

## **Residents sue to challenge Milton's 'rapid transit' status**

### **NEWS**

**By Elaine Cushman Carroll Milton Times staff**

A group of 16 Milton residents has filed a lawsuit in Norfolk Superior Court asking the court to drop Milton's status as a "rapid transit community" under the MBTA Communities Act and instead consider the town an "adjacent community" under the law.

It states that the Executive Office of Housing and Livable Community's (EOHLC) designation of Milton as a "rapid transit community" was "arbitrary and capricious" and beyond the authority of the agency.

The civil lawsuit also seeks a preliminary injunction from the act's guidelines from being implemented and joins prior lawsuits from other towns that are seeking to have the law declared an "unfunded mandate," a move that they say would make the act and regulations unenforceable, according to the court filings.

The residents, who include long-time opponents of the law that requires the creation of multi-family zoning districts, are being represented by Milton Attorney Paul Hogan, who ran an unsuccessful campaign for the Select Board in April.

The lawsuit comes as Milton faces a July 14 deadline for coming up with a compliant "rapid transit" plan and June 16 Special Town Meeting during which it will take up a Planning Board plan of 10% adjacent community plan and a 25% rapid transit plan that was also put forward by a group of citizens.

Milton was one of 12 communities to be put in the highest tier of rapid transit, which also required the earliest and most expansive zoning capacity requirements under the law. The category requires byright multi-family zoning districts be created that have the capacity for 2,461 units, roughly 25% of the town's total homes. The requirement for a 10% adjacent community category would be 9,850 units of zoned capacity. Zoned capacity includes housing units currently in place on properties.

The plaintiffs have requested a jury trial and for the case, which was filed on May 29, to be fasttracked.

Those bringing the suit are: John Driscoll Jr., Joan and Gregory Fall, James Goodfellow, Andrew Han-ley, David Humphreys, Brian Kelley, Allen Lapey, Andrea Lizio, Brian O' Halloran, Stephen Sheptyck, Robert Sweeney, Denise and Winthrop Swenson, Carol Wells, and John Wells III.

The lawsuit seeks a preliminary injunction to stay the July 14 deadline until a final determination is made on the unfunded mandate law. It also would require the EOHLC to accept a 10% plan from Milton.

The Plaintiffs are seeking the following declarations from the court: that the Mattapan High Speed Line is not a subway; and that there is not a "subway station" either within the Town of Milton or within 0.5 miles of the borders of the town.

It further asks for a declaration that the "rapid transit" designation of Milton in the regulations is "arbitrary and capricious" because that category is not found in the law. It also asks the court to classify Milton as an "adjacent community" under the regulations because it does not have a subway station and has some developable area within 0.5 miles of a commuter rail station.

The suit claims that the guidelines were not properly promulgated because EOHLC did not prepare a small business impact analysis as required under the Administrative Procedures Act.

The group of residents can be considered a class action suit with regards to the unfunded mandate claims, according to the filings.

The lawsuit points to a February 21 decision from the state Division of Local Mandates, under the state Auditor's Office, in response to claims brought by the towns of Middleborough and Wrentham. That ruling

found that the MBTA Communities Act constitutes an unfunded mandate and that more analysis is needed. The state Attorney General's office has disputed those claims and lawsuits are pending on the issue.



**File photo**



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