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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.”<sup>1</sup>

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

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<sup>1</sup> 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].”

substantial hardship, financial or otherwise, to the applicant” and that “such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes” of the Act, the HDC “*shall* approve the application [emphasis added].” When making its Decision, the HDC did not consider the harm its Decision would have on First Parish, including its right to the free exercise of religion, and did not consider whether the application could be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of the Act.

55. Pursuant to Section 9(a) of the Act, the HDC “may impose conditions which, if the certificate of appropriateness is acted upon, shall be binding upon the applicant, the owner of the property and his successors in title.” When making its Decision, the HDC did not propose or impose any conditions.

56. Pursuant to Section 9(c) of the Act, “as to applications for a certificate of appropriateness, the commission may make recommendation to the applicant with respect to appropriateness of design, arrangement, texture, material, color and similar factors. Prior to the issuance of any disapproval, the commission may notify the applicant of its proposed action accompanied by recommendations of changes in the applicant’s proposal which, if made, would make the application acceptable to the commission. If within ten days of the receipt of such a notice the applicant files a written modification of his application in conformity with the recommended changes of the commission, the commission shall cause a certificate of appropriateness . . . to be issued to the applicant.” When making its Decision, the HDC did not consider notifying the applicant of its proposed action accompanied by recommendations of changes in the applicant’s proposal which, if made, would make the application acceptable to the commission.

57. Pursuant to Section 9(a) of the Act, the HDC “shall also consider the applicable zoning and other by-laws of the town.” When making its Decision, the HDC did not consider applicable zoning and other by-laws of the town.

### **The HDC Hearings**

58. The HDC considered the First Parish Solar Panel Proposal over the course of three Public Hearings, on April 6, May 4, and June 1, 2016.

59. Only three members of the HDC, the Chair William Moonan, Vice Chair Alan Long and Lorrie Dunham, attended the April 6 hearing, which was not recorded.

60. At each HDC hearing, First Parish submitted the detailed presentation, including the power-point presentation attached hereto as Exhibit G. The presentation described the comprehensive measures to minimize the visual impact of the installation. Members of the Congregation showed the HDC members a sample solar panel of the type intended for the rooftop, and noted that the proposed plan would have no impact on the celebrated iconic view of the Church from the Bedford Town Common.

61. The HDC continued the matter to its next public hearing on May 4, 2016. All members of the HDC were present for the May 4, 2016 hearing.

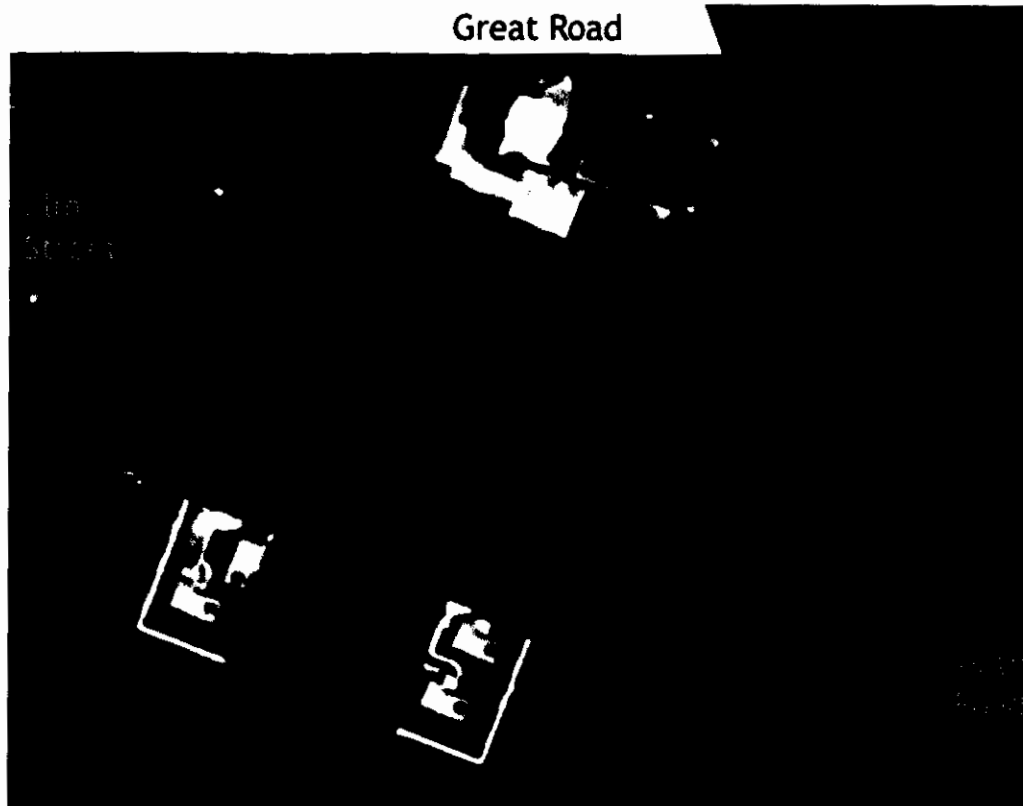
62. At the May hearing, attorney Rebecca Neale explained to the HDC that denial of the Congregation’s application would unreasonably infringe on the First Parish’s free exercise of its religious beliefs.

63. At the May hearing, Members of the HDC, including Chris Weisz, Alan Long and Chair William Moonan stated that they would not consider arguments pertaining to “freedom of religion” when deciding whether to approve the certificate of appropriateness.

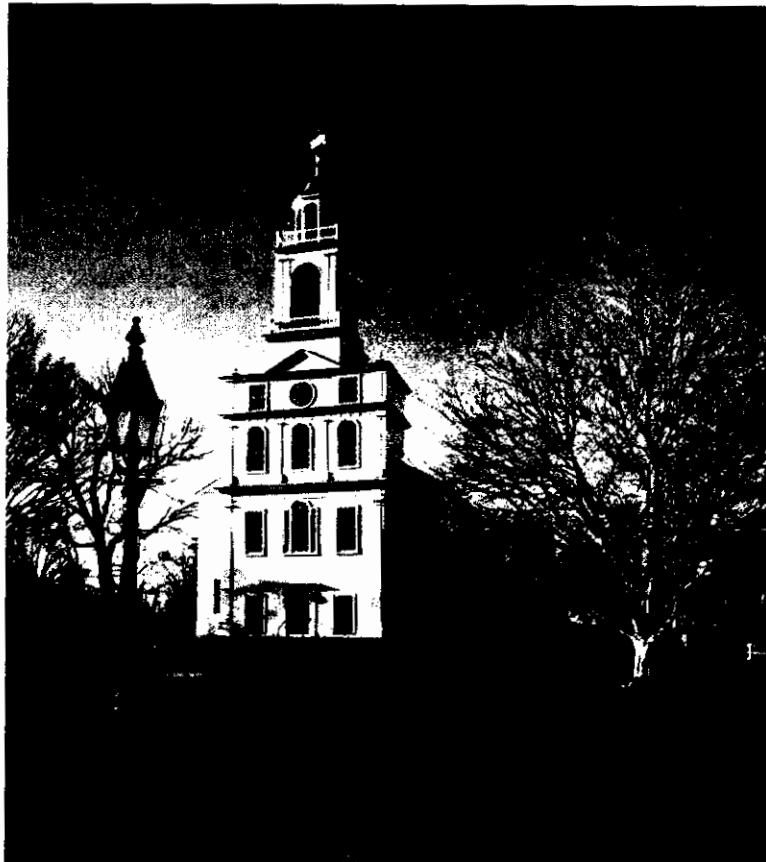
64. At the May hearing, members of the First Parish Congregation offered detailed testimony outlining the thoughtful and diligent efforts of the Congregation to minimize the “visual noise” as a result of the rooftop solar panels, noting that the Congregation had sacrificed an otherwise attainable goal of supplying 100% of the Meetinghouse’s energy needs for the proposed panel arrangement that would supply only 75% of the Meetinghouse’s energy needs in order to achieve as unobtrusive and inconspicuous arrangement of solar panels as possible.

65. At the May hearing, the HDC was provided with an explanation of each measure taken to minimize the visual impact of the solar panels under the proposed plan, including using black matte solar panels rather than panels with a reflective surface, replacing the gray asphalt roof shingles (which are already nearing the end of their useful lives) with charcoal black architectural shingles to ensure uniformity in color between the panels and the unpaneled portions of the roof, arranging panels in rectangles rather than a sawtooth configuration, setting back panel arrays a minimum of 24 inches from the roof edge, equidistant between the top and bottom, with no more than a 1 inch gap between panels to minimize visibility from street level, mounting the panels parallel to, and no more than 8 inches above, the roof level, concealing all conduits, framing and wiring from view, using black ice skirts, black critter cards, and black finish plates to give the appearance of a roof constructed from uniform materials, and placing the panels only on rooftop surfaces that would not be visible to an observer viewing the iconic North facing façade of the original Meetinghouse.

66. First Parish provided the HDC with this diagram showing that four of the five proposed panels would be placed be on the roof of the 1999 addition and none would be visible from the front of the Meetinghouse:



67. The HDC also was provided with this iconic photo of the front of the Meetinghouse, to demonstrate that the solar panels would not be visible from the front of the Meetinghouse:



68. The HDC was advised that several churches of historical significance, located in the historic districts of other cities and towns in the Commonwealth, have received permission from their local Historic District Commissions to install solar panels on the roofs of their buildings, as well as photographs of some of those churches showing the minimal visual impact that those solar panel additions had on the historic aspects of those church buildings.



69. The HDC was specifically advised that South Church in Andover is located in a Historic District and has solar panels on its roof. The HDC was provided with this aerial photo of South Church in Andover:



70. The HDC was presented with multiple images of comparable solar panel arrangements for comparison purposes, and multiple videos and images showing views of the Meetinghouse from all angles to demonstrate how the proposed locations of the solar panel arrays would be minimally visible from the surrounding public spaces within the Bedford Historic District.

71. Chairman Moonan arrived at the June 1, 2016 HDC hearing with a previously prepared and distributed motion to deny the Congregation's application for a certificate of appropriateness. A true copy of the motion is attached hereto as Exhibit J. The HDC's actions concerning that motion are subject to a now pending Open Meeting Law Complaint.

72. No member of the public opposed the First Parish Solar Panel Proposal. In fact, public opinion voiced during the HDC hearings was overwhelmingly in favor of the First Parish Solar Panel Proposal. Local environmental groups and town agencies expressed their support for the project to the HDC, including the Bedford Historic Preservation Commission, the Bedford Energy Task Force, the Bedford Chamber of Commerce, members of the Bedford Interfaith Clergy Association, the Bedford chapter of Mothers Out Front, the Sierra Club of MA, and St Paul's Episcopal Church's Green Team. Several citizens of Bedford spoke in favor of the proposal, and many town residents who were not able to attend the meetings showed strong support for this solar panel project by sending in 79 postcards to the HDC. In addition, several children sent in drawings to show the importance of this project to their prospects for a livable climate.

73. Certain members of the HDC expressed support for the proposal, with conditions, but Chairman Moonan stated, contrary to the clearly enumerated authority expressed in the Act, that the HDC did not have the power to impose conditions when issuing a certificate of appropriateness.<sup>2</sup>

74. During the HDC deliberations on June 1, three members of the HDC participated even though they were not present at the April 6, 2016 hearing when the HDC first considered First Parish's application. HDC member Weisz voted to deny First Parish's application even though he had not been present at the April 6 hearing.

75. The previously prepared and distributed motion to deny the Congregation's application for a certificate of appropriateness (Exhibit J hereto) was adopted verbatim.

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<sup>2</sup> See ¶¶ 53 & 54, above, which provides the HDC's statutory authority on this point.

**The HDC Determination Exceeds its Authority and is Legally  
Untenable, Whimsical, Unreasonable, Arbitrary and Capricious**

76. The HDC erred in finding that §§5(a) and 9(a)(1) of the Act apply to the First Parish Solar Panel Proposal because no “structure” is being erected. Solar panels are not structures within the statutory language. Nor are solar panels regulated “exterior architectural features” under §§5(a) and 9(a)(1) of the Act.

77. The HDC erred in failing to consider or find that the First Parish Solar Panel Proposal complies with §9(a) of the Act because the roof improvements will be “appropriate for the purposes of this act” and because “failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant and whether such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this act.”

78. The HDC erred in failing to consider conditions on approval of the First Parish Solar Panel Proposal, as specifically authorized by §§9(a) and 9(c) of the Act,

79. In acting upon the First Parish Solar Panel Proposal, the HDC was acting as a quasi-judicial body.

80. The HDC erred by permitting HDC members who did not attend the HDC’s April 6, 2016 hearing to deliberate and vote on the First Parish Solar Panel Proposal. See Mullin v. Planning Board of Brewster, 17 Mass. App. Ct. 139, 143 (1983) (two of the voting members failed to attend the planning board’s public hearing on a special permit; “only those members of the board who attended the July, 1981 public hearing could properly vote on Bay Colony’s application for a special permit”).

81. The HDC Decision is legally untenable because at least one member who voted on the First Parish Solar Panel Proposal relied upon evidence and information that was not part of the HDC hearing record when arriving at his vote.

82. In a letter to the editor of the BEDFORD CITIZEN, HDC member Weisz explained his rationale for voting to deny First Parish's application for a certificate of appropriateness. He cited as determining factors in his vote matters that are not appropriate to a quasi-judicial proceeding and were not the subject of any testimony or evidence presented at any public hearing. Weisz wrote that: "I solicited opinions from many residents in town . . . I received emails and texts from those opposed and they tended to be the people I knew as history buffs . . . no one I spoke to alone in my circle of acquaintances (outside of church members) loved the idea of seeing them on the roof. They were at best indifferent and at worst outraged . . . I had it brought to my attention that there were things I was not considering and that may not have been part of the churches [sic.] considerations . . ." Such personal investigation and informal polling outside of the hearings is not appropriate to a quasi-judicial proceeding.

83. The HDC Decision is legally untenable due to the HDC's violation of the Open Meeting Law. See Yaro v. Bd. of Appeals of Newburyport, 10 Mass. App. Ct. 587, 592 (1980) ("A court has discretion to invalidate an action of a town board if it was taken in violation of the open meeting law.").

84. The HDC Decision was unreasonable, whimsical, arbitrary and capricious in multiple respects including, inter alia:

(a) No member of the public opposed the First Parish Solar Panel Proposal and the evidence supporting the proposal was overwhelming. Such support included the Bedford Historic Preservation Commission, the Bedford Energy Task Force, the Bedford

Chamber of Commerce, members of the Bedford Interfaith Clergy Association, the Bedford chapter of Mothers Out Front, the Sierra Club of MA, and St Paul's Episcopal Church's Green Team. In addition, several citizens of Bedford spoke in favor of the proposal, and the HDC received 79 postcards from Bedford residents supporting the First Parish Solar Panel Proposal. True copies of letters of support submitted to the HDC are attached hereto as Exhibit K. In addition, several children sent in drawings to show the importance of this project to their prospects for a livable climate.

(b) The First Parish Solar Panel Proposal fully complied with the HDC's own Guidelines (Exhibit I hereto) which permit solar panels in the Bedford Historic District.

(c) The First Parish Solar Panel Proposal fully complied with the guidelines promulgated by the National Trust for Historic Preservation, in that they would not be visible from the Meetinghouse's primary facade, did not impact any architectural feature of the building, would be fully reversible in the future, and would be installed on asphalt shingles that were not original or historically accurate.

(d) There was no factual support for the HDC's determination that the proposed solar panels would be "highly visible and incongruous to the historic aspect of the church and its architectural characteristics." There is no historic significance to the roofs on which the solar panels would be placed, which roof appearance and materials have been significantly altered, with HDC approval. Moreover, there was overwhelming evidence that the visual impact of the solar panels, if any, would be minimal.

(e) There was no factual support for the HDC finding that the solar panels would be "highly visible and incongruous" to the historic aspects of the Meetinghouse, and such finding directly contradicted multiple representative sample images provided to

the HDC of similar installations on both historic and non-historic buildings. True copies of 19 representative samples submitted to the HDC are attached hereto as Exhibit L.

(f) When making its Decision, the HDC failed to consider the Commonwealth's strong policy in support of solar power. See, e.g., G.L.c. 40A, §3 ¶9 and G.L.c. 40C, §7.

(g) When making its Decision, the HDC failed to consider the Commonwealth's strong policy and statutory protections provided for religious uses of property. See, e.g., G.L.c. 40A, §3, ¶2.

(h) When making its Decision, the HDC failed to consider its own enabling statute, and Bedford zoning by-laws. Historic district ordinances, including the Act creating and empowering the HDC, are "types of zoning rules." See Roman Catholic Bishop of Springfield v. City of Springfield, 724 F.3d 78, 98 (1st Cir. 2013). "[Z]oning requirements . . . should not be applied to a proposed religious use where it would unreasonably impede the protected use without appreciably advancing critical municipal goals." Martin v. Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints, 434 Mass. 141, 148 (2001).

(i) The HDC Decision imposed undue burdens and substantial hardship upon the First Parish Congregation's fundamental right to free exercise of religion. See First Amendment to the Constitution of the United States; Mass. Decl. of Rights Art. II ("no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship.").

**The HDC Determination Violates Article II of the Massachusetts Declaration of Rights  
and the First Amendment to the Constitution of the United States**

85. The HDC erred when it refused to consider First Parish's religious beliefs and the constitutional and statutory protections for the free exercise of religion. See, e.g., Society of Jesus of New England v. Boston Landmarks Comm'n, 409 Mass. 38, 41-42 (1990) ("A 'great object' of the Declaration of Rights was 'to secure and establish the most perfect and entire freedom of opinion, as to tenets of religion, and as to the choice of the mode of worship.'"), citing Adams v. Howe, 14 Mass. 340, 346 (1817); Society of Jesus of New England, 409 Mass. at 43 ("The government interest in historic preservation, though worthy, is not sufficiently compelling to justify restraints on the free exercise of religion, a right of primary importance. In short, under our hierarchy of constitutional values we must accept the possible loss of historically significant elements of the interior of this church as the price of safeguarding the right of religious freedom."); Opinion of the Justices to the Senate, 333 Mass. 783, 788 (1955) ("in the case of zoning regulations, although the statute may in general be constitutional, it is possible that particular applications of it, because of peculiar hardship and remoteness from the legitimate purposes of the statute, might be unconstitutional.").

86. The HDC determination is subject to a "strict scrutiny" standard of review, as it constitutes a substantial burden on the First Parish Congregation's Article II and First Amendment rights to the free exercise of religion, without being narrowly tailored to the goal of achieving a compelling governmental interest. See Roman Catholic Bishop of Springfield v. City of Springfield, 724 F.3d 78, 98 (1st Cir. 2013).

87. First Parish's proposed installation of solar panels constitutes religious conduct that "neither disturbs the public peace nor obstructs the religious worship of others. Thus, [the

HDC determination] . . . cannot evade the sweep of Article 2's categorical prohibition against government restraints on religious worship." Society of Jesus of New England, 409 Mass. at 43.

**COUNT I**  
**Appeal of the Decision of the HDC**  
**(St. 1964, Ch. 118, §10 (as amended))**

88. Plaintiffs repeat the allegations set forth in Paragraphs 1 through 87, above.

89. Plaintiffs are aggrieved by the HDC Decision (Exhibit A hereto).

90. The Decision was filed with the Bedford Town Clerk on June 9, 2016. This appeal has been filed within twenty (20) days thereafter as required by St. 1964, Ch. 118, §10 (as amended).

91. The Decision is arbitrary, unreasonable, whimsical, capricious, legally untenable and exceeds the authority of the HDC.

92. The Decision violates First Parish's right to free exercise of religion, as guaranteed by the First Amendment to the Constitution of the United States and Article II of the Massachusetts Declaration of Rights.



WHEREFORE, the Plaintiffs demand judgment in their favor:

- (a) annulling the decision of the Historic District Commission of the Town of Bedford attached hereto as Exhibit A; and
- (b) granting such other and further relief as justice and equity may require.

THE FIRST PARISH IN BEDFORD,  
UNITARIAN UNIVERSALIST, et al.,

By their attorneys,



Sander A. Rikleen – BBO# 420280

Debra Squires-Lee – BBO # 633619

David A. Michel – BBO# 682122

Sherin and Lodgen LLP

101 Federal Street

Boston, Massachusetts 02110

Ph: 617-646-2000

Fx: 617-646-2222

SRikleen@sherin.com

DSquires-Lee@sherin.com

DAMichel@sherin.com

Rebecca G. Neale – BBO #670630  
Sneider Kellman, PC  
1244 Boylston Street, Suite 200  
Chestnut Hill, MA 02467  
Ph: 617-278-1881  
Fx: 617-278-1888  
RNeale@sneiderkellman.com

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