



# Memorandum

To: City Councilors  
From: Councilors Grossman and Crossley  
Re: Grace Church Back-up Material for Joint Meeting  
Date: January 8, 2021

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Councilors,

Attached is back-up material for the discussion of docket item #458-20. The Finance and Zoning & Planning Committees we will be discussing this item jointly on Monday night, January 11, 2021. The back-up material includes information provided by CPA Program Manager Lara Kritzer and Grace Church.

**Referred to Zoning & Planning and Finance Committees**

**#458-20** **CPC Recommendation to appropriate \$1,433,000 in CPA funding for Grace Church**  
**COMMUNITY PRESERVATION COMMITTEE** recommending the appropriation of one million four hundred and thirty-three thousand dollars (\$1,433,000) in Community Preservation Act historic resource funding to the Grace Episcopal Church Tower Restoration project for the stabilization and preservation of the historically significant ca. 1872 conical stone spire, tower and belfry.

**#458-20**

**Community Preservation Committee Funding  
Recommendation for the  
Grace Episcopal Tower Restoration Project**

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**1) CPA Funding Recommendation, updated as of January 8, 2021:**

- Full Tower Restoration Proposal is available at:  
<https://www.newtonma.gov/home/showpublisheddocument?id=39653>

Provided by Lara Kritzer, CPA Program Manager



Ruthanne Fuller  
Mayor

## City of Newton, Massachusetts

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**#458-20**

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Barney S. Heath  
Director

### Community Preservation Committee Funding Recommendation for the Grace Episcopal Tower Restoration Project

**Date:** October 28, 2020 (Updated January 8, 2021)  
**From:** Community Preservation Committee  
**To:** The Honorable City Council  
**CC:** The Honorable Mayor Ruthanne Fuller

**PROJECT GOALS & ELIGIBILITY** Grace Episcopal Church requests CPA historic resource funding in the amount of \$1,433,000 for the stabilization and preservation of the conical stone tower located in the southeast corner of the structure. A structural defect recently discovered in the tower, which includes the belfry and spire, is causing the structure to deteriorate to the extent that it is now a public safety risk and imperils the campus of the ca. 1872 building. The tower is a prominent historic resource which is considered to be a significant element of the neighborhood's visual landscape and contributes to the character of the adjacent Farlow Park. Designed by Architect Alexander Rice Esty, the stone campus is considered to be of "outstanding architectural quality" (Newton NRHP Nomination) and is listed on the State and National Registers of Historic Places as part of the Farlow and Kenrick Parks National Register Historic District.

This project is eligible for CPA funding for the restoration/rehabilitation of an historic resource as it is listed on both the State and National Historic Registers and is also supported by the Newton Historical Commission as a locally significant structure.

**RECOMMENDED FUNDING** At the CPC's regularly scheduled meeting on Tuesday, October 13, the Community Preservation Committee recommended, with a vote of 6 to 2 with one abstention, the appropriation of \$1,433,000 in Community Preservation Act historic resource funds to the control of the Planning & Development Department for the completion of the tower restoration project at Grace Episcopal Church. Committee member Martin Smargiassi abstained from the vote as he was not present for the public hearing, and reasons for the negative votes are discussed further in the Special Issues section. In recommending this project, the CPC proposes that all of the project funding come from the Historic Resource Reserve accounts as suggested below:

Sources of CPA Funding	
FY21 Historic Resource Reserve Funds	\$479,737
Prior Fund Balance – Historic Resource Reserve Fund	\$557,382
FY22 Historic Resource Reserve	\$395,881
<b>Total CPA Funding</b>	<b>\$1,433,000</b>

[www.newtonma.gov/cpa](http://www.newtonma.gov/cpa)

Lara Kritzer, Community Preservation Program Manager  
[lkritzer@newtonma.gov](mailto:lkritzer@newtonma.gov) 617.796.1144

**SPECIAL ISSUES CONSIDERED BY THE CPC**

Whether or not public CPA funding should or could be provided for the preservation of an historic property owned by a religious entity was at the center of the CPC's discussion. Few questions were raised as to whether the tower is a significant historic and architectural resource within the community, a prominent visual and audible element of the neighborhood since its construction or contributes to the historic character of the adjacent historic Farlow Park. Instead, discussion focused on whether the CPC should recommend funding to a private institution, whether the amount of funding requested might prohibit the City from funding other important projects in the future, and how the legal questions raised by the case of *Caplan v. Acton* might impact a project recommendation.

**Funding of Private/Religious Institutions:** This was an area of significant discussion during the public meetings on this project. The Committee heard legal arguments made both for and against the use of CPA public funding for religious institutions, and also consulted with other CPA communities to learn about their reasoning and process for funding similar projects. It was noted that 91 CPA communities, including Boston and Cambridge, have funded the restoration of significant historic religious and institutional buildings based on their historic and architectural contributions to their neighborhoods and communities. The Massachusetts Anti-Aid amendment and its impact on the CPA funding of religious institutions was also reviewed during these meetings. As a result of these discussions, the majority of the CPC's members agreed that this project must be reviewed in the same manner that any historic resource project would be considered, based on the historic significance of the structure, its importance to the community, and the merits of its restoration process and plan. However, one member stated he could not see beyond the legal arguments against funding this project as he did not have the capacity to interpret legal opinions; he voted against the recommendation.

**Architectural and Historical Significance:** The Grace Episcopal Church at 76 Eldredge Street has been considered to be of architecturally and historically significance for as long as the City has been tracking its historic resources. The site was listed on the National Register of Historic Places as part of the Farlow and Kenrick Parks National Register District in 1999, having previously been noted for its "outstanding architectural quality" in the 1986 Historic Resource Inventory of Newton. The property has been a local landmark in Newton Corner since its construction, as shown on the 1878 bird's eye view Map of Newton Corner included in the proposal. When the property was included in the Newton Corner Historic Neighborhood Walking Tour in 2002, the corner tower "rising to an open belfry and high stone spire" was again noted to be an important local landmark. Numerous other planning and historic preservation documents prepared by the City over the years have noted the importance of its design, the prominence of its architect, Alexander Rice Esty, and the need to protect and preserve Newton's many churches not only for their architectural and historical contributions to the area, but for their service as important community gathering spaces, polling centers, and multi-use open space facilities. A preservation restriction was placed on the property in 1999 after Massachusetts Preservation Project Funds were awarded to the property for other restoration purposes.

**Funding leverage & project costs:** The project meets the CPC's guidelines for the funding of private projects through public-private partnerships as it provides a 50/50 match to the CPA funds. The Applicant hopes to use the City's commitment of CPA funding to leverage additional grants and donations for the project. As a condition of the project's funding, the CPC recommended that if more funding is raised than is currently estimated, the CPA funding provided to the project should be lowered accordingly. The high cost of the project was discussed, with members noting that the high cost of this type of specialized historic preservation work made it an expensive project. The possibility of dividing the project over phases to lower the initial investment was also discussed with the Applicant, who explained that the stabilization work would be fruitless if the restoration work was not completed as well. Keeping in mind the need to complete all aspects of the project within a relatively short timeframe, the CPC agreed to recommend the full funding of the project with the understanding that the funding would be released as needed over the course of the two-year project.

As part of the budget discussion, the CPC reviewed the Applicant's existing maintenance budget for the site and their proposed plan and budget for the continued maintenance of the restored tower. The CPC discussed the importance of ensuring that the tower remain in good condition following its restoration and agreed that

future maintenance should be a requirement of any funding. The Applicants agreed and expressed their commitment to funding an annual maintenance budget for the tower.

The CPC's recommendation also included a condition that all of the CPA funding for this project come from the City's existing and future Historic Resource Reserve funds. While the CPC has a goal of spending at least 20% of CPA funding on Historic Resource projects, only 17% had been used for this purpose over the life of the program. With no new Historic Resource projects in recent years, the reserve fund had grown to \$1,223,270 set aside for Historic Resource projects. Allocating these reserve funds to this project, along with a portion of the FY22 reserve funds for Historic Resources, addressed some members concerns that the use of this much funding for the tower restoration could negatively impact the City's ability to complete much needed projects in other categories. The other member who voted against this project stated that he objected to a large amount of CPA funding for this project when there were other City projects which he thought were more critical to the community.

**Community spaces & services:** The proposal details the extensive public use of this property as a meeting center, performance venue and local polling location. Grace Episcopal also has a long history of allowing non-profits to use other structures on their site, and an additional letter detailing the congregation's history in community engagement can be found on the website at:

[www.newtonma.gov/civicax/filebank/documents/106924](http://www.newtonma.gov/civicax/filebank/documents/106924). The CPC found it important to note during their discussion, however, that many historic resources are not public buildings but provide a benefit to their neighborhood and community by contributing to the community's architectural and historic landscape and character.

**Project design & permitting:** The Applicant has spent several years working closely with Structures North, as well as other preservation and masonry experts, to complete a thorough evaluation of the tower's existing condition and develop the proposed solutions. The result is a set of detailed elevations and drawings of the tower which show where the damage is located and the proposed treatment methods. The Applicants have prepared a breakdown of each phase of work to be completed, who will complete the work, and how each material/structural element will be restored along with an estimated cost for the work. The proposed work meets the Secretary of the Interior's Standards for Preservation and Restoration as it will be restored and repaired using existing and in-kind materials, with new structural materials to be used only as needed on the interior of the structure. There are no anticipated zoning changes required by this project and the Applicant will be required to take out building permits to complete the necessary work.

#### **ADDITIONAL RECOMMENDATIONS** (*funding conditions*)

1. Recommended CPA funds should be appropriated within 6 months and the project should be completed within 3 years after the date of its approval by City Council, with the understanding that these deadlines may be extended by submitting a written request to the CPC outlining the reason the extension is necessary and the proposed new deadline.
2. The Applicant has committed to raising funding for 50% of the project budget. If through grants or donations more funding is raised than is currently estimated, those additional funds will be used to reduce the CPA funding contribution to the project.
3. The Applicant has committed to an ongoing maintenance plan and budget for the preservation of the restored tower. As a condition of CPA funding, the plan and budget should be submitted to the CPC for review prior to the release of any funding.
4. All funding for this project will be taken from the City's CPA Historic Resource Reserve accounts, using both its current balance of available funding and additional funding from FY22 as needed.
5. All CPA funding will be used solely for the restoration of the tower as a public element of the building which is visible from all surrounding public ways and park spaces. No funding can be used for the support of any religious activities, or for the restoration of any other elements of the building which are solely used for religious purposes.
6. The Applicant will be asked to update the CPC on the status of the project at regular intervals as requested. Periodic site visits to check the status of the restoration work may also be requested.

7. The CPC will hold 10% of the project's CPA funding until all restoration work is complete, at which time a final report and updated project budget must be submitted to the CPC for approval. The Applicant will be expected to present these materials at a public meeting of the CPC for their review and approval before the final funds are released.
8. The release of CPA funds will be governed by a grant agreement that includes but is not limited to the usual conditions for the phased release of CPA funds for historic resource projects, including a final report to the CPC and the return of unspent funds.
9. Any CPA funds appropriated but not used for the purposes stated herein should be returned to the Newton Community Preservation Fund.

**KEY OUTCOMES** The successful outcomes of this project will be the interior stabilization of the tower, using a patented system to replace the failing interior supports and prevent further deterioration, and the exterior restoration of the facades by repointing and replacing failed masonry elements to prevent water infiltration and damage in the future. The ultimate goal of this project is to have a fully restored tower element which can be viewed and accessed again by the public.

#### **ATTACHMENTS**

- Tower Restoration Proposal submitted by Grace Episcopal Church on Aug. 14, 2020. (Due to the size of this document, a link has been included to its location on the project website: <https://www.newtonma.gov/home/showpublisheddocument?id=39653>)
- Grace Episcopal Church's October 13, 2020 presentation to the Community Preservation Committee

Additional information not attached to this recommendation, including petitions and letters of support, are available on the CPC's website at: <https://www.newtonma.gov/government/planning/community-preservation-program/proposals-projects/grace-episcopal-church-tower-restoration>

**1b)** Grace Episcopal Church's October 13 project presentation to the Community Preservation Committee.

Provided by Grace Episcopal Church





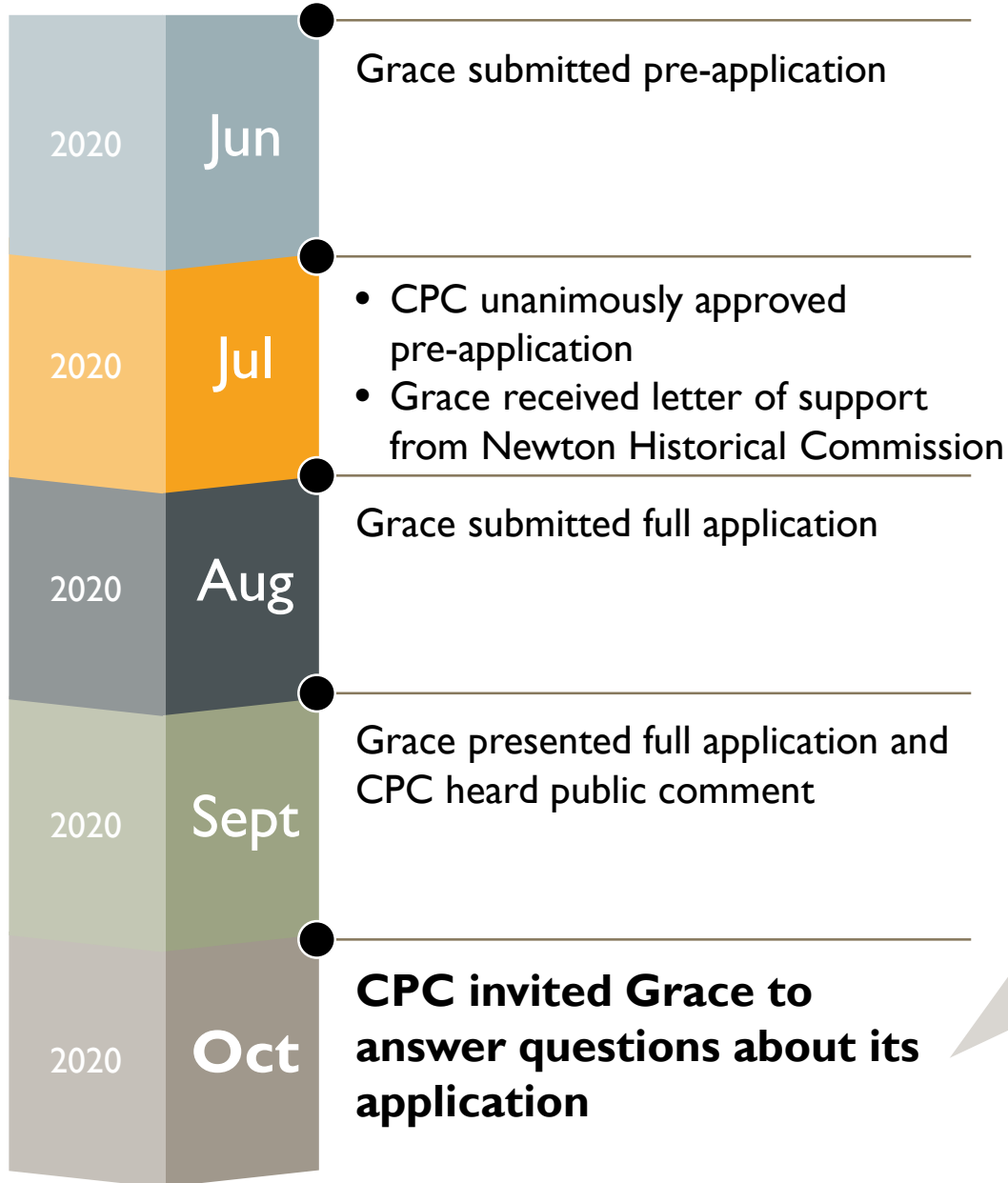
Grace Tower Restoration Project  
Newton's Community Preservation Committee  
October 13, 2020

## Grace Tower Restoration CPC Application Recap



- Grace tower and the Eldredge chime have defined Farlow Park and Newton Corner for 147 years
- Listed on the National Register of Historic Places as part of the Farlow and Kenrick Parks Historic District, nominated by the City in 1982
- A design defect has rendered the tower unstable, creating an emergency situation and a threat to public safety
- Nine-bell Eldredge Chime is one of only two functioning chimes of its kind in Newton

## Background and Today's Agenda



CPC members and staff have asked Grace to discuss the following:

- Grace Church Eligibility
- Benefit to Newton
- Phasing of Revenue and Expenses
- Future Maintenance Budget
- Preservation Restriction
- Mayor's Perspective on Project



## ***Caplan v. Town of Acton*** **Three-Part Test**

1. Is motivating purpose of grant to aid a private entity?
2. Will grant have the effect of substantially aiding private entity?
3. Does grant avoid risks that prompted passage of the anti-aid amendment?

## *Caplan v. Town of Acton* Three-Part Test

1. Is motivating purpose of grant to aid a private entity?

**Purpose of grant is historic preservation**

2. Will grant have the effect of substantially aiding private entity?

**Grant will not substantially aid **Grace Church****

3. Does grant avoid risks that prompted passage of the anti-aid amendment?

**Grant Avoids Risks**

- **Would not infringe liberty of conscience**
- **Would not entangle government with religion**
- **Would not threaten civic harmony**





## Historic Preservation Benefits Communities

- Historic preservation is a legitimate public good
- Historic districts are desirable areas marked by population growth, cohesion and a strong sense of identity
- There is direct and indirect economic benefit to historic preservation (e.g., increased home values and greater appreciation, heritage tourism)
- There is a cost to NOT investing in historic preservation
- 91 municipalities in MA commit CPA funds to help preserve historic houses of worship. Newton has yet to do so.

**Grace Has Contributed to Newton for 147  
Years...  
and counting**

Sources:

Massachusetts Historical Commission, Economic Impacts of Historic Preservation in Massachusetts, May 2002

Massachusetts Historical Commission, Massachusetts State Historic Preservation Plan 2018-2022

Metropolitan Policy Program, The Brookings Institution, Economics and Historic Preservation: A Guide and Review of the Literature

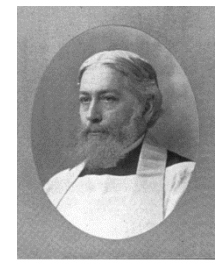


# Grace's Contributions to Newton 1870-1970

Stone Church  
and Tower  
Opens



1873



Rev. G. Shinn

1881



Newton Cottage  
Hospital

Rev G. Shinn and Mayor  
Pulsifer founded NCH,  
(now NWH)

Farlow Park

Land donated by Grace  
leader John Farlow, Rev  
Shinn supervises design



1880-83

1931



Newton Children's  
Library

Grace Church Member  
donates land.

Social Justice  
Affordable  
Housing

Rev Tom Lehman helps  
establish NCDF  
Grace co-founds CMM,  
Cooperative  
Metropolitan Ministries



Cooperative Metropolitan Ministries

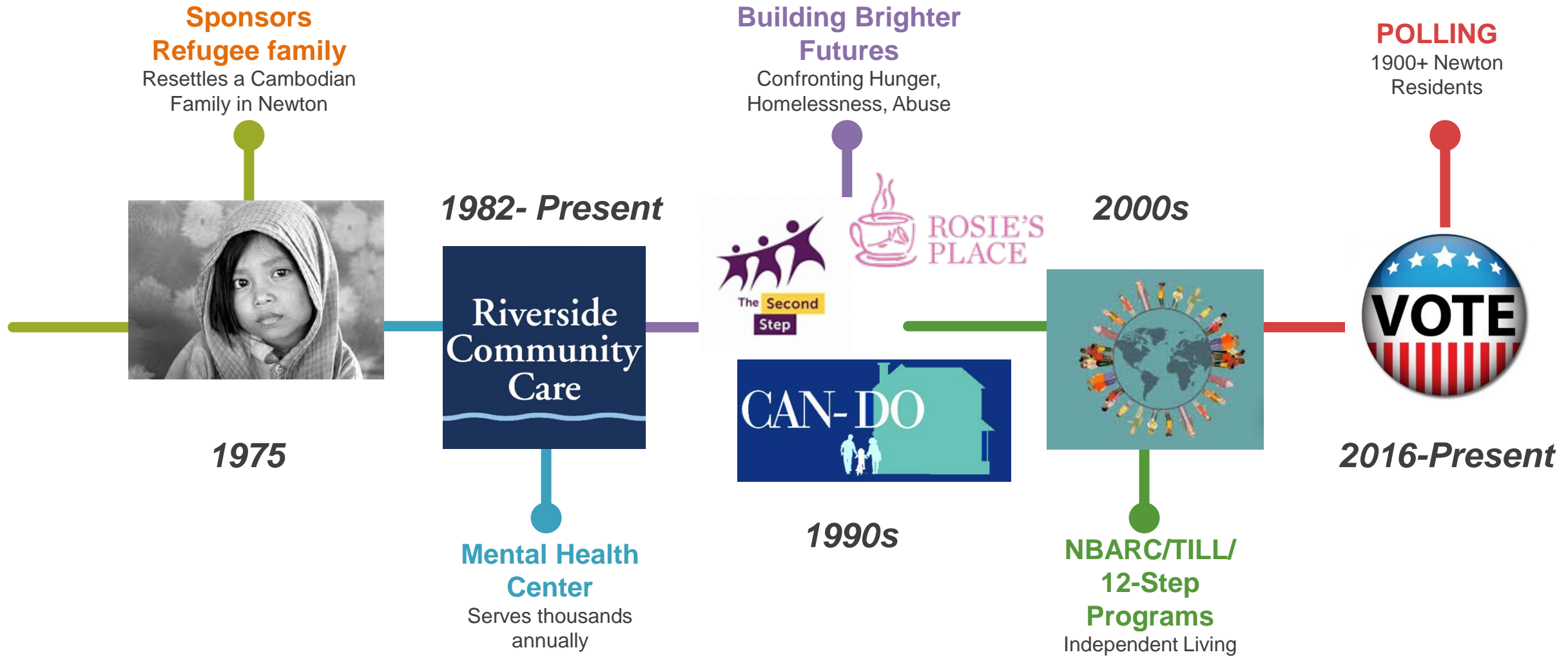
Faiths Uniting in Social Action Since 1966



1960s



# Grace's Contributions to Newton 1970-2020





## Project Budget – Source of Funds

### Stabilization and Restoration

#### 2021–2022

	Phase I – Stabilization (2021)	Phase 2 – Restoration (2022)	Project Total
CPC	\$ 600,000	\$ 833,000	\$ 1,433,000
GRACE	500,000	483,000	<b>983,000</b>
Other Grants	<u>50,000</u>	<u>400,000</u>	<u><b>450,000</b></u>
<b>Total</b>	<b>\$ 1,150,000</b>	<b>\$ 1,716,000</b>	<b>\$ 2,866,000</b>

The CPC requested information about Grace Church’s past and future maintenance budgets for upkeep of our historic property.

We actively steward our historic property and are committed to:

- Preserving its architecture for the benefit of the historic district and for Newton and its residents.
- Making enhancements that enable the Newton community to benefit from our space in relevant and modern ways

### **Property Expenditures 2006 – 2020**

Average annual expense	\$96,000
Range of annual expenses	\$40,000 - \$231,000

### **Added Budget for Tower Maintenance**

Annual reserve for tower	\$15,000
Tower reserve over 25 years	\$375,000
Tower reserve over 50 years	\$750,000



Middlesex South Registry of Deeds

DATE 1/19/99 TIME 9:16 DOC# 154

PRESERVATION RESTRICTION AGREEMENT  
between the COMMONWEALTH OF MASSACHUSETTS  
by and through the MASSACHUSETTS HISTORICAL COMMISSION  
and the Grace Church

The parties to this Agreement are the Commonwealth of Massachusetts, by and through the Massachusetts Historical Commission located at the Massachusetts Archives Building, 220 Morrissey Boulevard, Boston, Massachusetts 02125, hereinafter referred to as the Commission, and the Grace Church 76 Eldredge Street, Newton Corner, Ma. hereinafter referred to as the Grantor.

In 1999, the Massachusetts Historical Commission placed a **preservation restriction in perpetuity** on the Grace Church property **including its tower.**

- To protect the **architectural, historical, and archaeological integrity** of the buildings
- Because it is listed in the **State Register of Historic Places**
- To **serve the public interest** by preserving the premises for the public's enjoyment

**Major alterations will only be considered if required due to casualty or emergency.**



In follow up to the CPC's request, Grace leadership reached out to Mayor Ruthanne Fuller's office on two occasions to solicit her perspectives on the proposed project.

### Mayor Fuller's Response

*“Mayor Fuller must respectfully decline your offer to meet with her about the bell tower project. **The CPC has a lot of independent authority in their decision making power** and the Mayor does not think it is appropriate to influence their process by meeting with members of the church to discuss the proposal prior to the vote.”*

*Your tower is an architectural treasure and should be protected!*

*Grace Church is an incredibly beautiful and important historical landmark in the city of Newton.*

Letters of community support include:

- Historic Newton
- Newton Historical Commission
- MA Historical Commission
- Friends of Farlow Park
- Riverside Community Care

*This is an important, beautiful piece of Newton's history, and I hope the city can pull together to save it.*

*"Historically and architecturally a treasure for the whole community of Newton"*

*Grace Church is one of the historical icons of this city.*

*Please preserve this important historical site in Newton Corner.*

**591**

*It is an important historical building that significantly adds to the character of the neighborhood and the city.*

*We need to save this historical Newton treasure.*

**Newton Residents signed a petition to support CPA funding for the tower.**

*Beautiful church that deserves as much help as possible to be restored. We live down the road and marvel at its beauty- held my baby many an evening staring out the window to Grace Newton.*

*Grace church with its tower intact is a beautiful landmark in our neighborhood. It would be a real loss to have to remove it.*

*I support the use of CPA funds to restore this beautiful and historic tower.*



## Grace Historic Tower - Conclusions

- Grace seeks to partner with the City to undertake a historic preservation project.
- The tower with its Eldredge chime is a historic landmark worthy of preservation.
- CPA funds restored Farlow Park, preserving the tower will build on this work and affirm the City's commitment to maintaining this historic district.
- This project represents a wonderful opportunity for the City to protect a cherished landmark for generations to come.



**Partner With Us to Preserve Newton's History**



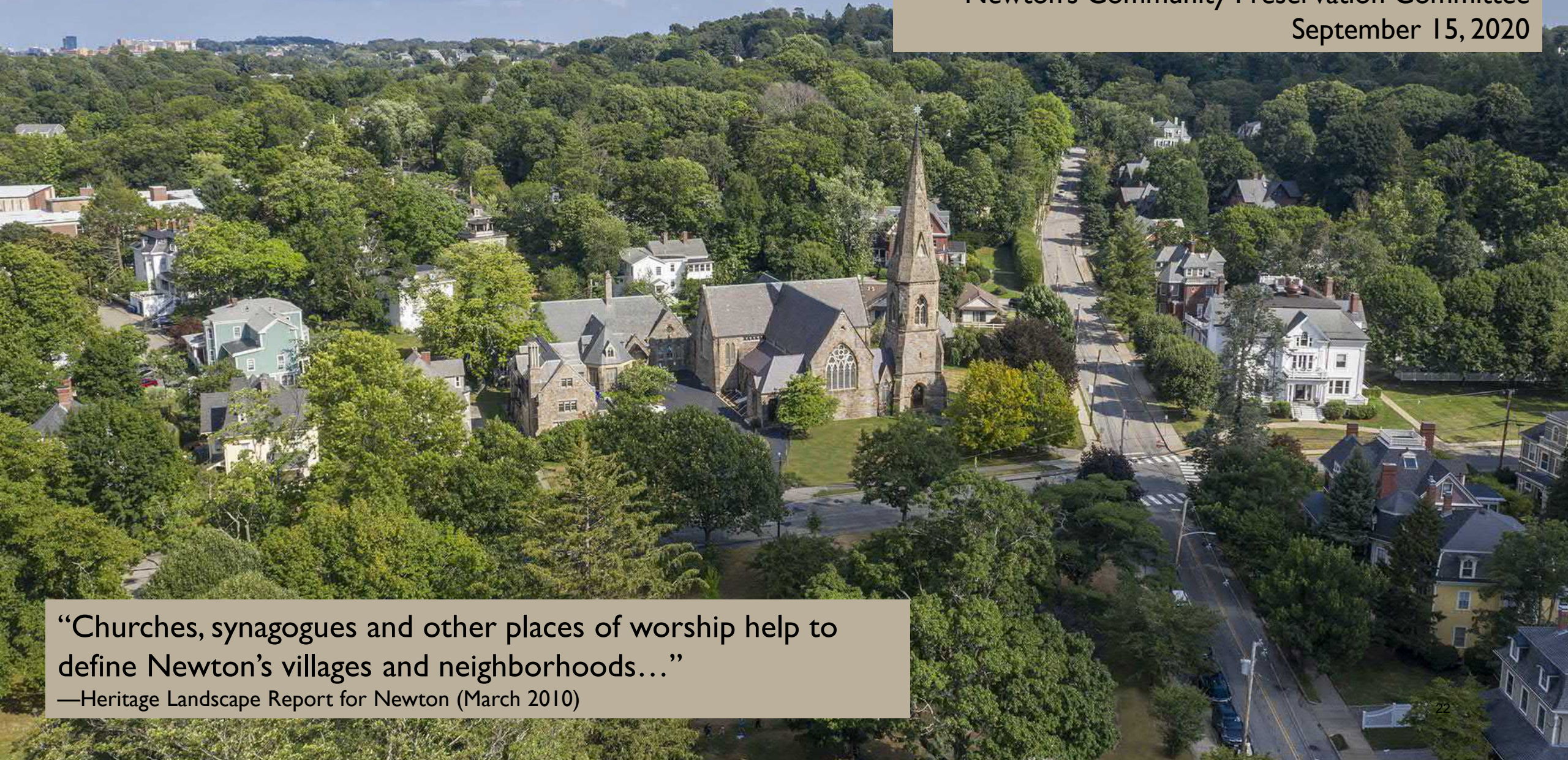
**2)** Grace Episcopal Church's September 15, 2020 public hearing presentation to the CPC.

Provided by Grace Episcopal Church

# Grace Tower Restoration Project

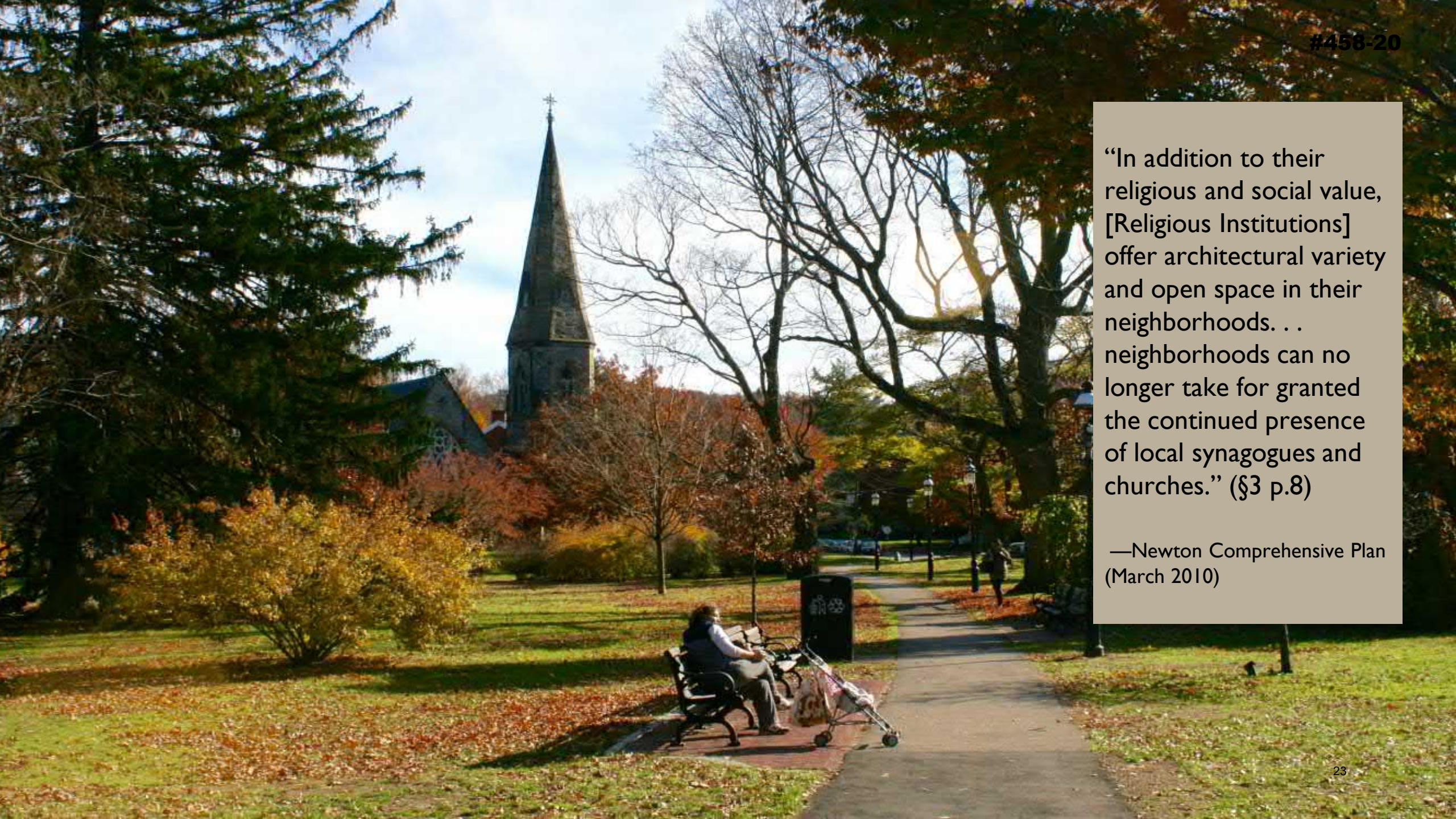
Newton's Community Preservation Committee

September 15, 2020



“Churches, synagogues and other places of worship help to define Newton’s villages and neighborhoods...”

—Heritage Landscape Report for Newton (March 2010)



“In addition to their religious and social value, [Religious Institutions] offer architectural variety and open space in their neighborhoods. . . neighborhoods can no longer take for granted the continued presence of local synagogues and churches.” (§3 p.8)

—Newton Comprehensive Plan (March 2010)

# Historical Significance

## The Old Stone Church 1873

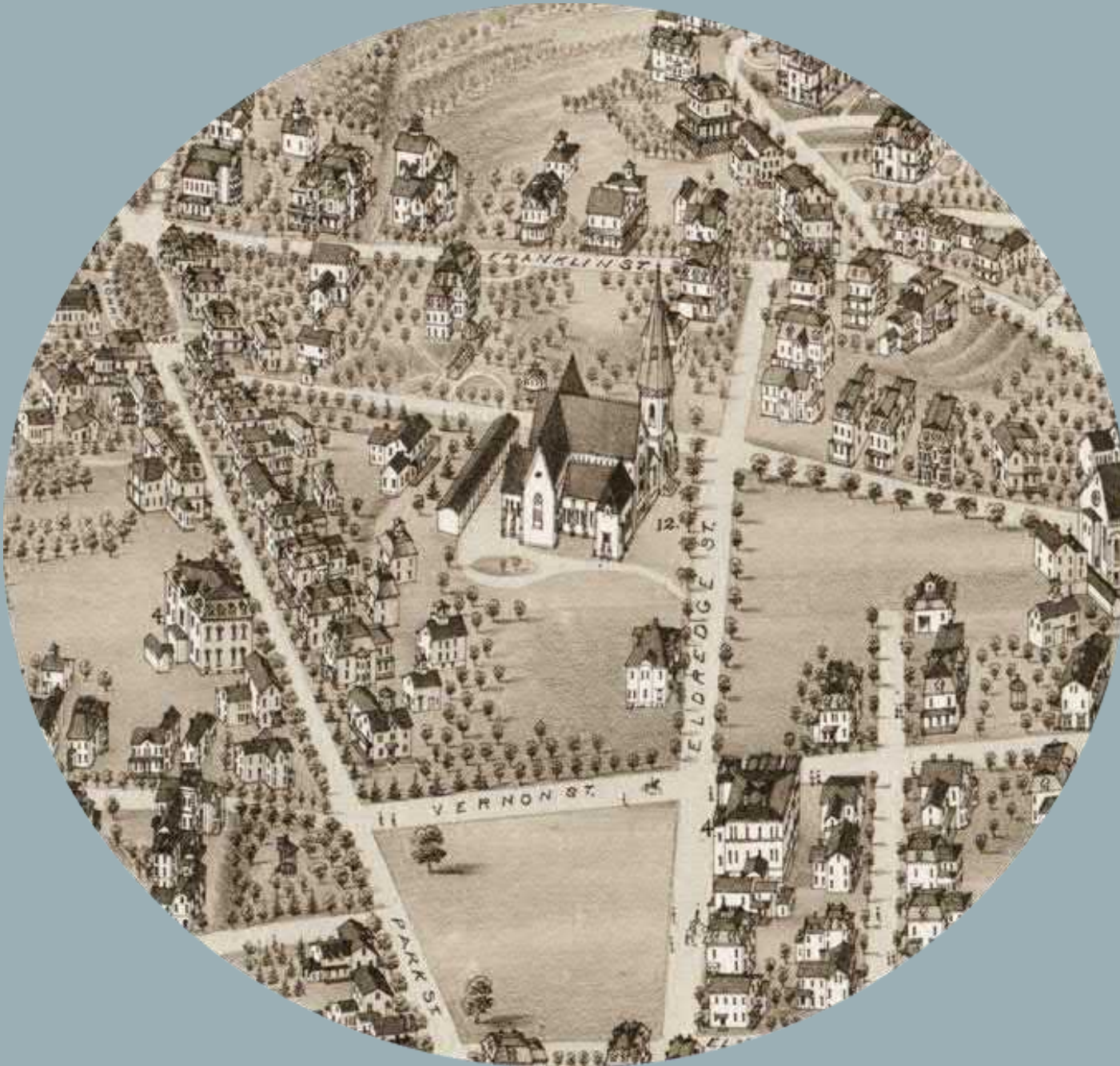
- Designed by Alexander Esty, architect of Boston's Emmanuel Church and Old Cambridge Baptist Church
- The tower's Eldredge Chime has defined the soundscape of the Victorian neighborhood for 147 years
- Listed on the National Register of Historic Places as part of the Farlow and Kenrick Parks Historic District since 1982



# Historical Significance

## Newton Corner Landmark

- Newton's oldest standing stone church rises 107 feet above the neighborhood
- “It is believed that this structure will not be surpassed in beauty and appropriateness of design by any rural church in this country.”  
—Newton Directory, 1873
- The church and the neighborhood built around it were the pride of a country town growing into the Garden City



## Historical Significance

### Design of Farlow Park

- The tower is the centerpiece of a carefully planned Victorian neighborhood
- Farlow Park Restoration Committee cited the tower as an integral feature of the landscape, Newton's oldest park
- The plan for Farlow Park was laid out in 1883, ten years after Grace was built, and emphasizes the siting of the tower
- Restoring the tower preserves the intentional design of the neighborhood's focal point



LAKE AND BRIDGE, FARLOW PARK.

(25)

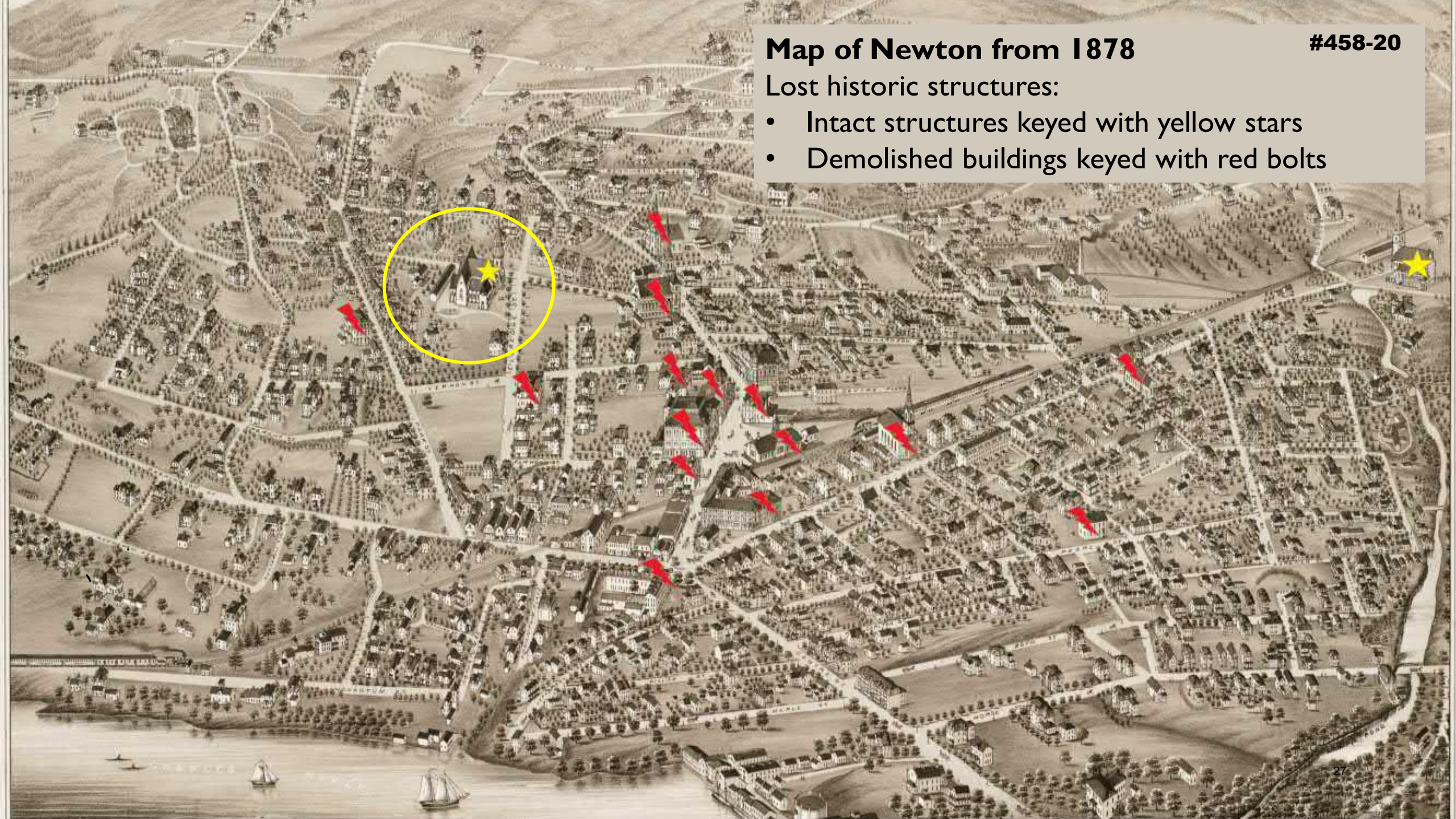


# Map of Newton from 1878

#458-20

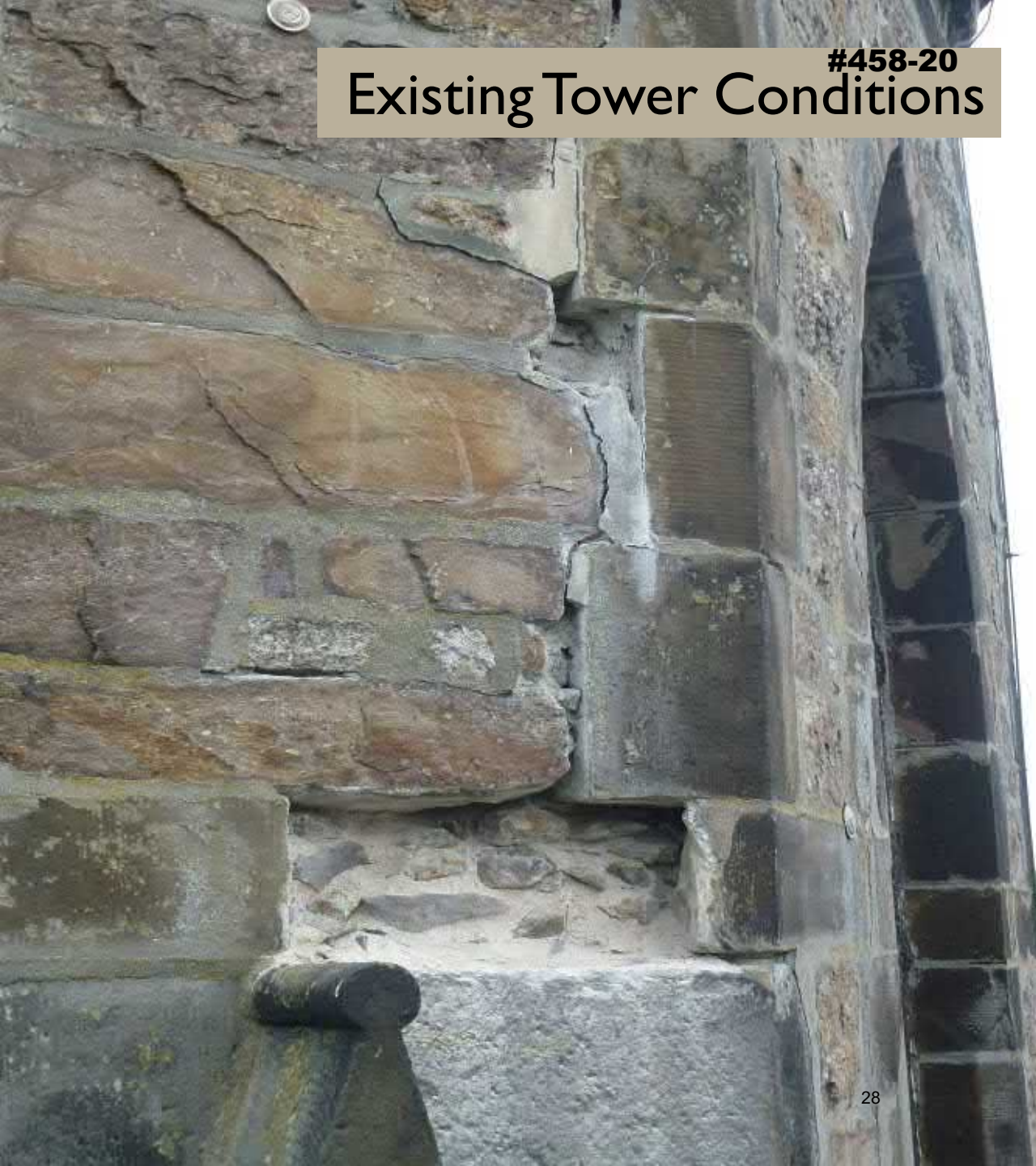
Lost historic structures:

- Intact structures keyed with yellow stars
- Demolished buildings keyed with red bolts

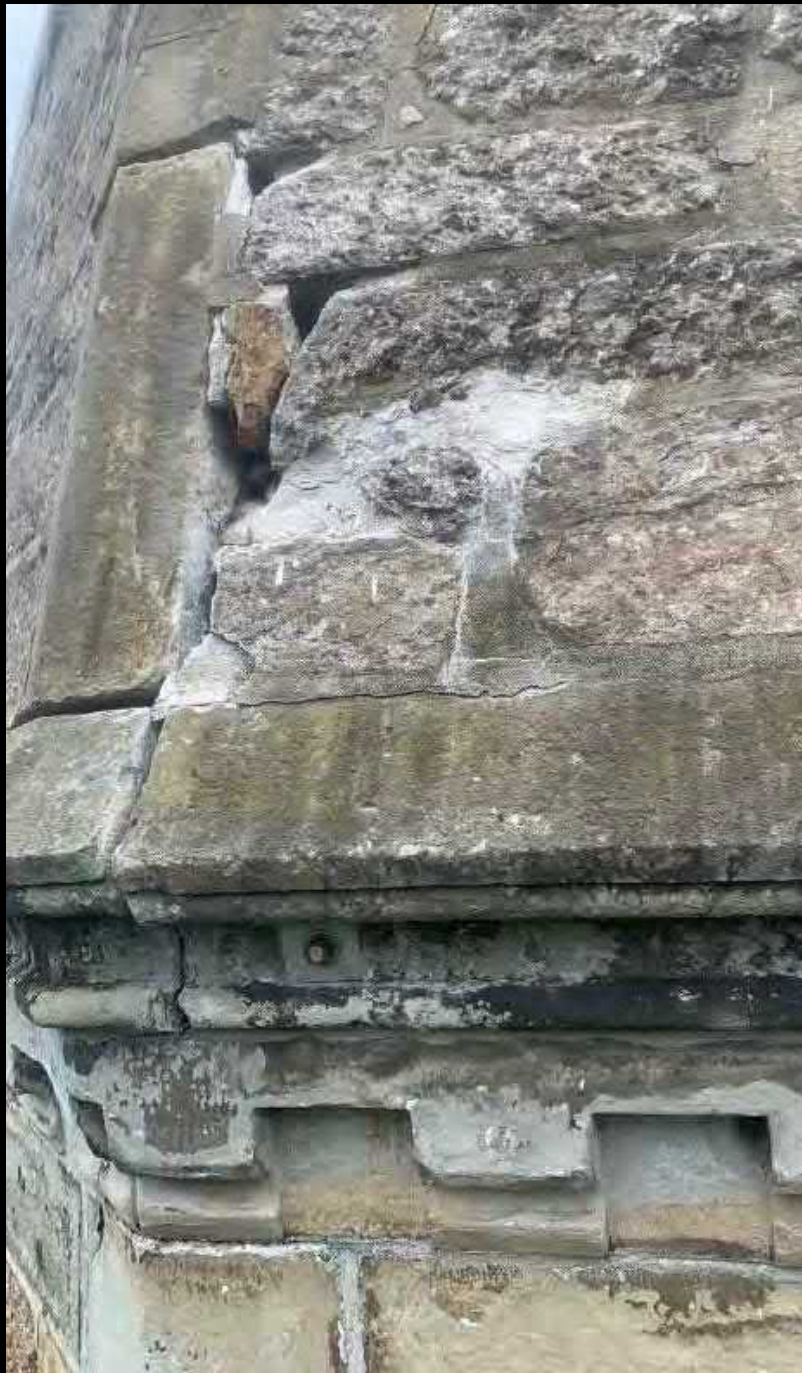




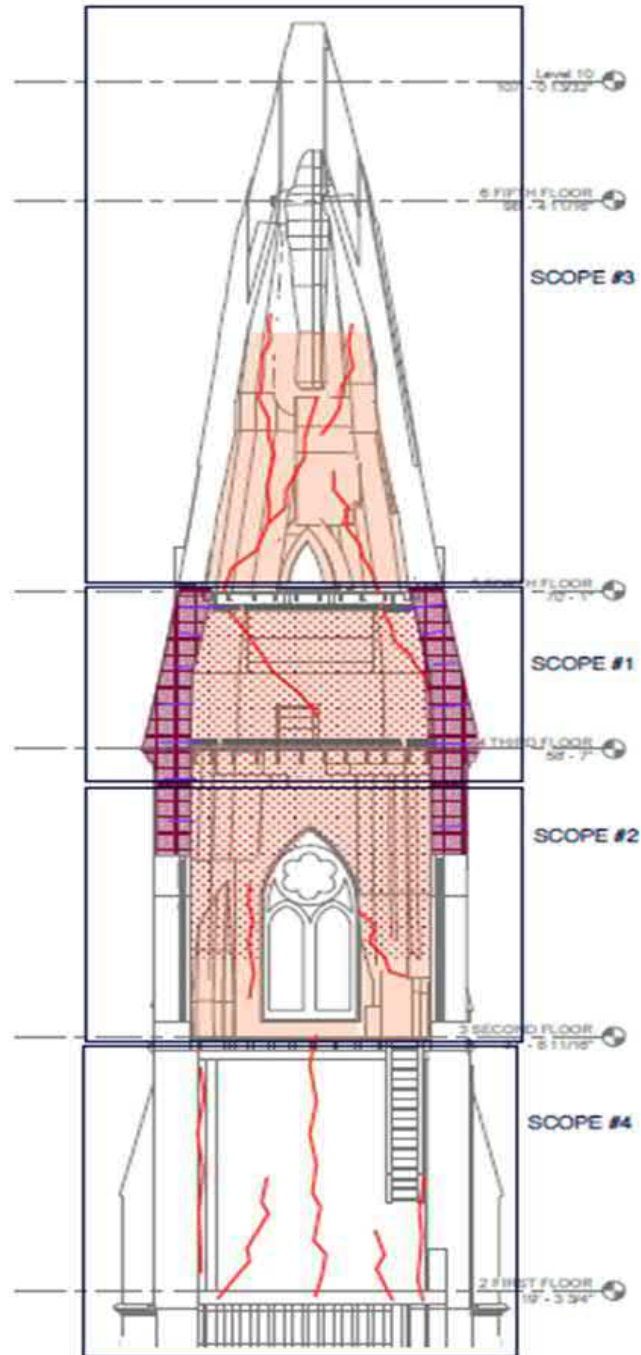
#458-20  
Existing Tower Conditions







#458-20



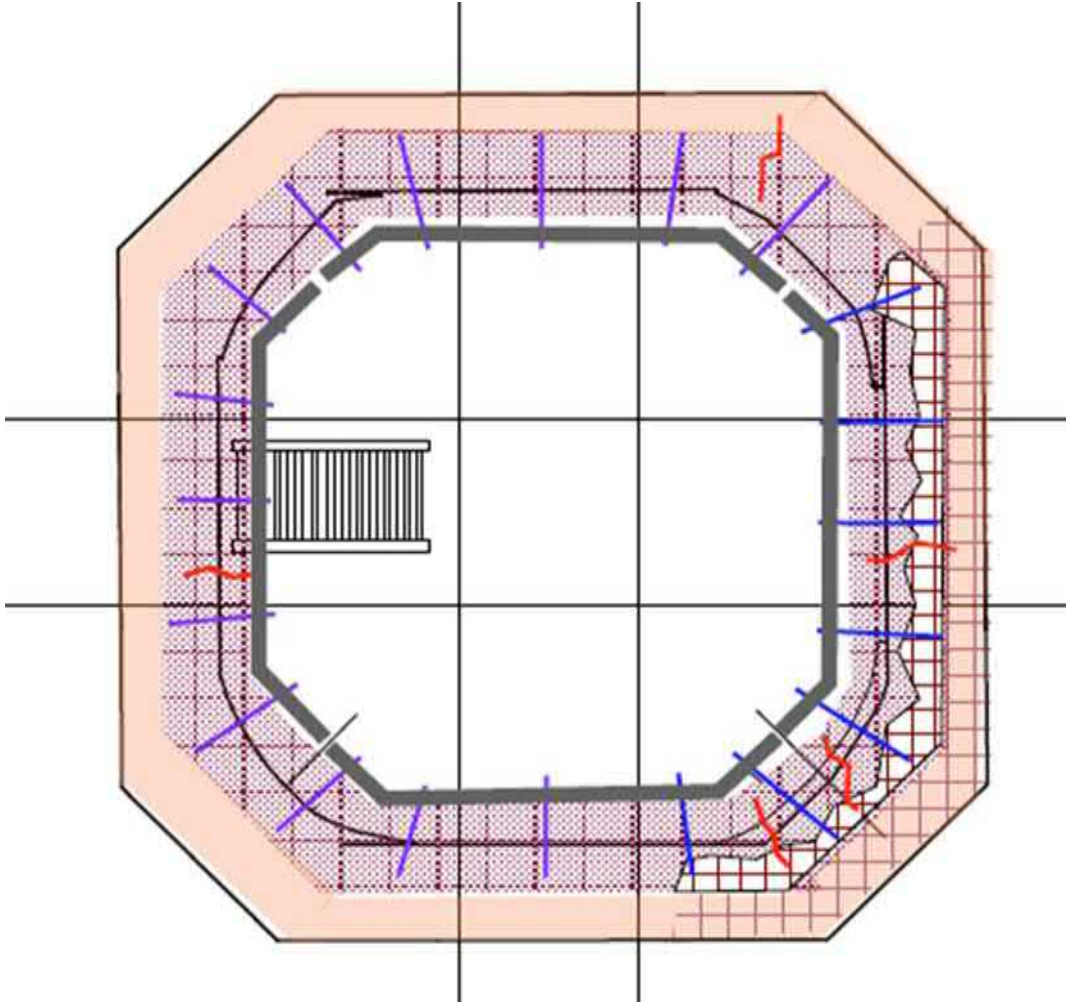
# Proposed Treatment

#458-20

2019 Structural Conditions Report by Structures North Consulting Engineers

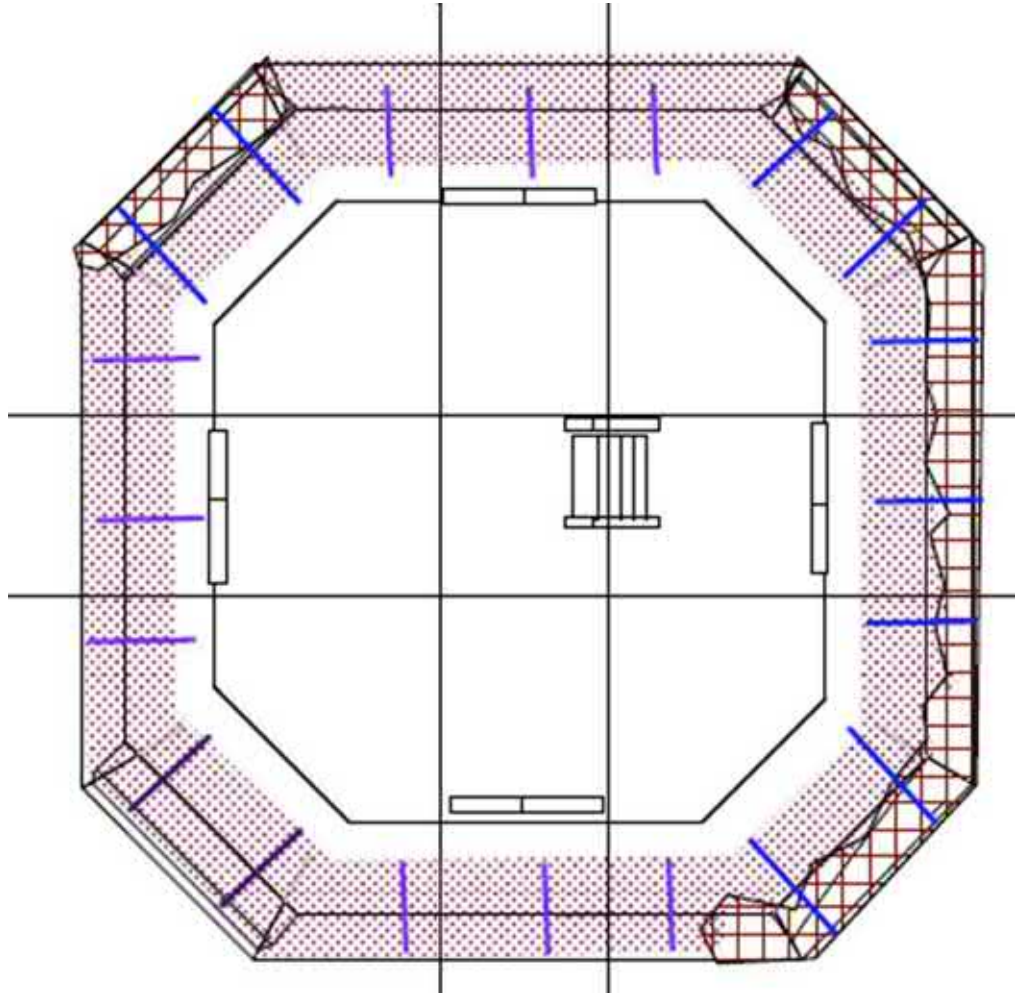
- Stabilize internal structure with the addition of internal steel bracing.
- Repair cracks by pinning and injecting with a pozzolanic lime grout.
- Deeply cut all exterior masonry (100%) to remove failed mortar, then repoint to stop water infiltration.
- Repair cracks in individual ashlar stone units off-site and re-set.
- Rebuild buttresses by reconstructing these elements with the addition of internal stainless-steel ties.
- Consolidate, repair, and paint wood tracery frames of the belfry openings.
- Safeguard the foundation by adding waterproofing and an under-slab drainage system.

# Proposed Treatment



Stabilization – Internal spring-loaded steel reinforcement to resolve structural flaw and resolve issue permanently

# Proposed Treatment



Stabilization – secure exterior stone back to core structure with specialty stone anchorage system

# Project Budget – Expenses

## 2-Phases — Stabilization and Restoration

### 2021–2022

#### Stabilization Phase #1 (2021)

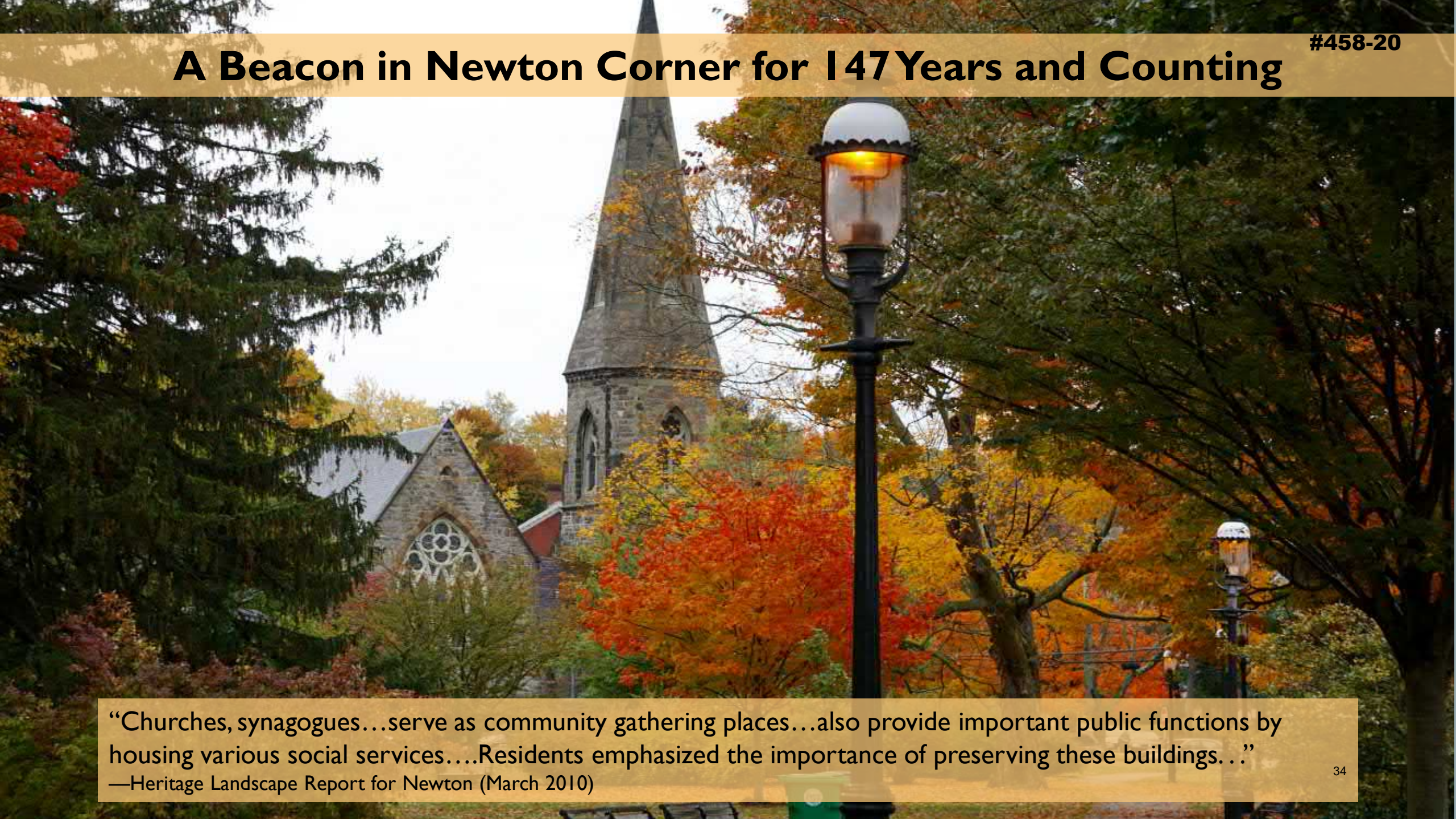
Stabilization \$	822,317
Contingency \$	146,683
Soft Costs \$	145,500
2021 Total \$	1,114,500

#### Restoration Phase #2 (2022)

Restoration \$	1,380,672
Contingency \$	142,828
Soft Costs \$	228,000
2022 Total \$	1,751,500

Project Total \$	2,866,000
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# A Beacon in Newton Corner for 147 Years and Counting



“Churches, synagogues...serve as community gathering places...also provide important public functions by housing various social services....Residents emphasized the importance of preserving these buildings. . .”  
—Heritage Landscape Report for Newton (March 2010)



## A historic resource and local landmark needs your help.

**Residents of Newton** Answer the call to support restoring the tower of Grace Church in Newton Corner. Historic buildings that happen to house religious organizations are receiving Community Preservation Act funds across the Commonwealth. Learn more about the Newton CPA and [sign our petition to show your support](#) for the use of CPA funds to help save this nationally recognized historic landmark.

**The stone tower of historic Grace Church is deteriorating quickly and can only be saved with support from the Newton community and CPA funds. Join us in our call to action and help save this architectural treasure.**

Hear the bells of Grace Church.

[www.GraceNewtonTower.com](http://www.GraceNewtonTower.com)

▶ "Simple Gifts," 19th century Shaker tune

**3)** Letter from Grace Episcopal Church's Attorney Ryan McManus to the CPC.

Provided by Grace Episcopal Church





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August 14, 2020

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Dennis R. Delaney  
Mark B. Elefante  
John J. Siciliano  
M. Bradford Bedingfield  
Charles R. Platt  
M. Patrick Moore, Jr.  
Ryan P. McManus

Michael E. Porter  
Harry F. Lee  
Eleanor A. Evans  
Johanna W. Schneider  
Sarah M. Waelchli

Kevin M. Ellis  
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Vanessa A. Arslanian  
Steven L. Mangold  
Keirsa K. Johnson  
Meaghan E. Borys  
Matthew J. Carey

David H. Morse  
Lawrence T. Perera  
George T. Shaw  
Timothy F. Fidgeon  
Michael B. Elefante  
Susan Hughes Banning  
Frederic J. Marx  
Deborah J. Hall  
R. Robert Woodburn  
Thomas L. Guidi  
Diane C. Tillotson

Community Preservation Committee  
c/o Lara Kritzer, Community Preservation Program Manager  
City of Newton Planning & Development Department  
1000 Commonwealth Avenue  
Newton, MA 02459

Re: Grace Episcopal Church Application

Dear Members of the Community Preservation Committee:

We are outside counsel to Grace Episcopal Church (“Grace”). We write to address Grace’s application (the “Application”) for Community Preservation Act (“CPA”) funds to make emergency repairs to Grace’s historic bell tower. In particular, we write to explain why, in our view, Grace’s Application and the use of CPA funds to restore the tower are consistent with state and federal law, including the so-called “anti-aid amendment” to the Massachusetts Constitution and the Supreme Judicial Court’s decision in Caplan v. Town of Acton, 479 Mass. 69 (2018).

As described in greater detail in the Application, Grace, and the tower in particular, have been recognized repeatedly as a significant historic resource. Grace is listed in the State Register of Historic Places as a contributing property to the Farlow and Kenrick Parks National Register Historic District. The Newton Historic Commission lists Grace among the sites on its historic walking tour of Newton Corner, and notes that Grace’s “corner tower” in particular “serves as an important local landmark.” And Newton’s 2010 Heritage and Landscape Report recognized that “Churches, synagogues and other places of worship help to define Newton’s villages and neighborhoods. Many are prominently located landmarks with attractive surroundings, have distinctive architectural styles and serve as community gathering places. Some also provide important public functions by housing various social services.” Despite that recognition, to our knowledge Newton has never provided CPA funding to a historic church, synagogue, or other property owned by a religious organization.

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We recognize the competing concerns that arise when public grants potentially benefit (or have the appearance of benefiting) religious organizations. The U.S. Supreme Court has repeatedly held, however, that the “Establishment Clause [of the U.S. Constitution] is not offended when religious observers and organizations benefit from neutral government programs.” Espinoza v. Mont. Dep’t of Revenue, 140 S. Ct. 2246, 2254 (June 30, 2020). On the other hand, disqualifying religious organizations from participating in such government programs simply because of their religious affiliation raises serious constitutional concerns. As the Supreme Court just recently reaffirmed, the Free Exercise Clause of the U.S. Constitution prohibits “disqualifying otherwise eligible recipients from a public benefit ‘solely because of their religious character.’” Id. (quoting Trinity Lutheran Church of Columbia, Inc. v. Comer, 137 S. Ct. 2012, 2021 (2017)).

Here in Massachusetts, the Supreme Judicial Court (“SJC”) has recognized that religious organizations cannot be excluded categorically from receiving CPA funds without raising serious constitutional concerns. Caplan, 479 Mass. at 83–84. The SJC has interpreted the Massachusetts Constitution’s anti-aid amendment to impose no such categorical bar, and to instead require each grant to be scrutinized on an individual basis. In the Caplan case, the SJC endorsed a three-factor framework: whether a grant of public funds to a church is permissible under the anti-aid amendment depends on (1) whether the motivating purpose for the grant was to aid the church, (2) whether the grant will have the effect of substantially aiding the church, and (3) whether the grant avoids the risks that prompted the passage of the anti-aid amendment in the first place (namely, infringement on liberty of conscience, entanglement of church and state, and the disruption of civic harmony). 479 Mass. at 71.

Viewed through the lens of this three-factor framework, the grant requested in Grace’s Application would not run afoul of the anti-aid amendment or the SJC’s holding in Caplan.

First, the motivating purpose behind a grant of CPA funds to Grace would be historic preservation, not aiding Grace’s religious mission. See Caplan, 479 Mass. at 87 (recognizing historic preservation as a permissible purpose, provided there is no “hidden purpose” of aiding a church). Designed by renowned architect Alexander Rice Esty, the Gothic-style stone tower at Grace bears a number of historically and architecturally significant features, including an open belfry trimmed with Gothic arches, tracery, and colonnettes. A grant of CPA funds to make emergency repairs necessary to preserve the tower would be consistent with Newton’s recognition that historic churches and synagogues contribute significantly to the character of the City’s neighborhoods. It would also be consistent with the Newton Historical Commission’s characterization of the tower as a “local landmark.”

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In addition, no part of the tower is used for religious worship services or other activities integral to advancing Grace’s religious mission. Nor would any part of a CPA grant be spent restoring religious imagery or iconography. In these circumstances, it is clear that the motivating purpose for a grant of CPA funds would be historic preservation, and not aiding the religious mission of Grace.

Second, the requested funds would not have the effect of substantially aiding Grace as a church. As noted, the tower is not used for any religious worship services, and while many parishioners (like other citizens of Newton) appreciate the tower for its historic and architectural significance, a majority of parishioners recently expressed that they do not view the tower as integral to Grace’s mission or religious identity. Additionally, it is worth stressing that the choice for Grace is not between securing a CPA grant or diverting funds from its other programs; the choice is whether the tower can be preserved or not. If Grace is not able to secure a CPA grant to defray some of the cost of preserving the tower, the project simply will not be undertaken. The effect of a CPA grant is therefore to benefit all citizens of Newton who value historic preservation and appreciate the Grace tower’s historic significance. It will not have the effect of substantially benefiting Grace as a church.

Third, a grant of CPA funds for the preservation of the Grace tower will not give rise to the concerns that prompted the passage of the anti-aid amendment. In the Caplan decision, the SJC identified those concerns as: the risk that “liberty of conscience” will be infringed by using taxpayer money to support the religious institutions of others, the risk of improper government entanglement with religion, and the risk of threatening “civic harmony” with divisive questions of religion. 479 Mass. at 90. It is worth noting, however, that the U.S. Supreme Court and the SJC have also acknowledged the more “checkered” and “shameful pedigree” of so-called “anti-aid” and “Blaine Amendments” to state constitutions – namely, that they were largely born of bigotry and hostility towards Catholics, particularly Irish-Catholic immigrants. Espinoza, 140 S. Ct. at 2259; Caplan, 479 Mass. at 78–79. Needless to say, to the extent those concerns motivated the initial passage of the anti-aid amendment, they are not entitled any consideration.

The grant requested in Grace’s Application does not present any substantial risk of infringing liberty of conscience, entangling the City in church affairs, or threatening civic harmony. As noted above, the requested funds will not be used to support Grace’s religious mission, nor will they be used to preserve or restore any religious imagery. The risk to liberty of conscience is therefore no greater than when a religious organization benefits from any generally available, taxpayer-funded City services. Nor will a grant entangle the City in Grace’s religious affairs. The funds will only be used for the preservation of the tower, a place where no religious worship

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or other activities are conducted, and which is already subject to a historic preservation restriction between Grace and the Massachusetts Historical Commission. Finally, Grace's Application has been carefully and narrowly tailored to seek support for an essentially non-religious – and yet historically significant – portion of its property. There is therefore little risk to civic harmony.

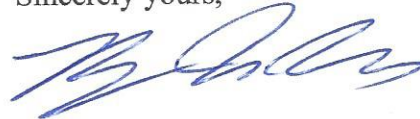
Grace's Application to preserve its historic tower is readily distinguishable from the use of CPA funds to restore stained glass windows containing religious imagery, which the SCJ found problematic in Caplan. Most obviously, the grant under consideration here would provide no funds for restoring religious imagery. Additionally, Grace's Application is not seeking any funds for the restoration or maintenance of the portion of its property where religious worship occurs. That was not the case in Caplan, and was repeatedly emphasized by the SJC as a concern. 479 Mass. at 91 (finding a risk to liberty of conscience because “the proposed grants would be used to renovate the main church building, where the church conducts its worship services”); *id.* at 92 (finding that the preservation restriction upon which the grants were conditioned risked entanglement of church and state because it could limit the church's ability to make future alterations to its worship space); *id.* 93–94 (noting the risk of political divisiveness is heightened “where those grants are for the renovation of a worship space or of a stained glass window with explicit religious imagery”). Finally, the grant at issue here would not allow money to be saved “to be used to support [the church's] core religious activities.” 479 Mass. at 89. Grace is not seeking CPA funds in order to avoid diverting funds from its other programs and services. In the absence of CPA funding, preservation of the tower will simply not be accomplished.

For all of these reasons, a faithful application of the three-factor analysis endorsed by the SJC in Caplan leads to the unavoidable conclusion that the grant sought by Grace's Application would not violate the anti-aid amendment. In fact, since the Caplan decision, CPA grants have been made by many communities to active houses of religious worship like Grace, including a grant by the City of Boston to the Emmanuel Episcopal Church (also designed by Alexander Rice Esty) to restore its doors and entrances. Upon review of Grace's Application, we trust that the Committee will reach the same conclusion.

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If we can be of any further assistance Committee, please let us know.

Sincerely yours,



Ryan P. McManus

**4) Grace Episcopal Church's Tower Project FAQs (prepared December 4, 2020)**

Provided by Grace Episcopal Church

### 1. What will happen to the tower if the CPA grant is not approved?

- A structural deficiency has rendered the 1873 tower unstable resulting in a threat to public safety. The situation has required us to close portions of our property to all visitors. Although major donors have stepped forward with major gifts to start us off, Grace does not have the resources to restore the tower without public support. We are seeking a partnership with the city and the greater community in support of Historic Preservation. Absent CPA funding, as a leverage for other grants and our capital campaign, the church will have to resolve an emergency situation, leading to the likely removal of the tower and bells.

### 2. Is Grace Church an especially significant historic building?

- The City noted Grace Church for its “**outstanding architectural quality**” in its listing of the building as part of the Farlow and Kenrick Parks National Register District in 1982.
- The 1986 Historic Resource Inventory of Newton lists Grace Church as “**Most Significant**,” one of only 250 of some 5,000 historic structures to earn this highest level of distinction.
- The same survey lists Grace Church as one of only 22 houses of worship in the city to earn this highest historical and architectural status.
- The Newton Historic Commission highlights Grace Church in its historic walking tour, noting “**the corner tower serves as an important local landmark.**”

### 2. What makes the Eldredge Chime a unique community resource?

- Cast in 1873, the nine-bell Eldredge Chime is one of only two operable bells in the city.
- This chime has been rung at the end of world wars, for 9/11, for the Boston Marathon Bombing, to celebrate Juneteenth as part of the City’s recognition of Black Lives Matter and at the request of local teachers, to honor Newton’s class of 2020 as they graduated during the pandemic.

### 3. Is it appropriate to fund a project associated with a church?

- There is strong precedent in Massachusetts for granting public funds to support landmark church restoration.
  - The Massachusetts Historic Commission established a precedent for providing state funds for church building restoration many years ago, funded projects at Grace Church in 1998 and 2007, and just granted a \$50,000 emergency fund grant to the project.
  - Cambridge and Boston and 89 other municipalities in Massachusetts have provided CPA funds for over 300 such project over the past 10 years. There are a dozen active projects in Boston currently, including two church towers.
- Legal rulings have clarified the appropriate allocation of CPA grants to religious organizations and eliminated uncertainty:
  - In 2017, U.S. Supreme Court confirmed the US Constitution prohibits disqualifying eligible recipients from a public benefit solely because of their religious character.

- In 2018, the issue was tested, when an out-of-state group sued the Town of Acton for approving a grant to a local church. While it was determined that the Acton grant was inappropriate because it funded stained glass windows with religious imagery, the MA Supreme Judicial Court determined that:
  1. **religious organizations cannot be categorically excluded from receiving CPA funds** without raising serious constitutional concerns, and
  2. **religious organizations cannot be treated differently from other applicants** because of their religious affiliation.
- The MA court established a 3-part eligibility test.
  3. Through that test, the CPC and the MHC determined that structural and other exterior repairs are eligible for CPA funding.
- A grant of CPA funds to preserve the tower is consistent with Newton’s recognition that **“historic churches and synagogue contribute significantly to the character of the City’s neighborhoods”** and with the Newton Historical Commission’s characterization of the tower as a **“an important local landmark.”**
- Two of other landmark churches designed by the same architect as Grace Church, Emmanuel Church and Union United Methodist Church in Boston, have received CPA funding.

#### **4. What about other religious organizations?**

- While Grace Church, the oldest stone church in the city and listed as one of 22 houses of worship to be "Most Significant", is more eligible for funding than structures without historic landmark status, there are recognized historic buildings from a variety of faiths in Newton:
  - 1912 Agudas Achim Anshei Sfard Synagogue, Adams St. Nonantum
  - 1889 Congregation Bnai Jacob, Beacon Street
  - 1885 Hellenic Gospel Church, Church Street
  - 1895 Temple Beth Avoda House, Hunnewell Ave.
- In addition, we belong to the Newton Interfaith Clergy Association and have statements of support from Rabbi Stern of Temple Beth Avoda, Rabbi Berman of Temple Reyim and Rabbi Berry of Temple Shalom. These community leaders understand the unique circumstances of our eligibility and grant request and therefore support it.

#### **5. Is there general community support for this project?**

- We have over 670 signatures of support from across the city and statements of support from prominent community members including:
  - Paul Holtz, Program Director, MA Historical Commission
  - Doug Cornelius, Chair, NHC
  - Lisa Dady, Executive Director, Historic Newton
  - Brooke Lipsitt, Newton Historical Society Board member
  - Ann Larner, Newton Historical Society Board member



- Jay Walter, Newton Historical Society Board member
- Peter Vieira, Chair, Chestnut Hill Historic District Commission
- Keith Jones, Friends of Farlow Park

**6. Does Grace Church provide a public benefit to the City of Newton?**

- Newton’s 2007 Comprehensive Plan stated: **“Religious Institutions offer architectural variety and open space in their neighborhoods and can no longer be taken for granted.”**
- Newton’s 2010 Heritage and Landscape Report stated: **“Churches, synagogues and other places of worship help to define Newton’s villages and neighborhood and support important public functions by housing various social services.”**
  - Now limited by the pandemic and **by the partial closure of the facility due to the tower instability**, our building supports a variety of educational and social service agencies by offering space at under-market rate rents to at-risk groups that have been turned away at other locations. Our partnerships include:
    - Riverside Community Health Clinic
    - Over five 12-Step programs that meet on a regular basis
    - Still Dancing which provides chair dancing for elders
    - Social Science Club, at Grace Church since 1886
    - Zdravets, a traditional Bulgarian Dance group
    - Kids4Peace, an Interfaith Peace Leader Program
- **Newton’s 2019 Comprehensive Arts and Cultural Plan lists Grace Church a venue for arts and cultural events.** Grace Church has provided an active roster of public programming, including:
  - Tanglewood Festival Chorus recital
  - Choir of King's College London
  - Blue Heron Renaissance Choir
  - Folk and World Music Concert with Four Shillings Short
  - Recitals on the restored Hook & Hastings organ
  - Regular community youth piano recitals
  - Weekly short-format bell concerts
- **Tower restoration is required to allow these activities to restart post pandemic.**

**7. Does Grace’s grant limit CPC funding for Affordable Housing and Open Space?**

- No. Per the CPC plan, the Grace Church grant of \$1.43M will be distributed over the course of two to three fiscal years, **allowing all funds to be drawn from the restricted fund for Historic Resources.**
- Some additional considerations:
  - Newton CPC’s established goal for Historic Resources is 20% of total CPA grants in any year. Only 17% of all Newton CPA funds have been allocated to Historic Resources since 2001 and only 13% of has been granted for historic resource projects in the last five years.

- 70% of Newton CPC Historic Resource funds have gone to city owned properties.
- Total 2021 accumulated CPA Funds (after admin costs and Webster Woods debt service): \$15,357,325, including:
  - Restricted Fund for Historic Resources: \$1,233,270
  - Unrestricted Fund: \$12,807,134

**5) Minutes of CPC's project discussions (Excerpted from September 15 and October 13 Minutes).**

Provided by Lara Kritzer, CPA Program Manager



Ruthanne Fuller,  
Mayor

## City of Newton, Massachusetts

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### Community Preservation Committee

#### Excerpted from September 15, 2020 Approved Minutes:

The virtual meeting was held online on Tuesday, September 15, 2020 beginning at 7:00 pm. Community Preservation Committee (CPC) members present included Mark Armstrong, Dan Brody, Byron Dunker, Rick Kronish, Susan Lunin, Robert Maloney, and Jennifer Molinsky. Community Preservation Program Manager Lara Kritzer were also present and served as recorder.

#### Public Hearing on Grace Episcopal Tower Restoration Proposal

Mr. Kronish requested guidance on how the Committee should proceed with this project. It was noted that the Committee had received additional information prior to the meeting. Mr. Armstrong thought that the Applicant's should move forward with their presentation. Mr. Kronish suggested that the applicant be asked to withdraw their proposal and rework it in a way that might meet the objections raised. He did not think that it would be fair to continue the discussion of the existing application at this time. Mr. Brody thought that the Committee should go ahead with the public hearing and allow those present to speak to the project. He stated that he did not think that he would be ready to move forward with any recommendations at this meeting but that that this was an opportunity to learn more about the proposal and thought the Committee should take advantage of it. Mr. Armstrong agreed, and Mr. Kronish asked if the Committee should share the information received with the applicant as he did not think that it would be fair to hold a discussion without sharing it. Mr. Brody stated that he would agree if the Committee was planning to make a decision at this meeting but thought that there would be plenty of time to discuss all of these issues before that happened.

Jean Papalia, chair of the governing board, was present with Austin Stewart and architect Scott Aquilina to present Grace Episcopal's Tower Restoration funding proposal. Their presentation began with a recording of the carillon bells playing "Lift Every Voice and Sing" followed by a summary of the history of the property and its close ties to the community. The applicants noted the rich history of the congregation in the development of Newton Corner and how places of worship were noted to be important to the community in both the 2007 Newton Comprehensive Plan and 2010 Landscape Report. Mr. Stewart suggested that this project could be seen as a test of the community's ability to work together on a project and argued that the preservation of the tower would undeniably serve the public good. He briefly noted the importance of its architect, Alexander Esty, and how Grace Episcopal was one of the best examples of its architectural style. Mr. Stewart explained how other communities had chosen to use their CPA funds for similar purposes and noted that the Eldridge chimes defined the soundscape of the neighborhood which had developed around the church. He also noted that the construction of the church and tower had inspired the donation and design of

website [www.newtonma.gov/cpa](http://www.newtonma.gov/cpa)

staff contact Lara Kritzer, Community Preservation Program Manager

email [lkritzer@newtonma.gov](mailto:lkritzer@newtonma.gov), phone 617.796.1144

Farlow Park across the street. An 1878 birds eye view of Newton Corner was included in the presentation, and Mr. Stewart noted both the prominence of Grace Episcopal to the community even then, and how many of the local landmarks in 1878 had since been demolished.

Mr. Stewart stated that Grace Episcopal's congregation had been faithful stewards of the campus and that they have been monitoring the condition of the tower for the last ten years. Last year, they had discovered that the structure was deteriorating much faster than they had anticipated, and that the base of the tower was structurally insufficient to carry the load of the stone structure. Photos of the cracked stones and plans mapping the damage to the tower were presented to explain the extent of the current damage. The tower was now at risk of collapsing and the area surrounding it was roped off and the tower itself inaccessible.

The applicants next reviewed their plans for the stabilization of the structure. They had created the project budget while working with experts in the field and had double checked the cost of the work with Shawmut Construction. Their funding plan proposed to have half of the funding come from CPA funds, with the rest to be raised through fundraising and grants. The applicants noted that CPA funding was the only funding source of this scale available to the project, and Mr. Stewart reiterated that 91 CPA communities had previously funded this type of work.

Ms. Papalia stated that the proposal was about preserving an iconic historic landmark which served as an anchor to Newton Corner. She noted that their congregation was growing and that they had made partnerships with other nonprofits throughout the community. For the last 28 years, the rectory has been rented to Riverside Community Care and the property was a well-used community meeting space, polling location, and concert venue. Ms. Papalia explained that the congregation does not feel that the tower defines what Grace Episcopal is, but that it does define the surrounding neighborhood.

Mr. Armstrong agreed that Grace Episcopal is a stunning and beautiful building. He noted that it was a big ask despite the leveraging to complete major construction on such a delicate project. Mr. Maloney thanked the applicants for the presentation and stated that he also loved the building but wanted to know what other options were available to the applicants if CPA funding could not be used here. Ms. Papalia stated that the CPA funding was necessary to fix the structure and that they were not sure that they could complete the project without it. Their attorney, Ryan McManus, stated that there were no alternative funding sources available to step in on this project. He asked that the applicants be provided with any information on why this could not be funded.

Mr. Maloney asked what the cost would be to remove the tower if all of the funding sources failed. Mr. Aquilina stated that they had estimated that it would cost \$650,000 to remove the tower and noted that they would then need to replace something in that area, so the overall removal and replacement cost was anticipated to be over \$1 million, which they assumed would rest on the congregation alone. Mr. Kronish stated that the funding of religious institutions was an issue but that even without the religious issue, he was concerned with funding private institutions where public use and access is limited. He wanted to know what the public benefit was of the project as the CPC would want to see a public benefit for any non-religious structure in private ownership.

Ms. Papalia stated that they are a public institution with an architecturally significant structure which is an appendage of their main building. She noted that the bells impacted the whole neighborhood and that they were trying to save the tower which was no longer safe. Mr. Aquilina stated that he was a newly appointed member of the Upper Falls Historic District Commission and was concerned with historic preservation in Newton and the level of support for preservation in the community. He explained that there are restrictions requiring preservation but very few sources to help property owners with this work. He noted used to be more funding available but that there were now very few options for helping to preserve these structures. He thought that if CPA funding was going to support historic preservation projects, then he was not sure how it could turn its back on the City's nineteenth century buildings.

Mr. McManus noted that the tower structure was very limited as to its other potential uses and reiterated that the City's churches and religious institutions had been called out for preservation in its planning documents. He also noted that this was a common use for CP funding and that the majority of other CPA communities had done these types of projects. Mr. McManus stated that in the Acton case, the Supreme Judicial Court had confirmed that communities cannot categorically exclude churches from public benefits and that the proposal had included a letter addressing the three-part test required for the Anti-Aid Amendment determination. He noted that every project was different, that funding could not be used for religious imagery or the sanctuary itself but that CPA funding could be used for projects which were entirely historic preservation. He stated that there was no intent to provide aid to the church in this application and that they would be happy to discuss that point further with the Committee, adding that the CPC could not deny funding to the project solely because the property owner is a church.

Mr. Brody asked to discuss the funding in more detail. He asked the applicants to explain the level of detail that they had received for their project commitments. Mr. Stewart responded that they had a verbal commitment for \$450,000 so far and had a good understanding of how much could be raised. Mr. Stewart was fairly confident of the funding numbers and explained how they had developed their plan and understanding of how to finance the project. The National Fund for Sacred Places was reviewing their funding application and they planned to apply to the Mass. Historical Commission (MHC) for two rounds of Mass. Preservation Projects Fund (MPPF) grants and for Emergency Funding. Mr. Brody asked if they would have heard back about any of these funding options by October 1. Mr. Stewart stated that they were not sure of the dates at present but expected to hear back before the end of 2020. They had had extensive conversations with the MHC about both of their funding programs as well. Mr. Brody asked about the likelihood of reaching their funding goal and Mr. Stewart answered that they thought it was likely and that they had been encouraged to apply. He noted, however, that at least some of this funding might hinge on the use of CPA funding. In terms of private foundations, they were working with a finance and campaign consultant to help identify these funding sources.

Mr. Brody asked about the timing of the funding, asking if all of the funding would need to be released at once if the City Council approved the project. Mr. Aquilina stated that if the CPA funding was approved, they had assumed that it would be released in pieces. They hoped to have half of the funding available at the end of this calendar year and would use those funding along with silent contributions, a bridge loan, and MHC funding to get the project started in the spring. Mr. Brody asked about the timeframe for member payments. It was noted that a number of the proposed

funding sources relied on matching funds. Mr. Aquilina thought that a CPA funding commitment could help them to leverage other funding sources. He added that they would need to resolve the future of the tower within the next twelve months, and that a commitment of CPA funding would make everything else possible.

Keith Jones, 109 Vernon Street, stated that he was the president of the Friends of Farlow Park and supported this project. In terms of the question of whether the tower was a public or private resource, he stated that as a photographer he was concerned with aesthetics and thought that there was significant structural beauty in the tower. He was not a member of the church but wanted to make the point that the sculptural beauty of the tower and the sounds of the bells were resources that were shared by everyone in the community. He added that most major cities took care of and supported their major historical and architectural structures.

Jay Walter, 83 Pembroke Street, stated that he was a member of Historic Newton, the Upper Falls Local Historic District Commission, and the Friends of Farlow Park. He thought that Grace Episcopal was an excellent example of nineteenth century ecclesiastical architecture. He noted that the tower was located at the foot of Farlow Park, the restoration of which had been funded with CPA funds and thought that it was clearly an important element of the City and Newton Corner. He also noted that the park was anchored by three churches and that Farlow Park is the oldest park in the City. He stated that historic preservation of the tower had a public benefit in and of itself and he thought that the Community Preservation Act recognized this by including preservation as a potential use. Mr. Walter also questioned the impact on this unique neighborhood of removing the tower.

Councilor Alison Leary stated that this was one of her favorite parks and that she believed that historic preservation was a clear public benefit. She noted that this would be a first for the City if the Committee recommended using public CPA funding for a religious institution. She noted that there were many other demands on the City for CPA funding and suggested that any funding for the project should be restricted to only what is already in the Historic Resource reserve account. Ms. Papalia stated that they were only applying for historic resource funding and noted that they had received 525 signatures on their petition to save the tower. Councilor Leary suggested that only the 10% of CPA funding that is required to be spent on Historic Resource projects should be used for this project and explained her concerns with the amount of funding requested.

Mr. Brody noted that Councilor Leary was correct that 10% of the City's CPA funding was set aside for historic preservation projects but noted that the Committee had a practice of spending more than that on each of the allowed categories. Mr. McManus stated that creating additional requirements for this project because the applicant was a church was legally problematic. Councilor Leary stated that she would like to see a letter from the Law Department addressing the use of CPA funding on religious institutions.

Mr. Brody stated that he would like to continue this discussion to the next meeting in order to provide time for the applicants to submit additional details to answer questions about the funding proposal. He asked that the Applicants put together financial information including a detailed phasing showing what funding would be coming in when. He thought that this information would be necessary in developing any future funding conditions. He also stated that he would like to see more specific information on when funding would be confirmed and for the administration to provide

guidance on the funding of this project, including whether or not the Mayor supports it. Mr. Kronish stated that he also wanted to note the public issue.

The public hearing was closed at this time. The Applicants requested that the discussion be continued to the next meeting to allow time for further discussion. A question was raised about the preservation restriction and what it covered, and the applicant was also asked to provide information on their maintenance budget for the property. Ms. Papalia stated that they did have a financial plan and budget outline that they could provide. Mr. Stewart stated that they could put together the budget numbers specific to the tower, but that in general the congregation spent \$50,000 each year to meet general site preservation requirements.

Mr. McManus asked to clarify that the proposed work was required because of a design flaw rather than any maintenance issues. Mr. Aquilina explained that this was a design flaw issue and that once fixed, was unlikely to happen again. The Applicants also noted that the option to remove the tower from the site was less expensive than the proposed restoration. Mr. Maloney thought that it was helpful to have this information and noted that if the CPC recommended this use of the funding, that the congregation would be saved from spending the funds to remove the tower. Mr. Armstrong thanked the Applicants for the preservation and noted that he believed in this project. Further discussion was continued to the October 13 meeting.



**Excerpted from October 13, 2020 Approved Minutes:**

The virtual meeting was held online on Tuesday, October 13, 2020 beginning at 7:00 pm. Community Preservation Committee (CPC) members present included Mark Armstrong, Dan Brody, Eliza Datta, Byron Dunker, Rick Kronish, Susan Lunin, Robert Maloney, Jennifer Molinsky, and Martin Smargiassi. Community Preservation Program Manager Lara Kritzer were also present and served as recorder.

**Grace Episcopal Tower Restoration Proposal**

Mr. Armstrong stated that the CPC would begin by continuing its discussion on the Grace Episcopal Tower Restoration Proposal which began at the September 15 meeting. He noted that the proposal requests \$1,433,000 in Historic Resource funding to stabilize and restore the existing stone tower. Mr. Armstrong stated that he wanted to begin by clarifying the confusion from the start of the last meeting. He explained that in 2018, the Massachusetts Supreme Judicial Court had ruled on a case involving CPA funding for properties owned by an active religious institution, finding that such funding may be in violation of the state's anti-aid amendment and that each grant required careful scrutiny. He went on to explain that the Massachusetts' Anti-Aid Amendment prohibits the use of public money for the purpose of founding, maintaining, or aiding any charitable or religious organization that is not publicly owned. The 2018 case had established a review process for determining when a project can or cannot receive CPA funding. Because the CPC was aware of this case law, the Committee had requested that the Law Department review the Grace Episcopal Tower Restoration project proposal. As a result of this review, the Law Department has advised the Committee that the proposal as submitted was likely to be found to be in violation of the state's Anti-Aid Amendment. Mr. Armstrong explained that this advice had received at the last minute before the September meeting, and that the Committee had not had a chance to review the information before the public hearing.

Mr. Kronish stated that he was not clear on what the CPC was attempting to do at this time. He asked if the Committee was going to evaluate the Law Department opinion, or if the Committee intended to evaluate the project in light of this information. Mr. Armstrong stated that he did not think that this information changed the CPC's mission or duties and that the Committee must continue to review the merits of the project with the Law Department's information used as part of that review. Mr. Kronish stated that he did not think that he had the capacity to review the project and could not see beyond the legal information provided. He added that he was not sure what the Committee would be accomplishing by continuing this discussion.

Mr. Brody noted from the City's Law Department that the anti-aid amendment may be an issue, and an opinion from Attorney Ryan McManus of Hemenway and Barnes stating that it would not be an issue. He personally planned to evaluate the project on its merits as he did not have a strong feeling that this will become a legal issue. He stated that he did not think that the fact that the CPC had received an opinion was enough to stop this review.

Ms. Lunin stated that she thought there was a lot of merit to this project. She added that just because there is a chance that there may be a future issue does not outweigh those merits. Mr. Maloney thought that it was for others to decide the legal issues that could possibly be involved in the future and that it was the CPC's duty at this time to review the project on its merits. Ms. Molinsky stated

that she had tried to study this issue before the meeting. She had questioned whether amendments to the proposal would address the concerns about the anti-aid amendment issues and wanted a chance to explore this question further.

Mr. Armstrong noted that the Applicants had prepared a presentation to address questions raised at the first meeting and suggested that they move forward with it at this time. Present for the application was Jean Papalia, Leah Gassett, Austin Stewart, and Scott Aquilina. Ms. Gassett and Ms. Papalia presented a history of the church and its historical significance before reviewing the emergency situation of the tower. They explained that the carillon housed in the tower was one of only two human operated chimes in Newton and that there could be no chimes without the stone tower. They reviewed the project's timeline and addressed the questions raised at the last meeting. Their attorney, Ryan McManus, stated that he understood that concerns had been raised about how the anti-aid amendment might impact this project funding. Mr. McManus thought that conducting a legal analysis of the project might not be the best use of the CPC's time and agreed that they should evaluate the project based on its merits and leave any future legal obstacles aside for the time being.

Mr. McManus then reviewed the questions that needed to be addressed for meeting anti-aid amendment questions. The first question was whether the motivating purpose of the funding was to aid a private entity. In the case of the Tower Restoration, he argued that the purpose of the funding was not to aid the church but historic preservation. He thought that this question would only be an issue if the CPC was recommending funding for a reason other than the preservation of an historically significant resource. The second question asked if the grant would have the effect of substantially aiding a private entity. Mr. McManus stated that preserving the tower would cost the congregation at least \$983,000 more than it would cost to remove the tower, and that they would also need to budget \$15,000 annually to maintain the structure in the future once it is stabilized and restored. He stated that the congregation was willing to take on these additional expenses as the stewards of this historic resource but that the results were far from a substantial aid to them. The third question asked whether the grant avoided the risks that prompted the passage of the anti-aid amendment. Mr. McManus explained this question, noting that this project would only complete the historic preservation of an historically significant structure. He asked the Committee to consider what projects could be funded if this project could not. Mr. McManus noted the many cities and towns which had used CPA funding to complete similar projects and had not had any legal challenges. He added that he did not think that this would be an attractive legal case. Mr. McManus explained that that *Caplan v. Acton* case that had raised these questions had started with the use of CPA funding to restore stained glass windows with religious imagery.

The Applicants noted how this project benefited Newton as a whole and that historic preservation had been affirmed as being supportive of the public good at the local, state and federal levels. These benefits were seen in the act of preservation itself as well as its economic benefits and how these efforts increased neighborhood pride. They noted the references to the importance of this type of preservation work in state and local planning documents as well before reviewing the costs to the community of not funding this work. It was noted that the Newton Corner neighborhood would lose not only the bells and tower structure, but that its demolition would also result in the permanent loss of an important piece of Newton history. The Applicants reviewed the congregations work for the community and reiterated that the requested funding was only for the historic preservation of the tower, after which the congregation would be responsible for all maintenance expenses. It was

noted to be a free-standing structure and the direct benefits to the community of preserving it were also reviewed.

The Applicants noted that Grace Episcopal Church had a long record of community involvement, impacts, and connections. The parish and its members were tied to the creation and restoration of Farlow Park, the Cottage Hospital (now Newton Wellesley Hospital), and the Newton Children's Library. The community supported numerous non-profit organizations including renting their former rectory to Riverside Community Care, creating a new lot on their property to construct a group home for TILL (Towards Independent Living and Learning), and serving as a polling location. The congregation wanted to continue these partnerships and enhance its connections to the City.

Ms. Gassett went on to review the congregation's revenues and their phased plan for the restoration. She explained that they would be launching a capital campaign for the emergency tower restoration work before the end of 2020. They had interviewed 70 members of the congregation to get a sense of what they could expect to raise and had determined that they could reach \$983,000 over three years. She added that they had seen increased levels of interest in the project since the CPA discussion had started. They planned to apply to the Massachusetts Historical Commission for emergency funding as well. They had also learned that they would not be receiving Sacred Places funding this year but were optimistic that they would receive it next year. Ms. Gassett explained that they have gap funding available and that they would start their public funding campaign as soon as they knew the CPA funding decision.

Mr. Aquilina explained that the maintenance budget for the property was \$96,000 per year on average. The congregation planned to set aside \$15,000 annually specifically to the tower in the future to demonstrate their commitment to its maintenance and preservation. They planned to create a reserve budget for repointing and restoring the tower in the future and were developing 25- and 50-year plans for the structure. The 1999 preservation restriction requires the congregation to preserve all exterior elements of the buildings unless there is a public emergency that requires demolition or alteration, and they felt a responsibility to preserve the neighborhood and historic district for future residents.

The Applicants noted that they had reached out to Mayor Fuller about the project but that she had declined to meet with them. They also provided an updated petition supporting the project with over 600 signatures on it. The project had received letters of support from Historic Newton, the Massachusetts Historical Commission, the Newton Historical Commission, the Friends of Farlow Park, and other community partners as well as other comments of support. The Applicants stressed that they were looking to partner with the City on this project and that the congregation was not in the historic preservation business. They felt that the Grace Episcopal Church Tower is an historic landmark worthy of preservation and noted that the pre-1907 Historic Resource Survey had rated the building as being of highest significance. The tower could be freely viewed and enjoyed by everyone. The Applicants noted that CPA funding had been used to restore Farlow Park and felt that this project was a natural next step and a further opportunity for the City. They reiterated that the funding would only be used to restore the tower, which could not continue to exist without help from the City through its CPA funds.

Mr. Armstrong opened the discussion to the CPC. He thought that the Applicants had made the argument for the architectural and historical significance of the structure. He thought that it was a beautiful, historically significant element of the building which should be preserved. Ms. Molinsky stated that she would like to make this funding work. She did not personally see the tower as a religious icon but did think that the funding requested was a significant financial amount in any sense. She noted that most CPA funded historic resource projects were below \$400,000 but noted that these projects were also much smaller and thought that this was a significant amount to request for a private property. Ms. Molinsky stated that she would like to know about other options that had been investigated to stabilize the structure which may not have worked out. She also asked the Applicants if they had had an independent assessment of the amount of funding needed for the project, and whether there were any indications of support for the project City-wide.

Mr. Aquilina first addressed the cost of the construction. He explained that he was an architect with 30 years of experience working on historic structures, and that another preservation architect, Larry Bauer, had also worked closely on the project. They had received three estimates for the project from firms which all had a clear understanding of what needed to be done after making multiple visits to the site. These estimates were then sent to Shawmut Construction, which conducted an independent review of the estimates which allowed the congregation to feel comfortable that they had a clear understanding of the costs. Ms. Molinsky asked if there were any alternative engineering plans for the project. Mr. Aquilina stated that they had had the tower looked at by Simpson, Gumpertz and Heger in 2009-2010 and provide suggestions at that time. That review had suggested a more traditional and expensive solution than the one currently proposed. J. Wathne from Structures North was a very skilled engineer which specialized in unusual structures and they felt comfortable with both the proposed solution and its anticipated cost.

Mr. Aquilina agreed that the requested amount was a substantial request but noted that there were applicants in the past that had received more funding than this over the course of numerous separate requests. The current proposal was based on what was needed to restore the tower. He noted that the City had put over \$1.7 million into the Durant Kenrick Homestead, that the Allen House had received over \$2 million overall, and that numerous funding allocations had been made to the Jackson Homestead as well. He agreed that this was a large request but was not sure that it was as much of an outlier as Ms. Molinsky suggested.

Mr. McManus stated that the amount could matter in some legal cases but thought that the unique circumstances of this project made that question irrelevant. Not funding this project would not be saving the congregation funding that could otherwise be used for religious programs. Further, this funding was not an issue because the result of the CPA funding would be an increase in the congregation's commitment to preservation, an undertaking which will add additional expenses and not savings for their budget in the future.

Ms. Gasset also agreed that this was a large amount to request but explained that the catastrophic failure of the tower's interior structure could not be spread out over time. The project had a lot of support from outside of the neighborhood as shown in the petition. Ms. Gasset added that she thought the project would be more attractive to other funding programs once it had the CPA funding commitment behind it. She noted that they were not an historic preservation organization but that they were working to make connections and wanted to build a stronger bond with the City. Mr.

Aquilina agreed and thought that their project would also get more from the Massachusetts Historical Commission as well, hopefully \$50,000 in Emergency funding and \$100,000 in MPPF grant funding. They had looked into Save America's Treasures and the National Trust but neither program had funding at this time. In short, the CPA funding was all that was available at this time.

It was noted that Historic Resource projects would total below \$1.5 million if this project was funded in addition to the Jackson Homestead and Durant Kenrick proposals which would be reviewed in November. It was suggested that the funding for this project could come out of the Historic Resource restricted reserve account, which is currently at \$1.2 million, with additional funding of less than \$300,000 from unrestricted funds or future Historic Resource Reserves. It was also noted that all other known historic preservation projects were City projects, and that the request was in scale with the resource involved. Some members suggested that with this in mind, the project was not overly burdensome. Ms. Molinsky asked about other Historic Resource Projects. Ms. Kritzer reviewed a spreadsheet showing Historic Resource funding in recent years and noted that Historic Resource funding over the life of the program was at 17%.

Mr. Maloney stated that he did not think that it was up to the Committee to determine whether the project passed legal muster. He agreed with the Applicants that the project was not necessarily for a private entity or benefit. He thought that this was the kind of iconic building which gave the municipality its identity and exactly the kind of project which the CPC should be seeing. He thought that these buildings should be preserved and that there were not enough of these projects in the City. Mr. Brody also thought that this was a great project and agreed with Mr. Maloney. He stated that he was persuaded by Mr. McManus that funding might not be challenged. He also noted that the CPC was well below its goal of 20% funding for Historic Preservation projects. He agreed that the request was for a lot of money but that these types of projects often come in large chunks.

Members reviewed the Historic Resource Reserve funds and noted that there was currently \$1,233,270 set aside in that account. Mr. Armstrong suggested that the project be funded only from the Historic Resource Reserve funds. Mr. Brody disagreed, noting that the CPC had set a City goal of 20% of all CPA funding for Historic Resources which included using some general funding towards that goal. He noted that unrestricted funds were used for projects in other categories and thought that those funds would be appropriate here as well.

Mr. Kronish stated that he saw this project in a different way. He felt that the legal opinion could not be dismissed and stated that he could see no way around it. He felt that the Law Department's opinion needed to be a deciding factor for this project. Mr. Smargiassi stated that as the Historic Preservation representative, he was very much in favor of preserving the tower. However, he did think that the funding was too heavily weighted towards City funding. He was concerned that 50% was too high an amount and wondered if loans were a possibility. Ms. Gassett stated that they had considered loans as a funding mechanism but were not willing to jeopardize the future of their congregation for one. They could manage a short-term loan for this work but not a long term one. Mr. Smargiassi stated that he was familiar with these financing issues and reiterated that he would like to see the tower preserved but was concerned with the amount of funding requested.

Mr. Dunker stated that as the Parks and Recreation Commission Representative, he was aware of how many City projects were out there that needed funding. He was concerned with spending such a

large percentage of the funding available on one project. He was also not sure about the public support for this project and thought that there would also be public concerns with the amount of the request. Mr. Aquilina noted that the majority of the CPA funding had been suggested to come out of the Historic Resource Reserve fund and that only \$300,000 or so would come out of the general fund that could be used for other categories.

Ms. Datta thought that the Applicant had made a compelling case and agreed that there needed to be a balance to the funding. She noted that there was room in the historic resource budget to consider this type of project and that a project with a 50% match was within the parameters of the Community Preservation Plan. She had confidence that a vote of support from the City for this project would also lead to support from other funding entities.

Mr. Maloney moved to recommend that \$1,433,000 be allocated to the Grace Episcopal Church Tower Restoration project for the restoration and stabilization of the stone tower to be expended according to the schedule presented at this meeting. Ms. Lunin seconded the motion.

Ms. Molinsky asked if it would be possible to use only the Historic Resource Reserve funds for this project. Ms. Kritzer answered yes that the funding could come entirely from the Historic Resource Reserves by using the current funding amount and FY22 Historic Resource funds as needed. Ms. Molinsky asked if anyone had pause over the funding amount. Mr. Armstrong stated that based on his experience, he did not think that this would be the final cost of the project as unexpected issues often came up during construction. He thought that the total amount could change and that the Applicants could come back, at which time the Committee could decide whether or not additional funding was appropriate. Architect Larry Bauer noted that the project would need to be publicly bid to meet City and State procurements requirements. Ms. Gassett stated that they were coming at this project from the perspective of their partnership with the community. She also thought that the City's partnership on this project would help them to leverage additional funding and was open to continuing this conversation with the community once more information on their funding sources was known.

Mr. Armstrong called for the motion to be voted on by roll call vote. The motion passed by a vote of six to two (Dunker, Kronish) with Mr. Smargiassi abstaining from the vote as he had not been present at the public hearing.

**6)** A list of all of the Historic Resource projects funded with Newton CPA funds from FY02 through FY21, organized by project applicant (nonprofit, joint municipal/other organization projects, and municipal projects)

Provided by Lara Kritzer, CPA Program Manager

**Newton Community Preservation Program  
Historic Resource Projects Funded through FY21**

**#458-20**

Project Title	Applicant	Fiscal Year	Address	Historic Resources	CPA Funding Appropriated	Total Project Cost
<b>Non-Profit Applicants</b>						
ALLEN HOUSE Restoration	Newton Cultural Alliance	FY15, FY16, FY19	35 Webster Street, West Newton, MA 02465	\$2,900,000	\$2,900,000	\$7,500,000
AUBURN STREET (236) (affordable housing & historic preservation)	CANDO (Citizens for Affordable Housing in Newton)	FY18	236 Auburn Street, Auburndale, MA 02466	\$300,000	\$977,700	\$3,992,905
DURANT-KENRICK HOMESTEAD	Historic Newton	FY07	286 Waverley Ave, Newton Corner, MA	\$2,812,684	\$2,812,684	\$4,942,795
ELLIOT STREET (248), Linden Green (housing & historic resources)	CANDO (Citizens for Affordable Housing in Newton Development Organization)	FY05, FY06	248 Elliot St (Units 1 and 2) and 12 Linden Street (Unit 6), Newton Upper Falls, MA 02464	\$106,890	\$618,600	\$2,304,994
NEWTON CEMETERY Whipple-Beal Cast Iron	Newton Cemetery Corporation	FY18	791 Walnut Street, Newton Center, MA 02459	\$60,000	\$60,000	\$74,500
NEW ART CENTER	New Art Center	FY16	61 Washington Park, Newtonville, MA 02460	\$72,562	\$72,652	\$115,073
WARREN HOUSE Historic Preservation	Newton Community Development Foundation	FY09	1600 Washington Street, West Newton, MA 02465	\$1,082,500	\$1,082,500	\$1,249,923
WEST SUBURBAN YMCA Window Restoration	West Suburban YMCA	FY05	276 Church St., Newton Corner	\$160,273	\$160,273	\$8,160,273
<b>Total Non-Profit Projects:</b>				<b>\$7,494,909</b>		
<b>Joint Applicant</b>						
ANGINO FARM, Acquisition, Farmhouse Deleading, and Barn	Newton Community Farm/ City of Newton	FY05, FY06	303 Nahanton St., Newton Centre 02459	\$669,140	\$669,140	\$1,099,140
CIVIL WAR MONUMENT 2, Restoration	Owned by City of Newton, Maintained by Newton Cemetery Corporation	FY05, FY12	Newton Cemetery, 791 Walnut Street, Newton Centre, MA 02459	\$149,000	\$149,000	\$149,000
FARLOW & CHAFFIN PARKS 1, Plan	City of Newton, Friends of Farlow Park	FY06	129 Church St. (bounded by Vernon & Eldredge Sts.), Newton Centre 02459	\$52,177	\$52,177	\$65,500
FARLOW PARK 3, Pond & Bridge Restoration	City of Newton, Friends of Farlow Park	FY15	129 Church St. (bounded by Vernon & Eldredge Sts.), Newton Centre 02459	\$516,780	\$476,780	\$1,104,249
HISTORIC BURYING GROUNDS 3, East Parish Burying Ground	Owned by City of Newton, Overseen by Historic Newton	FY03, FY15, FY05	East Parish: 880 Centre St. (bordered by Cotton St.), Newton Centre 02459; West Parish: 85 River St. (bordered by Cherry St.), West Newton	\$654,372	\$654,372	\$704,372
HOUGHTON GARDEN	City of Newton, Friends of Houghton Garden	FY04, FY05	210 Suffolk Road (near Woodman Rd.), Chestnut Hill, MA 02167	\$90,000	\$90,000	\$100,000
MUSEUM ARCHIVES, Accessibility & Fire Suppression	Owned by City of Newton, Overseen by Historic Newton	FY09, FY06, FY14, FY15, FY16	Jackson Homestead 527 Washington Street, Newton Corner, MA 02459	\$1,142,345	\$1,172,345	\$1,206,345



**Newton Community Preservation Program  
Historic Resource Projects Funded through FY21**

**#458-20**

<b>Project Title</b>	<b>Applicant</b>	<b>Fiscal Year</b>	<b>Address</b>	<b>Historic Resources</b>	<b>CPA Funding Appropriated</b>	<b>Total Project Cost</b>
MUSEUM EXTERIOR Preservation	Owned by City of Newton, Overseen by Historic Newton	FY09	527 Washington Street, Newton Corner, MA 02458	\$167,234	\$138,244	\$155,144
WASHINGTON PARK Historic Lighting	City of Newton, Park Friends, Inc.	FY05	18 Washington Park, Newtonville, MA 02460	\$131,035	\$131,035	\$131,035
<b>Total Joint Projects:</b>				<b>\$3,572,083</b>		
<b>Municipal Projects</b>						
ARCHAEOLOGY SURVEY	City of Newton	FY09	Citywide	\$37,750	\$37,750	\$40,000
BRIGHAM HOUSE, Planning, Preservation & Rehabilitation	City of Newton	FY06	20 Hartford St. Newton Highlands, MA 02461	\$554,950	\$554,950	\$654,238
CITY ARCHIVES Project	City of Newton	FY07, FY08, FY15	City Hall, Newton Public Library, Jackson	\$255,031	\$255,031	\$267,487
CITY HALL 1, Balustrade	City of Newton	FY03, FY04	City Hall	\$150,660	\$150,660	\$150,660
CITY HALL 2, Lighting	City of Newton	FY03, FY04	City Hall	\$121,200	\$121,200	\$121,200
CITY HALL 3, Historic Windows	City of Newton	FY03	City Hall	\$119,400	\$119,400	\$119,400
CITY HALL 4, Landscape Preservation Plan	City of Newton	FY05, FY06	City Hall	\$40,650	\$40,650	\$60,000
CITY HALL 5, War Memorial Auditorium Stairs Plan	City of Newton	FY05	City Hall	\$15,000	\$15,000	\$15,000
CITY HALL 6, Historic Art	City of Newton	FY10	City Hall	\$5,200	\$5,200	\$5,200
CITY HISTORIC BUILDINGS SURVEY	City of Newton	FY11	Citywide	\$98,780	\$98,780	\$513,780
CRAFTS STREET STABLE Plan	City of Newton	FY07	90 Crafts Street, Newton Corner, MA	\$30,000	\$30,000	\$90,000
CRYSTAL LAKE 2, Lake Avenue (230)	City of Newton	FY08, FY09	230 Lake Ave., Newton Highlands, MA 02461	\$88,500	\$885,000	\$885,000
EARLY ARCHITECTURE SURVEY	City of Newton	FY11	Citywide	\$37,500	\$37,500	\$115,000
HERITAGE LANDSCAPE INVENTORY	City of Newton	FY08	Citywide	\$5,250	\$10,500	\$10,500
LOCAL HISTORIC DISTRICTS Signs, Newtonville & Newton Upper Falls	City of Newton	FY04	Newtonville (zip 02460); Newton Upper Falls (zip 02464)	\$2,000	\$2,000	\$2,000
NEWTON CENTRE LIBRARY	City of Newton	FY06	1294 Centre St, Newton Centre, MA 02459	\$26,425	\$26,425	\$26,425
NEWTON CENTRE PLAYGROUND Plan	City of Newton	FY06	55 Tyler Terrace (bounded by Bowen, Homer & Centre Sts.),	\$67,853	\$67,853	\$83,853
NEWTON CORNER LIBRARY	City of Newton	FY03, FY05, FY06	124 Vernon St., Newton Corner, MA 02458	\$291,829	\$291,829	\$291,829
WPA MURAL at Newton North	Newton Public Schools	FY16	Newton North High School, 457 Walnut St. (or 360 Lowell Ave.),	\$114,900	\$114,900	\$114,900
<b>Total Municipal Projects:</b>				<b>\$2,062,878</b>		
<b>Total Historic Resource Funds:</b>				<b>\$13,129,870</b>		
<b>Historic Resource Funding as Percentage of all CPA Funding (FY02-FY21)</b>				<b>17%</b>		

Newton Community Preservation Program  
Historic Resource Projects Funded through FY21

**#458-20**

Project Title	Applicant	Fiscal Year	Address	Historic Resources	CPA Funding Appropriated	Total Project Cost

**7)** Current CPA program finances, as of January 4, 2021, including impact of funding any projects which have been approved, recommended, or are currently under consideration. The amount of reserved and general CPA funding available at this time is listed at the end of the second page.

Provided by Lara Kritzer, CPA Program Manager

Newton Community Preservation Fund	Fiscal 2019	Fiscal 2020	Fiscal 2021	REVISED Fiscal 2021
<b>COMMUNITY PRESERVATION FUND CURRENTLY AVAILABLE FUNDS</b>	<i>based on Fy19 CP-1 &amp; CP-2</i>	<i>based on Sept. 2019 revised budget, Fy19 CP-1 &amp; CP-2</i>	<i>based on Spring 2020 approved budget, Pending FY20 CP-1 &amp; CP-2</i>	<i>based on Final FY21 DOR Match, FY20 CP-1 and CP-2</i>
<b>REVENUE</b>				
Local CPA Surcharge (1% of Newton's total property tax levy)	\$3,381,289	\$3,568,921	\$3,658,144	\$3,658,144
State Matching Funds				
<i>Percentage State Match for previous year's certified local revenue</i>	<i>budgeted 8.5%, final 19%</i>	<i>budgeted 11.5%</i>	<i>budgeted 20%, anticipate reduction Fall 2020</i>	<i>28.6% match - final</i>
State Match Budgeted	253,970	\$383,309	\$713,784	\$1,009,206
Unrestricted Fund Balance (additional State Match Received after budget set, listed in following year)	240,424	\$360,816	\$425,445	\$425,445
additional sources:				
Prior Year Ending Fund Balance (unspent funds forwarded from prior year; should not be totaled across years)	12,669,321	\$10,740,419	\$11,683,009	\$11,683,009
Bonds (Webster Woods Acquisition only - Legal Fee bond not yet sold)		\$15,000,000		
Earnings (Premium Received on Bonding)	399,904	\$637,000		
Other (incl. liens) FY19 Return of unspent FTHB funds	805,000			
<b>TOTAL REVENUE</b>	<b>\$17,749,907</b>	<b>\$30,690,465</b>	<b>\$16,480,382</b>	<b>\$16,775,804</b>
<b>EXPENDITURES</b>				
<b>PROGRAM ADMINISTRATION &amp; DEBT SERVICE</b>				
Program Administration (max 5% of current-yr new funds)	\$131,574	\$215,456	\$202,845	\$202,845
<i>(fy19 year-end actual; fy20 and fy21 as budgeted - incl. "logged" state funds in base for % calculation)</i>	<i>confirmed 3.1%</i>	<i>budgeted 5%</i>	<i>budgeted 4%</i>	<i>budgeted 4%</i>
Debt Service for Webster Woods/300 Hammond Pond Parkway	no debt service	no debt service	\$697,699	\$697,699
<b>TOTAL Program Administration &amp; Debt Service</b>	<b>\$131,574</b>	<b>\$215,456</b>	<b>\$900,544</b>	<b>\$900,544</b>
<b>AVAILABLE FUNDS</b> after program administration & debt service	<b>\$17,618,333</b>	<b>\$30,475,009</b>	<b>\$15,579,838</b>	<b>\$15,875,260</b>
<b>PROJECT APPROPRIATIONS by City Council (chronological order)</b>				
<b>In FISCAL 2019 (Chronological Order)</b>				
Jackson Road/Haywood House New Senior Housing (Newton Housing Authority)	\$3,000,000			
300 Hammond Pond Parkway/Webster Woods (City of Newton) - professional services for open space preservation	\$100,000			
Stanton Avenue /Golda Meir House Senior Housing (JCHE)	\$3,250,000			
Grant to Newton Conservators - Conservation Restrictions (Wabasso Street, Rogers Street)	\$30,000			
Allen House (historic resources) - supplemental request (\$2.3 million previously appropriated)	\$600,000			
<b>In Fiscal 2020 (Chronological Order)</b>				
300 Hammond Pond Parkway (Webster Woods), open space acquisition: \$15,000,000 authorized principal for 30-year debt. The first debt service payment is scheduled for Fy21.		\$15,000,000		
300 Hammond Pond Parkway: See above. CPC recommendation to convert \$740,000 for conservation restriction grant and legal, etc. costs from direct funding to 30-year debt is now pending with the Council.		\$740,000		
Riverside Greenway - Pigeon Hill Trail Design (recreation land)		\$50,000		
Newton Housing Authority Acceptance of CAN-DO Portfolio (affordable housing)		\$1,105,000		
COVID-19 Rental Housing Relief Program - Community housing		\$2,000,000		
<b>In Fiscal 2021 (Chronological Order)</b>				
Golda Meir House Expansion/Stanton Ave (2 Life Communities) Affordable Housing funding requested to increase affordability of 60 new senior living units (City Council voted approval 10/5)			\$1,244,857	\$1,244,857
Commonwealth Ave. Carriageway Redesign - Final Design funds requested for new green space, bike, and pedestrian path between -Lyons Field to the Charles River (City Council voted approval 11/2)			\$390,000	\$390,000
Haywood House/Jackson Road Senior Housing Additional Funding - Funding requested to cover additional construction costs (Recommended for funding Oct. 5 2020)			\$77,900	\$77,900
Historic Newton Durant-Kenrick Gutter and Window Repairs - Funding requested under Historic Resource Restoration/Rehabilitation to replace rear façade gutter and restore six damaged windows (Recommended for funding Nov. 10, 2020; FinCom Approved 12/14/20)			\$16,884	\$16,884
<b>TOTAL Appropriations (By Year)</b>	<b>\$6,980,000</b>	<b>\$18,895,000</b>	<b>\$1,729,641</b>	<b>\$1,729,641</b>
<b>AVAILABLE FUNDS after new appropriations</b>	<b>\$10,638,333</b>	<b>\$11,580,009</b>	<b>\$13,850,197</b>	<b>\$14,145,619</b>

# #458-20

Newton Community Preservation Fund		Fiscal 2019	Fiscal 2020	Fiscal 2021	REVISED Fiscal 2021
<b>COMMUNITY PRESERVATION FUND CURRENTLY AVAILABLE FUNDS</b>		<i>based on Fy19 CP-1 &amp; CP-2</i>	<i>based on Sept. 2019 revised budget, Fy19 CP-1 &amp; CP-2</i>	<i>based on Spring 2020 approved budget, Pending FY20 CP-1 &amp; CP-2</i>	<i>based on Final FY21 DOR Match, FY20 CP-1 and CP-2</i>
<b>CPC RECOMMENDATIONS</b> pending with City Council (chronological order)					
Grace Episcopal Church Tower Restoration - Funding requested to stabilize and restore historic stone tower, belfry and spire on National Register listed property <i>(Funding Recommended Nov 2020; Tent. City Council Review Jan 2021)</i>				\$1,433,000	\$1,433,000
Historic Newton Jackson Homestead Fence Replacment - Funding requested under Historic Resource Restoration/Rehabilitation to replace fence along Jackson Road <i>(Recommended for funding Nov. 10, 2020 - pending updated quote)</i>				\$28,990	\$18,244
<b>TOTAL RECOMMENDATIONS</b>				<b>\$1,461,990</b>	<b>\$1,451,244</b>
<b>AVAILABLE FUNDS</b> if all current recommendations were funded in full				<b>\$12,388,207</b>	<b>\$12,694,375</b>
<b>FULL PROPOSALS UNDER CONSIDERATION by CPC</b>					
Crescent Street (City of Newton) final design & construction: \$1,481,622 housing, \$1,093,378 recreation/ playground <i>[CPC vote on hold per project sponsor request as of 18 June 2018]</i>				\$2,575,000	\$2,575,000
Coleman House Senior Housing Preservation (community housing preservation) - Request for funding to complete comprehensive rehabilitation and preservation of existing Coleman House I and II buildings <i>(Pre-proposal approved Dec. 8 meeting; Dec 9 Full Proposal Submitted)</i>				\$4,214,622	\$4,214,622
Covid-19 Rental Housing Relief Program Additional Funding (Community housing support) - Request for \$1.2 million in additional funding to continue program through June 2021. <i>(Proposal submitted for January 12 meeint)</i>				\$1,200,000	\$1,200,000
<b>TOTAL PROPOSALS</b>				<b>\$7,989,622</b>	<b>\$7,989,622</b>
<b>AVAILABLE FUNDS</b> if all submitted proposals were funded in full				<b>\$4,398,585</b>	<b>\$4,704,753</b>
<b>PRE-PROPOSALS AND PROJECT UPDATES SUBMITTED to CPC</b>					
City Hall & War Memorial Auditorium Exterior Stairs (historic restoration/rehabilitation) - <i>12 March 2019 CPC agreed to consider a full proposal for this amount toward initial/conceptual design, if the proposal includes some matching non-CPA funds; total anticipated CPA request incl. construction \$2,332,000</i>				\$68,250	\$68,250
<b>TOTAL PRE-PROPOSALS</b>				<b>\$68,250</b>	<b>\$68,250</b>
<b>AVAILABLE FUNDS</b> if these requests were accepted / funded in full in Fy21				<b>\$4,330,335</b>	<b>\$4,636,503</b>
<b>Note:</b> Unless exceptional needs require otherwise, Newton's CPC aims to maintain a balance of approximately 1 year's new funding (currently ≈ \$4 million), so the program can start each year with about 2 years' worth of funds.					
<b>Newton Community Preservation Fund</b>					
<b>Restricted vs. Unrestricted Available Funds</b>	<b>Housing</b>	<b>Historic Resources</b>	<b>Open Space/ Recreation</b>	<b>New Restricted Reserves (Minimum in each account)</b>	
<b>Restricted Accounts by Funding Category</b>					
Fy21 Budget Reserves (10% of Local Surcharge Estimation)	\$401,837	\$479,737	\$0	\$509,279	
<i>MUNIS Account Numbers</i>	58C10498 57900C	58B10498 57900B	58A10498 57900D	58A10498 57900	
Prior Fund Balances (unspent funds from Fy20 & prior years)	\$431,305	\$557,382	\$409,689		
<i>MUNIS Account Numbers</i>	5820 3599	5810 3599	5840 3599	5840 3599	
<b>Restricted Totals</b>	<b>\$833,142</b>	<b>\$1,037,119</b>	<b>\$409,689</b>		
<b>Unrestricted</b>					
Fy21 Budget Reserve				\$1,306,399	
Fund Balance (unspent funds from prior years)				\$9,865,878	
<b>Unrestricted Total</b>				<b>\$11,172,277</b>	
<b>Restricted Funds Total</b> (Housing, Historic Resource, and Open Space)				<b>\$2,279,950</b>	
<b>Total Funds Available</b>				<b>\$13,452,227</b>	

**8)** Updated CPC funding guidelines, which includes information on the CPC's goals for allocating CPA funding by category and preferred matching amounts. The third and fourth pages include lists of projects currently under consideration and potential future projects identified in the City's most recent CIP report.

Provided by Lara Kritzer, CPA Program Manager



Ruthanne Fuller,  
Mayor

Newton, Massachusetts  
**Community Preservation Committee**  
**COMMUNITY PRESERVATION PLAN**

*funding guidelines (pp. 1-2) adopted: April 3, 2018*  
*future proposals (pp. 3-4) last updated January 4, 2021*

**#458-20**  
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 Director of Planning  
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Massachusetts' [Community Preservation Act](#) (CPA) provides local and state funds for community housing (affordable housing), historic resources, and land for open space or recreation, within certain constraints:

ALLOWABLE SPENDING PURPOSES under the Community Preservation Act				
RESOURCES → ↓ ACTIVITIES	COMMUNITY HOUSING	HISTORIC RESOURCES	OPEN SPACE	LAND for OUTDOOR RECREATION
ACQUIRE	YES	YES	YES	YES
CREATE	YES	NO	YES	YES
PRESERVE	YES	YES	YES	YES
SUPPORT	YES	NO	NO	NO
REHABILITATE / RESTORE	YES, IF acquired or created with CPA funds	YES	YES, IF acquired or created with CPA funds	YES

The [Guidelines & Forms](#) page of Newton's CPA program website, at [www.newtonma.gov/cpa](http://www.newtonma.gov/cpa), includes a more detailed [allowable uses of funds](#) chart, with the state statute's full definitions of these eligible resources and activities, as well as Newton-specific proposal instructions and upcoming deadlines. The CPC works with the sponsors of CPA-appropriate proposals to help them meet program requirements.

Like most CPA communities, Newton does not have enough CPA funding for all current and anticipated requests, even those that are both CPA-eligible and CPA-appropriate. The Community Preservation Committee (CPC) uses the following guidelines to decide which projects it will recommend for funding by the City Council.

**1. Use Newton's regularly updated community-wide plans to guide funding decisions.**

The CPC relies on Newton's *Comprehensive Plan* and other regularly updated community-wide plans to prioritize Newton's CPA-eligible needs. Each funding proposal must cite at least two of these plans, most of which are linked to [Guidelines & Forms](#) at [www.newtonma.gov/cpa](http://www.newtonma.gov/cpa).

**2. Balance funding across all CPA-eligible resources and activities.**

The CPA statute requires communities to spend at least 10% of each year's new funds on each of three resources – housing, historic resources, and the combination of open space and land for recreation. Funds may be allocated in the year they are received or retained for future projects. Unless exceptional needs require otherwise, Newton's CPC aims to end each year with a remaining balance of about one year's worth of funds (currently about \$3 million), so the program can respond quickly to unanticipated future opportunities. Unusually expensive projects, such as land acquisition or major capital improvements to public buildings or parks, may also be funded by borrowing – selling bonds that will be repaid from future local CPA revenue.

Newton's allocation targets for CPA funding of the different eligible resources (see next page) are flexible guidelines, not rigid quotas. These targets reflect Newton's past funding patterns, available information about possible future proposals, and feedback the CPC has received through community surveys and public hearings. The targets also reflect cost differences among different types of projects. For example, in Newton projects

website [www.newtonma.gov/cpa](http://www.newtonma.gov/cpa)  
 contact Lara Kritzer, Community Preservation Program Manager  
 email [lkritzer@newtonma.gov](mailto:lkritzer@newtonma.gov) phone 617.796.1144

that involve land acquisition, such as creating new affordable housing or a new conservation area, tend to cost more than projects that preserve or rehabilitate buildings and land already in public ownership.

<b>Newton CPA Allocation Targets: Balancing Funds Across Resources</b>	<b>± 5%</b>
<b>affordable housing:</b> development & preservation	<b>35 ±5%</b>
<b>historic resources:</b> all purposes	<b>20 ±5%</b>
<b>open space &amp; recreation land:</b> acquisition	<b>20 ±5%</b>
<b>open space &amp; recreation land:</b> rehabilitation / capital improvements	<b>20 ±5%</b>
<b>total, min. - max.</b>	<b>75-115%</b>

The final two pages of this *Plan* compare the allocation of current and future funding requests to these targets.

**3. Support projects that are CPA-appropriate and that leverage non-CPA funds.**

Newton's CPC prioritizes projects that are not only CPA-eligible but also CPA-appropriate, and that leverage the maximum possible funding from other sources. The CPC also recognizes that a project may need a relatively high share of CPA funding in its initial phases (such as design) in order to raise funds primarily from non-CPA sources for its later phases (such as construction).

<b>project categories</b>	<b>CPA appropriateness &amp; funding leverage</b>
<b>special public resources and public-private partnerships:</b> publicly or privately owned assets that benefit all Newton residents & neighborhoods, including housing that is both deed restricted to ensure permanent affordability and proactively marketed to all eligible households	<b>highest priority for CPA funding,</b> with these minimums from other sources: 30% for public projects, 50% for private projects
<b>limited-benefit special public resources:</b> publicly owned assets that benefit only some Newton residents or neighborhoods	<b>lower priority for CPA funding,</b> with a target of at least 60% non-CPA funding
<b>core public resources:</b> assets already in public ownership and that the City of Newton would be obligated to rehabilitate even if Newton had not adopted the CPA  with one primary exception: CPA funding may be appropriate for the <i>difference</i> between lowest-cost and historically appropriate methods or materials for the rehabilitation of publicly owned historic resources	<b>usually not appropriate for CPA funding,</b>
<b>limited-benefit private resources:</b> privately owned assets that benefit only some Newton residents or neighborhoods	<b>not appropriate for CPA funding</b>

**4. Support proposal sponsors with a proven capacity for project management and long-term maintenance.**

Newton’s CPC requires each proposal to identify both a qualified, available project manager and a reliable source of non-CPA funding for future maintenance. The CPC also considers each proposal sponsor’s past record of project management and maintenance when reviewing new proposals from that sponsor.

These requirements help Newton to avoid repeating past experiences with projects that took far more time or public funding to complete than originally anticipated or promised, and to comply with the state CPA statute’s prohibition on using CPA funds for maintenance and operations.

**5. Evaluate completed projects to ensure accountability & improve future projects.**

Once a project is funded, the CPC requires regular progress reports. For all non-City projects, the final release of CPA funds is contingent on presentation of a final in-person and written report to the CPC. City departments are also expected to provide final reports to the CPC on CPA-funded City projects.

The CPC monitors completed projects indefinitely, to evaluate the community’s long-term returns on its CPA investments, and to learn how well – and why – different projects are maintained with non-CPA funds.



Current & Future Proposals Compared to Available Funds & Allocation Targets

Total Funded Projects, FY15-FY20 (included debt service)	Affordable Housing	Historic Resources	Open Space	Recreation
\$37,215,223	\$12,298,224	\$5,295,287	\$15,862,500	\$3,759,122
Fy15-Fy20 - Percentage of allocation by resource	33%	14%	43%	10%
CPC target allocations by resource, ± 5%	30%	25%	20%	20%

Current Proposals or Pre-proposals, with Related Future Proposals (in order of submission to CPC)

✓ = Fy20 appropriation    ? = recommended by CPC but not yet funded    \* = cost revised or estimated by CPC staff

CIP = City of Newton Capital Improvement Plan.

In this plan, for "Priority," lower numbers = higher priorities; for "Urgency," 100 = highest, 1 = lowest.

Sources & CIP Priority (Urgency) October 2019	Project Title	Affordable Housing	Historic Resources	Open Space	Recreation
CIP 31 (53.7) CPA proposal on hold	70 Crescent Street <i>(in addition to prior CPA funding already incl. in Fy13-18 totals above: \$100,000 for site assessment, Apr. 2016; \$260,000 for feasibility &amp; design, Mar. 2017)</i>	\$1,481,622			\$1,093,378
CIP 66 (39.9) Pre-proposal discussed by CPC	Fy21 City Hall (Front) & War Memorial Exterior Stairs <i>In April 2019 the CPC voted 9-0 to condition any consideration of a full proposal for initial design (\$68,250) on a commitment of matching non-CPA funds. The CPC has not yet agreed to consider a request for final design or construction funding.</i>		\$2,332,000		
Not City Project	Grace Episcopal Church Tower Restoration <i>(Public Hearing held 9/15/20; Further review on 10/13)</i>		\$1,244,857		
Not on CIP Proposal submitted for review on Nov 10, 2020	Jackson Homestead Fence Replacement		\$18,244		

Current (Pre)Proposals (including debt service)

Not City Project	Coleman House Senior Housing Preservation <i>(Pre-proposal submitted for Dec. 10 meeting)</i>	\$4,214,622			
Not on CIP	Covid-19 Emergency Rental Housing Assistance Additional Funding	\$1,200,000			
FY21 Funds only	Webster Wood Debt Service			\$697,699	
<b>\$12,282,422</b>		\$6,896,244	\$3,595,101	\$697,699	\$1,093,378
Percentage of Allocation by Resource		56%	29%	6%	9%

**Other Potential Future Proposals (in order by highest CIP ranking for each site)**

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Sources & CIP Priority (Urgency) October 2019	Project Title	Affordable Housing	Historic Resources	Open Space	Recreation
CIP 30 (53.8)	Fy21 Crystal Lake Levingston Cove ( <i>state provided planning funds</i> )				\$700,000
CIP 110, 192, 208 (20.8, 17.9, 33.6)	Waban Library		\$428,500		
CIP 112 (33.1)	Gath Pool ( <i>replacement</i> )				\$9,200,000
CIP 113 (33.1)	Forte Park ( <i>including synthetic turf, which cannot be purchased with CPA funds</i> )				\$2,000,000
CIP 114 (33.0)	Old Cold Spring Park				\$350,000
CIP 118 (32.2)	Upper Falls/Braceland Playground				\$1,675,000
CIP 121, 145 (31.7, 28.5)	Burr Park Fieldhouse		\$474,000		<i>could also be listed here</i>
CIP 124, 176 (30.6, 24.7)	Kennard Estate ( <i>Parks &amp; Rec. Dept. HQ</i> )		\$740,000		
CIP 125, 184 (30.5, 22.7)	Crafts Street Stable ( <i>DPW</i> )		\$5,000,000		
CIP 126, 161, 211 (15.4, 26.9, 30.4)	Auburndale Library		\$520,000		
CIP 131, 147, 167, 182 (26.0, 29.9, 23.0, 28.4)	Senior Center ( <i>existing, use changing</i> )		\$689,000		
CIP 134, 148 (28.2, 29.6)	West Newton Library ( <i>Police Annex</i> )		\$450,500		
CIP 137 (29.3)	* City Hall Archives ( <i>facilities</i> ) <i>CIP lists only</i>		\$1,500,000		
CIP 141, 166 (26.0, 29.0)	Newton Corner Library ( <i>use changing</i> )		\$331,500		
CIP 159 (27.1)	Newton Centre Library ( <i>use changing</i> )		\$1,500,000		
CIP 168 (25.7)	Crystal Lake Bathhouse ( <i>previously est. full project cost \$8m</i> )				\$5,000,000
CIP 177 (24.7)	City Hall Historic Landscape		\$1,500,000		
CIP 178 (24.4)	Chaffin Park Wall (Fy21) ( <i>abutting Farlow Park</i> )		\$200,000		
CIP 180 (23.8)	Nonantum Library		\$204,000		
CIP 181, 204, 207 (23.7, 18.7, 19.2)	Historic Burying Grounds ( <i>in addition to ≈ remaining unspent \$84,000 in previously</i> )		\$160,000		
CIP 196, 206 (19.0, 20.7)	Jackson Homestead ( <i>basement galleries, doors &amp; windows</i> )		\$342,000		
CIP 202 (20.0)	City Hall Doors & Windows		\$3,000,000		
CIP 205 (19.2)	Nahanton Park ( <i>renovate parking areas, path to</i> )				\$150,000
<b>Other Potential Future Proposals Subtotal =</b>					
<b>\$36,114,500</b>		\$0	\$17,039,500	\$0	\$19,075,000
% Allocation by Resource		0%	47%	0%	53%
<b>TOTAL Current (Pre)Proposals + Other Future Proposals =</b>					
<b>\$48,396,922</b>		\$6,896,244	\$20,634,601	\$697,699	\$20,168,378
% Allocation by Resource		14%	43%	1%	42%
<b>CPA Target Allocations by Resource +/-</b>		<b>35% ± 5%</b>	<b>20% ± 5%</b>	<b>20% ± 5%</b>	<b>20% ± 5%</b>
Following amts include current fund balance. For funds available once that balance is spent down, see separate funding forecast.					
<b>FIVE-YEAR FORECAST: Total Available Funds for FY21-FY25 =</b>					
<b>\$22,936,366</b>					
target allocations. – 5%		\$6,880,910	\$3,440,455	\$3,440,455	\$3,440,455
target allocations + 5%		\$9,174,546	\$5,734,092	\$5,734,092	\$5,734,092
<b>TEN-YEAR FORECAST: Total Available Funds for Fy21-FY30 =</b>					
<b>\$60,727,016</b>					
target allocations. – 5%		\$18,218,105	\$9,109,052	\$9,109,052	\$9,109,052
target allocations + 5%		\$24,290,806	\$15,181,754	\$15,181,754	\$15,181,754
<b>Cumulative Debt Service for Webster Woods/300 Hammond Pond Parkway land acquisition (30 year debt):</b>					
First Five Years (FY21-FY25):				\$3,474,609	
First Ten Years (FY21-FY30):				\$6,950,872	

**9)** List of projects at religious institutions funded by the CPA in other communities

Provided by Lara Kritzer, CPA Program Manager

**CPA funded projects at Religious Institutions in Other Communities  
(2018-2020)**

**#458-20**

<b>Steeple and Tower Projects funded in other Communities</b>				
<b>City/Town</b>	<b>Project Name</b>	<b>Approval Date</b>	<b>Approval Date</b>	<b>CPA Historic Funds Awarded to Project</b>
Boston	First Baptist Church Tower	3/6/2019	The repair of structural components and restoration of sections of the roof of the 176' tower and church	\$420,000
Boston	Charles St. AME Church	3/6/2019	Repoint the Roxbury pudding stone that makes up the surround of the building. The church foundation and exterior walls have not been repointed for many years. Also restore the stone steeple in front of the church that has caused interior water damage.	\$45,000
Boston	Old West Church Tower	3/6/2019	Complete tower preservation, made urgent by deterioration.	\$400,000
Cambridge	Christian Mission Pentecostal Tabernacle Church	6/30/2018	Replace siding and repaint in historically appropriate colors and repair steeple; part of a major, ongoing restoration project. The church was designed in 1886 by Frank E. Kidder and is a contributing building in the Upper Magazine Street National Register District.	\$100,000
Cambridge	First United Presbyterian Church	6/26/2005	Exterior renovation of 1893 church building, including repair of the main and towers roofs and installation of a fire alarm	\$49,818
Deerfield	First Church of Deerfield, Old Deerfield, MA	4/30/2018	Restore/Replace Louvers on Steeple of Historic First Church of Deerfield, Old Deerfield, MA	\$5,000
Nantucket	St. Paul's Church	4/3/2018	Restoration of Bell Tower	\$100,000
Newburyport	Belleville Congregational Church Restoration Project	8/29/2016	To continue the repair and restoration of the windows, including the replacement as necessary of storm windows, on the west and rear sides of the Fiske Chapel and Parish Hall and to paint the front of the main parish hall, including the steeples.	\$39,000
Tisbury	Stone Church Tower	4/10/2018	Repair and restoration of historic stone church tower.	\$37,500
Tisbury	Stone Church Clock and Bell restoration	4/9/2019	Restoration of historic stone church clock and bell.	\$20,000

**CPA funded projects at Religious Institutions in Other Communities  
(2018-2020)**

**#458-20**

<b>All CPA Funded Projects at Religious Institutions (Steeple/Tower Projects Highlighted)</b>				
<b>City/Town</b>	<b>Project Name</b>	<b>Approval Date</b>	<b>Approval Date</b>	<b>CPA Historic Funds Awarded to Project</b>
Barnstable	ST MARY'S EPISCOPAL CHURCH	2/7/2019	Preservation and restoration of an historic resource including fire suppression system, water line, controls and hydrant; replacement/replication of trim and exterior doors; restoration of front entrance to original with bluestone. Numerous community organizations and partners use the meeting rooms, parish hall, church building and parking lot.	\$147,725
Boston	Church of the Covenant Roof Replacement	6/20/2018	Repair exterior masonry and roof on the South elevation, around the tenant entrance, facing Newbury Street, to ensure the building is sealed and weather-proof. Church of the Covenant is a historic building in Boston's famous Back Bay neighborhood with significant architectural features. The building has been home to the Women's Lunch Place for more than 30 years and provides other secular social services with no religious orientation and is also the site for a public art gallery.	\$430,000
Boston	Eliot Church Stone Step Restoration	6/20/2018	Restore corner stairs to the building that are used by the general public waiting for school and MBTA buses. The stairs are not generally used for entry to the building, but are a critical feature of this historic site and in dangerous condition for public use.	\$100,000
Boston	Emmanuel Church Exterior Entrance Restoration	6/20/2018	Restore exterior entrances on Boston Landmarked building in historic Back Bay neighborhood providing social services to the City's homeless population and an arts venue for non-profit arts programming open to the public. Exterior entrance work will increase safety, prevent weather damage, and restore doors and other historic entrance features.	\$306,700
Boston	Roxbury Presbyterian Church Exterior Restoration	6/20/2018	Restore doors and roofing over entrances to complete exterior restoration of historic Roxbury building. Home to a nationally-recognized trauma and victim support social service program, as well as years of neighborhood and regional history, the entrance restoration will allow the Social Impact Center's trauma and other secular program participants safe access.	\$385,000
Boston	Arlington Street Church	3/6/2019	Restoration of masonry and stairs which constitute the main entrance	\$200,000
Boston	First Baptist Church Tower	3/6/2019	The repair of structural components and restoration of sections of the roof of the 176' tower and church	\$420,000
Boston	Charles St. AME Church	3/6/2019	Repoint the Roxbury pudding stone that makes up the surround of the building. The church foundation and exterior walls have not been repointed for many years. Also restore the stone steeple in front of the church that has caused interior water damage.	\$45,000
Boston	Old West Church Tower	3/6/2019	Complete tower preservation, made urgent by deterioration.	\$400,000
Cambridge	First Korean Church in Cambridge	7/12/2018	Construct a permanent roof for the base of the belfry (belfry was removed in 2017 over public safety concerns). The First Korean Church was designed by Thomas W. Silloway in 1871 and is a contributing building in the Upper Magazine Street National Register District.	\$25,000
Cambridge	Christian Mission Pentecostal Tabernacle Church	6/30/2018	Replace siding and repaint in historically appropriate colors and repair steeple; part of a major, ongoing restoration project. The church was designed in 1886 by Frank E. Kidder and is a contributing building in the Upper Magazine Street National Register District.	\$100,000
Cambridge	First Church in Cambridge, Congregational	10/15/2018	Repair or replace slate roof, roof framing elements, and stone pinnacle; repoint cornice, coping stones, and other areas on north elevation. First Church in Cambridge was designed by Abel C. Martin in 1870 and is a contributing building in the Cambridge Common NRD.	\$100,000
Cambridge	Harvard Epworth United Methodist Church	4/30/2019	Repair and conserve stained glass windows and fabricate and install new African Mahogany wood frames, including windows in clerestory. (No windows display religious iconography.) The 1891 church building was designed by A.P. Cutting and is a contributing building in the Cambridge Common NCD.	\$21,775
Cambridge	St. Augustine's African Orthodox Church	12/6/2018	Install an insulated roof. This small 1886 wooden church was designed by Robert H. Stack as an Episcopal mission, which remained active into the early 20th century. In 1931 St. Augustine's was organized by the founder of the AO denomination, Bishop George A. Maguire, who designated the church as his cathedral. The church is an important part of Black history in Cambridge and Boston.	\$100,000
Cambridge	Western Avenue Baptist Church	4/4/2019	Complete installation of an exterior handicapped lift and other accessibility improvements. The wooden building, constructed as a stable in 1895, was converted to church use in 1917 and is a significant part of the Black community of the Riverside/Coast neighborhood.	\$342,500
Deerfield	First Church of Deerfield, Old Deerfield, MA	4/30/2018	Restore/Replace Louvers on Steeple of Historic First Church of Deerfield, Old Deerfield, MA	\$5,000
Deerfield	Historic First Church of Deerfield Building	4/29/2019	Disposal and replacement of the brick steps and landing at the Historic First Church of Deerfield.	\$9,000
Edgartown	Whaling Church - Church St. side restoration	4/10/2018	Restoration of the siding and windows of the Church St. side of the Whaling Church.	\$55,421

**CPA funded projects at Religious Institutions in Other Communities  
(2018-2020)**

**#458-20**

<b>All CPA Funded Projects at Religious Institutions (Steeple/Tower Projects Highlighted)</b>				
<b>City/Town</b>	<b>Project Name</b>	<b>Approval Date</b>	<b>Approval Date</b>	<b>CPA Historic Funds Awarded to Project</b>
Edgartown	Whaling Church Lighting	4/9/2019	Capital improvements to the lighting at the Whaling Church to improve access, safety and visibility	\$23,846
Gloucester	ANNISQUAM VILLAGE CHURCH REHAB AND PRESERVATION	9/18/2018	This project will support the preservation and restoration of the two main floors of the Annisquam Village Church. CPA Funding will be used to support Cove Room level work. The primary focus being rebuilding two existing bathrooms to handicap standards.	\$30,000
Great Barrington	Clinton Church Restoration	5/7/2018	Stabilization and preservation of the historic former Clinton AME Zion church	\$100,000
Hadley	North Hadley Congregational Church	10/18/2018	Additional restoration and conservation work of the church. Located at 12 Mt Warner Rd, Hadley, MA 01035.	\$26,000
Hubbardston	First Parish Unitarian Church	6/5/2018	Repairing and replacing roof thereby restoring the historic building	\$38,310
Hubbardston	First Parish Unitarian Church Roof Restoration	6/4/2019	Rehab and restore historic building roof	\$26,690
Lenox	Trinity Church	5/3/2018	Restoration and repointing of the western elevation of the church building which is on the National Historic Register.	\$41,000
Monson	Monson Glendale Methodist Church Stained Glass Windows	5/13/2019	Restore historic stained glass windows. The church is the northern most anchor of the downtown Monson Historic district. The stained-glass windows are not religious in character. The windows are in an advanced stage of deterioration as the lead has oxidized and separated from the glass, causing the windows to be in danger of collapse.	\$20,680
Nantucket	South Church Preservation Fund	4/3/2018	Restoration of historic glass in windows	\$45,000
Nantucket	St. Paul's Church	4/3/2018	Restoration of Bell Tower	\$100,000
Newburyport	Belleville Congregational Church Restoration Project	8/29/2016	To continue the repair and restoration of the windows, including the replacement as necessary of storm windows, on the west and rear sides of the Fiske Chapel and Parish Hall and to paint the front of the main parish hall, including the steeple.	\$39,000
Northborough	First Parish Unitarian Universalist Church and Meeting House	4/23/2018	Handicap ramp for First Parish Unitarian Universalist	\$52,000
Pittsfield	Zion Lutheran Church Roof Replacement	6/25/2019	This project involves the replacement of a failing modern asphalt shingle roof with a more historically appropriate material. Zion Lutheran Church has become a vital multi-use space in Downtown Pittsfield. However, failures in the existing roof are putting the historic interior of the church at risk.	\$100,000
Quincy	United First Parish Church Crypt Handicapped Accessibility	5/1/2018	To construct handicapped accessibility structures for public access to the historic Adams Family crypts located beneath the now United First Parish Church.	\$650,000
Quincy	Church of the Presidents Exterior Work	6/3/2019	Painting and repairs of the building's wooden trim, windows, shutters and entry doors.	\$30,000
Somerville	Mission Church of Christ Roof Repair and Preservation Project	1/24/2019	The Mission Church of Our Lord Jesus Christ will repair and preserve the roof of their historic building.	\$113,120
Stockbridge	First Congregational Church of Stockbridge	5/20/2019	Continuation of the restoration of building columns and shutters.	\$35,770
Tisbury	Stone Church Tower	4/10/2018	Repair and restoration of historic stone church tower.	\$37,500
Tisbury	Stone Church Clock and Bell restoration	4/9/2019	Restoration of historic stone church clock and bell.	\$20,000
West Tisbury	West Tisbury First Congregational Church	4/9/2019	Funding for the first phase of an Accessibility and Kitchen Plan, which will generate schematic drawings to address the challenge of achieving code compliant accessibility and kitchen architectural plan for an historic building.	\$45,000
Yarmouth	Yarmouth New Church Exterior Preservation and Climate Control	5/5/2019	Preservation of the exterior of the building and installation of a climate control system.	\$168,551

**10) Text of George Caplan v. Town of Acton**

<http://www.massmunilaw.org/wp-content/uploads/2018/03/GEORGE-CAPLAN-vs.-TOWN-OF-ACTON.pdf>

# GEORGE CAPLAN & others[1] vs. TOWN OF ACTON

**Docket:** SJ-12274  
**Dates:** September 7, 2017 - March 9, 2018  
**Present:** Gants, C.J., Lenk, Gaziano, Budd, Cypher, & Kafker, JJ  
**County:** Middlesex  
**Keywords:** Constitutional Law, "Anti-aid" amendment. Massachusetts Community Preservation Act. Historic Preservation. Church.

Civil action commenced in the Superior Court Department on July 7, 2016.

A motion for a preliminary injunction was heard by Leila R. Kern, J.

The Supreme Judicial Court granted an application for direct appellate review.

Douglas B. Mishkin, of the District of Columbia (Joshua Counts Cumby & Alex Luchenitser, of the District of Columbia, & Russell S. Chernin also present) for the plaintiffs.

Nina L. Pickering-Cook (Arthur P. Kreiger also present) for the defendant.

The following submitted briefs for amici curiae:

Daniel Mach, of the District of Columbia, Anthony M. Doniger, Kate R. Cook, & Sarah R. Wunsch for American Civil Liberties Union & another.

Maura Healey, Attorney General, David C. Kravitz, Assistant State Solicitor, & Matthew P. Landry, Assistant Attorney General, for the Attorney General.

Eric C. Rassbach, of the District of Columbia, Joseph C. Davis, of Louisiana, Daniel D. Benson, of Utah, & Mark L. Rienzi for Becket Fund for Religious Liberty.

Thomas A. Mullen for Massachusetts Municipal Law Association & another.

Thaddeus A. Heuer & Andrew London for National Trust for Historic Preservation.

Ryan P. McManus & M. Patrick Moore for Boston Preservation Alliance & others.



GANTS, C.J. Article 18 of the Amendments to the Massachusetts Constitution, as amended by arts. 46 and 103 of the Amendments, known as the "anti-aid amendment," prohibits in § 2, cl. 2, the "grant, appropriation or use of public money . . . for the purpose of founding, maintaining or aiding any church, religious denomination or society." This case presents the question whether two grants of public funds to renovate an active church that has been identified as a "historic resource" under the Community Preservation Act (act), G. L. c. 44B, are categorically barred by the anti-aid amendment, or whether the constitutionality of such grants must be evaluated under the three-factor test we have applied under *Commonwealth v. School Comm. of Springfield*, 382 Mass. 665, 675 (1981) (*Springfield*), to payments made to other private institutions. Also presented is the follow-up question: if the three-factor test applies, do the grants satisfy its requirements?

We conclude that the constitutionality of such grants must be evaluated under our three-factor test: a judge must consider whether a motivating purpose of each grant is to aid the church, whether the grant will have the effect of substantially aiding the church, and whether the grant avoids the risks of the political and economic abuses that prompted the passage of the anti-aid amendment. We also conclude that, in light of the history of the anti-aid amendment, a grant of public funds to an active church warrants careful scrutiny. Because the judge applied this three-factor test incorrectly in denying the plaintiffs' motion for a preliminary injunction to prohibit disbursement of these grants, we vacate the order denying the motion. As to the grant to preserve the stained glass windows in the main church building, we remand the case to the Superior Court for entry of an order allowing the plaintiffs' motion for a preliminary injunction barring disbursement of the grant. As to the grant to fund a "Master Plan" to preserve all three of the buildings belonging to the church, we remand for further proceedings consistent with this opinion.[2]

Background. The Acton Congregational Church (church), an affiliate of the United Church of Christ, is an active church with a congregation of over 800 members. It describes its mission thusly:

"The mission of Acton Congregational Church . . . is to preach and teach the good news of the salvation that was secured for us at great cost through the life, death, and resurrection of Jesus. The church encourages each individual to accept the gift of Christ and to respond to God's love by taking part in worship, ministry to one another, and the Christian nurture of people of all ages. With the guidance of the Holy Spirit, we are called as servants of Christ to live our faith in our daily lives and to reach out to people of this community and the world with love, care, and concern for both their physical and spiritual needs."

The church stands in the Acton Centre Historic District (historic district), an area that has served as a center of town life since the establishment of the town of Acton (town) in 1735. The church owns and maintains three adjacent buildings in the historic district: the main church building, the John Fletcher House, and the Abner Hosmer House. The main church building was built in 1846. Today, it is used for worship services and religious educational programs; it also houses a local day care center, meeting spaces for various community groups, and a thrift shop. The two houses, also built in the mid-Nineteenth Century, originally were private residences but were later acquired by the church and are now rented to local families.

The town is one of 172 municipalities in Massachusetts that have adopted the act, which establishes a mechanism for funding projects relating to open space, historic resources, and community housing.[3] G. L. c. 44B. In 2015, the church submitted two grant applications to the town's Community Preservation Committee (committee), which makes recommendations in accordance with the act to the town meeting regarding "the acquisition, preservation, rehabilitation and restoration of historic resources." [4] G. L. c. 44B, § 5 (b) (2). See G. L. c. 44B, § 7.

The church's first application was for a \$49,500 grant to fund a "Master Plan for Historic Preservation" for all three of its buildings (the Master Plan grant). The church proposed to hire an architectural consultant to develop a plan for their renovation and preservation; the proposed work would include "a thorough assessment of the [c]hurch building envelope, including windows, doors, siding, roof, chimney, bell tower, skylights, and fire escapes." The church noted "[s]pecific areas of concern" for the building, including its bell tower and brass chandelier.

The church's second application was for a \$51,237 grant to fund the restoration and preservation of the main church building's stained glass windows, which were installed in 1898 (the stained glass grant). According to the church's application, the "most prominent" of the windows depicts Jesus and a kneeling woman; another window features a cross and the hymnal phrase, "Rock of Ages Cleft for Me." The proposed work would include replacing parts of the glass, sealing the glass, and installing new glazing so that the windows -- which currently have a "cloudy" exterior and "cannot be appreciated outside the church" -- will be given "complete transparency."

The church explained in its applications that, due to declining membership and contributions, it lacked the funds necessary both to preserve its buildings and to fully serve the needs of its congregation without financial assistance from the town:

"As you may know, mainstream churches have not been growing for years, and the financial strain is significant. [The church] has weathered the storm better than many churches, but the reality is that we have had to cut programs and personnel. The cuts can further exacerbate the financial problem by not offering the congregation what draws them to their church. With that in mind, the long list of maintenance and capital improvement projects get[s] delayed before we cut programs, but there are many things that we've had to fix."

Consistent with the requirements of the act, the committee held a public hearing on the church's applications and voted unanimously to recommend the two grants. The town approved them both at a town meeting.

The town imposed several conditions on the grants. First, it required that the church convey to the town a "historic preservation restriction" in the buildings that would be "perpetual to the extent permitted by law." Second, it specified that no funds would be disbursed to the church except as reimbursements for specific expenses incurred in connection with the projects, and only after the town could verify, based on submitted invoices, that those expenses were "consistent with the project scope presented" in the church's applications.

The plaintiffs, a group of town taxpayers, commenced this action in the Superior Court under G. L. c. 40, § 53, which permits taxpayers to act "as private attorneys general" to enforce laws designed to prevent abuse of public funds by local governments. *LeClair v. Norwell*, 430 Mass. 328, 332 (1999). The plaintiffs sought a declaratory judgment that the grants to the church violate the anti-aid amendment, and requested injunctive relief to prevent their disbursement.[5]

In denying the plaintiffs' motion for a preliminary injunction, the judge relied on the three-factor test we first set forth in *Springfield*, 382 Mass. at 675. We applied the test in that case to determine whether a statute that authorized the public funding of special education placements of public school students in private schools violated the anti-aid amendment. *Id.* at 667. The three factors are: "(1) whether the purpose of the challenged statute is to aid private schools; (2) whether the statute does in fact substantially aid such schools; and (3) whether the statute avoids the political and economic abuses which prompted the passage of [the anti-aid amendment]." *Id.* at 675.[6] We cautioned that these factors "are not 'precise limits to the necessary constitutional inquiry,' but are instead guidelines to a proper analysis." *Id.*, quoting *Colo v. Treasurer & Receiver Gen.*, 378 Mass. 550, 558 (1979). We also recognized that each factor was "interrelated," and that any conclusion "results from a balancing" of the factors as applied to the facts of each case. *Springfield*, *supra* at 675.

The judge here determined that the plaintiffs bore a heavy burden to overcome the presumption of the act's constitutionality because, although the plaintiffs were challenging the constitutionality of the grants to the church, those grants were awarded pursuant to the act. Thus, as to the first factor, the judge determined that she must "examine the purpose of the [act]," and concluded that the purpose of the grants under the act was "to preserve historic resources, and not to aid the [c]hurch[]." As to the third factor, the judge found that "[t]here is no credible evidence that the grants under the [act] are economically or politically abusive or unfair," noting that "[t]he application and approval procedures for grants under the [act] operate without regard to the applicant's makeup or purpose." The judge concluded that, even if the plaintiffs were to satisfy the second factor, which she was "not convinced they can," they still had "no likelihood of success on the merits" because their failure to satisfy the first and third factors "preclud[ed] them from overcoming the presumption of constitutionality that favors the [act]."

The judge also granted the town's motion for a protective order to stay discovery until thirty days after entry of a decision on the preliminary injunction. The plaintiffs appealed from the denial of their motion for a preliminary injunction and the allowance of the protective order. We granted their application for direct appellate review.

**Discussion.** In a taxpayer suit such as this, the taxpayers collectively are acting as a private attorney general seeking under G. L. c. 40, § 53, "to enforce laws relating to the expenditure of tax money by the local government." *LeClair*, 430 Mass. at 332. In order to obtain a preliminary injunction, the plaintiffs must show a likelihood of success on the merits and that the requested relief would be in the public interest; they need not demonstrate irreparable harm. See *id.* at 331-332.

The plaintiffs claim that the judge made two errors of law in her decision denying their motion for a preliminary injunction. First, they argue that the judge erred by applying the three-

factor test articulated in Springfield, contending that this test only applies where the challenged grant of public funds is to aid a private school or institution, and not where the challenged grant is to aid a church. Second, they contend that, even if the three-factor test properly applies to public aid to churches, the judge misapplied the test. To rule on these claims of error, we must look first to the history and evolution of the anti-aid amendment.

1. The history and evolution of the anti-aid amendment. Our original Declaration of Rights, adopted in 1780, provided in art. 3 for the direct public support of religion, continuing the Colonial practice of using tax revenues to support the "public Protestant teachers of piety, religion and morality[,]" see *Colo*, 378 Mass. at 556 n.10, which essentially meant support of the Congregational Church. See T.J. Curry, *The First Freedoms, Church and State in America to the Passage of the First Amendment*, 163-164, 174-175 (1986) (Curry); S.E. Morison, *A History of the Constitution of Massachusetts* 24 & n.1 (1917) (Morison).[7]

Even before it was mandated by the Declaration of Rights in 1780, the "quasi-religious establishment" of the Congregational Church had provoked heated conflict. *Id.* at 24. See generally 1 W.G. McLoughlin, *New England Dissent 1630-1833, The Baptists and the Separation of Church and State*, 547-568 (1971) (McLoughlin). During the American Revolution, Baptists protested the religious assessments with acts of civil disobedience; in retaliation, mobs attacked them on the pretext that they were Tories. See Curry, *supra* at 163. When the Constitution was submitted to the people for ratification, forty-five towns rejected art. 3, most of them because it provided public support to the Congregational Church. See *id.* at 167-169; McLoughlin, *supra* at 626-631. After art. 3 was enacted, the Baptists challenged the religious assessments in court, and other denominations followed. See McLoughlin, *supra* at 636-659.

After decades of "lawsuits, bad feeling, and petty persecution," Morison, *supra* at 24, the Massachusetts Constitution was amended in 1833 with art. 11 of the Amendments enacted to substitute for art. 3. Article 11 guarantees the equal protection of "all religious sects and denominations" -- not just the Christian denominations protected under art. 3 -- and effectively ended religious assessments. The next year, the Legislature enacted a statute providing that "no citizen shall be assessed or liable to pay any tax for the support of public worship . . . to any parish or religious society whatever, other than to that of which he is a member." St. 1834, c. 183, § 8. See Morison, *supra* at 38-39.

But the issue of public support for religious institutions was far from resolved by art. 11. It was raised again in the Constitutional Convention of 1853, which adopted art. 18 of the Amendments to prevent the appropriation of public funds to sectarian schools.[8] See 3 *Debates and Proceedings in the State Convention 1853*, at 613-626 (1853) (*Debates of 1853*); Morison, *supra* at 59. The debates from the Convention indicate that art. 18 did not arise in response to any actual funding of sectarian schools in Massachusetts, but from fear of the sectarian conflict that would result if such funding were to occur. See *Debates of 1853*, *supra* at 615, 618-620.[9]

The delegates worried that competing claims from various denominations would quickly deplete public funds for education. In the words of one delegate: "[I]f we take the position that a part of this fund may be given to one denomination, another may come in and claim the same

privilege, and another, and another, until the fund is completely exhausted . . . ." *Id.* at 620. But the delegates were equally fearful of the political controversies that were bound to ensue. See *id.* at 619, 624. One delegate warned that making public funds available to religious institutions would be like throwing "a firebrand into . . . town meetings." *Id.* at 624. The "object" of art. 18, he explained, was "to extinguish [that] firebrand, so that it shall not be possible to rekindle it." *Id.* Having seen until 1833 how public financial support for churches could provoke such animosity between citizens, the delegates were eager to remove the controversial issue of religion from politics. See *id.* at 624-625.

In fact, religious tensions were on the rise in 1853, as Massachusetts faced a massive influx of immigrants, most of them driven here from Ireland by the famine caused by a potato blight that devastated the nation's harvest. See generally O. Handlin, *Boston's Immigrants, A Study in Acculturation*, 25-53 (rev. ed. 1979). In 1841, about 10,000 Irish immigrants arrived in Boston; in 1846, that number had risen to more than 65,000. *Id.* at 242. By 1850, more than one-fourth of Boston residents were Irish. *Id.* at 243. Hostility toward Irish Catholics grew among those who felt threatened by the combined forces of mass immigration, urbanization, and industrialization. See Haynes, *The Causes of Know-Nothing Success in Massachusetts*, 3 *Am. Hist. Rev.* 67, 70-76 (1897) (Haynes). Rumors spread about a "papal plot" to spread Catholic influence throughout the government and in particular the public school system. See Holt, *The Politics of Impatience: The Origins of Know Nothingism*, 60 *J. Am. Hist.* 309, 323-324 (1973). These anti-Catholic sentiments were well known to the framers of art. 18. Indeed, some delegates believed (and historians today agree) that art. 18 was itself targeted specifically against Catholic schools.[10] See *Debates of 1853*, *supra* at 615-617; J.R. Mulkern, *The Know-Nothing Party in Massachusetts, The Rise and Fall of a People's Movement*, 42 (1990) (Mulkern); Shapiro, *The Conservative Dilemma, The Massachusetts Constitutional Convention of 1853*, 33 *New Eng. Q.* 207, 224 (1960). See also *Wirzburger v. Galvin*, 412 F.3d 271, 281 (1st Cir. 2005), cert. denied, 546 U.S. 1150 (2006).

It bears noting that art. 18, along with all the amendments adopted by the 1853 Convention, failed to be ratified by the people in 1853. Morison, *supra* at 63. However, in 1854, the Know-Nothing Party, running on an anti-foreign and in particular an anti-Catholic platform, won a surprising political victory in Massachusetts that secured both the governorship and control of the Legislature. See Haynes, *supra* at 67-68. Article 18 was revived by the Know-Nothing government, Mulkern, *supra* at 94, 105-106, and ratified by special election in 1855, Morison, *supra* at 64.

However, the adoption of art. 18 did not end the controversy over public support for religious institutions. Public dissatisfaction with art. 18 grew when, due to its "rather uncertain language," private religious schools and hospitals continued to receive public funding. *Bloom v. School Comm. of Springfield*, 376 Mass. 35, 39 (1978). See Loring, *A Short Account of the Massachusetts Constitutional Convention 1917-1919*, 6 *New Eng. Q.* 1, 10 (1933). In 1913, the Legislature requested this court's opinion on whether art. 18 "adequately prohibit[ed]" the appropriation of public funds "for maintaining or aiding any church, religious denomination or religious society, or any institution, school, society or undertaking which is wholly or in part under sectarian or ecclesiastical control." *Opinion of the Justices*, 214 Mass. 599, 599-560 (1913). The Justices were in agreement that art. 18 prohibited appropriations to primary and

secondary schools under sectarian control, but not to schools of higher education. *Id.* at 601. The Justices were divided, however, on whether art. 18 allowed appropriations to a church or religious denomination; four Justices were "of opinion that such an appropriation is prohibited by the Constitution and its Amendments," while three Justices "incline[d] to the opposite conclusion." *Id.*

Faced with this uncertainty, delegates to the Constitutional Convention of 1917 sought "to tighten the prohibition of public support for religious education" and "to protect State and municipal treasuries from the growing pressure of interest groups in search of private appropriations." *Springfield*, 382 Mass. at 673. The result was art. 46 of the Amendments, a substantially revised version of art. 18 that was "sweeping in its terms." *Bloom*, 376 Mass. at 39. Article 46 broadened the prohibition on the use of public funds to encompass not only private religious schools but all private institutions, whether secular or religious, and, in the last clause of § 2, specifically prohibited the "grant, appropriation or use of public money . . . for the purpose of founding, maintaining or aiding any church, religious denomination or society."<sup>[11]</sup>

By its terms, the revised anti-aid amendment applied to all institutions not under public control. Its proponents recognized that, in the fight over public funds, private institutions of all kinds -- whether religious or not -- were equally likely to compete. See 1 *Debates in the Massachusetts Constitutional Convention, 1917-1918*, at 62-70, 163-168 (1919) (*Debates of 1917-1918*). As one of the amendment's chief supporters explained during the debates: "[I]f you let the bars down everything else will come in." *Id.* at 118. The decision to appropriate funds to one private institution would lead to "a thousand other[s]" asking for the same. *Id.* The anti-aid amendment was intended to keep those bars up, protecting public funds from religious and secular institutions alike.<sup>[12]</sup>

Still, the delegates to the Convention voiced many concerns that were specific to religious institutions, as reflected in the last clause of § 2 of the revised anti-aid amendment. As we have summarized in the past:

"Proponents of [the anti-aid amendment] urged that liberty of conscience was infringed whenever a citizen was taxed to support the religious institutions of others; that the churches would benefit in independence and dignity by not relying on governmental support; and, more generally or colloquially, that to promote civic harmony the irritating question of religion should be removed from politics as far as possible, and with it the unseemly and potentially dangerous scramble of religious institutions for public funds in ever-increasing amounts."

*Bloom*, 376 Mass. at 39, citing *Debates of 1917-1918*, *supra* at 68, 74-79, 161-164.

The anti-aid amendment that emerged from the 1917 Convention is the amendment -- with some revisions adopted in 1974, not relevant here<sup>[13]</sup> -- that applies today. It currently provides:

"No grant, appropriation or use of public money or property or loan of credit shall be made or authorized by the [C]ommonwealth or any political subdivision thereof for the purpose of founding, maintaining or aiding any infirmary, hospital, institution, primary or secondary school, or charitable or religious undertaking which is not publicly owned and under the exclusive

control, order and supervision of public officers or public agents authorized by the [C]ommonwealth or federal authority or both, [with exceptions not relevant here]; and no such grant, appropriation or use of public money or property or loan of public credit shall be made or authorized for the purpose of founding, maintaining or aiding any church, religious denomination or society." [14]

Art. 18, § 2, as amended by arts. 46 and 103.

2. Does the three-factor test in Springfield apply to public aid to churches? Section 2 of the anti-aid amendment contains two clauses: the first clause prohibits the grant of public funds "for the purpose of founding, maintaining or aiding" any institution that is not publicly owned or under exclusive public control, including schools and hospitals; the second clause prohibits the grant of public funds "for the purpose of founding, maintaining or aiding any church, religious denomination or society." Art. 18, § 2, as amended by arts. 46 and 103. The plaintiffs contend that the three-factor test in Springfield applies only where the challenged grant of public funds is to a private school or institution under the first clause, and should not be applied where the challenged grant is to an active house of worship under the second clause, as in this case. Rather, the plaintiffs argue that the second clause requires an "unequivocal and unqualified" ban on the grant of public funds to churches. We disagree.

This is the first time that we have been asked to consider the constitutionality of a grant of public funds to a church under the second clause of the anti-aid amendment. All of our prior decisions under the anti-aid amendment since its revision in 1917 have considered the actual or contemplated grant of public funds or assistance to private schools or institutions under the first clause. See *Helmes v. Commonwealth*, 406 Mass. 873, 874 (1990) (funding for repair of memorial battleship); *Attorney Gen. v. School Comm. of Essex*, 387 Mass. 326, 327 (1982) (Essex) (transportation for private school students); *Springfield*, 382 Mass. at 665, 666 (funding for special education programs in private schools); *Colo*, 378 Mass. at 551 (payment of legislative chaplains' salaries); *Bloom*, 376 Mass. at 36 (textbooks for private school students). See also *Opinion of the Justices*, 401 Mass. 1201, 1202 (1987) (tax deduction for expenditures on tuition, textbooks, and school transportation); *Opinion of the Justices*, 357 Mass. 846, 847-848 (1970) (vouchers for private school students); *Opinion of the Justices*, 357 Mass. 836, 837-838 (1970) (reimbursement of private schools for secular educational services).

In *Springfield*, 382 Mass. at 675, we declared that "there are no simple tests or precise lines by which we can determine the constitutionality" of grants challenged under the first clause of the anti-aid amendment. Instead, we devised the three-part test as "guidelines to a proper analysis," *id.*, quoting *Colo*, 378 Mass. at 558, focusing on the purpose of the grant, the extent to which the grant aids the private institution, and whether the grant "avoids the political and economic abuses" that led to the passage of the anti-aid amendment, all of which must be carefully balanced in determining its constitutionality. *Springfield*, *supra* at 675.

This rejection of "simple tests [and] precise lines" is equally appropriate when evaluating the constitutionality of a grant of public funds under the second clause of the anti-aid amendment. *Id.* The operative language in each clause is identical: both provide that no "grant, appropriation, or use of public money . . . shall be made or authorized" "for the purpose of

founding, maintaining or aiding" one of the enumerated private institutions. Art. 18, § 2, as amended by arts. 46 and 103. In both clauses, the specific reference to "purpose" demands an inquiry into both the making of a grant and its purpose.[15] Where the language of the two clauses is essentially the same, our interpretive framework is appropriately also the same. See, e.g., *Alliance, AFSCME/SEIU, AFL-CIO v. Secretary of Admin.*, 413 Mass. 377, 384 (1992) ("Words occurring in different places in the Constitution and its amendments ordinarily should be given the same meaning unless manifestly used in different senses" [citation omitted]); *Opinion of the Justices*, 384 Mass. 820, 823 (1981) (interpreting word "items" in §§ 3 and 5 of art. 63 of Amendments to have same meaning).

Moreover, even if we did not look to our interpretation of the first clause for guidance, we could not read the second clause as an absolute ban on grants to churches, because the second clause by its own terms calls for a case-by-case analysis. The words of the second clause are not: "No grants shall be made to any church." Rather, the second clause prohibits only grants that are made "for the purpose of founding, maintaining or aiding any church," and we cannot know that every grant to a church will be for that purpose. The categorical prohibition urged by the plaintiffs therefore invites the danger of overbreadth -- and of hubris. We do not presume that we have the wisdom or imagination to contemplate every possible grant of public funds to a "church, religious denomination or society" and be certain that all of them, regardless of purpose, effect, or historical context, would be barred by the anti-aid amendment.

A categorical prohibition also invites the risk of infringing on the free exercise of religion, a right guaranteed under the First Amendment to the United States Constitution ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof"); art. 2 of the Massachusetts Declaration of Rights ("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"); and the anti-aid amendment itself. See art. 18, § 1, as amended by art. 46 ("No law shall be passed prohibiting the free exercise of religion").

This was the risk addressed in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2017 (2017) (*Trinity Lutheran*), where a church in Missouri was denied a public grant to resurface its playground. In contrast with the Massachusetts anti-aid amendment, the Missouri Constitution imposes a categorical prohibition on any grant of public funds "in aid of any church, sect[,] or denomination of religion." [16] *Id.* As a result, when a church preschool and day care center applied for a grant under a general government program to purchase a new playground surface made from recycled tires, the State's Department of Public Resources rejected its application, based on "a strict and express policy of denying grants to any applicant owned or controlled by a church, sect, or other religious entity." *Id.* The Supreme Court of the United States held that the department's policy of excluding a church from a government program "solely because it is a church," *id.* at 2025, "imposes a penalty on the free exercise of religion that must be subjected to the 'most rigorous' scrutiny," *id.* at 2024, quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993). [17]



We do not interpret the Massachusetts anti-aid amendment to impose a categorical ban on the grant of public funds to a church "solely because it is a church." *Trinity Lutheran*, 137 S. Ct. at 2025. Rather, under our three-factor test, whether a church can receive such a grant depends on the grant's purpose, effect, and the risk that its award might trigger the risks that prompted the passage of the anti-aid amendment. Such an analysis would surely not bar the grant of public funds to a church preschool to provide a safer surface for its playground. Cf. *Essex*, 387 Mass. at 333-334 (State funding to provide transportation to students attending private schools did not violate anti-aid amendment because it was "a general program to help parents get their children, regardless of their religion, safely . . . to and from . . . schools" [citation omitted]).[18]

Therefore, we conclude that the judge did not err in declining to interpret the second clause of the anti-aid amendment as a categorical prohibition on the grant of public funds to churches.

3. Application of the three-factor test. The plaintiffs contend that, even if the constitutionality of the grant should be determined under the three-factor test, the judge erred as a matter of law in her application of that test. We agree, and discern two distinct errors of law.

First, in determining whether the grants at issue would violate the anti-aid amendment, the judge focused primarily on the constitutionality of the act itself rather than on the constitutionality of the award of the two grants at issue.[19] Analysis of the act's constitutionality would have been appropriate if the act itself authorized the appropriation of public funds to a church or other private institution within the scope of the anti-aid amendment. See, e.g., *Helmes*, 406 Mass. at 875, 877-878 (applying three-factor test to statute authorizing expenditure of public funds for repair of World War II battleship under control of charitable corporation); *Springfield*, 382 Mass. at 668, 675-683 (applying three-factor test to statute authorizing school committees to contract with private schools to provide special needs education where public schools could not meet special needs).[20]

Here, however, the act simply establishes a procedure for municipalities to make discretionary grants to projects relating to open space, historic resources, and community housing. See G. L. c. 44B, §§ 5, 7. Nothing in the act itself specifically authorizes the expenditure of funds to assist churches or religious institutions.

For this reason, the constitutionality of the act itself was not challenged by the plaintiffs, and is not at issue in this case. What was challenged, and is at issue, is the constitutionality of specific discretionary grants made pursuant to the act. Therefore, "the familiar principle of statutory construction that affords a statute a presumption of constitutionality validity," *Springfield*, 382 Mass. at 674, does not apply to the constitutional analysis of these grants, and the judge erred in applying that presumption. The grants themselves enjoy no such presumption of constitutionality.

Second, the judge's focus on the constitutionality of the act rather than of the grants also rendered erroneous her analysis of the first and third factors.[21] As to the first factor, the judge relied on the language of the test as it was applied to the statutes at issue in *Springfield* and *Helmes*, and therefore considered whether the legislative purpose of the act was to aid churches. The judge instead should have considered whether the primary purpose of the

committee in recommending the grants was to aid this particular church rather than to serve the proper purpose of historic preservation.

Accordingly, we now apply the three-factor test to the proposed grants themselves. On this record, we conclude that the plaintiffs are likely to succeed on the merits of their claim with respect to the stained glass grant, but that further discovery is needed to evaluate their claim as to the Master Plan grant.

a. Purpose. The first factor to be considered is whether the proposed grants are "for the purpose of founding, maintaining or aiding [a] church." Art. 18, § 2, as amended by arts. 46 and 103. In ascertaining the purpose of a challenged grant, our cases concerning aid to private schools are instructive. In *Springfield*, 382 Mass. at 678, we upheld the constitutionality of a statute that funded special education programs in private schools for children whose needs could not adequately be met in public schools, finding that its "primary purpose" was "to benefit public schools and individual children." We saw no evidence of any "hidden legislative purpose" to aid the private schools themselves. *Id.* at 677. See *Essex*, 387 Mass. at 331 (statute authorizing provision of transportation to private school students held constitutional based on "avowed purpose" to benefit children and lack of any "hidden purpose to maintain private schools"). In contrast, in *Bloom*, 376 Mass. at 42, we declared unconstitutional a statute requiring public school committees to lend textbooks to children attending private schools because we could infer from this statutory scheme no other purpose than to aid private schools "in carrying out their essential function." We determined that it made no difference under the anti-aid amendment that the textbooks were to be lent to the students rather than to the private schools they attended. *Id.* at 47. What mattered was that the statute made use of public money or property for the purpose of "maintaining or aiding" the private schools. *Id.* at 42.

Here, historic preservation is the stated purpose of the committee in awarding these grants to the church. That stated purpose is consistent with the town's decision to make the grants contingent on a historic preservation restriction in the three buildings. Such a restriction would limit the church's ability to make changes to the buildings in the future, thereby ensuring that the historic value of those buildings is not diminished over time. Thus, the plaintiffs' burden under the first factor is to demonstrate a "hidden . . . purpose" to aid this particular church. *Springfield*, 382 Mass. at 677.[22]

We conclude that the record before us is insufficient to determine whether such a hidden purpose existed. The plaintiffs here sought to depose a person, to be designated by the town under Mass. R. Civ. P. 30 (b) (6), as appearing in 435 Mass. 1501 (2001), to testify regarding the town's "[c]onsideration and approval of the applications for the [c]hurch [g]rants," and the communications among town officials, employees, and committee members regarding the applications, but the judge denied the plaintiffs this discovery for purposes of the motion for preliminary injunction when she granted the town's motion for a protective order. Where the anti-aid amendment itself focuses on the "purpose" of a grant to a church, and where the first factor to be considered under our test is the purpose of the grant, a plaintiff is entitled to reasonable discovery to ascertain whether there is a hidden purpose that motivated the issuance of the grant. Discovery, however, should not be any broader or any more intrusive than it needs to be. For the purpose of ascertaining the purpose of the grants, discovery should be limited to

the testimony of the rule 30 (b) (6) witness and writings reflecting the oral and written communications regarding the committee's decision-making process in recommending the grants; there is no need in this case to probe the private intentions of town meeting members. We leave it to the judge in her discretion to determine more precisely the appropriate scope of discovery.

b. Substantial aid. The second factor to be considered is whether the effect of the grants is to substantially aid a church. Our precedents make clear that a grant of public funds does not violate the anti-aid amendment if the assistance it provides to a private institution is merely "minimal," *Essex*, 387 Mass. at 332, or "remote," *Bloom*, 376 Mass. at 47. The aid must provide "substantial assistance" to the church to risk violation of the anti-aid amendment. *Springfield*, 382 Mass. at 680. In evaluating this factor, we look to both the amount of aid provided and "the degree to which the aid assists [the church] in carrying out [its] essential function." *Opinion of the Justices*, 401 Mass. at 1208.

In particular, we have focused on whether the aid that is provided contains certain "limiting features" designed to restrict its effect. *Id.* at 1207. In *Springfield*, we approved the funding of the special education programs with the important limitation that there would be no reimbursement for children whose parents had unilaterally enrolled them in private school; public funding was strictly limited to expenses that the private schools would not otherwise have incurred. See *Springfield*, 382 Mass. at 677. This limiting feature worked to cabin the effect of the public funding, guaranteeing that it would not "aid the private school[s] in carrying out [their] essential function." *Id.* at 681.

We see no such guarantee here. As an initial matter, we note that the proposed grants are "neither minimal nor insignificant" in amount. *Opinion of the Justices*, 401 Mass. at 1208. The total cost of the comprehensive assessment contemplated under the Master Plan will be \$55,000, to which the Master Plan grant will contribute \$49,500, while the total cost of restoring the stained glass windows will be \$56,930, to which the stained glass grant will contribute \$51,237.

More worrisome is the extent to which these grants will assist the church in its "essential enterprise" as an active house of worship. *Bloom*, 376 Mass. at 47. The church was candid in its grant applications, explaining that -- faced with declining membership and contributions -- it would need the town's "help" in order to preserve its buildings while also "offering the congregation what draws them to their church." This is not a case like in *Springfield*, where it was possible to limit the public funding to a narrow, specific purpose. The reimbursement there was for expenses that the schools would not otherwise have incurred; it did nothing to "lessen[] the financial burden" of the schools or those who chose to attend those schools. *Springfield*, 382 Mass. at 683. Here, in contrast, the grants would help defray planning and restoration costs that the church would otherwise have to shoulder on its own, allowing the money saved to be used to support its core religious activities. As the church indicated in its grant applications, budgetary constraints have led it to make difficult choices between "capital improvement projects" on the one hand and "programs and personnel" on the other. These grants would allow the church to have both, in effect "underwrit[ing]" its essential function as an active house of worship. *Opinion of the Justices*, 401 Mass. at 1209.

On this record, we therefore conclude that the effect of these grants is to substantially aid the church.

c. Risks. The third and last factor that must be considered is whether the grants avoid the risks that prompted the passage of the anti-aid amendment. In evaluating the third factor, the judge erred in focusing on whether there was "credible evidence that the grants under the [act] are economically or politically abusive or unfair," and, finding no such evidence, concluding that there was "no political or economic abuse which the anti-aid amendment was enacted to prevent." Instead, the judge should have focused on whether the grants to the church avoid the risks of the political and economic abuses that "prompted the passage" of the anti-aid amendment. *Springfield*, 382 Mass. at 675.

We recognize that our articulation of this third factor in prior cases has provided less than clear guidance. The third factor, as first set forth in *Springfield*, focused on "whether the [grant] avoids the political and economic abuses which prompted the passage of [the anti-aid amendment]." *Id.* But in *Springfield*, we did not provide the historical background that identified these "political and economic abuses," and therefore failed to recognize, as we do here, that the amendment was proposed in 1853 not to abolish an existing practice of funding religious institutions -- no one at the Convention alleged the existence of such a practice -- but instead as a preemptive measure to avoid the risks associated with the public financial support of religious institutions. These risks, as we noted in *Bloom*, 376 Mass. at 39, also prompted the revision of the anti-aid amendment in 1917, and are worth repeating here: first, the risk that "liberty of conscience" would be infringed "whenever a citizen was taxed to support the religious institutions of others"; second, the risk that public funding would result in improper government entanglement with religion, undermining the "independence and dignity" of churches; and third, the risk that the public support of religious institutions would threaten "civic harmony," making the divisive "question of religion" a political question. *Id.*

In *Helmes*, 406 Mass. at 878, our most recent case applying the three-factor test, we redefined the third factor in light of the circumstances of that case to consider "whether there is any use of public money that aids a charitable undertaking in a way that is abusive or unfair, economically or politically." Because nothing in the record indicated any such abuse or unfairness, we concluded that the appropriation was constitutional; there was no evidence that any private person would benefit from it, that the funds would be distributed to a noncharitable use, or that its charitable objective -- preserving a World War II battleship and educating the public -- was not generally accepted. *Id.* at 877-878. We did not consider in *Helmes* whether the appropriation of funds presented any of the risks that the framers of the anti-aid amendment sought to avoid, perhaps because it was so clear that these risks were not presented where the challenged funding was for the repair of a memorial battleship.

Here, where the grant of public funds is for the renovation of an active house of worship, it is imperative, in considering the third factor, to focus on whether these specific grants avoid the risks of the political and economic abuses that "prompted the passage" of the anti-aid amendment, which we identified in *Bloom* and have described in this opinion. On the record before us, we conclude that these risks are significant.

First, these grants risk infringing on taxpayers' liberty of conscience -- a risk that was specifically contemplated by the framers of the anti-aid amendment. As one delegate to the Convention of 1917 stated, "Religious liberty [requires] that . . . the State cannot compel a man to pay his good money in taxation for the support of a religion, or of the schools and institutions of a religion, in which he does not believe." Debates of 1917-1918, *supra* at 77. The self-described mission of the church here is "to preach and teach the good news of the salvation that was secured . . . through the life, death, and resurrection of Jesus." The proposed grants would be used to renovate the main church building, where the church conducts its worship services, and its stained glass windows, which feature explicit religious imagery and language. For town residents who do not subscribe to the church's beliefs, the grants present a risk that their liberty of conscience will be infringed, especially where their tax dollars are spent to preserve the church's worship space and its stained glass windows.

Second, these grants also present a risk of government entanglement with religion. See *Bloom*, 376 Mass. at 39, 47. To ensure that the grants are used for historic preservation, the town has imposed on the church the condition that it execute a historic preservation restriction, which -- if the restrictions accompanying the town's prior grants under the act are any indication -- would significantly limit the church's ability to make future alterations to its buildings, including its worship space and its stained glass windows, without the town's approval.[23] We have held in other contexts that where the State exercises control over the design features of a church, it infringes on the free exercise of religion guaranteed under the Massachusetts Constitution. In *The Society of Jesus of New England v. Boston Landmarks Comm'n*, 409 Mass. 38, 42 (1990) (*Society of Jesus*), we concluded that the designation of a church interior as a landmark, thereby making all renovations subject to government approval, infringed on "the right freely to design interior spaces for religious worship," in violation of art. 2 of the Massachusetts Declaration of Rights. The historic preservation restriction contemplated here presents a comparable risk of "intrusion . . . , reaching into the church's actual worship space." *Id.*

The town contends that these grants would result in no such intrusion, and are distinguishable from the landmark designation in *Society of Jesus*, because they relate only to the exterior of the church's buildings. See, e.g., G. L. c. 40C, § 7 ("The [historic district] commission shall not consider interior arrangements or architectural features not subject to public view"). In *Society of Jesus*, 409 Mass. at 39 n.2, we expressly did not decide whether a landmark designation of a church exterior would also infringe on the free exercise of religion. We need not decide that issue here because, even if we were to recognize the distinction between the interior and exterior of a church and conclude that restrictions on the renovation of a church exterior would not burden the free exercise of religion, such restrictions would still pose a risk of government entanglement in religious matters.

In *Society of Jesus*, we reasoned that "[t]he configuration of the church interior is so freighted with religious meaning that it must be considered part and parcel of . . . religious worship." *Society of Jesus*, 409 Mass. at 42. Since then we have recognized that the exterior features of a religious structure can also be expressive of religious beliefs. In *Martin v. The Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints*, 434 Mass. 141, 142 (2001), we held that a church steeple should be exempted from local height

restrictions as a "religious" use of land, noting that "churches have long built steeples to 'express elevation toward the infinite'" (citation omitted). *Id.* at 152. See P. Tillich, *On Art and Architecture* 212 (1989) ("the one great symbol of the church building is the building itself"). We warned, "It is not for judges to determine whether the inclusion of a particular architectural feature is 'necessary' for a particular religion," *Martin, supra* at 150, or "to determine what is or is not a matter of religious doctrine." *Id.* at 152. The Master Plan grant at issue here contemplates a comprehensive assessment of the entire church building, which would include elements both exterior and interior; it is not for judges or, for that matter, a community preservation committee to determine whether this assessment will affect elements that touch on matters of religious doctrine.

The stained glass window is illustrative of the fragility of the interior-exterior distinction, and of the extent to which historic preservation of the building is interwoven with religious doctrine. Although it is an "exterior" feature, in that it is open to public view, see G. L. c. 40C, § 5, its inclusion in a church building is as much a religious choice as an aesthetic one -- especially where, as here, the windows have an expressly religious message. See V.C. Raguin, *Stained Glass, From its Origins to the Present*, 10-13 (2003).

Third, the challenged grants also risk threatening "civic harmony," by making the "question of religion" a political one. *Bloom*, 376 Mass. at 39. As centuries of experience have shown, government support of churches has always and inevitably been a politically divisive issue in Massachusetts. Although the act provides for a rigorous process for the allocation of funds, the decision to award a grant lies with the committee and, ultimately, with the town meeting members. Those who first proposed the anti-aid amendment in 1853 were wary of throwing "a firebrand into . . . town meetings." *Debates of 1853, supra* at 624. Grants for the renovation of churches -- using funds that could potentially have been dedicated to open space, soccer fields, low-income housing, or other historic preservation projects, including projects for the renovation of houses of worship of other religious denominations -- pose an inevitable risk of making "the irritating question of religion" a politically divisive one in a community, the more so where those grants are for the renovation of a worship space or of a stained glass window with explicit religious imagery. *Bloom, supra* at 39.

We do not suggest that fair consideration of the risks that prompted the passage of the anti-aid amendment means that every historic preservation grant for a church building will be unconstitutional. We only caution that any such grant to an active church warrants careful scrutiny under the three-factor Springfield test. The third factor is by no means a dispositive factor, only an important one. Indeed, we can imagine various circumstances where such grants would survive careful scrutiny, including, for instance, where historical events of great significance occurred in the church, or where the grants are limited to preserving church property with a primarily secular purpose. Cf. *Shrine of Our Lady of La Salette Inc. v. Board of Assessors of Attleboro*, 476 Mass. 690, 700-702 (2017) (shrine property leased for battered women's shelter and used as wildlife sanctuary not subject to religious worship exemption, because "dominant purpose" not connected to religious worship and instruction). The use of public funds for such preservation efforts poses little risk of political division.[24]

In this case, having weighed and balanced the three factors, we conclude that the plaintiffs are likely to succeed on the merits of their claim with respect to the stained glass grant. Although the record before us does not allow us to ascertain whether there is a motivating purpose behind this grant other than historic preservation, its effect is to substantially aid the church in its essential function and, given the explicit religious imagery of the stained glass, it fails to avoid the very risks that the framers of the anti-aid amendment hoped to avoid. Thus, even if further discovery were to reveal that the sole motivating purpose of this grant was in fact to preserve historic resources, and not to aid this particular church, the other factors in our analysis -- especially the third factor, to which we accord special weight -- still compel the conclusion that the stained glass grant runs afoul of the anti-aid amendment. Because the plaintiffs are likely to succeed on the merits of their claim, and a preliminary injunction would "promote[] the public interest" reflected in the anti-aid amendment, *LeClair*, 430 Mass. at 332, the plaintiffs are entitled to a preliminary injunction barring the disbursement of the stained glass grant.

With respect to the Master Plan grant, we conclude that further discovery is needed before a determination should be made as to whether the plaintiffs are likely to succeed on the merits of their claim. This is in part because, unlike the stained glass grant, the Master Plan grant is far broader in its scope, including not only plans for the renovation of worship space but also plans for the renovation of the Fletcher and Hosmer Houses, which are both private residences. Accordingly, analysis of the grant under the third factor must be more fact-intensive; restoration of the main church building will implicate risks different from those arising from the restoration of the adjoining residences. And where the analysis of the third factor is more complex, and the potential judicial options more diverse,[25] the discovery that might shed light on whether there was a hidden purpose apart from historic preservation becomes more important to the over-all decision.

We therefore remand the issue to the Superior Court for a determination whether the Master Plan grant, in full or in part, should survive the careful scrutiny required under the third factor. Such a determination should not be made until the plaintiffs have had reasonable discovery regarding the purpose of the committee in awarding this grant. We reiterate that the scope of such discovery should be limited at this time to the testimony of the rule 30 (b) (6) witness and writings reflecting the oral and written communications regarding the committee's decision-making process in recommending the grants and that there is no need to probe the private intentions of town meeting members. We leave it to the judge to determine more precisely its appropriate scope.

Conclusion. The orders denying the plaintiffs' motion for a preliminary injunction and granting the town's motion for a protective order to stay discovery are vacated. The case is remanded to the Superior Court for entry of an order allowing the plaintiffs' motion for a preliminary injunction barring disbursement of the stained glass grant and, as to the Master Plan grant, for further proceedings consistent with this opinion.

So ordered.

KAFKER, J. (concurring, with whom Gaziano, J., joins). I write separately to emphasize that our analysis of the anti-aid amendment of the Massachusetts Constitution is tightly constrained by the United States Supreme Court's interpretation of the religion clauses of the First Amendment to the United States Constitution. The grants at issue here are provided pursuant to a generally available public benefit program designed to promote community conservation including the protection of the Commonwealth's historic buildings. The United States Supreme Court has warned that only a very narrow category of exclusions are allowed by the free exercise clause from such generally available public benefit programs. Because I believe the preliminary injunction against the stained glass grant is consistent with this very narrow permitted exclusion, and the Master Plan grant requires further analysis to decide both the anti-aid and First Amendment questions, I concur in the judgment of the court.

1. The First Amendment background to this case. Today's decision takes us into one of the most confusing and contested areas of State and Federal constitutional law. The United States Supreme Court has emphasized that there is a "tension" between the religion clauses of the United States Constitution -- that is, what is prohibited by the establishment clause and what is required by the free exercise clause of the First Amendment. See *Locke v. Davey*, 540 U.S. 712, 718 (2004). The Court has also stated that there is "play in the joints" between the dictates of the two religion provisions in the United States Constitution -- allowing limited State action therein - - without defining precisely how much play. See *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2019 (2017) (Trinity Lutheran). The Supreme Court's jurisprudence also has been continually evolving, particularly in its definition of the neutrality the two first amendment provisions requires in regard to religion.[1]

All of this is further complicated by State constitutional anti-aid provisions providing greater protections against the establishment of religion than the establishment clause of the First Amendment. These State constitutional anti-aid provisions present additional legal constraints, and State grants are permissible only if they do not run afoul of the free exercise clause of the First Amendment.

There is no clear path yet through this difficult intersection of the religion clauses of the State and Federal Constitutions. Most instructive, for our purposes, however, are the Supreme Court's more recent pronouncements in *Trinity Lutheran* and *Locke*. These two cases analyzed grants arising from generally available public benefit programs, like the one before us. See *Trinity Lutheran*, supra at 2017; *Locke*, supra at 715. Both cases involved exclusions required by anti-aid provisions in State Constitutions. See *Trinity Lutheran*, supra at 2017 (Missouri Constitution, art. 1, § 7); *Locke*, supra at 722 (Washington Constitution, art. 1, § 11).

In *Trinity Lutheran*, 137 S. Ct. at 2025, the Supreme Court held that the exclusion of a church school and day care facility from a generally available public benefit program funding rubber playground surfaces "solely" on account of a church's religious identity violated the free exercise clause. The Court held that it had "repeatedly confirmed" that it will not approve such exclusions, giving as an example its 1947 decision upholding against Federal establishment clause challenges a New Jersey law allowing a local school district to pay for public, private, and parochial school transportation costs. *Id.* at 2019-2020, citing *Everson v. Board of Educ. of Ewing*, 330 U.S. 1 (1947).



In *Locke*, however, the Supreme Court held that a State anti-aid amendment exclusion of scholarships to pursue degrees in devotional theology from an otherwise inclusive student aid program did not violate the free exercise clause of the First Amendment. *Locke*, 540 U.S. at 725. In so holding, the Court stressed that it could "think of few areas in which a State's antiestablishment interests come more into play" than using "taxpayer funds to support church leaders." *Id.* at 722. "The claimant in *Locke* sought funding for an 'essentially religious endeavor . . . akin to a religious calling.'" *Trinity Lutheran*, 137 S. Ct. at 2023, quoting *Locke*, *supra* at 721-722. To contrast, the Court in *Trinity Lutheran* stated, "nothing of the sort can be said about a program to use recycled tires to resurface playgrounds." *Trinity Lutheran*, *supra*. In his concurrence in *Trinity Lutheran*, Justice Breyer also emphasized that he would "find relevant, and would emphasize, the particular nature of the 'public benefit' . . . at issue." *Id.* at 2026 (Breyer, J., concurring).

Together, *Trinity Lutheran* and *Locke* define a very narrow category of exclusions from generally available public benefit programs that can be required by State anti-aid amendments without violating the free exercise clause of the First Amendment. To be excluded from a generally available public benefit program, the funding must be sought for an "essentially religious endeavor" raising important state constitutional antiestablishment concerns. *Trinity Lutheran*, 137 S. Ct. at 2023, quoting *Locke*, 540 U.S. at 721-722. With these overarching First Amendment principles in mind, I turn to the grants at issue, and art. 18 of the Amendments to the Massachusetts Constitution, as amended by arts. 46 and 103 of the Amendments, the anti-aid amendment.

2. The Community Preservation Act grant and the anti-aid amendment. As explained by the court, the town of Acton (town) is one of 172 municipalities in Massachusetts that have adopted the Community Preservation Act (act), which establishes processes and procedures for funding projects related to open space, historic resources, and community housing. See ante at . . . Here, the church's "Evangelical Church Stained Glass Window Preservation" application initially requested \$41,000 from the town's Community Preservation Committee (committee) to repair the church's stained glass windows. Eventually \$51,237 was awarded for the windows. The proposed repairs included a three-foot, six-inch by ten-foot, six-inch "Christ window" depicting Jesus with a woman kneeling and praying, altar windows, and a window containing a cross and the hymnal phrase "Rock of Ages Cleft for Me." [2] The church was requesting that the town pay for ninety per cent of the costs. The stained glass windows were "installed in memorial to honor prominent members of the church" in 1898.

The church also sought \$49,500 to hire an architect to do a structural review and prepare a master plan for historic preservation of the church, and two neighboring buildings owned by the church, the John Fletcher House and the Abner Hosmer House. The church was again requesting that the town pay ninety per cent of the costs. The main church dates back to 1846 with a renovation in 1898. The houses were built circa 1855 and 1846. The grant was sought to "hire an architectural consultant to thoroughly investigate each of the [three] historic buildings to identify all the needs of each building in order to protect and preserve these historic assets for future generations." For the church itself, this would include "a thorough assessment of the [c]hurch building envelope, including windows, doors, siding, roof, chimney, bell tower, skylights, and fire escapes, with a focus on protecting the building from the

elements." Similarly, "the rental houses will be evaluated for the building envelope, mechanical, electrical and plumbing systems, and safety systems. This work will focus on building structural integrity." The grant was requested because "each [of the buildings] shows the signs of 170+ years of wear."

In its application for both grants, the church explained that "mainstream churches have not been growing for years, and the financial strain is significant . . . we have had to cut programs and personnel. The cuts can further exacerbate the financial problem[s] by not offering the congregation what draws them to their church."

Pursuant to the requirements of the act, the committee held a public hearing and voted unanimously to recommend the grants. The town meeting approved both grants. The annual town meeting warrant explained that the church and the other two buildings were located in the Acton Centre Historic District. The warrant explained that the "work will protect the stained glass windows, an integral part of the church's historical significance." The warrant also explained that the master plan would evaluate and identify critical needs and set restoration and rehabilitation priorities to preserve the three historic buildings. It also stated that the "preservation project must comply with the Standards for Rehabilitation stated in the United States Secretary of the Interior's Standards for the Treatment of Historic Properties codified in 36 C.F.R. Part 68." Historic preservation restrictions were imposed on the buildings with the restriction being "perpetual to the extent permitted by law." The plaintiffs, who are town taxpayers, challenged the grants, claiming they violate the anti-aid amendment.

3. Application of the anti-aid amendment and the First Amendment to the stained glass grant. I agree with the court that the three factor anti-aid amendment analysis set forth in *Commonwealth v. School Comm. of Springfield*, 382 Mass. 665, 675 (1981) (Springfield), applies, including where the grant is being given to a church as well as a nonreligious private charity. I also agree that a categorical ban would violate the First Amendment right to the free exercise of religion.

In analyzing the first factor, I conclude that we must consider the purpose of both the statute and the grant. This is necessitated, in part, by the Supreme Court's First Amendment jurisprudence and its focus on whether the grant is authorized pursuant to a generally available public benefit program. Here, the purpose of the statute itself is unquestionably to provide generally available public benefits for the purpose of conservation, including historic preservation. There is no suggestion or argument that an "examination of the statutory scheme . . . [will reveal] any 'technique of circumvention'" designed to avoid the requirements of the anti-aid amendment. *Springfield*, 382 Mass. at 677, quoting *Bloom v. School Comm. of Springfield*, 376 Mass 35, 47 (1978). See *Bloom*, supra at 44 ("[W]e note, first, that the Supreme Court has been regularly unreceptive to schemes of circumvention which resemble that attempted by the present legislation"). Indeed the statute is straightforward and serves important conservation purposes as eloquently explained by the dissent. See post at .

The court, however, draws a distinction between the purposes of the statute and those of the grants, and emphasizes that we must probe further to discern the primary or motivating purposes of the grantors as well as any hidden purposes, and this additional inquiry requires a remand for

the Master Plan grant. See ante at . At least for a determination whether a preliminary injunction should issue regarding the stained glass grant, I conclude that we have a sufficient record that conservation is the primary purpose of the grants. I do not detect any indicia of a scheme or technique of circumvention. The purpose, as reflected in the town warrant, appear to be described straightforwardly and factually.

In my opinion, the most complicated aspect of the purpose inquiry is not discerning the subjective intentions of the grantors but the difficulty of separating conservation from religious purposes when the grant is being given to preserve a religious component of a church building. Even if the purpose of the grantors is conservation, and not the promotion of religion, it is obvious to anyone voting on the grants that both purposes would be served. I think that is particularly true for the stained glass grant where the windows convey an express sectarian religious message.[3] Ultimately, however, the purpose inquiry is just one factor in a multifactor test and it is meant to be instructive, not dispositive. *Springfield*, 382 Mass. at 675. I find the other two factors, particularly the third, conclusive of the anti-aid amendment analysis and critical to the First Amendment interpretation as well.

The second prong of the anti-aid test analyzes whether the grants substantially assist religion. The stained glass grant is "neither minimal nor insignificant" to the church. See *Opinion of the Justices*, 401 Mass. 1201, 1208 (1987). Approximately \$50,000 is being provided and the town is funding ninety per cent of the total cost. Without the assistance of the committee's grants, the church indicated that the financial strain and required cuts could "exacerbate the financial problem[s] by not offering the congregation what draws them to their church." [4]

Most important in my view is the third prong. Awarding public monies paid by taxes directly to a church to repair stained glass windows with an express religious message raises core concerns about separation of church and State that prompted the passage of the anti-aid amendment. I agree with the court that those concerns include (1) infringement on liberty of conscience caused by taxing citizens to support the religious beliefs and institutions of others; (2) improper government entanglement with religion, thereby diminishing the independence and integrity of both church and State; and (3) unnecessary divisiveness in the polity caused by making the funding of religious institutions a political question. See ante at .

All three of these risks are present here. Tax dollars are paying for the stained glass windows that have an express sectarian religious message. A historic preservation restriction of perpetual duration is being imposed on the windows and perhaps other parts of the church, thereby entwining an active church building with state government. See *The Society of Jesus of New England v. Boston Landmarks Comm'n*, 409 Mass. 38, 42 (1990) (designation of church interior as landmark infringed on "right freely to design interior spaces for religious worship"). See also *Martin v. The Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints*, 434 Mass. 141, 153 (2001) ("no municipal concern was served by controlling the steeple height of churches"); Saperstein, *Public Accountability and Faith-Based Organizations: A Problem Best Avoided*, 116 Harv. L. Rev. 1353, 1365 (2003) ("With government money come government rules, regulations, audits, monitoring, interference, and control -- all of which inherently threaten religious autonomy"). Town meeting members were being asked to vote on a

grant to maintain religious aspects of the church of their neighbors and now they are suing each other. Should another house of worship in the town be denied a grant after this one has been awarded, it will likely bring about further controversy and division. No more discovery is required to know that this grant goes to core concerns of the anti-aid amendment.[5] In sum, the balancing of the three factors shows that the plaintiffs have a substantial likelihood of success in establishing that the stained glass grant violates the anti-aid amendment.

As the church and the free exercise rights of its members are also implicated, they must be considered as well. As explained above, to be excluded from a generally available public benefit program, the funding must be sought for an "essentially religious endeavor" raising important State constitutional antiestablishment concerns. See *Locke*, 540 U.S. at 721. I conclude that paying for stained glass windows with an express sectarian religious message and mission fits within the very narrow exception allowed by *Locke*.

The benefits are vastly different from the nonreligious rubberized playground services or school transportation costs, or the police and fire or other obviously nonreligious types of assistance that have been found not to raise establishment clause or anti-aid concerns. See *Trinity Lutheran*, 137 S. Ct. at 2026-2027 (Breyer, J., concurring). See also *Everson*, 330 U.S. at 17-18 (describing services "so separate and so indisputably marked off from the religious function"). Although "nothing [religious] . . . can be said about a program to use recycled tires to resurface playgrounds," the opposite is true for stained glass windows. See *Trinity Lutheran*, supra at 2023. They are an important part of the church's religious message and mission. V.C. Raguin, *Stained Glass, From its Origins to the Present*, 13 (2003) ("stained glass became . . . an intimation of God's very nature, and important as a contemplative aid"); Lupu & Tuttle, *Historic Preservation Grants to House of Worship: A Case Study in The Survival of Separationism*, 43 B.C. L. Rev. 1139, 1175 (2002) ("[Stained glass] windows often present religious themes . . . and help to shape the worship experience through the play of light and imagery"). See *Mitchell v. Helms*, 530 U.S. 793, 820 (2000) (opinion of Thomas, J.) (aid cannot be "impermissibly religious in nature"). Additionally, as explained above, the stained glass grant here raises core State constitutional anti-aid concerns. Like excluding State scholarships to pay for a divinity degree in *Locke*, there are "few areas in which a State's antiestablishment interests come more into play" than paying for stained glass windows with sectarian religious symbolism. *Locke*, 540 U.S. at 722.

For the religion clauses in the State and Federal Constitutions, there is "no simple and clear measure which by precise application can readily and invariably demark the permissible from the impermissible." *School Dist. of Abington Township, Pa. v. Schempp*, 374 U.S. 203, 306 (1963) (Goldberg, J., concurring). See *Van Orden v. Perry*, 545 U.S. 677, 699 (2005) (Breyer, J., concurring) ("the Court has found no single mechanical formula that can accurately draw the constitutional line in every case"). Although line drawing in this intensely contested area of constitutional law is difficult, I believe that the use of taxpayer dollars to pay for stained glass windows with a religious message crosses that line.

I therefore conclude that on this record the plaintiffs have demonstrated the necessary likelihood of success that the stained glass grant violates the State's anti-aid amendment without running afoul of the free exercise clause.

4. Remand on the Master Plan grant. I also agree with the court that a remand is required on the Master Plan grant, although I place less emphasis than the court on a search for "hidden" purposes. I conclude that a fuller factual record is required on the inner workings of the grant itself before it can be determined whether the Master Plan grant violates the anti-aid amendment, and if so, whether exclusion of such a grant from a generally available public benefit program would violate the free exercise clause of the First Amendment.

It is important to emphasize up front just how narrow the exclusion is for generally available public benefit programs. See *Locke*, 540 U.S. at 725. The exclusion involves essentially religious endeavors, such as paying for ministry training or stained glass windows with sectarian symbols or messages. The Master Plan grant is to pay an architect to perform a structural review of three 170 year old buildings of historic importance to the town. Only one of those buildings is a church. The focus of the architect's work appears to be on preserving the structural integrity of the old buildings, not repairing or maintaining particular parts of the church that convey an express religious message.[6] It is unclear to me how much of this work goes beyond the "building envelope." These buildings are also a part of the historic district of the town and serve important nonreligious as well as religious purposes in the town and the Commonwealth, as the dissent explains. See post at . Additionally it is not clear from the record what historic preservation restriction will result from this grant. Will the grant to pay for an architect to provide for a structural review of the three buildings give the town a restriction regarding construction on all of these buildings? Or would such a restriction only apply if a grant is provided for subsequent work on the buildings? A fuller factual record is necessary on this point as well as others.

5. Conclusion. In sum, I conclude that the stained glass grant not only violates the anti-aid amendment but also fits within the very narrow exclusion from a generally available public benefit program authorized by the Supreme Court pursuant to the First Amendment. I further conclude that on remand the legal status of the Master Plan grant under both the anti-aid amendment and the free exercise clause of the First Amendment must be determined.

CYPHER, J. (dissenting). I respectfully dissent. Separation of church and State is a vital constitutional requirement under the Massachusetts Declaration of Rights and the United States Constitution and an enduring principle of the Commonwealth. As the court recounts, Massachusetts has an interesting and complex history in this regard. Nevertheless, I would affirm the order denying the motion for an injunction to block the town's use of the Community Preservation Act (act) to preserve the historic façade of the Acton Congregational Church, which is located in the town center.

I agree with the majority that grants of public funds to active religious institutions pursuant to the act are not categorically barred by the anti-aid amendment, and that such grants are instead subject to the three-factor test this court first articulated in *Commonwealth v. School Comm. of Springfield*, 382 Mass. 665, 675 (1981) (Springfield). As the court points out, this test requires that we consider (1) whether the purpose of the challenged grant is to aid a private charity; (2) whether the grant does in fact substantially aid a private charity; and (3) whether the grant avoids the political and economic abuses that prompted the passage of the anti-aid amendment.[1] I do not think that the motion judge misapplied those three factors here.

I am also concerned with the court's admonition that grants of community preservation funds to active religious institutions warrant particularly "careful scrutiny." Such an analysis is belied by the plain text of the anti-aid amendment, as well as this court's cases interpreting the amendment, which dictate that we do not treat religious and secular entities differently under the amendment. The court's focus on a grant applicant's status as an active house of worship also implicates the most recent United States Supreme Court decision in this area, *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2024 (2017) (*Trinity Lutheran*). *Trinity Lutheran* holds that a State cannot condition participation in a generally-available public benefit program on an applicant's "renounc[ing] its religious character."<sup>[2]</sup> *Id.* Finally, I write to underscore the importance of preserving our State's historic buildings, which embody the Commonwealth's rich past and offer those in the present a number of public benefits. Historic churches and meeting houses are, like secular historic buildings, an indispensable part of our historic landscape, and warrant the same degree of preservation.

As I understand the judge's decision, she examined the purpose of the grant and found that the taxpayers did not satisfy the first Springfield factor in their challenge. She stated in her decision that the taxpayers "failed to demonstrate that the purpose of the grants is to aid the [c]hurch[]." And in the judge's discussion of this factor, she correctly stated that a court's inquiry does not depend on "the stated purpose of the recipients." *Boston Edison Co. v. Boston Redevelopment Auth.*, 374 Mass. 37, 62-63 (1977) (where Legislature has provided specific standards, "the purpose of the applicants in proposing the project is wholly irrelevant").<sup>[3]</sup> At the hearing on the request for a preliminary injunction, the parties emphasized the grant, not the act itself, and the judge noted in her decision that under *Helmes* she was to consider the purpose of the grants. *Helmes v. Commonwealth*, 406 Mass. 873, 877 (1990). When the judge set out the factors, she identified each one as concerning the grants, not the act.

Turning to the grants themselves, it is readily apparent that they have a public purpose of historic preservation and require a recipient to convey a preservation restriction as an express condition of the grant. G. L. c. 44B, § 12 (a). See G. L. c. 184, § 31 (defining preservation restriction). The public receives a real property interest in exchange for the grant. Moreover, the town enjoys "every presumption in favor of the honesty and sufficiency of the motives actuating public officers in actions ostensibly taken for the general welfare." *LaPointe v. License Bd. of Worcester*, 389 Mass. 454, 459 (1983).<sup>[4]</sup> There is nothing in the record that suggests any irregularity in the grant process in this case. To the contrary, the town and its Community Preservation Committee (committee) complied with all of the rigorous requirements of the act for these grants. After a public hearing, the committee voted unanimously to recommend the projects to the town meeting, based in part on "the significance of the historical resource[s]" that were to be preserved. Following additional favorable recommendations by the town's board of selectmen and its finance committee, residents at the town meeting voted to approve the grants for these projects in April, 2016. These grants received full scrutiny and endorsement by the residents of the town at multiple levels of town government.

The judge found that the first and third prongs of the test had been satisfied by the town.<sup>[5]</sup> With regard to the second factor, the judge assumed for the purposes of the analysis that the taxpayers would be able to show that the grants in fact substantially aided the church and she then conducted the balancing test, concluding that the grants did not run afoul of the anti-aid

amendment.[6] She did not ignore the second factor; rather, the judge balanced the various factors, which are "cumulative and interrelated," Springfield, 382 Mass. at 675, in reaching her conclusion that the town had not violated the anti-aid amendment by issuing the preservation grant.[7]

The anti-aid amendment itself makes no distinction between secular and religious recipients of public funds; rather, as the court acknowledges, "the operative language in the amendment's two clauses is identical." Ante at . Indeed, as this court's anti-aid amendment cases repeatedly state, the amendment "marks no difference between 'aids,' whether religious or secular." Springfield, 382 Mass. at 674, n.14, quoting Bloom v. School Comm. of Springfield, 376 Mass. 35, 45 (1978). See Opinion of the Justices, 401 Mass. 1201, 1203 n.4 (1987); Attorney Gen. v. School Comm. of Essex, 387 Mass 326, 332 n.3 (1982). In my view, we cannot treat a religious institution differently from a secular private institution if we are to respect the text of the amendment and our own precedent. Applying that principle to this case, I conclude that the application of the three-factor Springfield test to religious institutions should be no more rigorous than the application of the test to any other grant under the act to any other secular private or charitable organization.[8]

In addition, although this case primarily concerns the State anti-aid amendment, our decision must also be mindful of applicable Federal constitutional provisions, such as the religion clauses of First Amendment to the United States Constitution. In Trinity Lutheran, decided this past June, the Supreme Court struck down a State's policy of denying public grants to religiously-affiliated applicants as a violation of the free exercise clause. Trinity Lutheran, 137 S. Ct. at 2024. The policy at issue there was based on a State constitutional provision requiring "[t]hat no money shall ever be taken from the public treasury, directly, or indirectly, in aid of any church." Id. at 2017. The court distinguishes Trinity Lutheran from the present case by stating that, unlike the State constitutional provision there, Massachusetts's anti-aid amendment is not a categorical ban on religious institutions applying for and receiving public grants. In my opinion, however, Trinity Lutheran carries broader implications.

The Supreme Court further observed that a State policy requiring an applicant for public funds "to renounce its religious character in order to participate in an otherwise generally available public benefit program is," absent "a [S]tate interest 'of the highest order,'" "odious to our Constitution" (citation omitted). Id. at 2024-2025. As I read the court's analysis in this case, a historic religious building with an active congregation is at a distinct disadvantage when seeking funds under the act -- at least for purposes of a court's anti-aid scrutiny of that building's grant application -- compared to historic religious buildings that are no longer active. The historic religious building would then be confronted with the "odious" choice of "having to disavow its religious character" in order to participate in the Commonwealth's community preservation program. Id. at 2022.

Finally, I write to emphasize the importance of preserving our State's historic structures, in light of the significant cultural, aesthetic, and economic benefits such preservation bestows on the Commonwealth's cities and towns. The citizens and the Legislature have determined that historic preservation is important so that future generations may appreciate the history of the Commonwealth. This determination has been expressed through the creation of a variety of

historic districts and historical commissions, as well as State laws and regulations governing historic preservation.[9] We have likewise recognized this interest. See, e.g., *Helmes*, 406 Mass. at 877 (public money appropriated to nonprofit "to rehabilitate [a World War II] battleship, to preserve it as a memorial to citizens of the Commonwealth" served public purpose); *Opinion of the Justices*, 333 Mass. 773, 780 (1955) ("There has been substantial recognition by the courts of the public interest in the preservation of historic buildings, places, and districts").

"[S]tructures with special historic, cultural, or architectural significance enhance the quality of life for all," as they "represent the lessons of the past and embody precious features of our heritage." *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 108 (1978). Likewise, the careful craftsmanship of these buildings -- too often a feature of the past -- "serve as examples of quality for today," *id.*, and improve the aesthetics of our neighborhoods. Indeed, the building that this court occupies is a testament to that, having been placed on the National Register of Historic Places in 1974, and undergoing a magnificent renovation and restoration completed in 2005. Historic preservation also offers distinct economic advantages, by increasing property values, encouraging tourism, and generating local business. See, e.g., H.S. Edwards, *The Guide for Future Preservation in Historic Districts Using a Creative Approach: Charleston, South Carolina's Contextual Approach to Historic Preservation*, 20 U. Fla. J.L. & Pub. Pol'y 221, 223-225 (2009).

Churches, an undeniable part of the Commonwealth's historic landscape, achieve these same cultural, aesthetic, and economic benefits,[10] and likewise warrant preservation. During Massachusetts's early history, civic and religious life were in many ways one in the same. The meeting house -- perhaps the most iconic feature of a "quintessential New England town" -- served as the center of gravity for both public administration and religious worship. See, e.g., Witte, *How to Govern a City on a Hill: The Early Puritan Contribution to American Constitutionalism*, 39 *Emory Law J.* 41, 57 (1990) ("Church meetinghouses and chapels were used not only to conduct religious services, but also to host town assemblies, political rallies, and public auctions . . ."). Colonial laws often required homes to be constructed within one mile of the meeting house. See, e.g., N.B. Shurtleff, ed., 1 *Records of the Governor and Company of the Massachusetts Bay in New England*, 157 (1853) (reflecting 1635 order of General Court that, in certain towns, no "dwelling howse" was to be "above halfe a myle from the meeting house" without legislative permission). Especially for buildings of such historic significance -- the institutional center of life in colonial Massachusetts -- we should be careful not to impose undue restrictions on their access to needed preservation funds.

### *footnotes*

[1] Jim Conboy, G. Stodel Friedman, Daniel Gilfix, Maria Greene, Jesse Levine, Dave Lunger, Allen Nitschelm, Scott Smyers, William Alstrom, Jennifer Brown, William Brown, and David Caplan.

[2] We acknowledge the amicus brief filed in support of the plaintiffs by the American Civil Liberties Union and ACLU of Massachusetts. We acknowledge the amicus briefs filed in support of the town of Acton (town) by the Attorney General; the Becket Fund for Religious



Liberty; the Massachusetts Municipal Law Association and Community Preservation Coalition; the National Trust for Historic Preservation; and the Boston Preservation Alliance, Historic Boston Incorporated, Historic New England, North Bennet Street School, and Preservation Massachusetts.

[3] Municipalities that adopt the Community Preservation Act (act), G. L. c. 44B, must establish a local preservation fund, which is funded through a surcharge on local property taxes, *id.* at § 4, and through disbursements from a State-administered trust fund that is funded through a Statewide surcharge on all real estate transactions at the State's Registries of Deeds, *id.* at § 8. See Community Preservation Coalition, CPA Trust Fund, <http://www.communitypreservation.org/content/trustfund> [<https://perma.cc/Y7XF-VQRZ>].

[4] The act defines "historic resources" as "a building, structure, vessel, real property, document or artifact that is listed on the [S]tate register of historic places or has been determined by the local historic preservation commission to be significant in the history, archeology, architecture or culture of a city or town." G. L. c. 44B, § 2.

[5] In their complaint, the plaintiffs also challenged the town's proposed \$15,000 grant to South Acton Congregational Church, another active church located in Acton. South Acton Congregational Church has since withdrawn its application for that grant; on appeal, the plaintiffs challenge only the grants to the Acton Congregational Church.

[6] The judge described these as "the three factors outlined in *Helmes v. Commonwealth*, 406 Mass. 873, 876 (1990)"; the court in *Helmes* quoted the factors set forth in *Commonwealth v. School Comm. of Springfield*, 382 Mass. 665, 675 (1981) (Springfield).

[7] Article 3 of the Massachusetts Declaration of Rights originally provided, in relevant part, that "the [L]egislature shall . . . authorize and require[] the several towns, parishes, precincts, and other bodies politic . . . to make suitable provision, at their own expense, for the institution of the public worship of God, and for the support and maintenance of public Protestant teachers of piety, religion and morality." Because Congregationalists were the overwhelming majority of the population in Massachusetts at the time, art. 3 functioned as a *de facto* general assessment in favor of the Congregational Church. See T.J. Curry, *The First Freedoms, Church and State in America to the Passage of the First Amendment*, 163-164 (1986); S.E. Morison, *A History of the Constitution of Massachusetts* 24 & n.1 (1917).

[8] Article 18 of the Amendments, as adopted by the 1853 Convention and ratified in 1855, provides:

"All moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the State for the support of common schools, shall be applied to, and expended in, no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is to be expended; and such moneys shall never be appropriated to any religious sect for the maintenance exclusively of its own schools."

[9] As one opponent to art. 18 stated, "[T]here has been nothing sectarian heretofore in the division of the public moneys." 3 Debates and Proceedings in the State Convention 1853, at 614 (1853) (Debates of 1853). Another delegate added, "Nobody asserts that such is the case; but somebody imagines that such a state of things may arise in the future; that sectarian schools are going to be established; that some new sect may outvote the Protestants, and claim the school fund. . . . We contend that it is all right now, but we are afraid of something ahead." *Id.* at 615-616. A supporter of art. 18 acknowledged that "no efforts have been made to establish sectarian schools," but pointed out that "other States have been afflicted" with such developments and that "it would be well to consider whether, in this State, . . . it is not our best policy to guard against it in time." *Id.* at 619.

[10] In the words of one delegate: "Every-body knows [art. 18] appears to be aimed at one class of our citizens, one denomination of religion. Nobody has intimated any apprehension that money would be used for the benefit of Protestant sectarianism. . . . [Article 18 has been] discussed[] in relation to the support of Catholic schools . . . ." Debates of 1853, *supra* at 615.

[11] As amended by art. 46 of the Amendments in 1917, art. 18, § 2, provided:

"All moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the [C]ommonwealth for the support of common schools shall be applied to, and expended in, no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is expended; and no grant, appropriation or use of public money or property or loan of public credit shall be made or authorized by the [C]ommonwealth or any political division thereof for the purpose of founding, maintaining or aiding any other school or institution of learning, whether under public control or otherwise, wherein any denominational doctrine is inculcated, or any other school, or any college, infirmary, hospital, institution, or educational, charitable or religious undertaking which is not publicly owned and under the exclusive control, order and superintendence of public officers or public agents authorized by the [C]ommonwealth or federal authority or both, [with exceptions not relevant here]; and no such grant, appropriation or use of public money or property or loan of public credit shall be made or authorized for the purpose of founding, maintaining or aiding any church, religious denomination or society."

[12] Several efforts were made during the 1917 Convention to modify the wording of art. 46, to permit funding of nonsectarian private schools and secular institutions such as museums and libraries. These efforts were rejected. See R.L. Bridgman, *The Massachusetts Constitutional Convention of 1917*, at 26-29 (1923); Shattuck, Martin Lomasney in the Constitutional Convention of 1917-1919, 71 *Proceedings of the Mass. Hist. Soc'y* 299, 303 (1959).

[13] Article 18 was further amended by art. 103 of the Amendments in 1974 to eliminate the opening clause of the previous version and to allow grants-in-aid to private institutions of higher education and their students. See *Bloom v. School Comm. of Springfield*, 376 Mass. 35, 40-41 & n.11 (1978).

[14] Section 1 of art. 18, as amended by art. 46, also added during the 1917 Convention, provides that "[n]o law shall be passed prohibiting the free exercise of religion."

[15] The most recent revisions to the anti-aid amendment support this reading. In 1974, the opening clause of art. 18, § 2 -- which contained broad language against the expenditure of public funds, unmodified by the phrase "for the purpose of" -- was eliminated, suggesting that under the current amendment an investigation into purpose is required. See *Springfield*, 382 Mass. at 679.

[16] Article I, § 7, of the Missouri Constitution, provides: "That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such; and that no preference shall be given to nor any discrimination made against any church, sect or creed of religion, or any form of religious faith or worship." See *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2017 (2017) (Trinity Lutheran).

[17] Chief Justice Roberts sought to limit the reach of the Court's opinion by stating in a footnote: "This case involves express discrimination based on religious identity with respect to playground surfacing. We do not address religious uses of funding or other forms of discrimination." *Trinity Lutheran*, 137 S. Ct. at 2024 n.3. Because two Justices joined the opinion except as to that footnote and one Justice concurred only in the judgment, the footnote failed to command a majority of the Court. *Id.* at 2017. See *id.* at 2025 (Thomas, J., concurring in part); *id.* at 2025-2026 (Gorsuch, J., concurring in part); *id.* at 2026-2027 (Breyer, J., concurring in the judgment).

[18] Despite our refusal to interpret the anti-aid amendment as a categorical ban on grants to churches, the dissent warns that our decision raises potential issues under the religion clauses of the First Amendment. See post at . We disagree. "[R]igorous' scrutiny" is required under the free exercise clause where a State policy "expressly requires [an applicant for public funds] to renounce its religious character in order to participate in an otherwise generally available public benefit program" (emphasis added; citation omitted). *Trinity Lutheran*, 137 S. Ct. at 2024. As we will make clear, our three-factor analysis under the anti-aid amendment imposes no such requirement. The fact that an applicant is an active church is a relevant but by no means disqualifying consideration under our anti-aid amendment.

[19] The judge stated, "This court is directed to examine the purpose of the [act], under which the challenged grants are to be conferred upon the [c]hurch[ ] . . . ." She found that "the purpose of the grants to the [c]hurch[ ] under the [act] is to preserve historic resources, and not to aid the [c]hurch[ ]."

[20] The statute at issue in *Springfield* was G. L. c. 71B, which authorizes school committees to enter into contracts with private schools, agencies, or institutions to provide special education to children whose needs cannot be met in the public school system. *Springfield*, 382 Mass. at 668. The Commonwealth sued the *Springfield* school committee, seeking to compel the school committee to enter into such contracts; in response, the school committee contended that any such contracts would violate art. 18, as amended by arts. 46 and 103, thus placing the constitutionality of the statute at issue. *Springfield*, supra at 666.

[21] The judge did not make a finding regarding the second factor of the Springfield test -- that is, whether the grants would "substantially aid" the church. See *Springfield*, 382 Mass. at 675.

[22] We recognize that the decision to award a grant of public funds, like other kinds of decisions, can have more than one motivating purpose. See, e.g., *Wynn & Wynn, P.C. v. Massachusetts Comm'n Against Discrimination*, 431 Mass. 655, 666 (2000), overruled on another ground by *Stonehill College v. Massachusetts Comm'n Against Discrimination*, 441 Mass. 549 (2004) (recognizing that certain employment discrimination cases are "mixed-motive" cases where discriminatory motive is one of several factors motivating employer's decision). Although in *Springfield*, 382 Mass. at 678, we focused on "the primary purpose" (emphasis added) of the challenged aid, we later acknowledged, in *Opinion of the Justices*, 401 Mass. 1201, 1208 (1987), that public aid may have more than one motivating purpose (aiding private schools was "one of the primary purposes . . . if not [the] only purpose" of challenged statute). In such cases, the inquiry becomes whether one of those motivating purposes is impermissible under the anti-aid amendment. We stress, however, that the purpose of a challenged grant is only one factor to be considered in our three-factor test, and need not be dispositive by itself. Thus, whether an impermissible purpose is the sole motivating purpose behind the grant, or only one purpose among many, may be considered in determining the weight to accord that factor.

[23] The record in this case includes two historic preservation restrictions executed in relation to past grants that the town has awarded under the act. These restrictions prohibit the owners from, inter alia, making changes to the exterior of their properties "without the prior express written approval of the [t]own," which can be "withheld or conditioned in the [t]own's sole and absolute discretion."

[24] The dissent takes issue with the emphasis that we place on the third factor in cases like these, where the public grant is to an active church. The dissent contends that our analysis is inconsistent with this court's anti-aid amendment cases, relying on our statement, first made in *Bloom*, 376 Mass. at 45, that "[o]ur anti-aid amendment marks no difference between 'aids,' whether religious or secular" (citation omitted). See post at . . . But the dissent takes this statement out of context. What we meant in *Bloom* (and in the other cases the dissent cites) was that, unlike the establishment clause of the First Amendment, which requires an inquiry into whether the aid has a religious or secular purpose, see *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971), our anti-aid amendment does not make that distinction. See *Bloom*, 376 Mass. at 45 & n.20. See also *Opinion of the Justices*, 401 Mass. 1201, 1203 n.4 (1987); *Attorney Gen. v. School Comm. of Essex*, 387 Mass. 326, 332 n.3 (1982); *Springfield*, 382 Mass. at 674 n.14. The only purpose that is forbidden under the anti-aid amendment is "the purpose of founding, maintaining or aiding" a private institution. Art. 18, § 2, as amended by arts. 46 and 103. Thus, in *Bloom*, 376 Mass. at 45, it did not matter whether the textbooks that were lent were of a religious or secular nature; what mattered was that the purpose of the loan was to aid private schools. See *id.* at 41-42. This does not mean that we do not distinguish between different kinds of "aids" in evaluating whether that aid poses the risks that prompted the anti-aid amendment; after all, aid to support a church poses risks quite different from those arising from aid to support a World War II battleship. Cf. *Helmes*, 406 Mass. at 873. We reiterate that the

anti-aid amendment is not a categorical ban on aid to churches. However, the fact that a grant recipient is an active church is relevant to our analysis of the potential risks under the third factor, to which we cannot (and need not) be blind.

[25] For example, the judge may deny the preliminary injunction as to the part of the Master Plan grant allocated to the renovation of the Fletcher and Hosmer Houses, and allow it as to the part allocated to the renovation of the church's worship space.

*footnotes for concurring opinion*

[1] The evolution was summarized by Justice Souter in *Mitchell v. Helms*, 530 U.S. 793, 882-883 (2000) (Souter, J., dissenting):

"In sum, 'neutrality' originally entered this field of jurisprudence as a conclusory term, a label for the required relationship between the government and religion as a state of equipoise between government as ally and government as adversary. Reexamining *Everson* [*v. Board of Educ. of Ewing*, 330 U.S. 1 (1947),]'s paradigm cases to derive a prescriptive guideline, we first determined that 'neutral' aid was secular, nonideological, or unrelated to religious education. Our subsequent reexamination of [multiple Supreme Court cases] . . . recast neutrality as a concept of 'evenhandedness.'"

Evenhandedness in this context means an evenhanded treatment of religious and nonreligious institutions.

[2] The windows are described as a "treasure, yet they are in need of care. The exterior plexiglass is no longer doing its job. Not only is it cloudy, so that the beauty of the glass cannot be appreciated outside of the church, but it is no longer weathertight. . . . The proposed work would remove the old plastic covers, repair the existing wood damage, replace missing or broken pieces . . . to stabilize and protect the eight primary stained glass windows."

[3] Unlike in the stained glass grant, there are other grants to churches where the secular and religious purposes may be more easily separable. The Old North Church, located in the North End neighborhood of Boston, is a good example. Funding the repair and restoration of glass windows are at issue for both houses of worship, but any similarity ends there. In 2002, the Old North Foundation applied for, and later received, a Save America's Treasure grant to preserve, among other things, the Old North Church's historic window. See Authority of the Department of the Interior to Provide Historic Preservation Grants to Historic Religious Properties Such as the Old North Church, 27 Opinions of the Office of Legal Counsel for 2003, United States Department of Justice, 91, 96, 99 (2013) (Old North Church opinion), <https://www.justice.gov/olc/file/477026/download> [<https://perma.cc/XUT2-L54E>]. Famously, in the Old North Church's steeple hung two lit lanterns to indicate that the British army was leaving Boston by boat to capture the stores of arms and ammunition located in Concord. See <http://oldnorth.com/historic-site/the-events-of-april-18-1775/> [<https://perma.cc/9AGF-KL9Z>]. See also H.W. Longfellow, *Paul Revere's Ride* (1860) ("He said to his friend, -- 'If the British march By land or sea from the town to-night, Hang a lantern aloft in the belfry-arch Of

the North-Church-tower, as a signal-light, -- One if by land, and two if by sea; And I on the opposite shore will be").

For the grant to the Old North Church, the historical purpose is manifestly evident and is described by the National Park Service as "one of America's most cherished landmarks." Old North Church opinion at 97. The Old North Church windows also contained no overt religious message as do the stained glass windows in the town of Acton. Furthermore, for the Old North Church, rigorous auditing requirements were also in place to ensure that the grant funded only the historic aspects of the church and not its religious endeavors. Old North Church opinion at 103.

[4] The Old North Church is again a good comparison. Great efforts were made to avoid religious assistance. See Old North Foundation Awarded \$317,000 Grant Under Save America's Treasure Program, National Park Service, Press Release (May 27, 2003) (Park Service Press Release), <https://www.nps.gov/aboutus/news/release.htm?id=395> [<https://perma.cc/9MAN-6NGV>]. The Old North Foundation, a secular, nonprofit organization, was the entity approved for the grant. See Mission Statement, Old North Foundation of Boston, Inc., <http://oldnorth.com/historic-site/foundation/> [<https://perma.cc/B45N-79Y5>]; Park Service Press Release, *supra*. Furthermore, as a matching-grant program, the Old North Foundation contributed a substantial amount to the project. See National Park Service, Matching Share Requirements at 1, [https://www.nps.gov/preservation-grants/manual/Matching\\_Share\\_Requirements.pdf](https://www.nps.gov/preservation-grants/manual/Matching_Share_Requirements.pdf) [<https://perma.cc/RA45-3SQF>] ("The Federal grant is meant to stimulate nonfederal donations-not to pay for all the work by itself").

[5] Again, this case is unlike the Old North Church. Any risks or tensions there are substantially assuaged by the building's undeniable significance in the Commonwealth's and the country's history and because of the separability of the historic restoration work from the religious mission.

[6] I recognize that this distinction may be subtle and even elusive as a house of worship contains many different religious symbols, but as the Supreme Court has emphasized, line drawing may be difficult but necessary in this area. See *School Dist. of Abington Twp., Pa v. Schempp*, 374 U.S. 203, 305-306 (1963) (Goldberg, J., concurring). See also *Van Orden v. Perry*, 545 U.S. 677, 699 (2005) (Breyer, J., concurring). See generally Lupu & Tuttle, *Historic Preservation Grants to House of Worship: A Case Study in The Survival of Separationism*, 43 *B.C. L. Rev.* 1139, 1174 (2002).

***footnotes for dissenting opinion***

[1] With respect to the first factor set out in *Commonwealth v. School Comm. of Springfield*, 382 Mass. 665, 675 (1981) (Springfield), consideration of a grant's "purpose", I disagree with the court that a court's primary focus here is on whether "one" of a grantor's motivating purposes is impermissible. See ante at n.22. Our "purpose" inquiry is limited to the intent of the grantor, without consideration of an applicant's motives for seeking grant funds. See, e.g., *Boston Edison Co. v. Boston Redevelopment Auth.*, 374 Mass. 37, 62-63 (1977) (where the legislature has provided specific standards, "the purpose of the applicants in proposing the project is wholly

irrelevant"). And as Springfield and subsequent cases make clear, that inquiry requires that we consider what "the" purpose of the grant is, see, e.g., Springfield, 382 Mass. at 675 -- not, as the court states, whether "one purpose among many" might be impermissible. In instances where there may be more than one purpose for a grant, a court must consider and balance all such purposes in order to determine what "the" predominant or "primary" purpose of the grant is. *Id.* at 678 ("The statute's purpose is, primarily, to help specified children with special needs obtain the education which is theirs by right"). I am therefore not convinced that the plaintiffs' potential discovery of some "hidden purpose" to aid the church tips the scale in their favor under this factor, where the clear predominant purpose of these grants is historic preservation.

[2] Were I to interpret the principles of separation of church and State without concern for our own precedent or the Supreme Court's decisions, I may well find myself in agreement with Justice Sotomayor's dissent in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2041 (2017) (Sotomayor, J., dissenting) ("History shows that the Religion Clauses separate the public treasury from religious coffers as one measure to secure the kind of freedom of conscience that benefits both religion and government. If this separation means anything, it means that the government cannot, or at the very least need not, tax its citizens and turn that money over to houses of worship"). See *Zelman v. Simmons-Harris*, 536 U.S. 639, 686-717 (2002) (Souter, J., dissenting).

[3] The Community Preservation Act (act) sets forth neutral criteria for the grants and a detailed procedural process under which those grants are considered. G. L. c. 44B, §§ 3-7. Under the act, the town's Community Preservation Committee gathers information, consults with municipal boards, holds public hearings, and makes recommendations for the acquisition, preservation, rehabilitation, and restoration of historic resources.

[4] In its brief, the town represents that the grants under the act "in this case are entirely consistent with previous funding by the town, other Massachusetts municipalities and the State itself. Over time, the town has approved fourteen other similar [projects under the act] (i.e., windows, roofs, and master planning) to preserve historic resources, including six owned by the town, five owned by private nonprofits, one owned by a church, and two owned by other private recipients."

[5] It is worth noting that between 2003 and 2014, the Massachusetts Historical Commission approved funding for thirty-eight projects involving active religious institutions through its Massachusetts Preservation Project Fund (16.5 per cent of all approved projects), including Vilna Shul in the Beacon Hill area of Boston, Trinity Church in Boston, and Saint George Greek Orthodox Cathedral in Springfield. There has been no evidence of the risks with which the court is concerned.

[6] Although there is no question that the grants must not "substantially aid" the church, the grants do not aid the "essential function" of the church within the meaning of the anti-aid amendment. Springfield, 382 Mass. at 680, 681. The grants are expressly limited to reimbursement of expenses incurred by the church on the projects and cannot be used to "for the purpose of founding, maintaining or aiding" the church's mission, see art. 18 of the Amendments to the Massachusetts Constitution, as amended by arts. 46 and 103 of the Amendments, or any

purpose other than historical preservation. *Springfield*, *supra* (close monitoring of public funds prevents aid from becoming aid for entity's essential function). There appears to be no case that has held that a grant to a private organization necessarily constitutes "substantial aid" where the grant serves other important public purposes. See *Helmes v. Commonwealth*, 406 Mass. 873, 876-877 (1990); *Springfield*, *supra* at 675; *Bloom v. School Comm. of Springfield*, 376 Mass. 35, 47 (1978).

[7] We have recognized that an incidental benefit to an entity is inevitable. In fact, in *Helmes*, we observed that a battleship would not be able to continue as a war memorial and likely would be forfeited to the Navy. *Helmes*, 406 Mass. at 877. See *Springfield*, 382 Mass. at 679-681 (secondary and indirect benefits to private schools do not qualify as "substantial aid" under anti-aid amendment). See also *Attorney Gen. v. School Comm. of Essex*, 387 Mass. 326, 332 (1982) ("The fact that a state law, passed to satisfy a public need, coincides with the personal desires of individuals most directly affected is certainly an inadequate reason . . . to say that a legislature has erroneously appraised the public need" [citation omitted]).

[8] In addition to their argument concerning the risks posed by public support of religious institutions, the taxpayers voice other concerns that are not insubstantial. They claim that (1) the grant to the church violates their liberty of conscience if the grant is for a church they do not want to support; (2) the grant threatens the independence of religious institutions, making them "supplicants" for governmental aid that may bring intrusive governmental inquiries; and (3) the grant may be politically divisive and engender "religious biases" in grant making. Of course, taxpayers could make similar objections to grants provided to secular recipients. These are the concerns that the three-factor test in *Springfield* is designed to address.

[9] For example, the Massachusetts Historical Commission was created by the Legislature in 1963, see St. 1963, c. 697, § 1, to identify, evaluate, and protect important historical and archaeological assets of the Commonwealth, G. L. c. 9, §§ 26-27D, including establishing and maintaining the State Register of Historic Places, G. L. c. 9, § 26C.

[10] According to one study conducted in 1996, the average historic religious place in an urban environment generates over \$1.7 million annually in economic impact. *Sacred Places, The Economic Halo Effect of Historic Sacred Places*, at 4, 19 (undated), <http://www.sacredplaces.org/uploads/files/16879092466251061-economic-halo-effect-of-historic-sacred-places.pdf> [ <https://perma.cc/LEH3-5G88>].