

Milton volleys back against AG's MBTA lawsuit

By Elaine Cushman Carroll Milton Times staff

The Select Board issued a letter to Milton residents regarding the MBTA Communities Act on March 27, and on the same day the town's attorneys filed a strongly-worded 53-page response and counterclaim to the Attorney General office's lawsuit against the town.

"There are legal questions about the MBTA Communities Act (MBTA CA) that need to be answered," the Select Board wrote in the letter that was posted on the town's website. "Our response filed today addresses questions that we have and that we have heard from many residents about the MBTA CA."

In its legal filings, the town is questioning whether the enforcement of MBTA Communities Act and its guidelines are valid and whether the Attorney General has the authority to enforce them.

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The town's counterclaim states that the Executive Office of Housing and Livable Communities (EOHLC) put forward guidelines that are "ultra vires" or beyond its power under the law and said those guidelines are "arbitrary and capricious."

The countersuit states that the law "says nothing about allowing" the Attorney General to file suit "to force a municipality" to conform its zoning bylaws to the MBTA CA, an authority that the Legislature has expressly granted in other cases.

It states that the Attorney General doesn't have standing to bring the suit, and that the case lacks merit and should and should be dismissed.

The case has drawn statewide attention as the law affects 177 communities to varying degrees. The next rung of about 129 communities face a compliance deadline of the end of 2024 for adopting by right multi family zoning districts near public transportation.

The town's response acknowledges the housing market imbalance that presents affordability changes but said those economic issues "are no excuse to ignore important restraints on government actions."

It states that the EOHLC "vastly inflated its own authority" instead of following its statutory mandate to promulgate guidelines to determine if an MBTA community is in compliance."

The counterclaim notes that while the text of law is "relatively modest" and the Legislature did not mean for the "district of reasonable size" to "include sweeping portions of a municipality."

"The statute is focused on housing density within a compact district of reasonable size, within a short walking distance of a public transit station, if applicable," the countersuit states.

But, the town contends, the EOHLC guidelines "venture far beyond that, by dictating to municipalities the percentage of their entire housing stock that must be zoned for multi-family housing as of right— in the case of Milton and many other communities, 25%.

The counterclaim charges that the Attorney General "brushed past the Legislature's careful designation of the funding consequences for non-compliance and filed suit...demanding declaratory and injunctive relief."

In its response, the town states that the Attorney General’s request for the potential appointment of a special master is not a remedy allowed under the regional housing law and such a remedy “would dramatically upend the right of local communities to govern themselves.”

It also states that the law specifically identifies the consequences for those municipalities that do not comply as loss of eligibility for funding under four specific programs.

The Select Board’s letter indicates that the questions of law may include bringing attention to the “MBTA’s efforts on the sorely needed Mattapan Line Transformation Project, which would greatly improve transit access to underserved populations in Mattapan, Milton, and Dorchester.”

The letter also brought up the state’s decision to cut a \$140,800 grant that had been awarded to Milton to help design repairs to the seawall at Milton Landing, which is needed to mitigate the impacts of coastal flooding during high tide and storm events.

“We will be submitting a formal request to the state that it not penalize Milton by withdrawing these and other grant funds until, at the very least, the Supreme Judicial Court renders a decision in this matter,” the letter reads.

The case is now before the Supreme Judicial Court and is expected to be heard in the October session. The town is being represented by Attorneys Kevin P. Martin and Jaime Santos of Goodwin Procter LLP and Town Counsel Peter Mello.

Attorney General Andrea Campbell’s office brought the suit shortly after Milton’s plan that was passed at a Special Town Meeting in December was overturned in a referendum in mid-February.

Campbell’s office has stated that the town is in violation with the MBTA Communities Act for failing to meet a Dec. 31 deadline set for the top tier twelve communities with the “rapid transit designation.”

In the letter to the town, the Select Board said, “We acknowledge that cities and towns in Massachusetts need to work together with our partners in state government to address housing issues.”

“Milton is growing; we have permitted hundreds of new housing units in recent years. We remain willing to work with the state to come up with a plan that works for Milton so that, together, we can make progress on housing in Massachusetts,” the letter reads.

The letter goes on to outline the work the town has undertaken on the MBTA CA over the past two years and said it had offered feedback to the state on the law and the guidelines issued by the EOHLC, including questions and concerns “about how the guidelines and the law were applicable to Milton.”

“We held countless public meetings and information sessions to provide updates and solicit feedback,” the letter read, adding that the board thanked boards, committees, staff, and residents who engaged on this issue.

“We encourage this respectful dialogue to continue on MBTA CA and all issues facing our town,” the letter continued.

It said that the lawsuit was brought less than two weeks after the referendum, which “did not give us adequate time to come together as a community to plan our next steps with respect to MBTA CA.”

“We look forward to the Court’s resolution of the many legal questions regarding the MBTA CA,” the letter reads.