

June 17, 2024



**VIA BARNSTABLE COUNTY SHERIFF CIVIL PROCESS**

Paul McCormick, Jr.  
88 Chase Rd.  
Dennis Port, MA 02639

Re: 1 Love Lane, Dennis, MA (the "Property") – Application for Building Permit for Dover Amendment Exempt Property (the "Project")

Dear Mr. McCormick:

This letter provides notice (including without limitation such notice as may be required pursuant to M.G.L. c. 258 §4) that Housing Assistance Corporation<sup>1</sup> and HAC Love Lane LLC (together, "HAC") intend to file a lawsuit against you in your representative capacity as well as personally, in your individual capacity, in connection with the intentional, bad faith, discriminatory and malicious conduct designed to block issuance of a building permit for the renovation at 1 Love Lane (the "Property") to which HAC is entitled under M.G.L. c. 40A §3 and the Town of Dennis Zoning Bylaw<sup>2</sup>. As set forth more fully below, HAC will seek all available relief, including monetary damages it has incurred and will continue to incur until the building permit is issued, plus attorneys' fees and costs against the Town officials participating in such unlawful scheme, including in your personal capacity.

The deprivation of rights in connection with HAC's proposed family shelter at the Property (which previously has been determined by the Dennis Building Commissioner to be an educational use protected under the Commonwealth of Massachusetts "Dover Amendment") under the color of official action and fueled by discrimination on the grounds of national origin – though wrongfully directed – is a gravely serious matter. As you may be aware, we have brought this to the attention of the Massachusetts Attorney General's Office ("AGO"). Please be informed that litigation brought against the Planning Board and its individual members does not preclude the AGO from either joining in such action or initiating separate litigation including for civil rights violations under federal and state law.

<sup>1</sup> As you are likely aware, the Housing Assistance Corporation has been integral to serving the community needs of the Cape and Islands for the past fifty years, by providing a range of services and programs that bridge the wide gap between homelessness and homeownership.

<sup>2</sup> On June 2, 2024, this Firm also provided the Town of Dennis Select Board with notice of HAC's intention to file suit against the Town of Dennis and individual Town officials.

### Background

The basic chronology of this matter was outlined in the letter dated May 23, 2024, from Attorney Peter Freeman to Dennis Building Commissioner Paul Fowler on behalf of HAC and is repeated here for your reference:

1. On July 12, 2023, Attorney Freeman submitted a written request to Building Commissioner Fowler for a determination that the proposed Family Shelter at 1 Love Lane was an educational use exempt from zoning under the Dover Amendment.
2. On August 29, 2023, Building Commissioner Fowler issued written determination that the proposed Family Shelter to be operated at this facility *is* a Dover Amendment exempt use. See copy attached hereto. Said determination indicated that HAC must also advance Planning Board Special Review pursuant to Section 2.2.2 of the Town of Dennis Zoning Bylaws (Use Regulation Schedule). It should be noted that the Bylaw contains no objective standards for such “special review,” nor does it establish authority for the Planning Board to condition or deny a use that otherwise would be subject to “special review.”
3. On September 28, 2023, in reliance on Commissioner Fowler’s written determination, HAC acquired the Property for use as a Family Shelter. In acquiring the Property, HAC incurred significant contractual debt obligations which they intended to meet through beneficial contracts for the provision of transitional housing and educational services at the Property, including funding through the Massachusetts Executive Office of Housing and Livable Communities (“EOHLC”).
4. Because there are no established procedural or substantive review standards<sup>3</sup> established by the Zoning Bylaw pertaining to Special Review, Attorney Freeman spoke to Commissioner Fowler, who indicated that HAC should request informal Staff Review followed by a meeting with the Planning Board. By letter dated January 24, 2024, Attorney Freeman requested the same on behalf of HAC.
5. On or about February 26, 2024, HAC applied for a building permit for the interior renovations only to the existing building on the Property.

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<sup>3</sup> The Zoning Bylaw merely provides that “special review” is “a review conducted by the Planning Board of proposed improvements, alterations or development of land or buildings by public or private organizations (i.e. religious and municipal) not subject to Site Plan Approval requirements of the By-Law.” Accordingly, such “review” is not defined as a permit or approval, and there are no criteria for such review.

6. On February 8, 2024, and March 21, 2024, HAC and Attorney Freeman attended informal Staff Review meetings with Town departments and staff.
7. On April 1, 2024, the Planning Board held a public meeting for Special Review where HAC and counsel presented the proposal for use of the Property as a Family Shelter. The Board continued the meeting until May 6, 2024; with the assent of HAC, the meeting was instead continued to May 20, 2024.
8. Subsequent to the April 1 meeting, HAC provided the Planning Board with additional materials which directly addressed any questions that had been raised within the so-called "Special Review" via written submissions dated April 24, 2024, and April 27, 2024.
9. At the continued May 20, 2024, Planning Board meeting, HAC presented its previously submitted materials and responses. Despite the fact that the Board's review occurred within a public meeting – as contrasted to a public hearing where public testimony is to be accepted – the Planning Board actively permitted public commentary. In fact, during the May 20 meeting, a Board member sought to publicly chastise HAC for not advertising the public meeting, despite the fact that there is no legal requirement for a property owner to advertise a public meeting<sup>4</sup>. Further, Chairman McCormick specifically invited members of the public attending via Zoom as well as in person to provide comments. The majority of the commentary from the public ran far afield of any interpretation of the Board's permissible inquiry of a Dover Amendment exempt use within the bounds of M.G.L. c. 40A §3. More problematic, however, is the fact that not a single Board member sought to reign in or preempt public comments attacking the Project because it would serve, in the ill-informed and often racist views of certain individuals, "migrants" and/or "illegal aliens." Instead, the Planning Board and its members actually *thanked* such speakers for their comments. At no point, did any individual member sitting on the Board seek to correct the inflammatory misstatements about the Project despite the fact that the statements were patently false. Moreover, the Board members allowed several speakers to return to the podium for multiple comments far afield from the narrow confines of the Board's permissive review and inquiry under the Dover Amendment.
10. At that May 20 meeting, Town Attorney Amy Kwesell unequivocally advised the Board of the controlling law, specifically: a) that the Family

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<sup>4</sup> Board member Hamlin also made the statement that HAC "could have come to the Board and just done it the right way." This implied subjecting the Project to a scope of review that the Board is not entitled to, and the actions of the Board attempting to secure such review are plainly coercive.

Shelter was an exempt educational use under the Dover Amendment; b) that it was not the role of the Planning Board to review or decide on the educational use; c) such determination under the Dover Amendment is within the exclusive purview of the Building Commissioner as the Town's zoning enforcement officer; and d) that the Building Commissioner had affirmatively determined the Family Shelter qualified as an exempt use under the Dover Amendment.

11. At the end of May 20, 2024 meeting, the Planning Board closed the Special Review. The Planning Board made no recommendations, but instead simply concluded the "special review" process.
12. However, the Board's additional actions taken during that May 20, 2024, further underscore the arbitrary, capricious and ultra vires intent of the Planning Board. During the meeting, the Board sought to flex its assumed authority by voting to appeal the Building Commissioner's August 29, 2024, determination on the educational use; to appeal the Cape Cod Commission's decision that that Project did not warrant review as a Development of Regional Impact; and to obtain outside counsel separate from Town Counsel to represent the Board in these appeals. These actions are directed to undercut not only the rights of HAC but also of those of the community for which HAC serves.
13. In addition to being pursued in an effort to intimidate or coerce HAC and/or to interfere with HAC's civil rights and its contractual obligations, these measures threatened by the Board are also grossly delinquent. Notably, the Building Commissioner issued his Dover Amendment determination *more than nine months ago*. A Board member acknowledged at the May 20<sup>th</sup> meeting that he was aware of the Project for "six or eight months," and on April 2, 2024, the Cape Cod Commission *declined* to undertake review of the Project as a Development of Regional Impact.
14. On May 23, 2024, Attorney Freeman hand delivered his letter to the Building Commissioner stating our client's position that in light of the Planning Board's conclusion of the Special Review process, there remained no plausible justification for withholding issuance of the building permits applied for on February 26, 2024, and demanded their issuance forthwith. The Building Commissioner has not issued the building permit.

#### Violations of Federal, State and Common Law

Your participation in and allowance of the actions outlined above, both individually and as a member of the Planning Board, improperly and capriciously exceeded any permissible scope of review and authority under both the Dover Amendment and the Bylaw's so-called "Special Review" provisions. Not only has HAC been subjected to a fundamentally flawed, *ad hoc* "special review" process, but this "special review" process

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is tainted with racial animus. Moreover, your actions within the May 20, 2024 meeting invited, entertained, and stoked racist public comments attacking the Project as serving “migrants” and/or “illegal aliens;” failed to correct gross misstatements and assertions about the Project that you know to be factually incorrect; ignored the unequivocal direction of Town Counsel, Attorney Amy Kwesell, that it is the Building Commissioner – not the Planning Board – that determines qualifying use under the Dover Amendment; and similarly ignored the equally clear direction provided by Attorney Kwesell as to the limits of the Board’s permitted review of Dover Amendment exempt uses under M.G.L. c. 40A §3<sup>5</sup>.

These affirmative actions are in bad faith, have prevented the Town’s issuance of building permits to HAC, violate federal, state and common law, and will serve as the basis for monetary damages.<sup>6</sup> Moreover, these actions targeted to prevent the Project likewise deprives Cape Cod families of secure housing to which they are legally entitled, including under the Massachusetts “Right to Shelter” Law.

As a result of this unlawful conduct, HAC has claims against you, the Town and other individual Town officials for, among other things,:

- Violations of 42 U.S.C. §1983;
- Violations of M.G.L. c. 12 §§ 11H and 11I;
- Intentional interference with contractual relations;
- Intentional interference with advantageous economic relations; and Appeal rights under M.G.L. c. 40A §17, including the award of monetary damages.

In view of the foregoing, we urge you to bring an immediate end to this, withdraw the Planning Board’s request for funding for Planning Board appeals of both the Building Commissioner’s Dover Amendment determination and the Cape Cod Commission’s declination of review as a Development of Regional Impact, and direct the Building Commissioner to immediately issue the building permit to HAC. Further delay of HAC’s legally entitled right to a building permit is unjustified and any actions taken by you toward that goal only serves to harm the most fragile members of our region – including Cape Cod single mothers and children experiencing homelessness.

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<sup>5</sup> See e.g., Valentin v. Town of Natick, 633 F. Supp.3d 366, 375 (D. Mass. 2022) (allowing claims against planning board members to proceed based on allegations that “planning board members violated [plaintiffs’] equal protection rights when they effectuated the discriminatory intent of the neighborhood by raising procedural hurdles to slow down the permitting process and thwart the project”) and cases cited.

<sup>6</sup> See e.g., Valentin v. Town of Natick, 633 F. Supp.3d 366, 375 (D. Mass. 2022) (allowing claims against planning board members to proceed based on allegations that “planning board members violated [plaintiffs’] equal protection rights when they effectuated the discriminatory intent of the neighborhood by raising procedural hurdles to slow down the permitting process and thwart the project”) and cases cited.

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If you and your fellow members of the Planning Board refuse to abide by the law and otherwise continue a campaign of coercive and unlawful conduct, HAC will seek damages against the Board and its members individually, jointly and severally, for at least \$280,000. Please also be informed that HAC is damaged an additional \$70,000 for each month that its building permit is further withheld (including during the pendency of any litigation) and that such additional sums will be sought together with recovery of its attorneys' fees and costs incurred in this matter. HAC also reserves the right to seek any prejudgment remedies available to it. As you are on notice of these claims against you, any effort by you or your spouse to transfer your assets or otherwise shield them from collection by HAC on its claims may be deemed to be a fraudulent transfer of assets in violation of M.G.L. c. 109A, §5.

Nothing in this letter shall be construed as a waiver of any of HAC's rights or remedies against you, which are expressly reserved. In the event that you retain individual counsel, please instruct your attorney to direct all communications to my attention including whether your attorney will consent to accept service of process on your behalf.

Sincerely,

*Stephanie A. Kiefer*

Stephanie A. Kiefer

cc: Elizabeth Sullivan, Town Manager  
Alisa Magnotta, President and CEO, Housing Assistance Corporation  
William Bogdanovich, Board of Directors Chair, Housing Assistance Corporation  
Robert L. Brennan, Jr., Esq.  
Peter L. Freeman, Esq.  
Margaret J. Hurley, Esq., Assistant Attorney General  
Amy E. Kwesell, Esq., Town Counsel