

## **Milton must come up with MBTA zoning**

**By Elaine Cushman Carroll Milton Times staff**

With both sides claiming a measure of victory in the state's highest court decision on the MBTA Communities law, the nitty gritty of what Milton and other communities will be required to do under the law is being played out.

The state issued "emergency regulations" on Jan. 14, giving Milton until Feb. 13 to submit an action plan to the state to have a town meeting vote on a compliant zoning article, and until July 14 to adopt compliant zoning.

The emergency order also firmly places Milton in the category of "rapid transit community," which has long been a point of contention in the town that is served by the aging Mattapan High Speed Line.

The emergency regulations issued by the state Executive Office of Housing and Livable Communities (EOHLC) amends the definition of "subway station" to include any of the stops along the Mattapan line and any extensions of the major MBTA lines.

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It gives all communities that are not in compliance with the law six months or until July 14, to adopt compliant zoning.

The regulations are in effect immediately and for 90 days. EOHLC intends to adopt regulations permanently following a public comment period, according to the statement.

"These regulations will allow us to continue moving forward with implementation of the MBTA Communities Law, which will increase housing production and lower costs across the state," said Governor Maura Healey. "These regulations allow communities more time to come into compliance with the law, and we are committed to working with them to advance zoning plans that fit their unique needs. We look forward to soon celebrating more communities joining the 116 that have already said yes to housing."

Lieutenant Governor Kim Driscoll said, "Firefighters, teachers and essential workers deserve to live in the communities they serve. Cities and towns that have taken action recognize that the MBTA Communities Law creates housing opportunities for their residents."

EOHLC Secretary Ed Augustus said that "local involvement is critical in developing zoning districts that put multifamily housing where communities have determined are the best locations."

The state Supreme Judicial Court on Jan. 8 upheld the MBTA Communities law, which requires 177 communities to come up with multi-family housing, by right near MBTA stations.

It also supported Attorney General Andrea Campbell's ability to enforce the legislation that is aimed at providing more development of multi-family (three or more units) housing.

But, the SJC also ruled that the guidelines - where the degrees of compliance and the deadlines, details and even the number of units of zoned capacity were contained - have to be redrawn.

EOHLC was charged in the law with coming up with guidelines and the court ruling states that the office did not follow all the steps laid out as required in the state's Administrative Procedure Act.

All other questions that were raised, were remanded to the Superior Courts to determine. Among those questions are whether the state will continue to withhold grants from Milton since it is no longer in violation of the law.

Attorney Kevin Martin, who argued the case on Oct. 7 as special counsel for Milton, said, "We're very pleased the Court recognized the critical importance of the state Administrative Procedure Act's procedural rules for agencies when they are issuing regulations."

"In that respect today's decision was a victory not only for Milton but also the rule of law. We hope that in issuing new guidelines, the Executive Office takes account of the many serious substantive concerns raised not only by Milton, but also by other affected communities," Martin said in a statement.

Milton's designation as a "rapid transit community" has been a main point of contention in the town that is served by the Mattapan Trolley.

The original guidelines stated that Milton, as a rapid transit community, should create districts with the zoned capacity of 2,461 units, which was equal to 25% of the town's year-round housing units. There is no requirement in the law or guidelines that any housing ever be built.

Former Planning Board member and attorney Kathleen O'Donnell said, "After this decision, the only fight left is the new regulations. Can Milton get EOHLC to reclassify the Town from rapid transit?"

"We'd still have to create MBTA districts but we wouldn't need to meet the higher number of units required for a rapid transit community," O'Donnell said.

Denny Swenson, another former Planning Board member and a chief organizer of Milton Neighbors for Responsible Zoning (MNRZ) said that the one-size-fits-all guidelines were their biggest issue. MNRZ was behind the effort to have Milton's zoning plan that was drawn up to comply with the law overturned.

"This SJC ruling is a victory for our town and for citizen action," Swenson said.

"Thanks to this ruling, Milton has the opportunity to work with the state to craft zoning regulations in line with our community's unique needs," the group said on its website.

State Sen. Bill Driscoll said he will be working with the Healey-Driscoll Administration, the town as well as other colleagues from other MBTA communities as the guidelines process moves forward.

He called for the new permanent guidelines to "fairly and appropriately classify Milton's MBTA service in accordance with the law." He said the MBTA service within a half mile of a subway doesn't apply to Milton since the Mattapan High Speed Line is not a subway.

Some have argued whether Milton fits into the less demanding categories of "commuter rail community," which carries a 15% requirement, given its proximity to various commuter rail stations, or an "adjacent community" that would drop the required zoned capacity to 10%.

Driscoll also called for the administration to "immediately" send Milton the \$140,000 Seaport Council grant that was awarded to Milton and then taken away after the ballot question.

"Additionally, Milton should have its ability and opportunity to apply for state grants restored," he said.

Newly elected state Rep. Richard Wells, who also serves as the chair of the Select Board, said he will be working with Driscoll in hopes that the new guidelines will offer Milton relief from its classification as a rapid transit community.

In my capacity as State Representative for the 7th Norfolk District, it is my intention to work closely with my colleagues in the legislature, as well as the Healey-Driscoll Administration, to ensure that any financial

grants are restored to the town, and that the guidelines created follow a process that addresses public input, individual community concerns and equitable, fair zoning.

“I welcome the opportunity to collaborate on this important issue on behalf of the residents of Milton,” Wells said.

Wells will clearly have another role to play as chair of the Select Board that will vote on future direction regarding legal action, which has been costly to the town.

While the Planning Board has been working on new alternatives, they recently paused action in the wake of the pending SJC decision. Any plan that Milton comes up with will need to be substantially different from the first because town bylaws require two years to pass before the same item is brought back before the body.

Milton’s initial version of compliance with the MBTA Communities law was drafted after the Planning Board was unable to reach a consensus on a plan as the deadline for Town Meeting review drew near about a year ago.

The previous configuration of the Select Board then directed Town Planner Tim Czerwienski, who is no longer with the town, to come up with a proposed bylaw based on the previous work with the Planning Board and its consultants.

A majority of Town Meeting voters approved the plan but Swensen and others organized a ballot question that ended in its defeat on Feb. 14, last year.

Their group became known as MNRZ and took issue with what it called an unfair burden of units and districts in East Milton. Members also termed the measure as governmental overreach and said zoning should be left to communities.

Others in town supported the measure citing the need for more types of housing in the town that is predominately zoned for single family homes.

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