

HOUSING

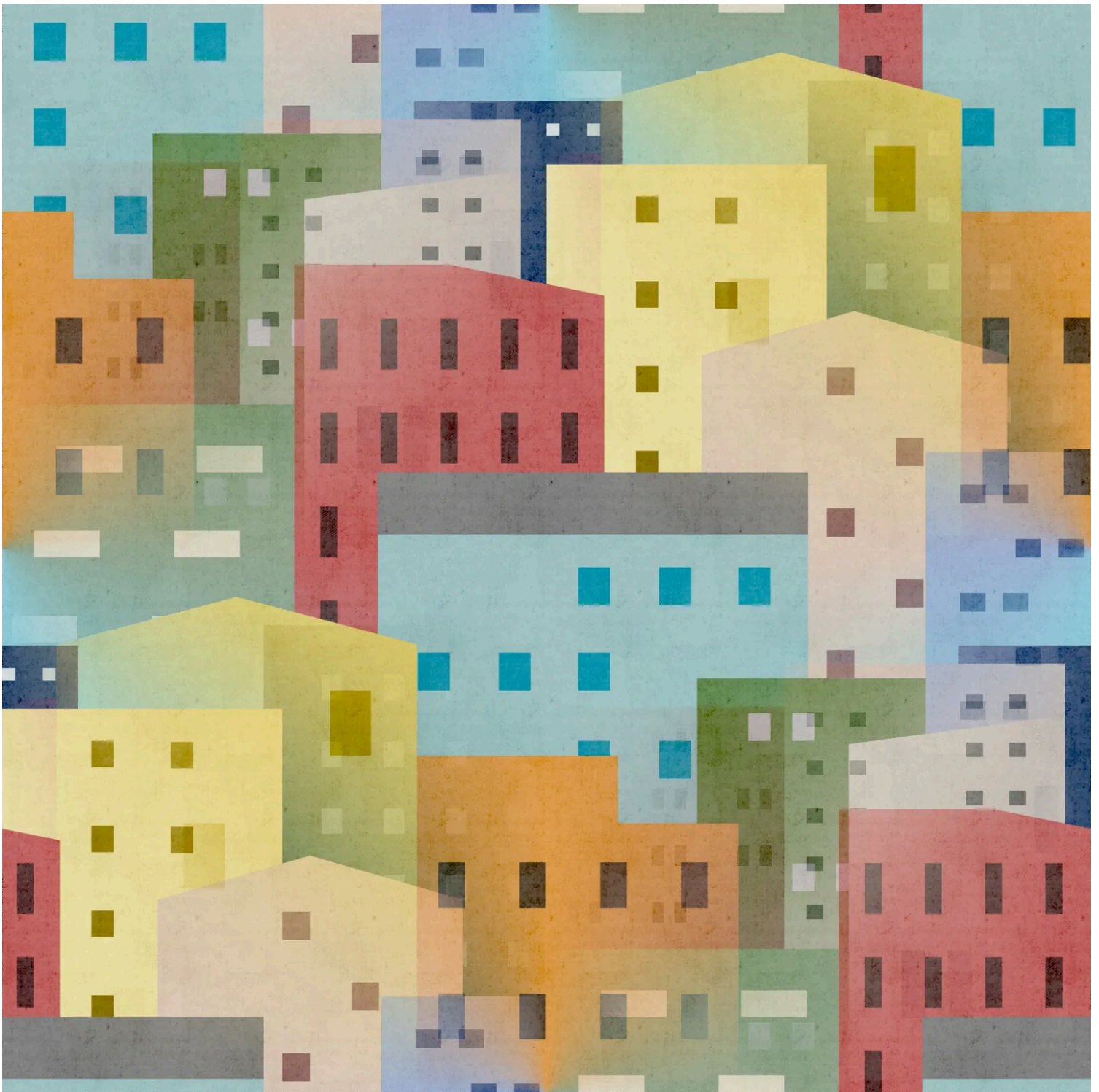
Milton makes interesting case on MBTA Communities Act

Says state can only withhold grant funds, can't compel compliance



by **BRUCE MOHL**

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(Illustration via Pixabay)

MILTON IS NOT putting all of its eggs in one basket as it tries to convince the Supreme Judicial Court that the town doesn't have to comply with the MBTA Communities Act, but it's coming pretty close.

The town continues to argue that the rezoning regulations were enacted improperly and that the rundown Mattapan trolley line that runs above ground through part of Milton doesn't qualify as subway rapid transit, a designation that subjects Milton to higher rezoning requirements than most other communities in eastern Massachusetts.

Those arguments still show up in the [legal brief](#) Milton filed on Monday, but they take a backseat to the idea that the only punishment available under the MBTA Communities Act for municipalities that don't comply with the law

is the withholding of certain state grant funds. In short, Milton argues the Legislature set out financial penalties for noncompliance and didn't give Attorney General Andrea Campbell the power to compel compliance through the courts.

“This is a case about the separation of powers and the rule of law—about who sets the rules that govern the Commonwealth and how they do so,” says the Milton brief. “In enacting a new statute, the Legislature is entitled to decide that the statutory goal is best advanced through financial penalties and not injunctive relief. Allowing the AG to always pursue injunctive relief, even if the Legislature specified only some lesser remedy, will make it impossible for the Legislature to balance competing policies and interests when establishing new statutory regimes.”

It's a straightforward argument, one that gives hope to communities like Milton that apparently are willing to forego state grant funds if they can avoid compliance with the rezoning statute. If Milton prevails before the SJC in October, one would expect to see other communities that are chafing at the rezoning statute's requirements adopt the same position. Officials in Winthrop, who are facing an end-of-year deadline to come into compliance, are bristling at the new law and **threatening to follow Milton's lead**.

Campbell, in her **court filings**, has argued that the MBTA Communities Act says communities “shall” rezone to allow for more housing. While she acknowledges the law sets out financial penalties for noncompliance, the attorney general claims the law's use of the word shall gives her the right to enforce compliance either by the town or by a representative appointed by the court.

“It is ‘axiomatic’ that a statute's use of the word ‘shall’ indicates a mandate,” Campbell argues.

Not so, Milton says. The town notes in its legal brief that the law and the regulations issued by the Executive Office of Housing and Livable Communities repeatedly refer to the loss of grant funding as the penalty for noncompliance. “Where a statute creates a duty and specifies no remedy, then the AG may seek equitable relief at common law. But where, as here, the Legislature has specified a remedy, that remedy is exclusive,” the town argues.