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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 16-1844

_____)
 THE FIRST PARISH IN)
 BEDFORD, UNITARIAN)
 UNIVERSALIST,)
 REV. JOHN GIBBONS, and)
 DANIEL F. BOSTWICK,)
 CHRISTINE DUDLEY-MARLING and)
 JENNIFER McCLAIN, Members of the)
 First Parish Solar Panel Team,)
)
 Plaintiffs,)
)
 v.)
)
 HISTORIC DISTRICT COMMISSION)
 OF THE TOWN OF BEDFORD,)
)
 Defendant.)
 _____)

COMPLAINT PURSUANT TO St. 1964, Ch. 118, §10 (as amended)

1. The First Parish in Bedford, Unitarian Universalist (“First Parish”), an unincorporated association, acting by and through the members of its duly authorized Solar Panel Team, hereby appeals, pursuant to St. 1964, Ch. 118, §10 (as amended), from a decision of the Historic District Commission of the Town of Bedford (the “HDC”) that denied First Parish’s application for a certificate of appropriateness to install solar panels on the roof of its Meetinghouse, which is located within the Bedford Historic District. A copy of the decision appealed from is attached hereto as Exhibit A (the “Decision”). The Decision exceeds the authority of the HDC, was legally untenable, unreasonable, arbitrary and capricious, and violated the rights of the members of First Parish to the free exercise of their religious beliefs under

Article II of the Massachusetts Declaration of Rights and the First Amendment of the United States Constitution.

The Parties

2. Plaintiff First Parish is an unincorporated association. First Parish owns the Meetinghouse facilities located at 75 The Great Road, Bedford, Middlesex County, Massachusetts (see South Middlesex Registry District of the Land Court, Certificate of Title No. 150442). The First Parish Meetinghouse is the oldest church building in Bedford, Massachusetts, and is located within the Bedford Historic District.

3. Plaintiff Rev. John Gibbons is the Senior Minister of First Parish and a member of First Parish.

4. Plaintiffs Daniel F. Bostwick, Christine Dudley-Marling and Jennifer McClain are members of First Parish and are all of the duly authorized members of the First Parish Solar Panel Team.

5. Plaintiffs Gibbons, Bostwick, Dudley-Marling and McClain bring this action on behalf of First Parish, pursuant to Mass. R. Civ. P. 23.2, to assert the rights of First Parish.

6. Defendant, the HDC, is a municipal board of the Town of Bedford, created by and existing pursuant to St. 1964, Ch. 118, with a usual place of business at Town Hall, 10 Mudge Way, Bedford, Middlesex County, Massachusetts.

Jurisdiction

7. This Court has jurisdiction over this appeal pursuant to the provisions of St. 1964, Ch. 118, §10 (as amended).

Background

First Parish Meetinghouse

8. First Parish was established, and its first Meetinghouse was erected, in approximately 1729, shortly after incorporation of the Town of Bedford. Prior to establishment of First Parish, the residents of the Bedford area travelled to Concord or Billerica to attend church services.

9. The original Meetinghouse was badly damaged in the “great gale” of September 1815, and was replaced by the present Meetinghouse in 1817. The historic portion of the church structure is the 1817 Meetinghouse.

10. The 1817 Meetinghouse was built in the Federalist Style based upon a design by noted American architect Asher Benjamin. Portions of the First Parish Meetinghouse maintain their historic appearance, but others do not.

11. Over the years, as technology has advanced, building codes, construction materials and standards, and the needs of First Parish relative to the Meetinghouse have evolved, there have been multiple alterations to the original design and structure of the Meetinghouse that would be utterly unrecognizable to a parishioner of the church at the time of its construction in 1817.

12. On several occasions, additions have been added to the rear of the Meetinghouse. The Meetinghouse and the additions thereto are located in the Bedford Historic District but are not listed on the state or federal Registers of Historic Places.

13. An addition was added to the rear of the Meetinghouse in or about 1960. A “matching” two-story addition was approved by the HDC on or about September 10, 1986, and

the HDC approved a further two-story addition on or about September 3, 1998. These additions had and have no historical significance.

14. The First Parish Meetinghouse, currently painted white, may have been originally painted with a yellow ochre mineral pigment called “Bedford yellow” that was unique to Bedford and common in the early nineteenth century. “Bedford yellow” was the predominant paint color in Bedford for a significant period of time. In the mid-1800s, the Meetinghouse was painted a dark grey, “lead” color. As such, the current white color of the First Parish meetinghouse bears no historical relation to its original appearance.

15. The current gray asphalt roof shingles on the Meetinghouse have no historical significance. Until 1954 the roof shingles were wooden. On or about September 26, 1991, the HDC approved replacing the shingles on the cupola dome with “lead-coated copper”. On or about July 1, 1999, the HDC approved replacing wooden louvers in the bell tower with fiberglass louvers. On or about July 12, 2001, the HDC approved replacing wooden louvers in the steeple with fiberglass louvers to match those in the cupola.

16. Four air conditioning units have been added to the roof of the Meetinghouse addition, as well as four gas-fired units for heating the First Parish buildings. These units are visible from several public ways and were approved by the HDC.

First Parish Unitarian Universalist Congregation

17. Unitarian origins derive from a Christian theological movement named for the affirmation that God is one entity. It developed in Eastern Europe in the sixteenth century. The first Unitarian church in England was founded in 1774. Unitarianism became popular in New England in the eighteenth century. Kings Chapel in Boston, Massachusetts became Unitarian in 1784.

18. Universalism developed as a Christian theological movement premised on universal salvation. In 1770, one of the first Universalist churches in New England was founded in Gloucester, Massachusetts.

19. Since 1830, the congregation that worships at First Parish (“First Parish Congregation”) has been a Unitarian religious denomination, and the First Parish Meetinghouse has been the Congregation’s continuous place of worship ever since.

20. Unitarian Universalism is a liberal religious tradition that was formed from the consolidation in 1961 of Unitarianism and Universalism.

21. In the early 1960s, the First Parish Congregation voted to join the new national organizational body known as the Unitarian Universalist Association (“UUA”), and has maintained and fostered the UUA’s heritage of creativity and innovation in the areas of community service and social justice.

22. The UUA is the closest manifestation of a centralized authority of the Unitarian Universalist faith, founded on principles of lay participation, democratic involvement, and common belief. As such, it often issues statements of religious doctrine, interpretation and purpose that have been ratified by a majority of attendees at the UUA’s annual national meetings.

23. Unitarian Universalists ascribe to Seven Principles. A true copy of these is attached hereto as Exhibit B.

24. The Seventh Principle of the Unitarian Universalist faith is “respect for the interdependent web of all existence of which we are a part.”

25. Respect and care for the natural world has been a core tenet of Unitarian and Universalist religious belief since their inception. Early followers included seminal figures of

the New England transcendentalist movement, such as Henry David Thoreau and Ralph Waldo Emerson, as well as other well-known naturalists and preservationists such as chaplain to the United States Senate Edward Everett Hale, and founder of the Trustees of Reservations Thomas Starr King. Environmental justice and stewardship have been foundational principles of Unitarian and Universalist religious practice for centuries.

26. In modern times, adherence to the Seventh Principle necessarily has involved confronting and mitigating evolving environmental threats. By far the most pressing of these threats in today's world is climate change. As such, Unitarian Universalists across the nation believe that their religion necessarily involves taking action on a personal, congregational and community level to confront and mitigate mankind's role in causing and exacerbating global warming.

27. In 2006, the UUA issued a Statement of Conscience founded squarely on the Seventh Principle, which reads: "We declare by this Statement of Conscience that we will not acquiesce to the ongoing degradation and destruction of life that human actions are leaving to our children and grandchildren. **We as Unitarian Universalists are called to join with others to halt practices that fuel global warming/climate change, to instigate sustainable alternatives, and to mitigate the impending effects of global warming/climate change with just and ethical responses.** As a people of faith, we commit to a renewed reverence for life and respect for the interdependent web of all existence [emphasis added]." A true copy of the 2006 Statement of Conscience is attached hereto as Exhibit C.

28. Unitarian Universalist congregations across the United States have, accordingly, taken affirmative steps to reduce their fossil fuel consumption and adopt environmentally sustainable practices. Many congregations have concluded that solar panel installations were the

exclusive means to satisfy this religious obligation, examples of which are attached hereto as Exhibit D.

29. First Parish adheres to this widely held Unitarian Universalist religious belief that the Seventh Principle calls upon the faithful to engage in affirmative acts of environmental conservation, and that these acts are essential to their religious practice. The Congregation has a long history of committees, projects and initiatives dedicated to “living the Seventh Principle.”

30. In 2015, First Parish successfully applied to the UUA for certification as a “Green Sanctuary,” and is currently certified as such. To become a Green Sanctuary, a Unitarian Universalist congregation must examine its current environmental impact, and then move towards developing sustainable practices grounded in Unitarian Universalism. A true copy of First Parish’s application for certification as a “Green Sanctuary,” which details many of the Parish’s environmental initiatives, is attached hereto as Exhibit E.

31. On November 8, 2015, the First Parish Congregation adopted “A Resolution Declaring our Right to a Livable Climate,” which was initially proposed by First Parish’s Climate Justice Group. A true copy of the Resolution is attached hereto as Exhibit F.

32. First Parish is engaged in a campaign of sustainable living, worship and celebration, education, and social action, including civil disobedience, to live out its commitment to climate justice and to the Seventh Principle.

33. As part of its commitment to the Seventh Principle, First Parish instituted an Energy Conservation Taskforce (“Eco Taskforce”) to evaluate and recommend updates to the First Parish buildings, including the Meetinghouse, designed to reduce First Parish’s carbon footprint.

34. The Eco Taskforce came up with a multifaceted plan. Several aspects of the plan have already been approved and enacted, including restoration of the Meetinghouse's windows and installation of new storm windows, installation of insulation in the walls, attic and subfloor of the Meetinghouse, updates to the Meetinghouse's HVAC system, and conversion of the Meetinghouse's water heater from a gas burner to an electric heat pump system. Several such changes were approved by the HDC.

35. The next phase of the Eco Taskforce plan is to install solar panels on the roof of First Parish buildings, with the goal of generating 75% of the Parish's energy needs from the sun.

36. If the solar panel project was approved, it was anticipated that the new solar panels would produce enough energy that the Congregation could then remove the four gas-fired HVAC units on the roof of the First Parish buildings. Despite their historical incongruity relative to colonial era building practices and visibility from public ways, these gas-fired units were installed pursuant to an HDC issued certificate of appropriateness.

The First Parish Solar Panel Proposal

37. First Parish takes great pride in the historic beauty and importance of the Meetinghouse and its iconic status as the anchor of Bedford's town common. The Eco Taskforce took great pains to design a solar panel proposal that would minimize the visual impact of the solar panels to the greatest possible extent, maintain the architectural, historical and traditional appearance of the Meetinghouse, the Town Common, and the Bedford Historic District, comply with all applicable guidelines and best practices, and still provide First Parish with a sufficient supply of renewable energy to meet its needs as a congregation.

38. First Parish's comprehensive, thoughtful and meticulously detailed proposal (the First Parish Solar Panel Proposal") is summarized in a power point presentation created for submission to the HDC, a true copy of which is attached hereto as Exhibit G.

39. First Parish applied to the HDC for a certificate of appropriateness to construct the solar panels on its roof, and the HDC scheduled the matter for an initial public hearing on April 6, 2016.

The Bedford Historic District Commission and the Act

40. The HDC was established by Chapter 118 of the Acts of 1964. A true copy of the Act, as amended (the "Act"), is attached hereto as Exhibit H.

41. Section 1 of the Act states that the HDC's purpose is "to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of buildings, places and districts of architectural and historic significance through the development and maintenance of appropriate settings for said buildings, places and districts as sites and landmarks compatible with the historic traditions and architecture of the town of Bedford."

42. The HDC has issued a set of official Historic District Guidelines ("the HDC Guidelines") which are "intended to provide direction for property owners and potential applicants before the Commission on the kinds of alterations the Commission deems appropriate in the Historic District." The HDC Guidelines are also "*intended to help the Commission make consistent and informed decisions* about what is, and is not, appropriate [emphasis added]." A true copy of the HDC Guidelines is attached hereto as Exhibit I.

43. The HDC Guidelines state that "[r]oof-mounted equipment . . . should be hidden as much as possible from public view . . . Solar panels should be installed parallel to the surface

of the roof to which they are attached, set back from the edges of the roof to minimize their visibility.”

44. The First Parish Solar Panel Proposal complies with the HDC Guidelines and solar panels are permitted within the Historic District.

45. Pursuant to Section 5(a) of the Act, “No building or structure within the historic district” may be erected “unless and until an application for a certificate of appropriateness as to exterior architectural features which are subject to view from a public street way or place shall have been filed with the commission” and the commission has issued “either a certificate of appropriateness or a certificate that no exterior architectural feature is involved.”

46. Section 3 of the Act defines “building” as “a combination of materials having a roof and forming a shelter for persons, animals or property.” Plainly, the proposed solar panels are not a “building”.

47. Section 3 of the Act defines “structure” as “a combination of materials, other than a building, including a wall, fence, walk and driveway.” Roofs and the proposed solar panels are not included in the Act’s definition of a “structure”, and are unlike the features listed in the statutory definition of a “structure”.

48. Section 3 of the Act defines “Exterior architectural feature” as “the architectural style and general arrangement of such portion of the exterior of a building or structure as is designed to be open to view from a public street, way or place including the kind, color and texture of the building materials of such portion and the type and style of all windows, doors, lights, signs and other fixtures appurtenant to such portion.” Roofs and the proposed solar panels are not included in the Act’s definition of an “Exterior architectural feature”, and are unlike the

features listed in the statutory definition of an “Exterior architectural feature”. Furthermore, the proposed solar panels are not designed to be “open to view from a public street, way or place.”¹

49. Pursuant to Section 9(a)(1) of the Act, the HDC shall pass upon “[t]he appropriateness of exterior architectural features of buildings and structures to be erected within the historic district wherever such features are subject to view from a public street, way or place.”

50. Roofs and the proposed solar panels are not included within this Section because they do not fall within the statutory definition of “Exterior architectural features” of “buildings” or “structures”.

51. Pursuant to Section 5(b) of the Act, “No building or structure within the historic district . . . shall be changed as to exterior color features which are subject to view from a public street, way or place unless and until an application for a certificate of appropriateness as to change in such color features shall have been filed with the commission and such certificate shall have been issued by the commission.”

52. Pursuant to Section 9(a)(2) of the Act, the HDC shall pass upon “The appropriateness of changes in exterior color features of buildings and structures within the historic district wherever such features are subject to view from a public street, way or place.”

53. First Parish proposed changing the current gray asphalt roof shingles on the Meetinghouse and its additions to black (to match the proposed black solar panels). The HDC did not object to such color change.

54. Pursuant to Section 9(a) of the Act, if the HDC determines that a proposed erection or alteration is inappropriate, but “failure to approve an application will involve a

¹ See also §9(a) of the Act: the HDC “shall not consider detailed designs, interior arrangement, and other building features *not subject to public view* [emphasis added].”

