athol*, 401 Mass. at 15-16 (citing *Worcester County Christian Communications, Inc. v. Board of Appeals of Spencer,* 22 Mass. App. Ct. 83, 87 (1986)). The articles of organization of nonprofit corporations, including out-of-state corporations doing business in Massachusetts, are filed with the Secretary of the Commonwealth and available at https://www.sec.state.ma.us/divisions/corporations/corporations.htm.

What qualifies as a "religious sect or denomination" under the Dover Amendment?

Unlike an educational organization, a religious group need not be organized as a nonprofit corporation in order to seek protection under the Dover Amendment. G.L. c. 40A, § 3, second par.

Where a religious group is in fact registered as a nonprofit corporation, then it will satisfy the first prong of the Dover Amendment test if its articles of organization authorize it to engage in the religious (or educational activity) it proposes at a site. *See, e.g., Hume Lake Christian Camps, Inc. vs. Sawyer*, Case. No. 19 MISC 000386, 2022 WL 1256666, at *13 (Mass. Land Ct. Apr. 27, 2022), rev'd on other grounds, *Hume Lake Christian Camps,* 492 Mass. at 188 (an organization is a "religious sect or denomination" under the Dover Amendment if "its articles of

organization allow it to engage in religious activities"); *Timothy Hill Children's Ranch, Inc. v. Webb*, Case Nos. 08 MISC 382531, 09 MISC 404144, and 09 MISC 404850, 2012 WL 444018, at *9 (Mass. Land Ct. Feb. 10, 2012) (camp operator is "religious" under Dover where its articles of organization authorize it to "operate an educational outdoor camp to teach children and families leadership skills and life skills with a spiritual foundation which includes bible studies and church services"). Where a religious group is not organized as a nonprofit corporation, a subjective, good faith "system of belief, concerning more than the earthly and temporal, to which the adherent is faithful" may be sufficient for Dover Amendment purposes. *Needham Pastoral Counseling Center, Inc. v. Board of Appeals of Needham,* 29 Mass. App. Ct. 31, 34 (1990) (discussing but not deciding question of how to define "religion" in a Dover Amendment case). The definition of a religious sect or denomination may also be impacted by developments in federal law. *See, e.g.*, *Catholic Charities Bureau, Inc. v. Wisconsin Labor and Industries Review Commission*, United States Supreme Court Case No. 24-154 (pending as of March 2025) (addressing role of state government in defining whether group is "operated primarily for religious purposes").

What is an "educationally significant goal"?

Under Massachusetts law, "education" is a "broad and comprehensive term" that is not limited to "traditional or conventional educational regimes." *Regis Coll.,* 462 Mass. at 285 (citing *Mount Hermon Boys' School v. Gill*, 145 Mass. 139, 146 (1887)). Instead, education is understood broadly as "the process of developing and training the powers and capabilities of human beings" and "preparing persons for activity and usefulness in life." *McLean Hospital Corp. v. Town of Lincoln*, 483 Mass. 215, 220 (2019) (quoting *Mount Hermon Boys' Sch.* at 146 and *Fitchburg Housing Authority v. Board of Zoning Appeals of Fitchburg*, 380 Mass. 869, 875 (1980)).

As a result, in the context of the second prong of the Dover Amendment test, "[e]ducationally significant" uses are not "limited only to those facilities closely analogous to traditional schools and colleges." *McLean Hosp.,* 483 Mass. at 220 (quoting *Regis Coll.*, 462 Mass. at 286). Similarly, whether a use is educational "does not, and should not, turn on an assessment of the population it serves." *McLean Hosp.*, 483 Mass. at 222. Instead, courts have found an "educationally significant goal" for purposes of the Dover Amendment when, for example:

- the curriculum is narrowly targeted to serve the special needs of a particular population, contains therapeutic or other nonacademic training methods, or is delivered in a manner other than through classroom instruction;
- program participants do not resemble traditional school students in their demographic characteristics or educational goals;
- the program includes a residential or medical component; or
- an ancillary structure like a parking garage, or a recreational facility like a baseball field, supports the work of an educational institution.

The following cases illustrate the courts' generous interpretation of the "educationally significant goal" requirement. While this guidance separates these cases into categories for convenience, there is often overlap among the types of programs offered in each case.

Residential programs delivering targeted education and training to unique populations

Substance abuse treatment programs

- *Stanley Street Treatment & Resources v. City of Fall River*, Case No. 2273CV00372, 2024 WL 493561 (Mass. Super. Jan. 3, 2024). Residential substance abuse treatment program "offering 24-hour care in a structured environment," including relapse and overdose prevention counseling and education, HIV testing and education, TB testing and education, and tobacco use counseling and education. Program was led by social workers and drug treatment counselors; was founded on dialectical and cognitive behavioral therapy and motivational interviewing; and included both individualized treatment plans and group "education on harm reduction, tobacco cessation, life skills management, setting goals, gender identity, positive thinking, managing anxiety, relapse prevention strategies, coping skills, twelve step models, and understanding addiction and recovery."
- *Spectrum Health Sys. Inc. v. Framingham Zoning Bd. of Appeals*, Case No. 240789 (Mass. Land Ct. May 21, 1999). Facility providing substance abuse rehabilitation and mental health counseling services, with methadone administration for some participants.

Transitional programs for people experiencing homelessness

- *Brockton Coalition for Homeless v. Tonis*, Case No. 03-00226, 2004 WL 810296 (Mass. Super. Mar. 5, 2004). Temporary housing with education designed to "assist homeless families in obtaining permanent housing and in becoming economically and socially independent," including classes, group activities, and individual coaching and assistance with topics ranging from life skills regarding housing, employment, and personal finance to parenting through homelessness and coping with domestic violence.
- *Congregation of the Sisters of St. Joseph of Boston v. Town of Framingham*, Case No. 194216, 1994 WL 16193868 (Mass. Land Ct. Mar. 31, 1994). Residence with classrooms for educational programming to teach "homeless families, single mothers, persons with AIDS and other physical disabilities such as deafness and blindness, and persons recovering from addictive habits…how to care and provide for themselves and their families." Programming included basic life skills like housekeeping, budgeting, and childcare; vocational and job search training; and personal health care, with "adjunct counseling services as needed to support these educational programs."

Programs where education is integral to mental health treatment

- *McLean Hospital Corp. v. Lincoln*, 483 Mass. 215 (2019). Residential program for adolescent males experiencing "severe emotional dysregulation." The program, run by a psychiatric hospital, would offer a "skills-based curriculum" based on dialectical behavioral therapy over the course of 60 to 120 days and help resident participants "to

develop the emotional and social skills necessary to return to their communities to lead useful, productive lives."

- *Harbor Schools, Inc. v. Board of Appeals of Haverhill*, 5 Mass. App. Ct. 600 (1977). Residential facility providing academic instruction in traditional academic subjects as well as therapeutic and rehabilitation support to teens with special needs ("'Education' and 'rehabilitation'…are not mutually exclusive.").
- *Caldeira v. Levesque*, Case No. 197854 (Mass. Land Ct. Oct. 13, 1995). Residential facility for adolescents who have been removed from their homes after sexual and/or physical abuse. Residents attend school separately but receive education and training on "social skills, academic skills, conflict resolution, depression control, and the like" at the residence.

Re-entry programs for people leaving institutions/incarceration

- *Fitchburg Housing Authority v. Board of Zoning Appeals of Fitchburg*, 380 Mass. 869 (1980). "Step down" residential facility for adults who were formerly institutionalized in psychiatric hospitals. Run by a mental health organization and staffed by social service workers, the facility would offer medical treatment as well as a "training program aimed at developing or learning social and interpersonal skills" to support eventual independent living.
- *MJ Operations, LLC v. Middleborough Zoning Board of Appeals, et al.*, Case No. 23 MISC 000458, 2025 WL 643720 (Mass. Land Ct. Feb. 21, 2025) (appeal taken March 2025). Twelve to 18-month residential program for formerly incarcerated people and other "disadvantaged and marginalized members of society" to receive "education and training in life and job skills" through "on-site education and training programs that are intended to assist participants with selecting and securing for full or part-time employment off-site and, eventually, becoming fully independent."
- *Austen Riggs Ctr., Inc. v. Considine*, Case No. 288451, 2004 WL 1392279 (Mass. Land Ct. June 22, 2004). "Step down" facility aimed at helping people formerly institutionalized in psychiatric hospitals to develop independent living skills, with twice weekly program meetings and weekly workshops on vocational, interpersonal, and other life skills topics.

Longer term supportive housing programs

- *Campbell v. City Council of Lynn*, 32 Mass. App. Ct. 152 (1992), aff'd in part on other grounds, 415 Mass. 772 (1992). Group residence for elders with mental illness, run by senior services agency and providing "instruction in the activities of daily living" and "a basic understanding of how to cope with everyday problems and to maintain oneself in society."
- *Watros v. Greater Lynn Mental Health and Retardation Ass'n, Inc.*, 421 Mass. 106 (1995). Barn on residential property to be renovated and "used to provide shelter and education

for three mentally handicapped individuals and their caretakers" under a lease with a local nonprofit.

- *Gardner-Athol Area Mental Health Association, Inc. v. Zoning Board of Appeals of Gardner*, 401 Mass. 12 (1987). Residential care facility for four adults with mental disabilities offering training in "daily living, as well as vocational skills, with the goal of preparing them for more independent living."
- *Seven Hills Cmty. Servs. v. Town of Saugus*, Case No. 278982 (Mass. Land Ct. Apr. 22, 2003). Residential facility for developmentally disabled adults with skill building in daily life activities like housekeeping, personal care, and meal preparation. Residents learn to become "as independent as possible in all facets of their lives so they may become contributing members of society."

Vocational and technical skills training programs

- *Arts Empowering Life, Inc. vs. Judd*, Case No. 15 MISC 000373, 2017 WL 2721186 (Mass. Land Ct. June 23, 2017). Facility for teaching of percussion by a prestigious youth music school.
- *City of Worcester v. New England Institute & New England School of Accounting, Inc., et al.*, 335 Mass. 486 (1957). Professional school for accountants with vocational training in skills like typing and stenography.
- *But see Metrowest YMCA, Inc. vs. Hopkinton*, Case No. 287240, 2006 WL 1881885 (Mass. Land Ct. July 10, 2006). YMCA gym not covered where "[t]he overwhelming majority of those who use the Hopkinton site receive no instruction, and those that do, mostly receive it in connection with sports and exercise activities."

Educational components of senior living communities

- *Regis College v. Town of Weston*, 462 Mass. 280 (2012). Requirement that residents of a residential community for older adults complete two college courses per semester on the adjacent campus while receiving individualized academic advising and curriculum planning and gaining opportunities to participate in both classes and extracurricular activities with degree-seeking college students could serve an educational purpose: "the promotion of the cognitive and physical well-being of elderly persons through academic and physical instruction."

Ancillary structures affiliated with and supporting educational institutions

<u>Parking</u>

- *Trustees of Tufts Coll. v. City of Medford*, 415 Mass. 753 (1993)
- *Radcliffe College v. Cambridge*, 350 Mass. 613 (1966)

Dorms

- *Newbury Junior College v. Town of Brookline*, 19 Mass. App. Ct. 197 (1985)
- *Commissioner of Code Inspection of Worcester v. Worcester Dynamy, Inc.*, 11 Mass. App. Ct. 97 (1980)
- *The Bible Speaks v. Board of Appeals of Lenox*, 8 Mass. App. Ct. 19 (1979)

Athletic facilities

- *The Bible Speaks v. Board of Appeals of Lenox*, 8 Mass. App. Ct. 19 (1979)
- *Martha's Vineyard Reg'l Sch. Dist. vs. Oak Bluffs Planning Bd.*, Case No. 22 MISC 000294, 2023 WL 5704480 (Mass. Land Ct. Sept. 5, 2023)

What is a "religiously significant" goal?

As in the education context, Massachusetts courts have taken an expansive view of what is religiously significant under the second prong of the Dover Amendment test. A use qualifies as religiously significant if it is "something in aid of a system of faith and worship." *Martin v. Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints*, 434 Mass. 141, 150 (2001). Religiously significant uses "encompass more than just 'typical' religious uses, such as worship or religious instruction," and include "accessory uses" that are "components of a broader religious project, and that facilitate the functioning of that project." *Hume Lake*, 492 Mass. at 196. The use need not be "intrinsically religious" nor a "necessary element" of the particular religion. *Id*. Some examples follow.

- *Hume Lake Christian Camps, Inc. v. Planning Bd. of Monterey*, 492 Mass. 188 (2023). RV park for seasonal staff, volunteers, and family attendees of camp that has evangelical aims and religious content; RV park makes it easier to run and more attractive to attend the camp, and informal religious discussions are expected to occur in park

- *Martin v. Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints,* 434 Mass. 141 (2001). Church steeple (and adding in dicta that church kitchen or church parking lot would be similarly exempt).

- *Jewish Cemetery Ass'n of Massachusetts, Inc. v. Bd. of Appeals of Wayland*, 85 Mass. App. Ct. 1105, 2104 WL 886907 (2014) (unpublished Rule 1:28 decision). Expansion of Jewish cemetery.

- *But see Needham Pastoral Counseling Center Inc. v. Board of Appeals of Needham*, 29 Mass. App. Ct. 31 (1990). Counseling center that does not proselytize or offer religious content *not* protected under the Dover Amendment.

When is education or religion the "primary" or "dominant" purpose of the proposed land use?

The Dover Amendment applies only if religion or education is the "primary or dominant" purpose for which the land or structures will be used. *Regis College*, 462 Mass. at 285. But *religion or education need **not** be the **only** purpose of the program*. It is common for religious or educational goals or activities to be intertwined with other goals and services, including housing, and courts have repeatedly cautioned against attempting to draw fine distinctions between the different aspects of an applicant's program in assessing whether the Dover Amendment applied. *See, e.g., McLean Hosp.*, 483 Mass. at 220 (declining to attempt to separate "therapeutic" from "educational" aspects of program in assessing whether education was dominant). Similarly, the "primary or dominant" test does not turn on the percentage of the physical space that will be devoted to educational or religious activity, since ancillary structures like parking lots are still Dover-protected. *See, e.g., Tufts Coll.*, 415 Mass. at 757-762 (applying Dover analysis to college parking garage). Rather than taking a "piecemeal approach" or restricting the exemption to single-focus uses, the Dover Amendment requires looking at the use as a whole and ensuring that the educational or religious purpose is not "mere window dressing for a nonexempt use." *Hume Lake*, 492 Mass. at 195 (internal quotes omitted).

The following cases illustrate how this test has been applied:

- *Hume Lake Christian Camps, Inc. v. Planning Bd. of Monterey*, 492 Mass. 188 (2023). RV park housing seasonal staff, volunteers, and family attendees of camp with evangelical aims and religious content has a primarily religious purpose. RV park makes it easier to run the camp and more attractive to attend it and thereby supports the operator's evangelical mission.
- *McLean Hospital Corp. v. Town of Lincoln*, 483 Mass. 215 (2019). Residential program of psychiatric hospital that teaches emotional and behavioral skills to adolescents who experience severe emotional dysregulation is primarily educational. Given unique needs of participants, it is inappropriate for local zoning board to attempt to separate what is "educational" from what is "therapeutic" in the program.
- *MJ Operations, LLC v. Middleborough Zoning Board of Appeals, et al.*, Case No. 23 MISC 000458 (Mass. Land Ct. Feb. 21, 2025). Twelve to 18-month residential program is primarily educational rather than residential where it offers multi-format life and job skills training for formerly incarcerated people and others seeking to change their life trajectories and incorporates features of residential life, like paying rent, into curriculum.
- *Brockton Coalition for Homeless v. Tonis*, Case No. CA 03-00226, 2004 WL 810296 (Mass. Super. Mar. 5, 2004). Primary and dominant purpose of temporary shelter for homeless families—"assisting homeless families in obtaining permanent housing and in becoming economically and socially independent"—is educational given the shelter's structured, mandatory program of life-skills training in various formats.

- *Fitchburg Housing Authority v. Board of Zoning Appeals of Fitchburg*, 380 Mass. 869 (1980). "Stepdown" residential facility for adults who were formerly institutionalized in psychiatric hospitals is primarily educational, despite "therapeutic" elements. Run by a mental health organization and staffed by social service workers, the program would offer medical treatment as well as a "training program aimed at developing or learning social and interpersonal skills" to support eventual independent living.
- *Regis College v. Town of Weston*, 462 Mass. 280 (2012). College's long-term residential community for older adults could be protected by Dover Amendment, but only if college demonstrated at trial that its goals were primarily educational by showing, for example, that residents would be held to the requirement that they complete two college courses per semester on the adjacent campus, that residents' advising and curriculum plans would be developed in consultation with trained educators, and that residents would be truly socially and academically integrated into the broader college community.

But see:

- *Whitinsville Ret. Soc., Inc. v. Northbridge*, 394 Mass. 757 (1985). Nursing home offering optional courses to residents and giving less healthy residents the opportunity to interact with and thereby learn from healthier ones had "merely an element of education" and was not an "educational use" under the Dover Amendment.
- *Sullivan v. Heritage Plantation of Sandwich, Inc.*, Case No. 1472CV00560, 35 Mass. L. Rptr. 281 (Mass. Super. Sept. 10, 2018). Recreational outdoor activity park that offered brief instruction in the available recreational activities was not primarily educational.

Which local official evaluates whether a use is a religious or educational use protected under the Dover Amendment?

It varies by municipality. Some municipalities have by-laws or ordinances that specify where an applicant for a building permit should first make its claim of Dover protection, and applicants must follow the local rules so long as they are lawful. In other communities, there is no specialized local process.

In some communities, a local ordinance or by-law instructs the proponent of a Dover use to seek a determination of Dover Amendment protection from the designated local zoning enforcement official, who is typically the building inspector or commissioner. *See, e.g.*, City of Framingham Planning Board Rules and Regulations, Section 20.3.1, https://www.framinghamma.gov/3997/Planning-Board-Rules-and-Regulations. When in doubt, the zoning enforcement official can consult with the municipality's lawyer—a wise practice given the extensive case law that governs the Dover Amendment's scope—and determine whether the use qualifies for Dover protection. This is the default process where a community has not adopted a by-law or ordinance creating a Dover-specific practice.

In other communities, a local ordinance or by-law instructs the applicant to make their claim of Dover protection to a municipal land use board, which will hold a public hearing before

making a decision. Given the extensive case law applicable to most Dover Amendment questions, any municipal board considering whether to extend Dover protections to a proposed religious or educational use should strongly consider involving municipal counsel before and/or during the hearing to ensure that all decisionmakers have the appropriate legal foundation.

This Guidance, in combination with specific local by-laws setting forth the proper trajectory for a claimed Dover use in a particular community, may help members of the public understand how the Dover Amendment applies to a proposed use. Public understanding of the complexities of Dover Amendment exemptions is important to promote both active and informed public engagement at the local level and protection of religious and educational uses from local prejudice and interference.

Initial decisions about Dover protection can be appealed, by appropriate parties, to the local zoning board of appeals. G.L. c. 40A, §§ 8 and 14.

Which local regulations can a city or town impose on a Dover-protected religious or educational use?

A municipality cannot ban or restrict the use of a site for Dover-protected religious or educational activity, either by denying a permit or by putting conditions on the use that make it impossible or impractical to use the site as the applicant intends. While the municipality must not deny or excessively burden the protected use, it may impose "reasonable" dimensional requirements in one of the eight categories listed in the statute, G.L. c. 40A, § 3, second par.:

- bulk and height of structures;
- yard sizes;
- lot area;
- setbacks;
- open space;
- parking; and
- building coverage.

The Dover Amendment does not exempt religious or educational uses from state laws, including state health and safety codes, or from municipal rules that are separately authorized by or intended to enforce state laws. *See Southern New England Conference Ass'n of Seventh-Day Adventists v. Town of Burlington*, 21 Mass. App. Ct. 701, 706-07 (1986) (municipalities are independently empowered by state environmental law to regulate wetlands, and the Dover Amendment's zoning exemption therefore does not apply regardless of whether the wetlands rules are incorporated into the local zoning code); *Spectrum Health Sys., Inc. v. City of Lawrence*, Case No. 1577CV00288 (Mass. Super. Ct. Mar. 9, 2015) ("[D]espite the language of the statute, the city [c]an also reasonably require Spectrum to comply with the provisions of the state's building, health and safety codes.").

What does it mean for a local zoning rule to be "reasonable" when applied to a Dover-protected religious or educational use?

It is unreasonable—and therefore not lawful—for a municipality to impose a local zoning regulation on a Dover-protected religious or educational use unless *all of the following* are true:

1. The rule concerns one of the eight dimensional restrictions specifically listed in the statute;
2. The rule otherwise applies to similar uses in the same zoning district; *and*
3. Applying the rule would not, in purpose or effect, nullify the use or excessively burden the use without sufficient benefit to the legitimate interests that the municipality typically protects through its zoning.

The threshold question for a municipality seeking to regulate a Dover-protected religious and educational use is therefore whether the rule it seeks to impose is an otherwise applicable dimensional regulation of the land or structures in one of the eight categories listed in the Dover Amendments second paragraph. If it is not, then the rule cannot be applied to the protected religious or educational use. *See, e.g.*, *Darish v. Needham Zoning Board of Appeals*, Case No. 24 MISC 000097, 2024 WL 5205565, at *9 (Mass. Land. Ct. Dec. 24, 2024) (town cannot require landscaped transition area even if it "concerns" open space in some manner, because it is not the kind of "dimensional" regulation the Dover Amendment allows); *Martha's Vineyard Reg'l Sch. Dist.*, 2023 WL 5704480, at *5 (town cannot apply local groundwater protection by-law to school's athletic field because groundwater protection is not one of the "dimensional" regulations allowed by the Dover Amendment and, unlike wetlands protection, is not separately derived from state law); *Primrose School Franchising Co. v. Town of Natick*, Case No. 12 MISC 459243, 2015 WL 3477072, at *9 (Mass. Land Ct. May 29, 2015) (school enrollment cannot be capped to address traffic impacts of childcare center on surrounding neighborhood, because neighborhood traffic is outside the scope of permissible dimensional regulation of the use site itself); *Brockton Area Multi-Servs., Inc. vs. Lundberg*, Case No. 330728, 2008 WL 4000903, at *7 (Mass. Land Ct. Aug. 28, 2008) (blocking expansion of educational programming into third floor of existing building is not a permissible dimensional regulation of the building's "height" but an impermissible regulation of its use). *See also Tracer Lane*, 489 Mass. at 780 (the "statutory protections for land use for education, religion, and childcare…allow only for reasonable regulations on such matters as bulk and height").

If the municipal regulation falls into one of the eight permissible categories, then the municipality must determine whether the rule is reasonable *when applied to the use*. Reasonableness "will depend on the particular facts of each case," *Tufts Coll.*, 415 Mass. at 759, but the following general rules apply:

The local rule cannot be applied if it would nullify the Dover-protected use.

A municipality cannot impose any zoning regulation—even one listed in the statute—if it would "nullify" the protected use, *i.e.*, if following the rule would be impossible or so difficult that the rule would have the effect of prohibiting the use. *See Sisters of Holy Cross of Mass. v. Town of Brookline*, 347 Mass. 486, 494 (1964) (town cannot apply dimensional requirements for

single-family homes to college dorms in same neighborhood because restrictions would virtually nullify Dover protection); *Campbell*, 415 Mass. at 779 (applying bulk and dimensional requirements would nullify Dover Amendment protection of an educational use where building to be used as a group home already occupied most of its small lot); *Caldeira* (Mass. Land Ct. Oct. 3, 1995) (in Dover-protected residential educational facility for adolescent victims of physical or sexual abuse, "dimensional regulation that has the effect of prohibiting or unreasonably limiting the use for educational purposes shall not be given effect").

The local rule cannot be applied if the financial and other costs of compliance would outweigh the benefits to the municipality.

If a regulation is expressly allowed by the statute and would not "nullify" the use, the Dover Amendment still requires the municipality to balance the municipal interest in applying the rule with the burden imposed on the protected use. If the local regulation will "substantially diminish or detract from the usefulness of a proposed structure, or impair the character of the [property], without appreciably advancing the municipality's legitimate concerns," the rule will be considered unreasonable as applied to the project. *Tufts Coll.,* 415 Mass. at 757, 759.

Among other things, in deciding whether it may lawfully impose a zoning rule on a Dover-protected use, the municipality must consider the applicant's financial burden of complying with the rule and assess whether compliance is necessary under the circumstances. "Excessive cost of compliance…without significant gain in terms of municipal concerns" renders a rule unreasonable as applied to a Dover-protected use. *Tufts Coll.*, 415 Mass. at 759-60. It is important to note that "[p]articularized proof as to cost of compliance is not required in every case." *Rogers v. Norfolk*, 432 Mass. 374, 385 (2000) (internal quotation marks omitted). Instead, "the central question is whether application of the…requirement to the[] proposed project furthers a legitimate municipal concern to a sufficient extent to warrant requiring the [applicant] to alter her plans." *Id. See also Radcliffe Coll.*, 350 Mass. at 619 (City may apply off-street parking requirement to campus expansion, but only as far as required new parking is proportional to any increase in car traffic attributable to the project); *Petrucci*, 45 Mass. App. Ct. at 825-27 (under *Tufts* test, it is unreasonable to apply local setback rules to childcare facility operating in barn where barn would have to be relocated on lot to conform to setbacks); *Austen Riggs Ctr.,* 2004 WL 1392279, at *5 (dimensional requirements could not reasonably be applied to a pre-existing non-conforming structure where applicant demonstrated that "compliance with the dimensional requirements will require the existing structure to be torn down and it would be impossible to replace it with a conforming structure for educational purposes" and there was no showing that requiring compliance would "advance the municipality's legitimate concerns.").

Similarly, "matters of aesthetic and architectural beauty" may be part of the "character" of land or structures, and so local zoning requirements that regulate them without a sufficient municipal justification can be unreasonable. *Martin*, 434 Mass. at 152 (citing *Petrucci,* 45 Mass. App. Ct. at 826-27) (Dover Amendment precluded application of zoning ordinance that would "disturb the sense of the building's continuity" and ruin its "architectural integrity"). *See also Trustees of Boston College v. Bd. of Aldermen of Newton,* 58 Mass. App. Ct. 794, 804 (2003) (application of height and story requirements deemed unreasonable where it would bar college from hiding mechanical equipment under Gothic-style false roof matching rest of campus).

The local rule cannot have the effect of subjecting the use to discretionary approvals.

A municipality cannot impose a regulation that would have the effect of forcing a protected educational or religious use to obtain discretionary zoning relief, like a special permit, variance, or waiver. Eliminating local discretion to interfere with a protected use is at the heart of the Dover Amendment. If imposing an otherwise permissible dimensional regulation on a Dover-protected use would trigger a requirement that the project obtain a variance or other discretionary zoning relief, the regulation will be deemed unreasonable and invalid as applied to the use. *See Boston Coll.*, 58 Mass. App. Ct. at 802 (city's floor-area-ratio requirement cannot be applied to college campus where campus already exceeded FAR limit and zoning ordinance required special permit for any noncompliant construction).

The local rule cannot discriminate against the Dover-protected use.

Zoning laws that "facially discriminate" against religious and educational uses are invalid. *Trustees of Tufts College v. City of Medford*, 33 Mass. App. Ct. 580, 581 (1992), *aff'd*, 415 Mass. 753, (1993). Moreover, an otherwise permissible restriction would be unreasonable if it were applied only, or more stringently, to a religious and/or educational use.

How should a municipality decide which local zoning regulations are "reasonable" when applied to a religious or educational use protected under the Dover Amendment?

In some communities, the local zoning enforcement official (generally the building inspector or commissioner) determines which of the local zoning rules are lawful when applied to a Dover-protected use. The zoning enforcement official can consult with municipal counsel and ensure that the inquiry is properly cabined and does not venture into the type of discretion that the Dover Amendment prohibits but that might be more common in other contexts. *See Bay Farm Montessori Academy v. Duxbury*, Case No. 329566, 2007 WL 6954812 (Mass. Land Ct. May 25, 2007) ("The legitimate municipal concerns manifested in local zoning by-laws are properly served by the involvement of the zoning enforcement officer, rather than the exercise of discretion by an elected or appointed board. The zoning enforcement office is charged with the statutory responsibility to determine what is a reasonable regulation of an educational use."), *aff'd* 75 Mass. App. Ct. 1103 (unpublished Rule 1:28 decision). In other communities, a municipal land use board conducts the assessment at a public hearing. In both cases, decisions may be appealed to the local board of appeals.

Regardless of the local procedure, a municipality seeking to impose conditions on a Dover-protected use should be specific and transparent in its decision-making and should make clear how, in imposing conditions on the use, the municipality has "str[uck] a balance between preventing local discrimination against an educational use and legitimate municipal goals advanced by reasonable zoning regulations." *Sharon Bd. of Library Trustees vs. Brahmachari*, Case No. 20 MISC 000525, 2021 WL 4059907, at *4 (Mass. Land Ct. Sept. 2, 2021).

Can a municipality require the proponent of a Dover-protected religious or educational use to obtain a special permit?

No. Any process that gives the municipality discretion over the use of land or structures for religious or educational purposes is prohibited. A special permit is inherently discretionary. G.L. c. 40A, § 9. In addition, in some cases, obtaining a special permit requires showing that a use meets criteria that are impermissible under the Dover Amendment. *See, e.g.*, G.L. c. 40A, § 9, seventh par. (requiring that any reduction in parking requirements be shown to serve the public good).

Because a municipality does not have discretion to deny a special permit to a Dover-protected religious or educational use, the municipality cannot require a Dover project to go through the rigors of the special permit process or obtain a special permit before moving forward with the use. *See Campbell*, 415 Mass. at 775 & n. 5 ("As a general rule, a municipality cannot condition the use of property for an educational purpose on the grant of a special permit"); *Tufts Coll.*, 415 Mass. at 765 ("A local zoning law that improperly restricts an educational use by invalid means, such as by special permit process, may be challenged as invalid in all circumstances"); *The Bible Speaks*, 8 Mass. App. Ct. at 33 (municipal process that introduces discretionary review, "as a practical matter, enables the town to exercise its preferences as to what kind of educational or religious denominations it will welcome, the very kind of restrictive attitude which the Dover Amendment was intended to foreclose"); *Boston Coll.,* 58 Mass. App. Ct. at 802 & n.19 (city cannot require college to obtain G.L. c. 40A, § 6, finding through special permit process where rezoning rendered entire section of campus nonconforming to FAR limits and thus subject to special permit requirement; special permit processes "offend the spirit, if not the letter, of the Dover Amendment"); *Jewish Cemetery Ass'n of Mass.*, 85 Mass. App. Ct. 1105 2014 WL 886907 (development of site for Jewish cemetery is religious use and therefore exempt from special permit requirement for earth removal). *See also Bay Farm Montessori*, 2007 WL 6954812, at *2, *aff'd* 75 Mass. App. Ct. 1103 (unpublished Rule 1:28 decision) (invalidating site plan review that went beyond reasonable regulations specified in Dover Amendment and introduced discretionary decision making by planning board); *Forster v. Bd. of Appeals of Belmont*, 60 Mass. App. Ct. 1118, 2004 WL 323545, at *3 (Feb. 20, 2004) (unpublished Rule 1:28 decision) (affirming dismissal of neighbors' appeal of decision by local board of appeals to allow school's athletic field lights to exceed height requirement without regard to special permit requirement in zoning by-law; under Dover Amendment, board lacked discretion to limit height where necessary to the educational use).

Can a municipality require a religious or educational use to go through site plan review?

Yes, but only if the site plan review is limited to assessing whether one or more of the eight categories of permissible regulation may be imposed reasonably on the Dover-protected use in a manner that does not prohibit or unduly burden the use. *Y.D. Dugout, Inc. v. Bd. of Appeals of Canton*, 357 Mass. 25, 31 (1970) (site plan approval acts as a method for reasonably regulating as-of-right uses rather than for prohibiting them). Where site plan review is limited to an assessment of what may constitute "reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements," G.L. c. 40A, § 3, second par., it is permissible. *See Jewish Cemetery*

Ass'n of Mass., 2014 WL 886907 (site plan review by building commissioner appropriate where limited to reasonable regulations permitted under Dover Amendment); *see also, e.g.,* Town of Westford Zoning By-law (2025), §§ 9.4.2 and 9.4.7.2 (outlining special, limited site plan review process for Dover Amendment uses).

On the other hand, requiring a Dover Amendment project to go through a site plan review process that looks beyond the permissible factors or introduces any discretion over the use of the land is unlawful. *See Bay Farm Montessori*, 2007 WL 6954812, at *2-3, *aff'd* 75 Mass. App. Ct. 1103 (unpublished Rule 1:28 decision). *See also The Bible Speaks*, 8 Mass. App. Ct. at 33 (town cannot require applicant to submit site plan and "informational statement" with details about its landscaping plans, projections about the increased impact on municipal services, and other details outside the scope of what the town could lawfully regulate under the Dover Amendment); *Watros*, 421 Mass. at 115 (zoning restrictions other than those allowed by the statute do not apply to a Dover Amendment use).

What procedure should a municipality follow if the Dover-protected use will result in alteration or expansion of a pre-existing nonconforming structure or use?

At times, a religious or educational use will be proposed in a structure that is "nonconforming" to zoning or will replace an existing nonconforming use. A structure or use is considered "nonconforming" when it violates current zoning rules but is excused from complying with them because it pre-dates them.

Under ordinary circumstances, a pre-existing nonconforming structure or use cannot be extended or altered "unless there is a finding...that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming [structure or] use to the neighborhood." G.L. c. 40A, § 6. But religious and educational uses are exempt from zoning requirements that prohibit them, create substantial burdens, or fall outside the eight permissible categories of reasonable regulation outlined in the Dover Amendment. As a result, Dover projects are often exempt from whatever regulation would otherwise create a nonconformity and therefore do not need any "Section 6 finding" to proceed. *See Watros*, 421 Mass. at 115 (nonconforming accessory structure used as barn can be used as congregate living facility for adults with disabilities and program staff without Section 6 finding because Dover Amendment exempts that use from local zoning rules that create nonconformity for barn). Put another way, a Dover-protected use is not "nonconforming" to any zoning by-law that cannot lawfully be imposed on it and therefore is neither extending nor altering any nonconformity. *Id*.

In practice, therefore, G.L. c. 40A, § 6, does not apply where a Dover-protected use will merely move into an existing structure, despite the nonconformity of the structure or its existing use. *Campbell*, 415 Mass. at 777, n. 6 (change of use in existing nonconforming structure does not require a finding under § 6 because of § 3's use protection). In these circumstances, the municipality cannot require a "Section 6 finding" that the Dover-protected use will "not be

substantially more detrimental...to the neighborhood." G.L. c. 40A, § 6. The use cannot be denied or based on such neighborhood effects or conditioned on mitigating them.

By the same logic, where changes to structures are necessary to enable a Dover-protected use to proceed, or where it would be unlawful or unreasonable to apply the regulations creating a nonconformity to a particular Dover-protected use, no Section 6 finding is required. *See Petrucci v. Bd. of Appeals of Westwood*, 45 Mass. App. Ct. at 824-27. *See also Ellsworth vs. Mansfield*, Case No. 08 MISC 382311, 2011 WL 3198174, at *4 (Mass. Land Ct. July 25, 2011) (no Section 6 finding required because "effectively, G.L. c. 40A, § 3 removes the non-conformity (the lack of frontage) because it would not be a 'reasonable regulation' of the proposed school in these circumstances").

Where a Dover applicant proposes to alter a nonconforming structure in a manner that can lawfully be regulated by the municipality under the Dover Amendment—*i.e.*, where the alteration of the structure triggers a zoning regulation that both falls into one of the eight categories of permissible regulation of religious and educational uses *and* can be reasonably applied without excessively burdening the use—then a Section 6 finding might be required as to that alteration – but not as to the use itself. *See Boston Coll.,* 58 Mass. App. Ct. at 802-803 (applying Dover Amendment analysis to redevelopment of preexisting nonconforming building on campus). In these circumstances, the Section 6 neighborhood-impacts analysis effectively folds into the "municipal interest" prong of the Dover Amendment reasonableness test and must be balanced with the impact on the protected use. *See Tufts Coll.*, 415 Mass. at 757, 759-60 (local regulation is unreasonable as applied to a religious or educational use if it will "substantially diminish or detract from the usefulness of a proposed structure, or impair the character of the [property], without appreciably advancing the municipality's legitimate concerns"). No special permit can be required, even where local by-laws prescribe a special permit process for Section 6 findings. *Boston Coll.,* 58 Mass. App. Ct. at 802 & n.19.

Can a municipality require impact studies or "mitigation" fees or measures as a condition of permitting a Dover-protected educational or religious use?

Not unless the studies are necessary for the municipality to act in areas of statutorily authorized regulation. A religious or educational use protected under the Dover Amendment may very well have local impacts, including adding foot or automobile traffic or increasing the potential demand on municipal services like trash collection or law enforcement. A municipality cannot condition a use protected by the Dover Amendment on an applicant's agreement to mitigate these effects, unless they fall into one of the eight categories of municipal regulation authorized by the statute, G.L. 40A, § 3, second para. Even in areas of permissible regulation, any mitigation required must be proportionate to the actual local impacts. *See Radcliffe Coll.*, 350 Mass. at 619 (city may apply off-street parking requirement to campus expansion, but only as far as required new parking is proportional to any increase in car traffic attributable to the

project). *See also Sheetz v. County of El Dorado*, 601 U.S. 267 (2024) ("legislatively prescribed monetary fees," such as those established by by-law or regulation, must meet the "essential nexus" and "rough proportionality" test of *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994)).

For the same reasons, it is unlawful for a municipality to require the proponent of a protected religious or educational use to produce studies measuring the projected impact of the project on the neighborhood or municipality, unless a study is necessary to inform a decision about a regulation that can lawfully be imposed on the project. Questions about the fiscal impact of a project on municipal services like public education for school-age children or neighborhood impacts like increased traffic are not relevant to the assessment of "reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements." Because such impacts cannot lead either to allowable regulations or to the prohibition of a use, they are not appropriate subjects for municipal consideration in the context of a Dover-protected religious or educational use. The fiscal effect of adding school children to the local population is an inappropriate subject for zoning consideration in any event. *See Bevilacqua Co. v. Lundberg,* Case No. 19 MISC 000516, 2020 WL 6439581, at *8–9 (Mass. Land Ct. Nov. 2, 2020), judgment entered, No. 19 MISC 000516 (HPS), 2020 WL 6441322 (Mass. Land Ct. Nov. 2, 2020) (because municipality must provide "fundamental public services" to public regardless of their ability to pay, considering whether an applicant for zoning relief would be a drain on municipal resources is inappropriate, particularly in the case of schoolchildren) and *160 Moulton Drive LLC v. Shaffer*, No. 18 MISC 000688 (RBF), 2020 WL 7319366, at *13-15 (Mass. Land Ct. Dec. 11, 2020), judgment entered, No. 18 MISC 000688 (RBF), 2020 WL 7324778 (Mass. Land Ct. Dec. 11, 2020) (same).

Can municipal decisions on Dover Amendment projects be challenged in court?

A "person aggrieved" by a decision of a local zoning board of appeals or special permit granting authority can appeal the decision in either the Land Court or the Superior Court. G.L. c. 40A, § 17. Not every person unhappy with the decision is a "person aggrieved" who can challenge the decision in court. A case can be brought only by 1) the original parties to the zoning board appeal, including the Dover applicant, or 2) a person who "sufficiently allege[s]" and "plausibly demonstrate[s]" through "credible evidence" a "measurable injury, which is special and different to [them], to a private legal interest that will likely flow from the decision." *Id.*, third par. The standing requirement for nonparties was made more stringent in 2024, and project opponents now face a heavier burden to establish standing. St. 2024, c. 150, Section 11 (amending standing requirement for appeals of zoning decisions under G.L. c. 40A, § 17).

In addition, a person who brings a case challenging an approved special permit, variance, or site plan can be ordered to pay a bond of up to $250,000 "if the court finds that the harm to the defendant or to the public interest resulting from delays caused by the appeal outweighs the financial burden of the surety or cash bond on the plaintiffs." *Id*. A bond can be required even if the appeal is brought in good faith. Moreover, a party who appeals a zoning decision "in bad

faith or with malice" can be ordered to pay the other parties' costs, including reasonable attorneys' fees, at the end of the case. G.L. c. 40A, § 17, sixth par.

Do state and federal fair housing laws apply to municipal decisions on Dover-protected religious and educational uses of land?

Yes. State and federal fair housing laws apply to municipal zoning and land use decisions. If a Dover-protected religious or educational use includes a residential component, the municipality's approval process and decisions must comply with the Federal Fair Housing Act, 42 U.S.C. §§ 3601-3619, among other fair housing laws. The Fair Housing Act makes it unlawful to "make unavailable or deny" housing on the basis of a protected characteristic like race, disability, or the presence of children. 42 U.S.C. § 3604. It is also unlawful "to coerce, intimidate, threaten, or interfere with" the exercise of fair housing rights or attempts to assist another person in exercising or enjoying such rights. 42 U.S.C. § 3617. *See also* G.L. c. 151B, § 4(4A) (state law equivalent); § 4(5) (making it unlawful for "any person" to "aid, abet, incite, compel or coerce" unlawful discriminatory conduct or attempt to do so); 804 C.M.R. § 2.01. In 2016, the U.S. Department of Housing and Urban Development and the Department of Justice published information for the public on the application of the Fair Housing Act in the zoning context. *See* HUD/DOJ Joint Statement on State and Local Land Use Laws and Practices and the Application of the Fair Housing Act (Nov. 10, 2016) (the "HUD/DOJ Statement") (https://www.justice.gov/crt/page/file/909956/dl?inline=). The HUD/DOJ Statement summarizes several decades of federal case law interpreting the Fair Housing Act in the zoning and land use context and offers a useful guide to understanding the topic.

The fair housing laws prohibit both intentional discriminatory treatment and facially neutral policies that have unjustified discriminatory effects. Intentional discrimination occurs when a municipality or municipal officials treat a project differently because of a protected characteristic of either the permit applicant or the likely residents of the housing. Intentional discrimination can occur when municipal officials act on community bias, even if the officials themselves do not feel animus or hold prejudicial views. HUD/DOJ Statement at p. 3-4.

In one local Fair Housing Act case, *South Middlesex Opportunity Council, Inc. v. Framingham*, 752 F. Supp. 2d 85 (D. Mass. 2010), both the town and individual town officials faced claims of fair housing violations and defamation in connection with their attempts to delay and ultimately stymie the siting of supportive housing for people with disabilities. While the applicant in *South Middlesex* ultimately received a permit, it was subjected to more hearings and layers of process, over a longer period, than was normal and required. *Id.* at 97-98, 100-01. Town officials who opposed the project became involved in decisions outside their official purview. *Id.* at 98-99, 101-02. The Planning Board held repeated and lengthy public comment sessions, allowing comment on matters outside of those necessary for the Dover Amendment analysis. *Id.* at 97-102. All of these factors led the judge to find sufficient evidence for a jury to find intentional discrimination and deny the municipal defendants' motions for summary judgment. *Id.* The court rejected the individual officials' claims that they were immune from suit due to their official roles, even if the officials themselves did not hold discriminatory views and were only acting on the unlawful biases of town residents. *Id.* at 110-13. *See also* G.L. c. 40A, § 3, fourth par. (Under separate paragraph of Dover Amendment, municipalities cannot treat people with disabilities differently and specifically must treat congregate living arrangements

among people with disabilities as they would families or other similarly sized groups of unrelated persons.) *Id.*; *BAK Realty, LLC v. Fitchburg,* 495 Mass. 587 (2025).

A discriminatory treatment claim can also be based on the protected characteristics of the developer of a project rather than its likely residents, as illustrated by another recent Massachusetts case. *See Valentin v. Town of Natick,* 633 F.Supp.3d 366, 371-73 (D. Mass. 2022) (denying town's motion to dismiss Black developers' Fair Housing Act claim where town planning board initially voiced approval of project but reversed after opposition movement to project arose, town board held approximately 29 hearings about project over 16 months, members of neighborhood opposition group made racist comments, and town board rejected town counsel's opinion that project met requirements of bylaw).

Unlawful discrimination can occur even in cases where there is no intentional discrimination. A zoning or land use policy violates the Fair Housing Act where it has a substantial discriminatory effect on protected groups without a sufficient municipal justification. *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015).

Fair housing and other civil rights laws also require a municipality to make zoning-related reasonable accommodations for people with disabilities. If a change to the application of a rule, policy, or practice is necessary to afford people with disabilities an equal opportunity to use and enjoy a residential facility or program and it would not be an undue burden on the municipality to make the change, then civil rights laws may impose limitations on municipal zoning decisions beyond the Dover Amendment.

A municipality or municipal officials found liable for violating fair housing laws can be ordered to pay actual and punitive damages as well as the plaintiff's attorneys' fees. A court can also award injunctive relief. 42 U.S.C. § 3613(c). See also G.L. c. 151B, § 9 (providing for actual and punitive damages and mandatory attorney fee shifting "unless special circumstances would render an award unjust" in state law housing discrimination cases). Municipalities can consult with municipal counsel for additional information on fair housing laws; information for the public on fair housing law and how to report suspected discrimination is available on the Attorney General's website at https://www.mass.gov/info-details/overview-of-fair-housing-law.