

Middleboro sues state over MBTA Communities Act

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Town Manager James McGrail discusses the lawsuit as attorney Gregg Corbo, left, and Select Board Chair Mark Germain look on. Photo by Sandy Quadros Bowles

MIDDLEBORO — The Town of Middleboro filed suit Friday, Feb. 28 against the state in Plymouth Superior Court, stating that the town has been incorrectly and “arbitrarily” declared non-compliant with the MBTA Communities Act when in fact the community has been creating multi-family and affordable housing near the MBTA station for years.

“This is a landmark case for the courts to decide,” attorney Gregg Corbo of KP Law, the town’s legal firm, said at a press conference Friday, Feb. 28.

The suit names Gov. Maura Healey, the Commonwealth of Massachusetts and the Massachusetts Executive Office of Housing and Livable Communities as defendants.

The governor, attorney general and the Massachusetts Executive Office of Housing and Livable Communities “have engaged in a tyrannical campaign of aggressive enforcement through threats, intimidation, coercion and punishment,” according to the suit.

The MBTA Communities Act requires MBTA communities, including Middleboro, to create districts near their transit stations to allow multi-family housing by right within a half mile of the train station. This is an effort to address the state’s housing shortage and to provide residents with access to mass transit.

The suit argues that the town already has a zoning district near the station, created years ago and called a 40R district. This district calls for multi-family housing, with 25 percent of units to be affordable.

“Not only has Middleboro created the required district, but it has already facilitated the development of 174 multi-family housing units within a half mile of the station, and more throughout town,” the suit reads.

Town Manager James McGrail said the town takes pride in its dedication to providing affordable and multi-family housing. He described Middleboro as a “champion of affordable housing.”

But, the suit states, “Middleboro has been vilified and severely penalized because the State’s computer model says it should be doing more.”

The requirements mandated by the act would force the town to add 1,471 more housing units, which would require the town to spend more than \$125 million to upgrade its public water supply system, almost \$200 million to upgrade its sewer system and spend "hundreds of millions of dollars to construct new school facilities to accommodate the influx of new students."

McGrail described the act as an "arbitrary and frankly Draconian method to break communities."

"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 Middleboro should be modeled and celebrated, not punished."

The suit was filed days after the state auditor ruled that the MBTA Communities Act qualified as an "unfunded mandated" because the state offered no funding mechanism to offset the costs of the act's impacts, such as the need for additional infrastructure and public safety personnel.

Attorney General Andrea Joy Campbell then described the auditor's claim as "wrong."

"If those who oppose housing affordability try to make a similar claim in court, the state will vigorously defend the law, and we intend to be successful, as we have been so far," she said in a statement.

In the lawsuit, the town argues that the state has wrongly rescinded grants to the town "in an effort to coerce Middleboro to comply with its mandate." These grants include a \$74K grant for mental and emotional health services in the schools and nearly \$3 million in MassWorks grants to support infrastructure for a South Middleboro commercial development.

Corbo said the town pursued legal action "because [Middleboro] has no other recourse."

Select Board Chair Mark Germain, who has been a vocal opponent of the act, said the town has "the moral ground to call out what we believe is truly unfair."

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