7.1

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 16-1844-A

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.

FILED
IN THE OFFICE OF THE
CLERK OF COURTS
FOR THE COUNTY OF MIDDLESEX

JUL 31 2017

CLERK

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

INTRODUCTION

The Historic District Commission of the Town of Bedford ("HDC") refused to allow The First Parish in Bedford, Unitarian Universalist ("First Parish") to place solar panels on the roof of its Meetinghouse. The HDC rejected First Parish's solar panel proposal ("Solar Proposal") even though (i) the Solar Proposal complied fully with all HDC regulations governing solar panels; and (ii) the Solar Proposal included every conceivable technological option to minimize the visibility of the solar panels. The HDC rejected the Solar Proposal not because the proposed solar panels would impact the architectural or historic significance of the Meetinghouse, but, rather, because three members did not like how the solar panels "looked." In doing so, the HDC acted arbitrarily and capriciously, failed to comply with the governing statute, and failed to consider the Commonwealth's express policy of encouraging the use of solar panels – even on historic buildings. Further, in an egregious attack on religious freedom, after mocking Unitarian Universalism, the HDC flatly refused to consider First Parish's argument that a denial of the Solar Proposal would interfere with First Parish's free exercise of its longstanding and sincerely held Unitarian Universalist beliefs. The HDC also refused to consider First Parish's request for a hardship exception under the Bedford enabling statute, St. 1964, Ch. 118. The HDC exceeded its authority, acted arbitrarily and capriciously, and violated art. 2 of the Massachusetts Declaration of Rights and art. 46, § 1 of the Amendments to the Massachusetts Constitution.[1]

FACTUAL BACKGROUND

I. The First Parish Meetinghouse

First Parish, an unincorporated association, owns the Meetinghouse located at 75 The Great Road, Bedford, Massachusetts. Stmnt of Undis. Mat. Facts ("Stmnt.")[2] ¶¶ 1,2. The Meetinghouse,

---

1 Attached hereto as an addendum is a copy of St. 1964, Ch. 118.

2 All citations to "Stmnt" are to the Superior Court Rule 9A(b)(5) Joint Statement of Facts. All citations to "JA" are to the Joint Appendix of Exhibits.

erected in 1817 and located in the Bedford Historic District, is the oldest church building in Bedford. Id. ¶¶ 2,4. Since it was built, there have been numerous and significant alterations to the Meetinghouse which are not consistent with the building's original historic construction or appearance. Stmnt. ¶ 6. Those changes include the removal of original window shutters; the construction of a substantial addition to the rear of the Meetinghouse; the modification of the steeple to allow for cellular service transponders; the replacement of the original windows with energy efficient interior and exterior storm windows, including some made of plexiglass; continual changes to the heat and cooling systems –the removal of pot-belly stoves, the installation of a coal shoot and furnace, the installation of an oil burner, and the conversion to an energy efficient heat-pump system in 2016; and the installation of a Memorial Garden in front of the Meetinghouse. Id.

The Memorial Garden was approved by the HDC even though it includes two large wooden Kopjafák, Transylvanian totem poles, highly visible from the street. Stmnt. ¶ 7. Kopjafák are not American, are not from New England, and have no historical connection whatsoever to the 19th or even the 20th century Meetinghouse; they are wholly incongruous with the historic design and appearance of the Meetinghouse. Id. ¶ 8.

II. The Bedford Historic District Commission and HDC Regulations

The HDC is a municipal board of the Town of Bedford, created by and existing pursuant to a special act of the legislature, St. 1964, Ch. 118 (the "Bedford Act") (Ex. A hereto). Pursuant to the Bedford Act, the HDC is charged with protecting and preserving the "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." St. 1964, Ch. 118, § 1. The Bedford Act contains a mandatory hardship exception which provides that, if the HDC determines that an alteration is not appropriate, it:

> ***shall*** determine whether, owing to conditions especially affecting the building . . . but not affecting the historic district generally, 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 purpose of this act.

Id. § 9(a)(4) (emphasis added).

The HDC has issued 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." JA 1, Gibbons Aff., Ex. D. The HDC Guidelines are "*intended to help the Commission make consistent and informed decisions* about what is, and is not, appropriate [emphasis added]." Id. The HDC Guidelines allow for the installation of solar panels on historic buildings, and require only 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." Id.; Stmnt. ¶ 50.

III. First Parish Unitarian Universalist Religious Beliefs

Since 1830, First Parish has been a Unitarian religious congregation. Stmnt. ¶ 30. First Parish became Unitarian Universalist ("UU") when the American Unitarian Association and the Universalist Church of America combined in the early 1960s and First Parish voted to join the Unitarian Universalist Association ("UUA"). Id. ¶ 31. First Parish, like all UU churches, ascribes to Seven Principles, and thereby "covenant[s] to affirm and promote":

1) The inherent worth and dignity of every person;
2) Justice, equity and compassion in human relations;
3) Acceptance of one another and encouragement to spiritual growth in our congregations;
4) A free and responsible search for truth and meaning;
5) The right of conscience and the use of the democratic process within our congregations and in society at large;
6) The goal of world community with peace, liberty and justice for all;
7) Respect for the interdependent web of all existence of which we are a part.

Id. ¶¶ 19, 32. In 2006, the UUA issued a Statement of Conscience founded on the Seventh Principle and declared that, as "people of faith," 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."[3] Id. ¶ 23.

First Parish adheres to the UU 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 UU religious practice.[4] Stmnt. ¶ 34. First Parish is deeply committed to and 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. Id. ¶ 43. Based on the Statement of Conscience and its religious calling to act consistent with the Seventh Principle, First Parish began to take affirmative steps to reduce First Parish's fossil fuel consumption. First Parish established a Climate Justice Group to investigate and propose ways for First Parish 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." Id. ¶ 38. In 2015, First Parish successfully applied to the UUA for certification as a "Green Sanctuary," and is currently certified as such. Id. ¶ 40. As part of its commitment to the Seventh Principle, First Parish instituted an Energy Conservation Taskforce ("Eco Taskforce") to recommend updates to the Meetinghouse to reduce First Parish's carbon footprint. Id. ¶ 44.

---

[3] In his expert affidavit, the Rev. Dr. William Schulz, former President of the UUA, described the governance system of the UUA, how the 2006 Statement of Conscience was developed, its role as religious guidance to member congregations and as a statement of UU faith and religious belief, and the significance of the Seven Principles in UU congregations and theology. See JA 2.

[4] In his expert affidavit, Professor Daniel Patrick McKanan, the Ralph Waldo Emerson Unitarian Universalist Association Senior Lecturer in Divinity at Harvard Divinity School, detailed the theological history of Unitarian Universalism, the theology's connection to the natural world, and explained that UUs and UU congregations, like First Parish, are called by their sincere religious faith to protect and defend the environment. See JA 3.

The Eco Taskforce developed a multifaceted plan, 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. Id. ¶ 45. Several of those changes were approved by the HDC. The Eco Taskforce also developed the Solar Proposal to install solar panels on the roof of the Meetinghouse, with the goal of generating 75% of the Parish's energy needs from the sun. Id. ¶ 46.

IV. The Solar Proposal

The Solar Proposal complies with the HDC Guidelines: the proposed solar panels would be set back a minimum of 24 inches from the roof edge, with no more than a 1 inch gap between panels to minimize visibility and will be installed parallel to and no more than 8 inches above the roof surface. Stmnt. ¶¶ 58-59. Cognizant of its responsibility to the historicity of the Meetinghouse, First Parish included additional elements in the Solar Proposal that exceeded the minimal requirements of the HDC Guidelines and were designed to minimize any visual impact of the solar panels. Id. ¶ 60. First Parish proposed (i) changing the current gray asphalt roof shingles on the Meetinghouse and its additions to black (to match the proposed black solar panels); (ii) arranging the panels in a rectangular rather than a sawtooth configuration; (iii) concealing all conduits, framing and wiring from view, using black ice skirts, black critter guards, and black finish plates to give the appearance of a roof constructed from uniform materials; and (iv) placing the panels only on rooftop surfaces that would not be visible to an observer viewing the iconic view of the original Meetinghouse. Id. ¶¶ 61-66.

The architect of the Solar Proposal, who presented the technological aspects of the Solar Proposal to the HDC, has testified that, based on his "knowledge of the current state of solar panel technology, First Parish's solar panel proposal limited the visual impact of the solar panels as low as

technologically feasible at this time." Id. ¶ 64. The HDC did not and cannot identify any additional steps that First Parish could have taken to further reduce the visibility of the proposed solar panels. Id. ¶ 67. Indeed, the chair of the HDC testified that the *only* way First Parish could further reduce the visibility of the proposed solar panels was *not to have any solar panels.* Id.

V. The HDC Denies the Solar Proposal

In March 2016, First Parish applied to the HDC for a certificate of appropriateness for the Solar Proposal. Stmnt. ¶ 51. The HDC considered the Solar Proposal over the course of three Public Hearings, on April 6, May 4, and June 1, 2016. Id. ¶ 53.

Before the May hearing, the HDC refused to move to a larger meeting room to accommodate the expected attendance of members of First Parish and one of the members of the HDC said: "you are Unitarians, you can sit on each other's laps." Stmnt. ¶ 72. At the May hearing, First Parish articulated its sincere religious belief that it was called by the Seventh Principle, the Statement of Conscience, and its UU heritage to install solar panels to decrease the Meetinghouse's carbon footprint. JA 9. Based on its religious beliefs, First Parish asked that the HDC approve the Solar Proposal under the substantial hardship provision of the Bedford Act, by finding that a denial would constitute a substantial hardship to First Parish's ability to exercise its religious beliefs. Id. HDC Member Chris Weisz, Vice Chair Long, and Chair Moonan (the three HDC members who ultimately voted against the Proposal) refused to consider First Parish's statement of its sincere religious beliefs, and instead stated that any discussion or consideration of "freedom of religion" was not "appropriate." Stmnt. ¶¶ 75-77. During that discussion, members of the HDC mocked First Parish's religious beliefs. HDC member Weisz asked whether the HDC would be required to permit tomato farming if a pastafarian, apparently a worshiper of the Flying Spaghetti Monster, wanted to grow tomatoes. Id. ¶ 81. Chair Moonan testified that he understood Weisz to be talking about a "made-up religion" to make a point. Id. ¶ 82. The HDC never discussed or even considered

First Parish's request for an exception under the Bedford Act based on First Parish's sincere religious beliefs. JA 11.

At the final HDC hearing, in June 2016, Chairman Moonan arrived with a previously prepared motion to deny the Congregation's application for a certificate of appropriateness. Stmnt. ¶ 99. Although some of the HDC members expressed support for the proposal with conditions, Chairman Moonan said that the HDC did not have the power to impose conditions when issuing a certificate of appropriateness. Id. ¶ 97; JA 16 at 35-36. The Bedford Act specifically allows the HDC to impose conditions including conditions binding on successors in title.

There were no public expressions of opposition to the First Parish Solar Panel Proposal. Stmnt. ¶ 108. Numerous local environmental and historical groups and town agencies expressed their support for the project to the HDC, including the Bedford Historic Preservation Commission, the Bedford Chamber of Commerce, members of the Bedford Interfaith Clergy Association, Sharon McDonald, the Bedford Town Historian, John Linz, the Chair of the Bedford Historic Preservation Commission, and Donald Corey, the President of the Bedford Historical Society and a member of the Bedford Historic Preservation Commission. Id. ¶¶ 92-95; see also JA 4, JA 5. Several Bedford citizens spoke in favor of the proposal, and many town residents who were not able to attend the HDC meetings supported the Solar Panel Project by sending 79 postcards to the HDC. Stmnt. ¶ 96.

On June 9, 2016, HDC issued a written Notice of Determination denying First Parish's Solar Panel Proposal ("Decision"). HDC provided two reasons for the denial: that the solar panels on the roof would be (1) "highly visible" and (2) "incongruous to the historic aspects of the Church and its architectural characteristics." JA 11. HDC provided no other bases for its Decision. Id. The Decision nowhere addressed First Parish's religious expression argument or First Parish's request for a hardship exception under the Bedford Act. Id.

After the Decision issued, HDC Member Weisz wrote a letter to the editor of the local newspaper, the BEDFORD CITIZEN, explaining his rationale for voting to deny the Solar Proposal: "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 . . ." Stmnt. ¶¶ 104-105. None of the considerations "brought to [Weisz's] attention" were discussed at the public meetings before the HDC; none of the emails from alleged "history buffs" were in cluded in the record; none of the people from whom Mr. Weisz claims to have solicited opinions (who remain unidentified) spoke at the public meetings of the HDC. First Parish had no opportunity to address or rebut any of the information Mr. Weisz solicited and on which he based his decision. Id. ¶ 106.

VI. HDC's Decision Was Based On Aesthetic and Not Historical or Architectural Concerns

The HDC denied First Parish's application for aesthetic reasons and not historical or architectural concerns. After the April hearing, HDC Chair Moonan wrote to the Massachusetts Historical Commission asking for reasons to deny the First Parish Solar Proposal that were not solely "*aesthetic.*" Stmnt. ¶ 70. When asked why he was looking for reasons to deny the Solar Proposal, Moonan claimed that he knew that the HDC was "concerned" about the Proposal, but could identify no bases for that alleged concern. Id. ¶ 71. When asked what he meant by "aesthetic reasons," Moonan testified that he meant "how something looks." Id.[5]

[5] The only reasonable inference to be drawn from Chair Moonan's email to the Mass. Historical Society is that he understood and appreciated that the HDC needed to articulate some basis other than aesthetics to justify denial of the Solar Proposal. He was correct – aesthetic reasons alone do not satisfy the Act. See infra Arg., IC.

After the June hearing, Chair Moonan told Reverend Gibbons that his decision to deny solar panels was wholly subjective. He said that solar panels are "like wallpaper. Some people like it. Some don't." Stmnt. ¶ 102. Chair Moonan testified that, when he compared solar panels to wallpaper, he "was trying to describe the fact that they were talking about ***art***, and some ***art*** people like and some art they don't. It doesn't make one person right and the other person wrong. It's a matter of perception of that art and how it works." Id. ¶ 103.

Member Weisz, in his letter to the local paper, identified constituents with whom he "consulted" outside of the open meetings, all of whom opposed solar panels because of how they "look." JA 1, Gibbons Aff., Ex. G. (people "hated the way solar panels look on old buildings"; and describing the installation as "an eyesore" that "destroys the character of the most beautiful historic building in Bedford."). Weisz indicated that he had aesthetic concerns as well. He wrote that it was "hard to feel comfortable with ***the look***" and "we should be able to have both solar power and aesthetics that don't disrupt the historic ***beauty*** of the church." Id. Finally, when members of the HDC were given the opportunity to view an exemplar solar panel on the roof of the Meetinghouse, Member Long stated that, unless he could view all of the panels, or a full array, on the roof and with the proposed new shingles, he was not going to know "whether [he] liked it or not." Id. ¶ 107. Chair Moonan and Members Long and Weisz were the three members of the HDC who voted against the Solar Proposal.

ARGUMENT

First Parish is called by its religious beliefs to install solar panels on its Meetinghouse. To do so, First Parrish developed and presented a proposal to the HDC that complied fully with the HDC Guidelines and minimized the visibility of the panels as much as technologically feasible. The HDC nonetheless rejected the proposal based solely on the aesthetic/artistic views of three

HDC members, while refusing to consider First Parish's religious freedom argument. All in violation of the Bedford Act and the Massachusetts Declaration of Rights.

I. HDC's Denial of the Certificate of Appropriateness Exceeded Its Authority and Was Arbitrary and Capricious

To find that the HDC's denial of First Parish's Solar Proposal was permissible, the Court must find *both* that the Decision was based "on a legally tenable ground" *and* that the "reasons given are 'warranted by the evidence . . . ." Marr v. Back Bay Architectural Comm'n, 23 Mass. App. Ct. 679, 683-84 (1987). The test is conjunctive. Here, the HDC's Decision was both legally untenable and unwarranted by the evidence.

First, the Decision fails to provide a statement of the "reasons for its determination" as required by the Bedford Act. The stated reasons – visibility of the panels and historical incongruity – are conclusory and insufficient as a matter of law. Second, the Decision stemmed from an error of law – the belief that the HDC could not approve the Solar Panel with conditions. Third, the Decision was not warranted by the evidence. Fourth, the HDC's true reason for denying the Solar Proposal was the arbitrary and capricious application of subjective aesthetic factors – factors nowhere found in the Bedford Act. Finally, the HDC failed to consider the Commonwealth's policy of encouraging solar panels on historic buildings. G.L. c. 40C. Given these infirmities, the HDC Decision must be annulled.

A. The Decision Is Legally Untenable.

If a decision of an historic district commission is, on its face, insufficient as a matter of law, then it "should be annulled without further ado . . . ." Warner v. Lexington Historic Dists. Comm'n, 64 Mass. App. Ct. 78, 83 (2005). A legally sound decision must do more than merely recite "statutory language"; it must include "explanations of how those statutory factors bore on their denial of the certificate." Id. At 81-82. Here, the HDC's stated bases for denial – visibility and historical incongruity – are legally insufficient. The Decision nowhere addressed or explained any

of the factors the HDC was required to consider, including whether the solar panels would be appropriate given the purposes of the Bedford Act, or the "general design, arrangement, texture, material and color of the [solar panels]." St. 1964, Ch. 118, § 9(a)(4). Because the HDC failed to articulate with clarity its reasons with reference to the considerations in the Bedford Act, the Decision is legally untenable and should be annulled.

The Decision also is legally untenable because it was based on an error of law. The HDC Chair incorrectly advised his co-members that Solar Proposal could not be approved with conditions, which was not the case. See St. 1964, Ch. 118, § 9(a)(4) ("In approving an application the commission 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."). This legal error infected the decision. In his letter to the local newspaper, Member Weisz appeared to indicate that he would have approved the panels with conditions. JA 1, Gibbons Aff., Ex. G.

B. The Decision Was Not Warranted by the Evidence.

The HDC's stated reasons for denying the Solar Proposal were not supported by the evidence. The only evidence before the HDC established that the Solar Proposal minimized visibility to the maximum extent given the state of technology – no evidence was presented to the HDC that the solar panels would be "highly visible" and the Decision does not reference any such evidence. To the contrary, the overwhelming evidence established the opposite. First Parish included every conceivable technological option to minimize the visibility of the solar panels, and insure they would not mar the iconic view of the Meetinghouse. Pursuant to the Solar Proposal, the panels would be installed on one roof on the rear portion of the Meetinghouse. First Parish proposed replacing the entire roof of the Meetinghouse with black shingles to match the solar panels. First Parish selected the least visible type of panels and proposed an arrangement that minimized visibility. First Parish also planned to conceal all wires, conduits, and framing from

view to give the appearance of a roof constructed from uniform materials. Short of abandoning its desire to install solar panels, there was nothing more First Parish could feasibly do to decrease the visibility of the panels any further.

Nor would the solar panels be incongruous with any historic aspect of the Meetinghouse roof.[6] No aspect of the current Meetinghouse roof is historically accurate or correlates to the Meetinghouse when it was built in 1817. The Meetinghouse has gray asphalt shingles which have no historical significance. Moreover, the HDC is charged with protecting and preserving buildings consistent with the historic traditions and architecture of the town of Bedford. No evidence was presented to the HDC that the Solar Proposal would harm the structure or the architecture of the Meetinghouse.

C. The HDC Impermissibly Denied the Proposal for Aesthetic Reasons.

The HDC – a quasi judicial body charged with evaluating applications under the Bedford Act – may not rely solely on individual members' wholly subjective views about what looks "good" when ruling on a certificate of appropriateness. Such reliance is the hallmark of arbitrary and capricious. The "inquiry of the historic district commission[s] is limited to the historic character of the district and surroundings, despite the temptation to consider [other] issues." Jeffrey S. Wieand, Historic Dist. Comm'n in Massachusetts, 85 Mass. L. Rev. 113, 119 (2001) citing Gumley v. Bd. of Selectmen of Nantucket, 371 Mass. 718, 724 (1977). Indeed, in Opinion of the Justices, 333 Mass 773 (1955), the Court recognized that, while aesthetic considerations could be *a factor* in the decision-making of a historic district commission, the requirement that such commissions hew closely to "the main purposes of the act," namely, the preservation and protection of historic buildings, would "prevent decisions based on *peculiar individual taste.*" 333 Mass. at 781

[6] The reference to historic incongruity is a red herring. *All modern equipment of any sort* – from air conditioners and air handling units, to telephone and electric light poles – is historically incongruent. The HDC Guidelines recognize that historic buildings require modern equipment and, with respect to roof mounted modern equipment such as solar panels, the Guidelines require only that their visibility be minimized.

(upholding act establishing Nantucket Historic District Commission where "[a]ll provisions must be interpreted with reference to the main purposes of the act.")

Here, the HDC must likewise hew to the purpose of the Bedford Act which nowhere states that subjective considerations of "aesthetics" are appropriate factors to deny an application. The purpose of the Bedford Act is to protect and preserve "buildings, places and districts of architectural and historic significance . . . ." St. 1964, Ch. 118, § 1. In deciding on a request under the Act, the HDC must "determine whether the features . . . will be appropriate for the purposes of this act" and must consider, among other things, "the historic value and significance of the site, building or structure, [and] the general design arrangement, texture, material and color of the features . . .." St. 1964, Ch. 118, § 9(a)(4). Whether or not a proposed alteration to an historic building looks "good," if the change is consistent with historical *uses* of the property, and if the change does not diminish the *architectural or historic significance* of the building, the change must be approved.

The undisputed evidence establishes that the three members of the HDC who voted against the Solar Proposal did so because they held a subjective aesthetic opposition to all solar panels. Their own statements establish that those members simply did not like how solar panels look. Yet, those aesthetic objections are nowhere noted in the Decision. The Decision simply concludes that the solar panels would be highly visible and historically incongruous. The Court should look behind that misdirection. Solar panels are *always* "visible" (they cannot be invisible) and will *never* be congruous with a 200 year-old building. Yet, solar panels are specifically permitted under the HDC Guidelines.[7] The only reasonable conclusion, then, is that the HDC's stated rationale in the Decision is subterfuge. The HDC may not rely on subterfuge to deny a certificate otherwise permissible under the Bedford Act and the HDC Guidelines. See Gumley, 371 Mass. at 721 ("the

[7] Given First Parish's exhaustive and costly efforts to reduce the visibility of the solar panels to the absolute minimum, the HDC's conclusion that the panels would be "highly visible" would mean that no solar panels ever would be acceptable in Bedford, which conflicts with the HDC's Guidelines.

reasons for denial . . . stated by the commission were not the reasons in fact but were manufactured in order to control the use of the land . . . they were a 'subterfuge").

The Court need look no further than the Transylvanian Kopjafák in the Memorial Garden. The HDC approved the installation of the Kopjafák in a highly visible location in front of the Meetinghouse, even though Kopjafák lack any historic connection to the Meetinghouse or early 19th century New England. The HDC's approval of the Kopjafák demonstrates the arbitrariness of relying on what the HDC thinks "looks good." Subjective perceptions of beauty are always arbitrary – as Chair Moonan said "some art people like and some art they don't." Stmnt. ¶ 103. That is not the standard under the Bedford Act.

D. The HDC Improperly Failed to Consider the Commonwealth's Policy of Advancing the Use of Solar Panels.

The HDC also erred in failing to consider the Commonwealth's policy of encouraging the use of solar panels on historic buildings. Although the HDC was created by a special act of the legislature, the Supreme Judicial Court has made clear that decisions of Historic District Commissions created by such special acts must be read in "light of the more general statutes providing for zoning, G.L. c. 40A, and for historic districts, G.L. c. 40C . . . ." Gumley, 371 Mass. at 719 (considering the Nantucket act); see also Connors v. Annino, 460 Mass. 790, 797 (2011) ("applicable rules of statutory construction require courts to 'construe statutes that relate to the same subject matter as a harmonious whole and avoid absurd results.'") quoting Canton v. Comm'r of the Mass. Highway Dep't, 455 Mass. 783, 791-792 (2010).

G.L. 40C is the Commonwealth's general Historic Districts Act. Like the Bedford Act, the purpose of the Historic Districts Act is to "promote the educational, cultural, economic and general welfare of the public through the preservation and protection of the distinctive characteristics of buildings and places significant in the history of the commonwealth . . . ." G.L. c. 40C, § 2. But, the Historic Districts Act, unlike the Bedford Act, addresses solar energy. It states:

> When ruling on applications for certificates of appropriateness for solar energy systems, as defined in section one A of chapter forty A, the commission ***shall also consider the Policy of the commonwealth*** to encourage the use of solar energy systems and to protect solar access.

G.L. c. 40C, § 7 (emphasis added). The HDC did not consider the Commonwealth's policy of encouraging the use of solar energy. If it had, the HDC would have given more weight to the evidence that other historic district commissions in towns throughout the Commonwealth, presumably in reliance on c. 40C, § 7, have permitted the installation of solar panels on numerous historical and iconic churches. Stmnt. ¶ 88.

II. HDC's Denial Of the Certificate of Appropriateness Impermissibly Burdened First Parish's Free Exercise of Religion

The right, in this Commonwealth, to freely exercise one's religion, is an "uncompromising principle" guaranteed in "emphatic and unmistakable terms" by the Declaration of Rights of the Massachusetts Constitution. Soc'y of Jesus of New England v. Bos. Landmarks Comm'n, 409 Mass. 38, 41 (1990). The "'great object' of the Declaration of Rights is 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.'" Id. at 41-42 quoting Adams v. Howe, 14 Mass. 340, 346 (1817) (decided the year the Meetinghouse was constructed).

This Court's task is to determine whether the HDC's denial of the Solar Proposal "substantially burdens [First Parish's] free exercise of religion, and, if it does, whether [HDC can establish] that it has an interest sufficiently compelling to justify that burden." Attorney Gen. v. Desilets, 418 Mass. 316, 322 (1994). Thus, the threshold questions are (1) whether First Parish's desire to install solar panels on the Meetinghouse stems from a sincere religious belief; and (2) whether the HDC Decision substantially burdens First Parish. If the Court finds in First Parish's favor on both questions, then the burden then shifts to the HDC to demonstrate an "unusually" important government interest ***and*** that an exemption would hinder that interest. Id. at 323.

A. First Parish Seeks to Install Solar Panels Based On its Sincere Religious Belief That It Is Called to Care for and Protect the Earth.

"Conduct motivated by sincerely held religious convictions will be recognized as the exercise of religion." Desilets, 418 Mass. at 323. Whether conduct is entitled to protection under art. 2 of the Declaration of Rights and art. 46, §1 of the Amendments depends only on "the sincerity of a professed belief." Sagar v. Sagar, 57 Mass. App. Ct. 71, 74 (2003). Conduct need not be "purely religious" to be entitled to protection. Id. Also, this Court must accept First Parish's "assertions regarding what [it] sincerely believes to be the exercise of [its] religion, even when the conduct in dispute is not commonly viewed as a religious ritual." Desilets, 418 Mass. at 323.[8] That is because, "[i]t is not permissible for a judge to determine what is or is not a matter of religious doctrine." Martin v. Corp. of Presiding Bishops of the Church of Jesus Christ of Latter-Day Saints, 434 Mass. 141, 152 (2001). Put bluntly, "[a] court may not examine the truth behind a person's religious beliefs." Sagar. at 74 (citations omitted).

This Court need not be concerned, however – the undisputed and unrebuttable fact and expert evidence establishes that First Parish holds a sincere religious belief that it is called by its religious faith to decrease the carbon footprint of the Meetinghouse by installing solar panels. According to Reverend Gibbons: "First Parish ... adheres to the widely held Unitarian Universalist religious conviction that the Seventh Principle calls upon the faithful to engage in affirmative acts of environmental conservation, and that these acts are essential to our religious practice. Reducing the carbon footprint of our iconic Meetinghouse is central to our Congregation's calling to act consistent with the Seventh Principle." JA 1 ¶ 10.

---

[8] The HDC's expected argument, that First Parish desires to install solar panels for secular, environmental reasons is immaterial. That First Parish may be motivated by secular *as well as* religious beliefs does not change the analysis. This Court may not condition a religious freedom right on evidence that the motivation for the conduct was "purely religious." Sagar, 57 Mass. App. Ct. at 74 (considering plaintiff's free exercise claim even though plaintiff's motivation was both religious and secular).

The expert affidavits of the Rev. Dr. William Schulz and Prof. Daniel McKanan establish the objective sincerity, longevity, and theological and institutional bases for the UU belief that UUs are called to act in furtherance of the Seventh Principle. According to Rev. Schulz, "Respect for the natural world, as a theological principle embodied in our Unitarian Universalist Seventh Principle . . . compels Unitarian Universalists to care of and protect the earth and environment." JA 2 ¶22. According to Prof. McKanan, "by refusing to permit First Parish to install solar panels on the Meetinghouse, the Bedford Historic District Commission interfered with First Parish's ability to comply with its religious beliefs and religious calling and drained the building of its real historical significance." JA 3 ¶ 40.

B. The HDC Has Substantially Burdened First Parish's Free Exercise of Religion.

Government action that makes the "exercise of religion more difficult and more costly" constitutes a substantial burden. Desilets, 418 Mass. at 324. "[A] 'substantial burden' is one that is coercive or compulsory in nature." Magazu v. Dept. of Children & Families, 473 Mass. 430, 444-45 (2016). Forcing a party to "forsake a sincerely held religious belief" constitutes a substantial burden under art. 46, § 1, of the Amendments. Id. Here, the HDC has forced First Parish to forsake a sincerely held religious belief. Forbidding First Parish from installing solar panels and forcing First Parish to continue to rely solely on fossil fuels to heat the Meetinghouse is repugnant to First Parish's religious beliefs. As the Rev. Dr. Schulz explained, "Unitarian and Universalist theology [developed] the core belief that, to take care of the natural world is to honor God, and to desecrate the earth is to dishonor God." JA 2 ¶ 18. Compelling First Parish "to worship in a Meetinghouse that contributes to the degradation of our environment and which relies on fossil fuels .... is repugnant to First Parish Unitarian Universalist beliefs." JA 1 ¶ 23.

In Roman Catholic Bishop of Springfield v. City of Springfield, 724 F.3d 78, 95-96 (1st Cir. 2013), the First Circuit adopted a functional approach to determine what constitutes a substantial

burden under the Religious Land Use and Institutionalized Persons Act ("RLUIPA").[9] Factors to be considered include whether the government targets a religion or religious practice; acted arbitrarily, capriciously, or unlawfully; or based its action on the objections of a "small but influential group in the community" or a misunderstanding of legal principles.

All are present here. The HDC's disdain for First Parish and Unitarian Universalism was expressed in the public meetings when First Parish members were told to sit on each other's laps and when Member Weisz mocked First Parish's stated religious beliefs by comparing Unitarian Universalism to a made-up parody religion called "pastafarians."[10] As discussed above, the HDC acted arbitrarily in denying the Solar Proposal based on subjective aesthetics. The HDC also misunderstood controlling legal principles: the HDC did not understand that the Bedford Act required consideration of First Parish's claim to a substantial hardship; the HDC did not understand that the Act permitted approval with conditions; and the HDC told First Parish that it would not countenance any discussion of "freedom of religion." Finally, Member Weisz made clear that he based his vote on the views of a small minority of citizens, who did not appear at any hearing, opposed to solar panels because of their appearance.

C. The HDC Cannot Show an Unusually Important Governmental Goal.

Once this Court determines, as it must, that the HDC has substantially burdened First Parish's free exercise of religion, the burden shifts to the HDC to prove "an unusually important

---

[9] RLUIPA prohibits state and federal governments from "placing a substantial burden on religious exercise unless the government could show that it had a compelling interest and that it used the least restrictive means." 724 F.3d at 94. The First Circuit has held that the strict scrutiny standard it adopted and applies to RLUIPA claims *is at least as robust* as the standard applied by the Massachusetts Supreme Judicial Court. 724 F.3d at 102 ("Massachusetts has . . . retained the strict scrutiny standard even for laws that are neutral and generally applicable") citing Desilets, 418 Mass. 322 & n.4.

[10] In addressing a RLUIPA claim by a prisoner claiming to be a pastafarian, a federal court in Nebraska declared "it is evident to the Court that FSMism is not a belief system addressing 'deep and imponderable' matters: it is, as explained above, a satirical rejoinder to a certain strain of religious argument." Cavanaugh v. Bartelt, 178 F.Supp.3d 819, 829 (D.Neb., 2016) (finding FSM not a religion for purposes of RLUIPA). That Member Weisz analogized Unitarian Universalism – a religion with roots in the 18th century and a direct outgrowth of the Puritan religion in New England, see generally JA 3, McKanan Disclosure – to an organization that parodies religion, in order to mock First Parish's free expression argument, demonstrates *actual religious hostility* repugnant to Article 2 and 46.

governmental goal . . . and that an exemption would substantially hinder the fulfillment of the goal." Magazu, 473 Mass. at 443. The HDC cannot meet its burden. The only permissible governmental goal the HDC could rely upon to bar First Parish from exercising its religious beliefs is the one provided in the Bedford Act – to protect and preserve "buildings . . . of architectural and historic significance." As shown, however, the installation of solar panels will not diminish or negatively impact the Meetinghouse's historic or architectural significance.

But, even if one could reasonably conclude that the solar panels would detract ***slightly*** from the iconic view of the Meetinghouse, preventing a minor visual change of the roof of the Meetinghouse is not a sufficiently compelling government interest that the HDC can trammel First Parish's art. 2 and art. 46 rights. Not when the HDC's own Guidelines permit the installation of solar panels and the stated policy of the Commonwealth is to encourage solar panels on historic buildings.

Moreover, "[t]he 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." Soc'y of Jesus, 409 Mass. at 43. In the Soc'y of Jesus case, the Court held that the Boston Landmarks Commission's designation of the interior of the Church of Immaculate Conception as a landmark violated art. 2 of the Declaration of Rights. The Court held that art. 2 "guarantees freedom of religious belief and religious practice subject only to the conditions that the public peace not be disturbed and the religious worship of others not be obstructed." Id. at 41 (emphasis added). Although the issue in Soc'y of Jesus involved the interior of the church, and the placement of the altar, the Court's reasoning applies here. The Court found that the position of the altar was of "central significance" to Jesuits religious practice. Id. at 42. Here, the overwhelming evidence from religious scholars, theologians, and First Parish's own Minister, establishes that

acting to protect the earth is central to the UU faith. And, as in Soc'y of Jesus, the installation of solar panels will neither disturb the peace nor interfere with any other religious practice.

The HDC also cannot establish that granting an exception would hinder its goal. The Bedford Act contains a mandatory hardship exception which First Parish satisfies. The hardship faced by First Parish – being forced to act in violation of First Parish's religious beliefs and being prohibited from affirming and promoting the Seventh Principle – must be weighed against a very minor change in the appearance of the Meetinghouse roof. And, permitting solar panels would not be a substantial detriment to the public welfare of Bedford or substantially derogate from the intent and purpose of the Bedford Act where the HDC Guidelines permit solar panels and the Commonwealth policy is in favor of solar panels. Truly, the avowed public policy as expressed in the HDC Guidelines, and by the Commonwealth, favors the very act of religious expression First Parish is called to perform. The HDC cannot satisfy its burden of proving that it has a compelling interest to the contrary that would Constitutionally justify burdening Free Parish's exercise of religion.

CONCLUSION

The Solar Proposal complied with HDC Guidelines and included every possible option to minimize the appearance of the panels. First Parish explained that the installation of the solar panels was in furtherance of its sincere beliefs. The HDC ignored the Guidelines, ignored First Parish's right to free expression, ignored the stated purpose of the Bedford Act, and denied the Proposal because three of the five HDC members do not like how solar panels look. The HDC decision was unacceptable, arbitrary, capricious and a violation of First Parish's right to free expression, and should be annulled.

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

By their attorneys,

Rebecca G. Neale – BBO #670630
Law Office of Rebecca G. Neale
PO Box 61
Bedford, MA 01730
Ph: (415) 516-9504
Rebecca.g.neale@gmail.com

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

May 23, 2017

CERTIFICATE OF SERVICE

I certify that I served a true copy of the above document on counsel for the Defendant by overnight mail this 23rd day of May, 2017.

Debra Squires-Lee

Acts, 1964. - Chap. 118.

Chap. 118. AN ACT ESTABLISHING A HISTORIC DISTRICT COMMISSION FOR THE TOWN OF BEDFORD, DEFINING ITS POWERS AND DUTIES, AND ESTABLISHING A HISTORIC DISTRICT THEREIN.

SECTION 1. *Purpose.* –
The purpose of this act 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.

SECTION 2. *Establishment of District.* –
There is hereby established in the town of Bedford the Great Road/North Road/Springs Road/South Road/Maple Street/Elm Street historic district. The locations and boundaries of said historic district being shown on a map on file in the office of the town clerk entitled "Plan of Land in Bedford, Mass., Showing Historic District , Scale 1"=100', prepared by BSC-Bedford, Drawing Number 1340.30, dated January 17, 1986."

SECTION 3. *Definitions.* –
As used in this act, the following words and terms shall have the following meanings: –

"Building", a combination of materials having a roof and forming a shelter for persons, animals or property.

"Building inspector", the building inspector of the town of Bedford.

"Commission", the Historic District Commission established by section four.

"Erected", the word "erected", includes the words "built", "constructed", "reconstructed", "restored", "altered", "enlarged", and "moved".

"Exterior architectural feature", 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.

"Historic District", the district established by section two.

"Landscaping", the planting and removal of trees and the alteration of site topography.

"Person", the word "person" includes an individual, a corporate or incorporated organization or association and the town of Bedford.

"Structure", a combination of materials, other than a building, including a wall, fence, walk and driveway.

SECTION 4. *Creation and Organization of Historic District Commission.* –
An historic district commission in the town of Bedford is hereby established and shall consist of five members and two alternate members appointed by the board of selectmen, including one member from the Bedford historical society or the Bedford historical commission, one member shall be a resident of the historic district to be administered by the commission, and one member shall be a registered architect or a person experienced in the building trade. The appointments to membership in the Commission shall be so arranged that the term of at least one member shall expire each year and his successor shall be appointed in the same manner as the original appointment for terms of three years for each member. Alternate members shall serve for a term of three years. Nominations for appointment of members and alternate members shall be submitted to the board of selectmen by letter which shall contain a statement of the qualifications of the nominees. In case of the absence, inability to act or unwillingness to act because of self interest on the part of a member of the commission, his place shall be taken by an alternate member designated by the chairman. Each member and alternate member shall continue in office after the expiration of his term until his successor is duly appointed and qualified. All members shall serve without compensation. A member who shall absent himself from three consecutive meetings of the commission, without cause, shall be deemed to have vacated his office, and the secretary of the commission shall give notice thereof to the board of selectmen who shall thereupon proceed to fill the vacancy. The commission shall elect a chairman, vice-chairman, and secretary from its membership. In the case of absence of the chairman from any meeting, the vice-chairman shall preside.

SECTION 5. *Limitations.* –

(a) No building or structure, except as provided under section six, shall be erected within the historic district 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 either a certificate of appropriateness or a certificate that no exterior architectural feature is involved, shall have been issued by the commission.

(b) No building or structure within the historic district, except as provided in section six, 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.

(c) No building or structure within the historic district, except as provided under section six, shall be demolished or removed unless and until an application for a permit to demolish or remove the same shall have been filed with the commission, and such permit shall have been issued by the commission.

(d) No occupational, commercial or other sign, except as provided under section six, and no billboard which is subject to view from a public street, way or place shall be erected or displayed within the historic district unless and until an application for a certificate of appropriateness shall have been filed with the commission, and such certificate shall have been issued by the commission. In the case of any such sign or billboard erected or displayed prior to the effective date of this act, there shall be allowed a period of five years, subsequent to said effective date, in which to obtain such certificate.

(e) No landscaping within the historic district, and subject to view from a public street, way or place, except for ordinary maintenance, shall be undertaken until a certificate of appropriateness shall have been issued by the commission.

(f) Except in cases excluded by section six: -

(1) No permit shall be issued by the building inspector for any building or structure to be erected within the historic district, until a certificate of appropriateness or a certificate that no exterior architectural feature is involved has been issued under section nine.

(2) No permit shall be issued by the building inspector for the demolition or removal of any building or structure within the historic district until a permit has been issued under said section nine.

SECTION 6. *Exclusions.* -

(a) Nothing in this act shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature of any building or structure within the historic district; nor shall anything in this act be construed to prevent the erection, construction, reconstruction, restoration, alteration or demolition of any such feature which the building inspector shall certify is required by the public safety because of an unsafe or dangerous condition; nor shall anything in this act be construed to prevent the erection, construction, reconstruction, alteration or demolition of any such feature under a permit issued by the building inspector prior to the effective date of this act.

(b) The following structures and signs may be erected or displayed within the historic district without the filing of an application for, or the issuance of, a certificate of appropriateness: -

(1) Temporary structures or signs for use in connection with any official celebration or parade, or any charitable drive in the town; provided, that any such structure or sign shall be removed within three days following the termination of the celebration, parade or charitable drive for which said structure or sign shall have been erected or displayed. Any other temporary structures or signs which the commission shall determine from time to time may be excluded from the provisions of section five without substantial derogation from the intent and

purposes of this act.

(2) Real estate signs of not more than three square feet in area advertising the sale or rental of the premises on which they are erected or displayed.

(3) Occupational or other signs of not more than one square foot in area and not more than one such sign, irrespective of size, bearing the name, occupation or address of the occupant of the premises on which such sign is erected or displayed where such premises are located within a single residence district as defined in the zoning by-law of the town of Bedford.

(c) The exterior color of any building or structure within the historic district may be changed to white without the filing of an application for, or the issuance of , a certificate of appropriateness or to any color or any combination of colors which the commission shall determine from time to time may be used without substantial derogation from the intent and purposes of this act.

SECTION 7. *Application to be filed with Commission.* –
Excepting cases excluded by section six, any person who desires to erect, build, construct, reconstruct, restore, alter, move, demolish, remove or change the exterior color features of any building or structure now or hereafter within the historic district, or to erect or display within the historic district any sign or billboard for which a certificate of appropriateness is required under paragraph (*d*) of section five, or to landscape within the historic district, for which a certificate of appropriateness is required under paragraph (*e*) of section five, shall file with the commission an application for a certificate of appropriateness or a permit for demolition or removal, as the case may be, together with such plans, elevations, specifications, material and other information drawn to scale, as shall be deemed necessary by the commission to enable it to make a determination on the application.

SECTION 8. *Meetings, Hearings, Time for making Determinations.* –
Meetings of the commission shall be held at the call of the chairman and also when called in such other manner as the commission shall determine in its rules.

The commission shall determine promptly, and in all events within fourteen days, after the filing of an application for a certificate of appropriateness as to exterior architectural features, whether the application involves any such features. If the commission determines that such application involves any exterior architectural features, the commission shall hold a public hearing on such application. The commission shall also hold a public hearing on all other applications required to be filed with it under this act, except that the commission may approve an application for a change in exterior color features without holding a hearing if it determines that the color change proposed is appropriate.

The commission shall fix a reasonable time for the hearing on any application and shall give public notice thereof by publishing notice of the time, place and purpose of the hearing in a local newspaper at least seven days before said hearing and also, within seven days of said hearing, mail a copy of said notice to the applicant, to the owners of all property deemed by the commission to be affected thereby as they appear on the most recent local tax list, to the planning board of the town, and to such

other persons as the commission shall deem entitled to notice.

As soon as convenient after such public hearing but in any event within forty-five days after the filing of the application, or within such further time as the applicant shall allow in writing, the commission shall make a determination on the application. If the commission shall fail to make a determination within said forty-five days, or within such further time allowed by the applicant, the commission shall be deemed to have approved the application.

SECTION 9. *Powers, Functions and Duties of Commission.* –
The commission shall have the following powers, functions and duties: –

(a) It shall pass upon: –

(1) The 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.

(2) 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.

(3) The demolition or removal of any building or structure within the historic district. The commission may refuse a permit for the demolition or removal of any building or structure of architectural or historic interest, the removal of which in the opinion of the commission would be detrimental to the public interest.

(4) The appropriateness of the erection or display of occupational, commercial or other signs and billboards within the historic district wherever a certificate of appropriateness for any such sign or billboard is required under paragraph *(d)* of section five.

In passing upon appropriateness, demolition or removal, the commission shall determine whether the features, demolition or removal, sign or billboard involved will be appropriate for the purposes of this act and, if it shall be determined to be inappropriate, shall determine whether, owing to conditions especially affecting the building, structure, sign or billboard involved, but not affecting the historic district generally, 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. If the commission determines that the features, demolition or removal, sign or billboard involved will be appropriate or, although inappropriate, owing to conditions as aforesaid, failure to approve an application will involve substantial hardship to the applicant and approval thereof may be made without substantial detriment or derogation as aforesaid, the commission shall approve the application; but if the commission does not so determine, the application shall be disapproved.

In passing upon appropriateness the commission shall consider, among other things, the historic value and significance of the site, building or structure, the

general design, arrangement, texture, material and color of the features, sign or billboard involved, and the relation of such factors to similar factors of sites, buildings and structures in the immediate surroundings. The commission shall consider the appropriateness of the size and shape of the building or structure in relation to (*a*) the land area upon which the building or structure is situated, (*b*) the landscaping and planting features proposed by the applicant and (*c*) the neighboring sites, buildings or structures within the district. The commission shall also consider the applicable zoning and other by-laws of the town. The commission shall not consider detailed designs, interior arrangement and other building features not subject to public view.

In approving an application the commission 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. Prior to approving an application subject to conditions, the commission may notify the applicant of its proposed action and permit the applicant to express his opinion thereon.

The concurring vote of three members of the commission shall be necessary to make a determination in favor of the applicant on any matter upon which the commission is required to pass under this act.

(b) In the case of an approval by the commission of an application for a certificate of appropriateness or a permit for demolition or removal, or in the event an application is deemed approved through failure to make a determination within the time specified in section eight, the commission shall cause a certificate of appropriateness or a permit for demolition or removal, as the case may be, dated and signed by its chairman or vice-chairman, to be issued to the applicant.

(c) In the case of disapproval of an application for a certificate of appropriateness or a permit for demolition or removal, the commission shall cause a notice of its determination, dated and signed by its chairman or vice-chairman in the absence of the chairman to be issued to the applicant, setting forth therein the reasons for its determination, and, 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 or permit for demolition or removal, as the case may be, dated and signed by its chairman or vice-chairman in the absence of the chairman, to be issued to the applicant.

(d) In the case of a determination by the commission that an application for a certificate of appropriateness does not involve any exterior architectural feature, the commission shall cause a certificate of such determination, dated and signed by its chairman or vice-chairman in the absence of the chairman to be issued forthwith to the applicant.

(e) The commission shall keep a permanent record of its resolutions, transactions, and determinations, and may make such rules and regulations consistent with this act and prescribe such forms as it shall deem desirable and necessary.

(f) The commission shall file with the town clerk a notice of all determinations made by it, and approvals of applications through failure of the commission to make a determination within the time allowed under section eight, except that no notice of a determination that an application for a certificate of appropriateness does not involve any exterior architectural feature shall be filed.

(g) The commission may incur expenses necessary to the carrying on of its work within the amount of its appropriation.

SECTION 10. *Appeals.* –

Any person aggrieved by a determination of the commission or by an approval of an application through failure of the commission to make a determination within the time allowed under section eight, whether or not previously a party to the proceeding, or any officer or board of the town may, within twenty days after the filing of a notice of such determination or approval with the town clerk, appeal to the superior court sitting in equity for the county of Middlesex. The court shall hear all pertinent evidence and determine the facts and if, upon the facts so determined, such determination or approval is found to exceed the authority of the commission, the court shall annul such determination or approval and remand the case for further action by the commission. The remedies provided by this action shall be exclusive; but the parties shall have all rights of appeal and exception as in other equity cases. Costs shall not be allowed against the commission unless it shall appear to the court that the commission acted in bad faith or with malice in the matter from which the appeal was taken.

Costs shall not be allowed against the party appealing from such determination or approval of the commission unless it shall appear to the court that said party acted in bad faith or with malice in making the appeal to the court.

SECTION 11. *Enforcement.* –
Any person who violates any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten dollars nor more than five hundred dollars. Each day such violation continues shall constitute a separate offense.

The superior court sitting in equity for the county of Middlesex upon the petition of the board of selectmen shall have jurisdiction to enforce the provisions of this act and the determinations, rulings and regulations issued thereunder and may restrain by injunction violations thereof and issue such other orders for relief of violations as may be required.

SECTION 12. *Changes in Historic District.* –
The district established by section two may be enlarged or reduced and new districts may be created by a two-thirds vote at any regular or special town meeting called for the purpose. Prior to any such action, the planning board of the town shall hold a public hearing, duly advertised, thereon and shall report its recommendations to the town meeting.

The commission shall file this act, amendments thereto, maps of historic districts created thereunder, annual reports and other publications of the commission, and a roster of membership with the Massachusetts historical commission.

SECTION 13. *Severability of Provisions.* –
The provisions of this act shall be deemed to be severable; and in case any section, paragraph or part of this act shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair the validity of any other sections, paragraphs or parts of this act.

SECTION 14. This act shall take effect upon its acceptance by the town of Bedford.

Approved February 27, 1964
As amended by Acts of 1979, Chapter 180, Sec. 10, approved May 18, 1979 and by Acts of 1987, Chapter 154 approved June 22, 1987