

## Clarifications Sought by the Planning Board

### Existing Status of the GCTS Site

As you know, “[t]he Dover Amendment bars the adoption of a zoning ordinance or by-law that seeks to prohibit or restrict the *use* of land for educational purposes,” although “a proviso to the statute authorizes a municipality to adopt and apply ‘reasonable regulations’ concerning bulk, dimensions, open space and parking, to land and structures for which an educational use is proposed.”<sup>1</sup>

1. Accepting this statement as an accurate reflection of the law, how does a sale by GCTS of only a portion of the site affect the use of the buildings and land that it might retain? Could the Seminary continue to rely on the Dover Amendment for those portions of the site it continues to occupy?<sup>2</sup>
2. For the buildings and undeveloped areas to have market value, must there be an explicit disavowal of reliance on the Dover Amendment by the Seminary in advance of finalization of the Development Agreement (DA) and Overlay District (OD)?
3. Does the adoption of a zoning bylaw without reference to the existing educational/religious use have the effect of annulling its application to *all* buildings and land on the site?

The GCTS property is subject to a mortgage in favor of Cass Commercial Bank securing a maximum lien of \$11 million.<sup>3</sup>

4. Given the mortgage (and mortgage modification) that encumbers the property, has GCTS obtained and/or will it be able to obtain the consent of the mortgagee, Cass Commercial Bank, to the potential piecemeal sale of portions of the property over some undefined period of time?

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<sup>1</sup> Trustees of Boston Coll. v Bd. of Aldermen of Newton, 58 Mass App Ct 794, 798, 793 NE2d 387, 391 (Mass App Ct 2003). *See also* McLean Hosp. Corp. v Town of Lincoln, 483 Mass 215, 219-20, 131 NE3d 240, 246-47 (2019) (setting forth a two-pronged test for determining whether a proposed use falls within the Amendment’s protections; and Mass. Gen. Laws. Ch. 40A, § 3, second par.

<sup>2</sup> In a Decision entered by the Zoning Board of Appeals on Feb. 13, 1987, a condition of approval of a modification to site plan approval provided: “Approval of housing is limited to student or Seminary program related activities use except however any mortgagee who takes possession of said premises or who obtain title thereto by foreclosure or pursuant to any other remedies provided in its mortgage shall take the same free and clear of the limitations of this condition.”

<sup>3</sup> GCTS executed a note dated Aug. 18, 2007 and secured it with a mortgage to Cass Commercial Bank in the sum of \$5M (Essex South Registry of Deeds - Bk. 36113, Pg. 194). That mortgage was modified on or around May 11, 2020 to increase the amount secured to \$11M. The mortgage references a note dated May 11, 2020 in the amount of \$8.5M and a note dated July 21, 2011 in the amount of \$3M. (Bk. 38516, Pg. 7). On May 7, 2020, the Board of Trustees of GCTS authorized the disposition of 19.750 acres along Bridge Street.

5. If GCTS defaults on its mortgage obligations, what contingencies are in place to protect the Town if Cass Commercial Bank were to exercise the power of sale in the mortgage? Would the DA bind Cass Commercial Bank in the event of a subsequent default if it is not a party to the DA?