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Massachusetts town sues Healey administration over 'great abuse of power' with MBTA zoning law



A train departs from the Middleboro Commuter Rail station. (Paul Connors/Boston Herald)



By **LANCE REYNOLDS** | lreynolds@bostonherald.com

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Middleboro has sued the Healey administration due to what it says is a “great abuse of power” as the state withholds previously committed grant funding in a fight over the controversial MBTA zoning plan.

Officials say Gov. Maura Healey and the state Executive Office of Housing and Livable Communities have rescinded a \$73,000 grant for student mental health needs and are refusing to sign a \$2.8 million MassWorks contract for commercial development infrastructure.

In a lawsuit filed in Plymouth Superior Court on Friday, officials highlighted how they believe the state “incorrectly declared” the Plymouth County town “non-compliant” with the MBTA Communities Act, arguing that they’ve gone above and beyond in their effort to create affordable housing.

This is the latest court battle between the state and a municipality over the 2021 law.

Attorney General Andrea Campbell sued Milton last year after the town voted not to comply with the mandate that requires 177 municipalities across Greater Boston to have at least one zoning district where multifamily housing is permitted as of right.

“The Commonwealth has taken badly needed funding for public schools and capital projects,” officials stated in an announcement of the litigation, “including projects to create greater access to persons with disabilities, and if these funds are not restored, essential public services are at risk.”

Town Manager Jay McGrail said the state declared Middleboro “non-compliant” with the act allegedly for not filing an action plan outlining how it would achieve compliance with the state housing office by Feb. 13.

At a news conference, McGrail argued the town is compliant with the requirements — a district within a half mile of an MBTA station that

Officials are also highlighting how the town in 2021 enacted a “Smart Growth Zoning District” of 40.4 acres all within a half-mile of its Commuter Rail station where multifamily housing is allowed at a density of 20 units per acre.

Multifamily housing is being facilitated as 26 units have been constructed and sold in the district with another 148 in the development stage.

“The one-size-fits-all interpretation of the MBTA Communities Act is unreasonable and is not what the Legislature intended,” McGrail said. “What we’ve done in Middleborough should be modeled and celebrated, not punished.”

The mandate, which would require zoning of at least 1,471 more housing units, could force Middleboro taxpayers to spend \$21 million in “perpetual” annual budget costs or a “one-time capital cost” of \$617 million if all of those units were built, officials have said.

Middleboro’s lawsuit came exactly a week after state Auditor Diana DiZoglio determined that the MBTA Communities Act is an unfunded mandate as the law “does not provide a funding mechanism for compliance with its provisions.”

Towns and cities can now seek a Superior Court order exempting them from compliance until the state provides funding, the auditor said.

The auditor’s determination led to a squabble with Campbell, who said last Monday that the unfunded mandate claim is wrong and has no effect on the law’s implementation.

DiZoglio responded that her office’s ruling doesn’t change the state Supreme Judicial Court’s January ruling that the law is constitutional and enforceable. That determination came in the AG’s legal win against Milton, the first town to vote against compliance.

Healey is taking Campbell’s side, that the MBTA Communities Act is not an unfunded mandate. The governor said in a statement Friday that 119 communities have already adopted zoning under the law.

“It is unfortunate that some communities are choosing to use the Division of Local Mandates’ advisory opinion to try to stall its implementation,” Healey said. “The law is essential to our efforts to lower the high cost of housing, which we know is one of the greatest challenges facing the people of Massachusetts.”

Campbell added: “It is regrettable that the Auditor’s incorrect legal assessment has spurred challenges to a law meant to address our housing crisis.”

Middleboro officials are also slamming the state for making “no effort to quantify the costs associated with complying with the act.” They also say that the town “exceeds the state affordable housing requirement by 40% and has long been a leader in ensuring access to affordable housing.”

“We don’t turn to the courts lightly, but we have been put in a corner and given no chance at a fair dialogue,” Select Board Chairman Mark Germain said in a statement. “Threatening and demanding compliance through draconian and capricious methods is not an effective way to achieve progress.”



Middleboro Town Hall (Paul Connors/Boston Herald)



Gov. Maura Healey (Herald file)

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brian@ohalloran.com



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