Supreme Judicial Court

FOR THE COMMONWEALTH OF MASSACHUSETTS

SJC-13195

TRACER LANE II REALTY, LLC,
Plaintiff-Appellee,

v.

CITY OF WALTHAM & another,
Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF THE LAND COURT

BRIEF OF AMICUS CURIAE NEW ENGLAND LEGAL FOUNDATION IN SUPPORT OF THE PLAINTIFF-APPELLEE

NEW ENGLAND LEGAL FOUNDATION,

By its attorneys,

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Dated: February 9, 2022

CORPORATE DISCLOSURE STATEMENT

Amicus curiae New England Legal Foundation ("NELF") states, pursuant to S.J.C. Rule 1:21, that it is a 26 U.S.C. § 501(c)(3) nonprofit, public interest law foundation, incorporated in Massachusetts in 1977, with its headquarters in Boston. NELF does not issue stock or any other form of securities and does not have any parent corporation. NELF is governed by a self-perpetuating Board of Directors, the members of which serve solely in their personal capacities.

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ISSUE PRESENTED

New England Legal Foundation (NELF) addresses the following issues presented by the Court in its amicus announcement of October 25, 2021:

> Where G. L. c. 40A, § 3, ninth par., precludes zoning ordinances or by-laws that "prohibit or unreasonably regulate the installation of solar energy systems" (except to protect public health, safety or welfare), whether allowing solar energy facilities in certain areas of a municipality but prohibiting them in other areas is permissible or whether it constitutes unreasonable regulation in contravention of the statute.

INTEREST OF AMICUS CURIAE

Amicus curiae New England Legal Foundation ("NELF") is a nonprofit, public interest law firm, incorporated in Massachusetts in 1977 and headquartered in Boston. NELF's membership consists of corporations, law firms, individuals, and others who believe in its mission of promoting balanced economic growth in New England, protecting the free enterprise system, and defending economic rights. NELF's members and supporters include a cross-section of large and small businesses and other organizations from all parts of the Commonwealth, New England, and the United States.

NELF is committed to the robust enforcement of a statute that serves the compelling public interest to combat the consequences of climate change, such as by granting property owners the presumptive right to build solar power facilities and supporting structures on their land. NELF is also committed to the principle of *stare decisis*, under which a court should adhere to its own precedent interpreting related provisions of the same statute, to ensure consistency, predictability, and legitimacy to the court's decisions.

NELF has appeared regularly as amicus curiae before this Court in a wide range of cases involving statutes that balance the rights of businesses and property owners with the powers of state and local government.[1] This is such a case, and NELF believes that its brief

[1] *See, e.g.*, *Jinks v. Credico (USA) LLC*, 177 N.E.3d 509 (Mass. 2021); *Oracle USA, Inc. v. Comm'r of Revenue*, 487 Mass. 518 (2021); *Rosenberg v. JPMorgan Chase & Co.*, 487 Mass. 403 (2021); *Kauders v. Uber Techs., Inc.*, 486 Mass. 557 (2021); *Donis v. Am. Waste Servs., LLC*, 485 Mass. 257 (2020); *Gammella v. P.F. Chang's China Bistro, Inc.*, 482 Mass. 1 (2019).
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will assist the Court in deciding the legal issues presented here.[2]

ARGUMENT

I. A LOCAL GOVERNMENT HAS VIOLATED THE SOLAR ENERGY PROVISION OF THE MASSACHUSETTS ZONING ACT WHEN, AS IN THIS CASE, IT HAS SUMMARILY PROHIBITED A PROPERTY OWNER FROM USING ITS OWN LAND FOR SOLAR ENERGY PURPOSES.

This case concerns the special protection that the Legislature has afforded a property owner who wishes to use its land to advance the socially desirable goal of developing solar power as a clean and renewable energy alternative to the burning of fossil fuels. Section 3 of the Massachusetts Zoning Act, G. L. c. 40A (the Act), establishes several *protected uses* of a property owner's land. G. L. c. 40A, § 3.[3] Relevant to this case is the solar

[2] Pursuant to Mass. R. App. P. 17(a)(1)(5), NELF states that neither the plaintiff-appellee, nor its counsel, nor any individual or entity other than amicus, has authored this brief in whole or in part, or has made any monetary contribution to its preparation or submission. Pursuant to Mass. R. App. P. 17(c)(5)(D), NELF also states that neither amicus nor its counsel has ever represented any party to this appeal in another proceeding involving similar issues, or was a party or represented a party in a proceeding or legal transaction that is at issue in this appeal.

[3] *See Boyajian v. Gatzunis*, 212 F.3d 1, 4 (1st Cir. 2000) ("Section 3 of Chapter 40A of the Massachusetts General Laws limits the zoning regulations that can be

energy provision, which states: "[N]o zoning ordinance or by-law shall *prohibit* or *unreasonably regulate* the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, *except where necessary to protect the public health, safety or welfare*." G. L. c. 40A, § 3, ¶ 9 (emphasis added). This provision ensures the uniform favorable treatment of solar energy structures throughout the Commonwealth, by barring local government from either "prohibiting" or "unreasonably regulating" that land use, absent proof of a compelling, countervailing public interest. The urgency of enforcing this statutory provision according to its plain terms cannot be overstated.[4]

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imposed on certain types of land uses, including agriculture, religious use of property owned by either the Commonwealth or a religious group, nonprofit educational uses, child care facilities, access for physically handicapped persons to private property, *solar energy systems*, and antennas for federally licensed amateur radio operators.") (emphasis added).

[4] *See* David Abel, *New England is warming faster than the rest of the planet, new study finds*, Boston Globe, Dec. 30, 2021 (available at https://www.bostonglobe.com/2021/12/30/science/new-england-is-warming-faster-than-rest-planet-new-study-finds/) ("New England is warming *significantly faster* than global average temperatures, and that rate is expected to accelerate as more greenhouse gases are pumped into the atmosphere . . . . The[scientific] findings were underscored this year in Greater Boston,

At issue, however, *is* the meaning of these clear operative terms. In particular, when has a local government unlawfully "prohibited" solar energy structures, and how does a prohibition differ from an "unreasonable regulation" of that protected use? The short answer is this: An unlawful prohibition occurs when, as in this case, a local government has summarily barred a property owner from using its own land for solar energy purposes. By contrast, a local government has "unreasonably regulated" the protected use when it has *allowed* the use to proceed but then imposes unduly burdensome requirements on the property owner's actual execution of that use.

In this case, the city of Waltham violated the solar energy provision because it summarily barred the property owner, Tracer Lane II Realty, LLC (Tracer Lane), to use its residential property to build an access road, for the purpose of constructing and maintaining a proposed solar power facility in the

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which is on track to having *the warmest year on record since 1900 . . . .* In Massachusetts, *average annual temperatures have increased even faster* [than the rest of the New England states]—rising 1.97 degrees Celsius, or 3.55 degrees Fahrenheit [from 1900 to 2020].") (emphasis added).

bordering town of Lexington.[5] What's more, the city has categorically barred the use of *all* other private property within its borders for solar energy structures, save its four industrial zoned districts, which comprise less than 2% of its total land area. Addendum to Appellant's Brief, at 66 (Land Court decision, at 11).

Notwithstanding the city's categorical refusal to allow Tracer Lane to build the access road, and its refusal to allow solar energy structures on nearly *all* other municipal property, the city argues nonetheless that it has not "prohibited" solar energy structures because it has allowed them in its industrial districts. That is, the city interprets the statutory term "prohibit" as an "all or nothing" concept. Unless it has banned solar structures on *all* available municipal land, the city would argue, it has not

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[5] The parties do not dispute that "the access [road] is considered to be in the same [non-residential] use as the parcel to which the access leads." *Beale, Jr. v. Planning Bd. of Rockland*, 423 Mass. 690, 694 (1996).

Moreover, the proposed access road qualifies as a protected "structure[] that facilitate[s] the collection of solar energy" under § 3, ¶ 9, because it is necessary for the construction and maintenance of Tracer Lane's proposed solar panel array in Lexington. Addendum to Appellant's Brief, at 58-59 (Land Court decision, at 3-4).

"prohibited" that land use, as that term is used in the provision. The city also argues that its restriction of solar energy structures to its industrial districts constitutes a "reasonable regulation" under the provision.

These arguments are entirely unavailing, simply because the city has disregarded the plain and common sense meaning of these key statutory terms. "If the statutory language is clear, courts must give effect to its plain and ordinary meaning and need not look beyond the words of the statute itself." *Osborne-Trussell v. Children's Hosp. Corp.*, 488 Mass. 248, 172 N.E.3d 737, 745 (2021) (cleaned up). According to the ordinary meaning of the provision's clear language, a local government cannot prohibit a property owner from using its *own* land for solar energy structures, nor can the government unreasonably regulate that protected land use once it has *allowed* the use to proceed, unless the government can show that the prohibition or the unreasonable regulation is necessary to protect the public health, safety or welfare. G. L. c. 40A, § 3, ¶ 9.

Stated otherwise, the solar energy provision protects the property owner's use of its land at *two*

logical stages of the local regulatory process: (1) at the initial approval stage, by barring the summary prohibition of the protected use on the property owner's land, and (2) after the approval stage, by barring the summary imposition of unduly burdensome requirements on that land use. *Id.*

According to this intuitively clear explanation of the solar energy provision, the city unlawfully prohibited the protected use when it summarily denied Tracer Lane the right to build the access road on its own land. The sole operative facts that determine liability are that the city prevented Tracer Lane from pursuing the protected use on its own property and that the city failed to show how its decision was necessary to protect the public health, safety or welfare. It is therefore legally irrelevant that the city may have allowed the access road somewhere else within its borders (where Tracer Lane does not own any property, and where an access road to the proposed Lexington solar power facility would make no sense).

After all, this is the very essence of a *protected use* under § 3 of the Act--to prevent local discrimination against that land use by ensuring a property owner's right to pursue the use on its own

land, subject only to reasonable local zoning requirements. *See Trustees of Tufts Coll. v. City of Medford*, 415 Mass. 753, 757 (1993) (discussing same with respect to the similarly worded Dover Amendment,[6] another protected use contained in § 3, which protects use of certain private property for religious and educational purposes). *See also Attorney Gen. v. Dover*, 327 Mass. 601, 603-04 (1951) (town's 1946 amended zoning bylaw prohibiting use of *residential* property for religious schools was abrogated by 1950 Dover Amendment, which barred any "by-law or ordinance which *prohibits* or limits the use of land . . . for

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[6] The Dover Amendment, as it now stands, is incorporated into the second paragraph of § 3 of the Act, seven paragraphs above the solar energy provision. It provides, in relevant part:

> No zoning ordinance or by-law shall . . . *prohibit*, *regulate or restrict* the use of land or structures for religious purposes or for educational purposes on land owned or leased by . . . a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to *reasonable regulations* concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.

G. L. c. 40A, § 3, ¶ 2, as inserted by St.1975, c. 808, § 3 (emphasis added).

any religious, sectarian or denominational educational purpose") (quoting St.1950, c. 325) (emphasis added).

The *Dover* case warrants close attention because it establishes that an unlawful prohibition of a protected use occurs under § 3 of the Act when local government has banned that use on certain zoned property (typically, residential property), even when that same government would allow the use on other zoned property. The Dover Amendment was the Legislature's response, in 1950, to that town's amended zoning bylaw of 1946, which had prohibited the use of any residential property for sectarian educational purposes. *See Dover*, 327 Mass. at 603. Of crucial importance to the current case, the town of Dover's amended bylaw prohibited that use on residential land only. The bylaw did not prohibit the use in any other zoned districts within the town's borders. *See id.*

In 1950, the Legislature apparently responded to the town of Dover's amended bylaw by inserting the following language into the Act: "No by-law or ordinance which *prohibits* or limits the use of land for any church or other religious purpose or which prohibits or limits the use of land for any religious,

sectarian or denominational educational purpose shall be valid." St.1950, c. 325 (emphasis added).[7] Notably, this "prohibit" language is virtually identical to that contained in the solar energy provision.

In *Dover*, the Attorney General sought to have the Court declare invalid the town's bylaw, due to the passage of the 1950 Dover Amendment. *Id.* at 601. The Court agreed and held that the Legislature had *abrogated* Dover's amended bylaw. "[I]f the amended subdivision [of the relevant Dover zoning bylaw] was ever valid, it became invalid immediately upon the taking effect of the statute of 1950." *Id.* at 603-04.

The Court did not mince any words when it emphasized the untenable conflict between the town's bylaw, which prohibited the land use on residential property only, and the Legislature's 1950 amendment to the Act, which precluded local government from prohibiting the land use in general terms:

> We think it plain that the statute and subdivision 4 of the [Dover] by-law as amended *cannot stand together*. The

[7] As amicus has explained in n.6 above, this language evolved into the protected use that is now incorporated into the second paragraph of § 3 of the Act, seven paragraphs above the solar energy provision. *See* G. L. c. 40A, § 3, ¶ 2.

> statute says that 'No by-law or ordinance which prohibits or limits the use of land for any . . . religious, sectarian or denominational educational purpose shall be valid.' The amended by-law attempts to admit to *residence districts* educational uses only 'if non-sectarian.' *The conflict is apparent*.

Id. at 604 (emphasis added).

In short, *Dover* defeats the city's position because it establishes that an unlawful prohibition of a protected use is *not* an "all or nothing" concept. A local government need not ban a § 3 protected use on *all* available land within its borders in order to "prohibit" that use under the solar energy provision. See *Richardson v. The UPS Store, Inc*., 486 Mass. 126, 131 (2020) ("Where the Legislature uses the same words in several sections which concern the same subject matter, the words *must be presumed to have been used with the same meaning in each section*.") (cleaned up) (emphasis added).

To violate the solar energy provision, then, it should suffice that local government has summarily denied even *one* property owner, residential or otherwise, the statutory right to pursue that protected use on its own land. *See Trustees of Tufts Coll.*, 33 Mass. App. Ct. 580, 581 (1992), *aff'd*, 415

Mass. 753 ("The Dover Amendment invalidates . . . zoning provisions . . . that *facially discriminate* against the use of land for educational purposes[.]") (emphasis added).

If the city's reading of the term "prohibit" prevailed, the provision would afford little, if any, protection to solar energy structures. Under this view, a local government could summarily prohibit the protected use on a property owner's land, and in nearly all other zoned districts, so long as it allowed the use somewhere within its borders. Indeed, such are the very facts of this case.

In short, a local government would have free rein to do precisely what § 3 generally, and the solar energy provision in particular, were intended to prevent--local discrimination against the protected use, such as by restricting that use to the smallest and most remote zoned districts. *See Trustees of Tufts Coll.*, 415 Mass. at 757 (discussing goal of Dover Amendment to prevent local discrimination against protected use). *See also Doherty v. Civil Serv. Comm'n*, 486 Mass. 487, 492 (2020) ("[W]e must avoid a construction which would make statutory language meaningless.") (cleaned up). Therefore, the

Court should affirm the Land Court's entry of summary judgment for Tracer Lane, because the city summarily denied it the right to build the access road on its land.

II. A LOCAL GOVERNMENT HAS "UNREASONABLY REGULATED" SOLAR ENERGY STRUCTURES WHEN, UNLIKE IN THIS CASE, IT HAS *ALLOWED* THAT PROTECTED LAND USE TO PROCEED BUT THEN IMPOSES UNDULY BURDENSOME REQUIREMENTS ON THE ACTUAL EXECUTION OF THAT USE.

As much as the city has misinterpreted what it means to "prohibit" solar energy structures, it has also misinterpreted what it means to "unreasonably regulate" that protected land use under the solar energy provision. That statutory term does *not* apply to this case because it refers to the specific structural requirements that a local government imposes on the property owner once the government has allowed the land use to proceed. See *Tufts Coll.*, 415 Mass. at 759-60 (university could prove "unreasonable regulation" under similarly worded Dover Amendment by showing "that compliance [with applicable municipal zoning bylaws] would substantially diminish or detract from the usefulness of a proposed structure, or impair the character of the institution's campus, without appreciably advancing the municipality's legitimate

concerns. Excessive cost of compliance with a requirement imposed on an educational institution, without significant gain in terms of municipal concerns, might also qualify as *unreasonable regulation* of an educational use.") (emphasis added).

In this case, however, the city has prohibited outright the protected use, by summarily refusing to allow Tracer Lane to build the access road on its property. Therefore, the "unreasonable regulation" prong of the solar energy provision does not apply.

Indeed, this clear statutory distinction between the *prohibition* and the *unreasonable regulation* of a protected land use occurs several times throughout § 3, under other protected-use provisions.[8] Notably,

[8] *See* G. L. c. 40A, § 3, ¶ 1 ("No zoning ordinance or by-law shall . . . *prohibit*, *unreasonably regulate*, or require a special permit for the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, nor *prohibit*, *unreasonably regulate* or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture . . . .") (emphasis added); § 3, ¶ 2 ("No zoning ordinance or by-law shall . . . *prohibit*, *regulate* or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by . . . a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to *reasonable regulations*

in some of these other protected-use provisions, the Legislature has expressly defined the particular structural aspects of the protected use that local government may reasonably regulate.[9] In these other protected-use provisions, then, the Legislature has made it clear that the term "reasonable regulation" refers solely to the *actual construction* of the protected use.

While the solar energy provision does not define the scope of what local government may reasonably regulate, clearly the Legislature must have intended the phrase "unreasonably regulate" in that provision

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concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.") (emphasis added); § 3, ¶ 3 ("No zoning ordinance or bylaw in any city or town shall *prohibit*, or require a special permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility; provided, however, that such land or structures may be subject to *reasonable regulations* concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.") (emphasis added).

[9] *See* G. L. c. 40A, § 3, ¶ 2 (under Dover Amendment, local government cannot "regulate" use of land for religious or educational purposes, but it may issue "reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements"); § 3, ¶ 3 (same language under child care facility provision).

to carry the same meaning as it does in these other, more detailed protected-use provisions contained in § 3. *See Richardson*, 486 Mass. at 131 ("Where the Legislature uses the same words in several sections which concern the same subject matter, the words must be presumed to have been used with *the same meaning in each section*.") (cleaned up) (emphasis added).

Therefore, a city or town cannot "unreasonably regulate" the actual execution of a solar energy structure that it has allowed to proceed. That language would have applied in this case only if the city had *allowed* Tracer Lane to build the access road but had then imposed various structural and dimensional requirements pertaining to the actual building of that road.

Accordingly, the city has grossly misinterpreted the meaning of the term "unreasonably regulate" when it argues that the city has "reasonably regulated" solar energy facilities by restricting them to its industrial districts. In essence, the city is merely restating its first, and equally unavailing argument--i.e., that it has not unlawfully *prohibited* solar energy structures because it has allowed them in its industrial districts. However the city may choose to

recast its arguments, it cannot escape the bare and unassailable fact that it violated the solar energy provision when it summarily denied Tracer Lane the right to build the access road on its own land. Therefore, the Court should affirm the Land Court's entry of summary judgment for Tracer Lane.

III. THIS INTERPRETATION OF THE SOLAR ENERGY PROVISION IS SUPPORTED BY NUMEROUS OTHER MEASURES UNDERTAKEN BY THE LEGISLATURE AND ADMINISTRATIVE AGENCIES OF THE COMMONWEALTH TO PROTECT AND ENCOURAGE THE DEVELOPMENT OF SOLAR ENERGY.

The city violated the solar energy provision when it summarily prohibited Tracer Lane from building the access road on its property. This conclusion is compelled by the text and immediate context of that provision, and by this Court's interpretation of the similarly worded Dover Amendment, as amicus has argued above. But this conclusion is also supported by the many other measures that the Legislature and certain administrative agencies have undertaken to protect and encourage the development of solar energy in the Commonwealth.

For example, § 9B of the Act, titled "Solar access," authorizes local government to "encourage the use of solar energy systems and protect solar access

by regulation . . . ."[10] That section also authorizes local government to *exempt* solar energy structures from certain generally applicable zoning requirements.[11] The Legislature has even extended its favorable treatment of solar energy to *private* instruments, by declaring void any real estate document that attempts to prohibit or restrict the use

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[10] Section 9B of the Act provides, among other things:

> Zoning ordinances or by-laws adopted or amended pursuant to section five of this chapter may *encourage the use of solar energy systems and protect solar access by regulation* of the orientation of streets, lots and buildings, maximum building height limits, minimum building set back requirements, limitations on the type, height and placement of vegetation and other provisions. Zoning ordinances or by-laws may also establish buffer zones and additional districts that protect solar access which overlap existing zoning districts. Zoning ordinances or by-laws may further regulate the planting and trimming of vegetation on public property *to protect the solar access of private and public solar energy systems and buildings*. *Solar energy systems may be exempted* from set back, building height, and roof and lot coverage restrictions.

G. L. c. 40A, § 9B (emphasis added).

[11] *See* n.18, above (final sentence).

of land for solar energy purposes. G. L. c. 184, § 23C.[12]

Finally, the Commonwealth's Department of Public Utilities (DPU) recently issued an order *doubling* the amount of solar-generated power for which homeowners and businesses can be compensated, from 1,600 to 3,200 megawatts, when they deliver solar-generated power to the conventional energy grid, under the Solar Massachusetts Renewable Target (SMART) program.[13] By way of explanation, the Department of Energy Resources implemented the SMART Program to encourage the development of solar energy in the Commonwealth.[14] The SMART program achieves these goals by reimbursing

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[12] That section provides:

> Any provision in an instrument relative to the ownership or use of real property which purports to forbid or unreasonably restrict the installation or use of a solar energy system as defined in section one A of chapter forty A or the building of structures that facilitate the collection of solar energy *shall be void*.

G. L. c. 184, § 23C.

[13] DPU 20-145-B, "Order on Phase I Revisions to the Model Smart Provision," Dec. 30, 2021, (available at 20-145-BPhaseIOrder12.30.21.pdf).

[14] *See* https://www.mass.gov/solar-massachusetts-renewable-target-smart ("Regulation & General Information").

homeowners and businesses for the solar-generated power that they produce and then deliver to one of three investor-owned utility companies in Massachusetts. *See id.*[15] Therefore, the DPU's recent order provides a greater financial incentive for homeowners and businesses to install solar panels on their property.

In sum, solar energy facilities and their supporting structures are, in many ways, a highly favored use of property in the Commonwealth. The city plainly violated Tracer Lane's rights under the solar energy provision when it summarily rejected the access road. In so doing, the city actually *harmed* the "public health, safety, or welfare" under that provision, by thwarting the development of a clean and renewable source of energy to combat the consequences of climate change.[16] Therefore, the Court should affirm the judgment of the Land Court, and Tracer Lane should be allowed to proceed with the construction of the access road on its property.

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[15] Those three utilities are Eversource, National Grid, and Unitil. *See* n.14, above.

[16] *See* Abel, *New England is warming faster than the rest of the planet*, Boston Globe, n.4, above.

CONCLUSION

For the foregoing reasons, NELF respectfully requests that the Court affirm the judgment of the Land Court.

Respectfully submitted,

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Dated: February 9, 2022

CERTIFICATE OF COMPLIANCE

Pursuant to Mass. R. App. P. 16(k), I certify that this brief complies with the requirements of Mass. R. App. P. 17 and 20. I also certify that I ascertained compliance with the length limit of Mass. R. App. P. 20(a)(2)(C), by composing this brief on Microsoft Word 2010 in 12-point Courier New. Pursuant to Mass. R. App. P. 20(a)(2)(D), I further certify that the number of pages to be counted in this brief is 22.

/s/ Ben Robbins

Ben Robbins

CERTIFICATE OF SERVICE

I, Ben Robbins, hereby certify that on this 9th day of February, 2022, I served the within Brief Of Amicus Curiae New England Legal Foundation In Support Of The Plaintiff-Appellee, in Tracer Lane II Realty, LLV v. City of Waltham, SJC-13195, by causing it to be delivered by eFileMA.com to counsel for the Plaintiff-Appellee, John F. Farraher, Jr., farraherj@gtlaw.com; and to counsel for the Defendants-Appellants, Bernadette D. Sewell, bsewell@city.waltham.ma.us.

Signed under penalties of perjury.

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