

NEWS

MBTA zoning law has drawn resistance from some South Shore communities. Where they stand



Hannah Morse

The Patriot Ledger

Published 4:31 a.m. ET Nov. 15, 2024 | Updated 4:31 a.m. ET Nov. 15, 2024

With the clock counting down to an end-of-year deadline, another South Shore town has decided not to hold a second vote to try to pass zoning rules that would bring it into compliance with a state law.

Hanover's select board has decided to push a decision on adhering to the MBTA Communities Act off until the spring 2025 town meeting.

By Dec. 31, Hanover and five other South Shore communities are required to approve at least one zoning overlay district near public transportation that allows multifamily housing by right. Three will hold special town meetings in November and December to ask its voters to reconsider.

The majority of South Shore communities have already passed their own MBTA zoning rules. Hanover voters rejected the proposal at town meeting in May.

Town Manager Joe Colangelo recommended that Hanover remove its two MBTA zoning articles from its Dec. 9 special town meeting warrant. The select board acted on the recommendation.

More: Which South Shore towns have passed MBTA zoning rules?

The pending case that the Massachusetts attorney general brought against Milton is the chief reason.

“[W]ithout the decision in hand and without knowing if the court will uphold the law,

modify, or strike down, the select board's more responsible decision is to ensure the planning board, select board, staff and voters are properly informed of the ultimate outcome of this law and its implementation so that the best decision can be made for Hanover," Colangelo wrote in an Oct. 30 email to the town attorney, planning board chair and advisory committee chair.

Where does the Milton MBTA case before the Massachusetts Supreme Judicial Court stand?

The state's Supreme Judicial Court heard oral arguments in the case against Milton in October. After Milton passed zoning rules and then retracted them in a special election, the attorney general sued Milton to force compliance with the zoning law.

Hanover joins Hanson in waiting for a decision from the state's highest court, also facing potential legal ramifications if a decision is not rendered before the end of the year. Like in Hanover, Hanson voters also rejected the proposed MBTA zoning rules at the May town meeting.

The text of the MBTA zoning law also specifically outlines four grants that MBTA communities will not be eligible for if they are found to be non-compliant. Milton also lost a \$140,800 seawall grant as a result of the special election vote.

Meanwhile, four municipalities on the South Shore will host special town meetings before the year is over to decide MBTA zoning rules.

What is the MBTA Communities Act?

Signed into law in 2021, it requires 177 towns and cities designated as "MBTA communities" to create at least one high-density zoning overlay district near public transportation where a specific number of housing units would be allowed to be constructed. The law does not require that these units be built.

Each of the 177 "MBTA communities" was given one of four labels that determined what percentage of the 2020 housing stock each community had to zone for, the highest being "rapid transit community" and the lowest being "adjacent small town."

Duxbury to decide MBTA zoning rules at special town meeting

The first to decide is Duxbury on Monday. Town meeting will be asked whether to support the creation of three districts that are concentrated in two areas: the southern corner of Auburn Avenue and Kingston Way, and the northeast corner of Route 3 and Route 3A near Island Creek Apartments.

Duxbury is considered an “adjacent community” by the state and was required to zone for a minimum of 750 multifamily housing units, or 12% of the 6,274 housing units counted in the 2020 census.

Kingston to decide MBTA zoning rules at special town meeting

On Tuesday, Kingston voters will decide whether to pass MBTA zoning rules. The selected overlay district largely covers the Kingston Collection mall as well as some properties north of Gallen Road. As a “commuter rail” community, Kingston had to zone for 805 multifamily housing units, or 16% of its 5,364 total housing units.

Towns that already rejected MBTA zoning rules will ask again

Norwell and Marshfield will hold special town meetings in December. Both communities already rejected proposed MBTA zoning rules earlier this year, but the towns’ leaders will be pitching the same question to voters.

Norwell will hold its special town meeting on Dec. 12, seven months after voters rejected a proposal to create an overlay district along Accord Park Drive and Pond Street, between Route 3 and Route 53. The “adjacent community” town was required to zone for at least 750 multifamily housing units, or 20% of the town’s 3,805 total housing units.

One of the early rejecters of the MBTA zoning requirements, Marshfield will hold its special town meeting Dec. 19. The town has proposed a zoning overlay district north of Route 139 and east of School Street that will allow the “adjacent community” to zone for 1,158 multifamily housing units, or 10% of its 11,575 total housing units.

What are the key arguments in the Milton court case?

A key issue, in this case, is the enforceable weight of the rules that were written by the state legislature and the guidelines for the 177 communities that were written by the state's Executive Office of Housing and Liveable Communities, or EOHLC.

The law itself crafted by the legislature is just a few paragraphs. It gave the EOHLC the authority to create guidelines that determine whether a MBTA community complies with the law.

Milton is arguing that the guidelines are guidelines and not law. Assistant Attorney General Eric Haskell argues that the state's chief law enforcement officer had the authority to enforce the law and that the law, as written, made the mandatory aspect clear.

Written opinions from the Supreme Judicial Court typically come within 130 days after oral arguments. Given that oral arguments in the Milton case were on Oct. 7, the opinion could come potentially past the end-of-year deadline that was set for 106 MBTA communities to pass zoning rules. As of the beginning of October, 75 communities have passed zoning to comply with the law.

Hannah Morse covers growth and development for The Patriot Ledger. Contact her at hmorse@patriotledger.com.