



## Higher authority

### Regis College claims that zoning can't stop its retirement village

BY RAY HAINER

► **WESTON** To Regis College, it seemed like a win-win proposition. The 362-unit retirement community the college wished to build on its campus would reverse the school's financial fortunes and bolster its educational mission, while also providing a valuable resource to the town. But when plans for the development were unveiled in 2005, many residents of Weston were aghast, and reacted as though a kindly and unassuming neighbor known for her manicured lawn and tasteful holiday displays had suddenly announced that she'd be installing a cell phone tower in the front yard.

The proposed development, covering 60 wooded acres near the center of town, is unprecedented for Weston, a suburb that prides itself on open space, ample lots, and million-dollar homes. Officially called Regis East, the new complex is expected to cost more than \$200 million to build and would be a fan-shaped collection of eight buildings, including four towers of between eight and 11 stories. It would include more than 600 parking spaces and just over 767,000 square feet of interior space—a number that has elicited comparisons to airport terminals and downtown Boston office buildings.

"It dwarfs any other development in town," says Michael Harrity, the chairman of the board of selectmen.

Regis East would burst the seams of the town's zoning laws. The height of the tallest building (117 feet) more than triples the height restriction in the neighborhood, which is zoned for single-family homes, and the complex also exceeds limits on lot size, setback, and parking. In the fall of 2005, Regis requested variances from the zoning board of appeals, but, to no one's surprise, the board rejected the request unanimously.

Regis responded by suing the town in Land

Court, based on a state law known as the Dover Amendment, which exempts religious and educational institutions from local zoning. The college argued that Regis East, which would include classroom space in addition to residential units, was critical to fulfilling the school's educational mission. But the town of Weston—the state's wealthiest community in terms of household income, according to the US Census Bureau—and a group of abutters to the campus are fighting back. They believe that Regis East, far from being an extension of the college, is nothing more or less than a commercial real estate venture. Or, as one resident put it, "a wolf in sheep's clothing."

**FOUNDED IN 1927** as a Catholic liberal arts college for women, Regis has been foundering financially in recent years, in large part because of its dependence on tuition at a time when single-sex schools are considered passé. (It now has an enrollment of slightly more than 600 full-time undergraduates and about 1,000 "non-traditional" students, which includes graduate students.) Over the past decade, the school has run operating deficits—of up to \$6.8 million—in every year and has been forced to cover expenses by dipping into its endowment, which has shrunk from more than \$30 million to about \$14.5 million. (By comparison, the endowment of nearby Wellesley College is more than \$1.3 billion.) In 2003, Standard & Poor's downgraded the college's bond rating to below investment grade, or "junk" status, where it has remained. As of September, according to the *Boston Business Journal*, Regis was the only Bay State college in that category.

In 2001 the college hired its first lay president, Dr. Mary Jane England, a child psychiatrist by

training, to begin bailing out the ship. Since then Regis has laid off more than 20 percent of its staff, eliminated six majors from the curriculum, sold off 28 acres of its campus for \$9.3 million, and, just last fall, announced that it would begin to admit men as undergraduates. But Regis East, which has been in the planning stages for five years, represents by far the most radical step, and is nothing less than an effort to “set up the institution for the next 75 years,” according to Thomas Pistorino, the college’s chief financial officer.



Emulating the dozens of colleges that have built or partnered with retirement communities (including Dartmouth College, Cornell University, and the University of Florida), Regis is targeting the growing demographic of well-heeled and well-educated retirees. The college envisions Regis East—which, in addition to apartments and classrooms, will include labs, libraries, and dining halls—as an “innovative educational community” where students and retirees will learn side-by-side and from each other. Although the details have yet to be spelled out, retirees will take courses at the college and perhaps assist with teaching, while Regis’s students will gain real-world experience working with elderly residents. (More than half of Regis students are in nursing or other health programs.) And perhaps most important, Regis East will also provide a much needed revenue stream independent of tuition: The college expects entrance fees for the units to range from \$500,000 to over \$1 million, and has said it expects to derive about \$5 million in annual revenue from the development, which would likely be run by an outside management company.

When the plans for Regis East were announced, opposition in the town formed almost immediately. A group of abutters to the site that called itself Stop Regis Overdevelopment printed hundreds of lawn signs with an eye-catching stop-sign logo, and began organizing opposition through e-mail bulletins. The abutters also circulated an online petition that garnered some 400 “signatures” from residents, many of whom typed a brief comment along with

their names. “This is the beginning of the end of the town as I know it,” wrote one woman who has lived in Weston for 35 years. Regis East, another resident added, “will turn this town into Needham and Wellesley.”

Residents and town officials, who were well aware of the school’s financial troubles, also began to question whether Regis had the resources and expertise to oversee such a massive project, and worried about various nightmare scenarios, such as a half-finished project or a bankrupt college—and perhaps even a private developer carving up a vacated campus. And though some residents saw the merits of a campus-based retirement community, they were astonished by the scale. Anticipating the school’s recourse to the Dover Amendment—Regis telegraphed this strategy by submitting its plans directly to the zoning board of appeals rather than to the planning board—they were also skeptical that such a mammoth project was driven solely by the school’s educational mission.

“The general belief is that wrapping a commercial undertaking in the guise of an educational endeavor by claiming there will be classes offered to residents and a learning experience for some of the students is misrepresenting the actual undertaking,” says Selectman Harrity, a commercial real estate broker who teaches real estate and finance courses at Babson College in Wellesley. “It would be like Babson College saying, ‘We’re going to build a Wal-Mart outside because we have marketing and managing courses, and it’ll be an educational undertaking since we’ll offer management classes to the employees.’”

At the zoning board of appeals hearing in September 2005, more than 150 residents gathered in Town Hall to

## ‘This is the beginning of the end of the town as I know it.’

criticize the proposal. Officials and residents expressed concern about the potential increase in traffic on the roads around campus and the development’s impact on the town’s water supply and public safety costs. (In a letter to the board, the fire chief pointed out that the town’s ladder trucks could not reach the upper floors of the Regis East towers.) Residents booed and yelled, according to press reports, and were so loud at times that the board’s chairman had to call for order.

“There was a lot of rancor,” recalls Arnold Zenker, a founding member of Stop Regis Overdevelopment, who lives across the street from the development’s proposed location. “And there still is a lot of hostility. Regis never reached out to the neighbors, never reached out to the town. They just sort of said, ‘Here’s the Dover Amendment, we believe we have the right to do it, and by God, we’re going to do it.’”

Marjorie Arons-Barron, who serves as a spokesman for Regis, disputes that the college failed to solicit the town's input. "We started conferring with the town five years ago," she says, adding that Regis invited abutters to view the first architectural renderings in early 2005. Town officials don't deny they communicated with the college—but they also note that their concerns about the development's size seem to have had no effect on Regis's plans.

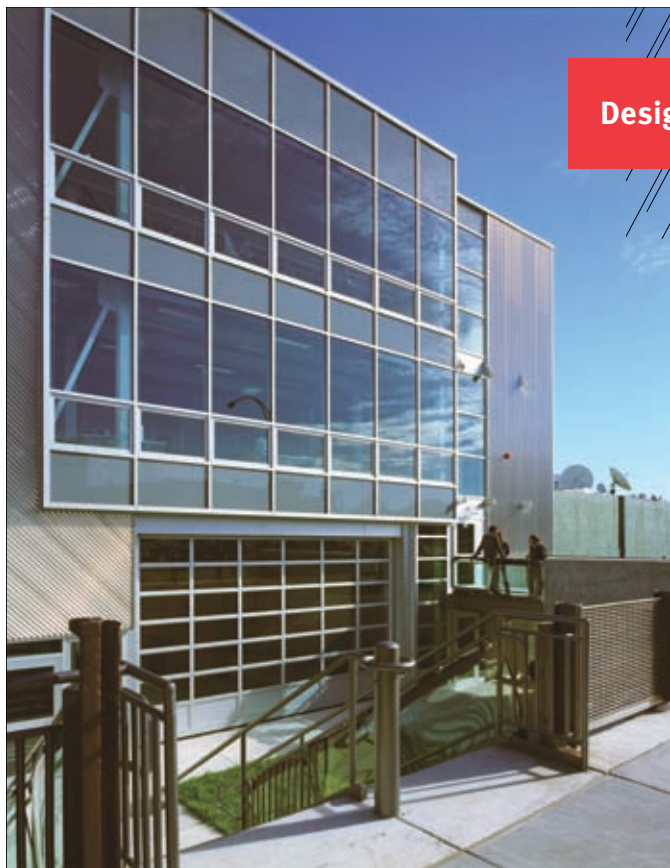
From the beginning it seemed likely that the development would end up in court, so no one was surprised when Regis announced its intention to sue after the board's decision. Even before the ruling, in fact, Stop Regis Overdevelopment formed a nonprofit corporation to begin raising money for a legal fund.

Finally, in late November, Regis filed a complaint against the town in state Land Court, naming the members of the board of appeals as defendants. Without an exemption from the town's zoning laws, the complaint read, "the Regis East Campus Development would not be economically feasible; the educational programs proposed by Regis College would be thwarted; and Regis College would suffer serious financial difficulties." The town's limits on Regis's development would cause "irreparable harm" to the college and its educational mission, the

complaint concluded, and are "in direct violation of the Dover amendment."

**THE DOVER AMENDMENT**, a state law added to the books in 1950, takes its name from the nearby town of Dover, where the board of selectmen had tried to block the Catholic Church from converting an old estate into a monastery. Though the town eventually backed down, the Legislature (which had shifted to Democratic control in 1948), moved to make sure that sort of thing never happened again. The law states that on land owned by a church or a nonprofit educational institution, local zoning laws shall not "regulate or restrict the use of land or structures for religious purposes or for educational purposes." The law also says, however, that "such land or structures may be subject to reasonable regulations" concerning building size and height, setbacks, parking, and other characteristics.

Roughly two dozen cases involving the Dover Amendment have made their way through the Massachusetts courts over the past quarter-century—in one of the most publicized, a group of Belmont residents argued in vain that the amendment should not apply to a 69,000-square-foot Mormon temple with a 139-foot spire along Route 2



## Designing a Sustainable Massachusetts

**The Artists for Humanity EpiCenter** (pictured)  
Platinum LEED certified by the US Green Building Council: A first for the city of Boston!

### CitySquare

A new transit-oriented, mixed-use downtown for Worcester

### The Westin Boston Waterfront

The Headquarters Hotel for the Boston Convention & Exhibition Center

## ARROW STREET

Architecture  
Urban Design  
Planning  
Graphics and Interiors  
[www.arrowstreet.com](http://www.arrowstreet.com)

Photo: Richard Mandelkorn

—and at least three of them involved colleges seeking to construct buildings. Cases brought by Tufts and Boston College hinged on the scope of “reasonable regulations,” but the courts have not defined “reasonableness” beyond a case-by-case weighing of a school’s needs and the interests of the municipality. In *Regis College v. Town of Weston*, however, that issue may be superseded by the larger question of whether Regis East is protected by the Dover Amendment at all. And here the most relevant precedent is Newton’s Lasell College, just a few miles from Regis.

In 1990, Lasell—a small liberal arts college then limited to women—applied to the city of Newton for a special permit to build a 200-unit retirement community and nursing facility, known as Lasell Village, in which residents would be required to participate in at least 450 hours of educational activities each year. Amid sustained opposition from abutters, the city’s board of aldermen rejected the proposal, and Lasell, invoking the Dover Amendment, sued the town in 1991. Two years later, the Land Court, and then the state’s Appeals Court, sided with the college.

That ruling would seem to bode well for Regis, but in 2001, a year after Lasell Village opened, Newton began tax-

ing the Village property (to the tune of about \$400,000) despite a preexisting payment-in-lieu-of-taxes agreement. After a failed attempt to secure an abatement from the state’s Appellate Tax Board, Lasell appealed in 2005, reminding the appeals court that the Village had qualified, years earlier, as a nonprofit educational corporation for the purposes of the Dover Amendment.

Last fall—after Regis had filed its complaint against

## Regis insists that education is at the heart of the project.

Weston—the Appeals Court affirmed the tax board’s decision, and made it clear that the exemptions from zoning afforded by the Dover Amendment and exemption from taxes are not a package deal. The court stressed that the Land Court’s decision regarding the zoning was made seven years before Lasell Village opened its doors in 2000, and that the operation of the facility in reality, rather than on paper, suggested that its purpose was not “predominantly educational.” (The court pointed to the tax board’s opinion that Lasell’s oversight of the educational requirements was “at best informal and at worst lax.”)

# I HAVE A PLAN *to inspire others.*

Next to the health of our members, nothing’s more important than the health of our community. Tufts Health Plan is proud to work alongside many groups and individuals dedicated to improving the lives of thousands of Massachusetts’ underserved children, women and elders.

**TUFTS**  **Health Plan**  
*No one does more to keep you healthy.*



“We take heart in that finding, because there weren’t many examples of this in Massachusetts before Lasell,” says Selectman Harrity, expressing a hope that the Lasell tax ruling, while not a precedent per se, will sway the Land Court in the Regis East case.

Regis also seems to be considering that possibility, and so it takes great pains to underscore the differences between Regis East and Lasell Village. “Lasell is an obvious comparison, but it’s incomplete,” says Arons-Barron. “My sense is, the integration of the educational component and the two-way synergy of the education model is even more substantial at Regis. It’s a much more integrated educational model than that of Lasell.” She adds, “If I leave you with only one message, it’s that education—whatever [the opponents] say—is the essence of the Regis proposal: education for Regis’s students, education for Regis’s residents, and long-term educational opportunities for Weston. Denying that educational reality doesn’t change it.”

**THE LAND COURT** case looks to be a long one. After more than a year, it is still in the discovery phase, and the trial isn’t expected to begin until spring. Meanwhile, the legal fees are accumulating on both sides. (The board of selectmen has already appropriated nearly \$80,000 for the litigation.) The court’s decision has the makings of a bellwether for towns and institutions—but only if the case runs its course. In fact, the town and the college have been attempting for several months to reach a compromise out of court, even as the litigation marches on.

For several months beginning in the fall of 2004, a delegation of Weston residents and officials met sporadically with representatives of the college in an attempt to carve out common ground on Regis East, and early last year the selectmen sought to formalize those talks. On Valentine’s Day 2006, Weston’s three selectmen voted to send a letter to the president of Regis, Mary Jane England, proposing that the town hire a professional mediator to help the town, the abutters, and the college arrive at a compromise development plan. As Ann Leibowitz, the (now former) selectwoman who spearheaded the idea, elaborated to the *Weston Town Crier*, the selectmen sensed that a lengthy and costly legal battle—which Leibowitz suspects the town is willing to fund, through a Proposition 2½ override if needed—might ultimately result in a Pyrrhic victory. “The Dover Amendment may or may not protect [Regis East],” she said at the time. “But it will be tied up in litigation for years. At the end of the day, bankrupting Regis, win or lose, does not serve anybody.”

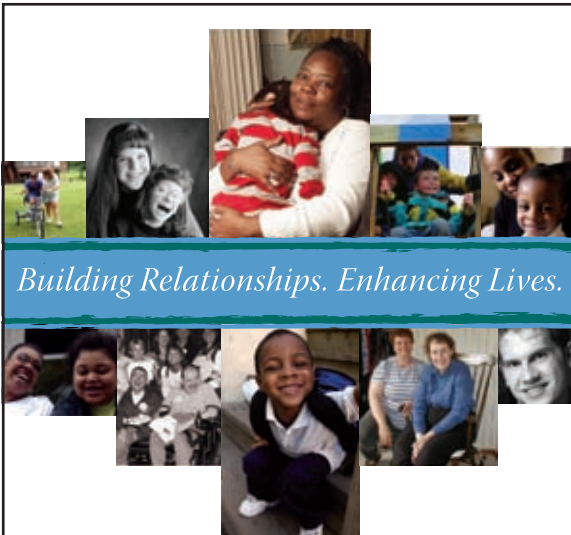
A successful mediation seems unlikely, but not out of the question. According to Harrity, nearly all of the 400 residents who have contacted him about Regis East expressed support for a compromise that would both help

Regis survive and reduce the size of the development. And there are a few scattered residents who have suggested that Regis East is not the beginning of the end of Weston. Noting the need for senior housing in town, resident John Evans wrote to the *Town Crier* in October to express his dismay at the “narrowly focused objectives” of the Stop Regis Overdevelopment group, and urged the stakeholders to “work together cooperatively and not squander precious time and financial resources.” For her part, Arons-Barron, emphasizing Regis’s commitment to the mediation process, suggests that the abutters and their sympathizers are drowning out residents like Evans. “We believe that the town and most of its residents are reasonable and fair-minded, and that the opponents are a small but very vocal group,” she says.

But it is Regis College’s misfortune to be tangling with a small-but-very-vocal group that’s also exceptionally dogged, sophisticated, and wealthy. The four officers of Stop Regis Overdevelopment are: Zenker, a former news manager at the CBS television network who now runs a media consulting company (he’s also an attorney); Robert Hedges, a former executive vice president at Fidelity Investments; Ahmed Mohiuddin, a prominent cardiologist; and hotelier Robin Brown, who is currently developing the Mandarin Oriental luxury hotel-and-condo complex on Boylston Street in Boston. As one Stop Regis ally, Dave Harmon (who participated in the early talks between the town and the college), summed it up neatly in one of his many letters to the editor, they are a “group of citizens who in all probability have a combined net worth much higher than Regis’s endowment and the willingness to spend some of it fighting the development.”

As abutters they have sizeable investments to protect—the assessed value of their homes averages out to around \$1.67 million—and they are doing so aggressively. In February, three days after the selectmen sent the letter proposing mediation to Regis, the Hedges, Mohiuddins, and Zenkers filed a successful motion in Land Court to intervene in the case as defendants, allowing them to defend their interests (and property values) independent of the town. The motion argued that town officials “will ultimately pursue the interests of the Town as a whole rather than the interests of the abutters.” Leibowitz phrases it somewhat more bluntly: “Their concern is probably that the town would sell them out.”

Since then the case in Land Court seems to have eclipsed the mediation, which has proceeded haltingly. The increasingly contentious discovery has involved numerous thrusts and parries: Stop Regis Overdevelopment has challenged Regis’s request for access to their correspondence and fund-raising records as a ploy designed to harass the group and “chill” its fundraising, while Regis has accused the town of evading depositions



## A National Network of Local Human Services Providers

In the spirit of true social entrepreneurship, The MENTOR Network provides state and county agencies with cost-effective private-sector solutions to challenges they face in the delivery of human services. Our belief in human potential is what drives our mission to successfully support adults and children with a range of abilities in their communities. For more than 25 years, we have provided an array of services to people with developmental disabilities or acquired brain injury; to children and adolescents with emotional, behavioral and medically complex challenges; and to elders in need of home care.



313 Congress Street, 5th Floor  
 Boston, MA 02210  
 617-790-4800  
[www.thementornetwork.com](http://www.thementornetwork.com)

and employing an overall strategy of “delay and protraction.”

But a recent development has potentially reframed the case. In early 2006, as Zenker tells it, a resident approached Stop Regis Overdevelopment with a box containing videotapes of town meetings dating back to 1998, when Regis petitioned the town for an easement, eventually granted, to install a sewer that would connect the campus to the MWRA wastewater treatment plant in Waltham. The tapes showed public meetings at which residents confronted the then-president of Regis, Sister Sheila Megley, with “rumors” of plans for a development like Lasell Village at Regis, which the sewer connection would facilitate. “We are not building anything on that land,” Megley is shown telling town meeting in December 1999, before a vote on the easement warrant article. Armed with the tapes, the town filed a counterclaim in Land Court in November invoking promissory estoppel, a legal doctrine used in contract law that, put simply, prevents a party (in this case, Regis) from breaking a promise that another party (Weston) has relied and acted upon.

Harrity speculates that the cost of the approaching trial might motivate the parties to compromise, but the estoppel counterclaim has opened up a new front in the case independent of the Dover Amendment, and, if it succeeds, could drastically curtail what Regis is able to build on the Regis East parcel. “The discovery of the videotapes,” says Zenker, “has toughened our resolve.”

Still, Zenker says, the abutters are “not interested in driving Regis to its knees,” and he points out that they agreed to mediation and are still at the table. “At least from the point of view of our group, it’s not so much ‘Stop Regis’ as it is ‘Keep Weston,’” says Zenker, stressing that the group’s name is Stop Regis *Overdevelopment*.

In the next moment, however, it sounds as though the dispute between Regis and the abutters may have already escalated—as disputes between neighbors will—into a matter of principle, and not just money or setbacks. “What are they *doing*?” Zenker asks, his voice rising. “Forget about whether they have a right to do it or not. Forget about whether or not they win or lose on the promissory estoppel case. They keep saying they’re good neighbors. Why would they want to do something that’s clearly not being a good neighbor?”

But Arons-Barron asks, “Who could be a better neighbor than one responding to town issues like a growing aging population, who could well benefit from a program like this?”

The future of Regis East and *Regis College v. Town of Weston* may not be decided for months, but perhaps it’s not too soon to update for the 21st century, and for Weston, that old saying about fences: Good *lawyers* make good neighbors. **CW**