COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS	**SUPERIOR COURT DEPARTMENT**
	DOCKET NO.

TOWN OF MILTON;	
Plaintiff	
v.	
COMMONWEALTH OF MASSACHUSETTS,	
HON. GOVERNOR MAURA HEALEY,	
and the	**VERIFIED COMPLAINT**
COMMONWEALTH OF MASSACHUSETTS	**AND BRIEF**
EXECUTIVE OFFICE OF HOUSING AND	**SEEKING DECLARATORY**
LIVABLE COMMUNITIES,	**JUDGMENT**
Defendants	

PARTIES

1. The plaintiff, Town of Milton, is a Massachusetts municipal corporation with a business address of Milton Town Hall, 525 Canton Avenue, Milton, Massachusetts, 02186.

2. The Defendant, Commonwealth of Massachusetts, is a sovereign state formed by the Massachusetts Constitution, with a business address of Massachusetts State House, Boston, Massachusetts 02133.

3. The Defendant, Hon. Maura Healey, is the Governor of the Commonwealth of Massachusetts, with a business address of Massachusetts State House, 24 Beacon St., Office of the Governor, Room 280, Boston, Massachusetts 02133, and is named in her official capacity as the Chief Executive Officer of the Commonwealth.

4. The Defendant, Massachusetts Executive Office of Housing and Livable Communities ("EOHLC") is an agency of the Commonwealth, established pursuant to Chapter 7 of the Acts of 2023 (Article LXXXVII of the Amendments to the Constitution, Reorganization Plan #1 of 2023), with a business address of 100 Cambridge Street, #300, Boston, Massachusetts 02114.

JURISDICTION

5. The Superior Court has jurisdiction over this action pursuant to G.L. c. 231A, §1 (Declaratory Judgment Act), G.L. c. 30A, §7 (the "State Administrative Procedures Act") and G.L. c. 214 § 1 (General Equity Jurisdiction).

INTRODUCTION

6. This action seeks a declaratory judgment that the Town of Milton can comply with the MBTA Communities Act, G.L. c.40A Sec. 3A, and its Regulations, 760 CMR 72.00, by adopting a zoning ordinance or bylaw that provides for at least one district of reasonable size in which multifamily housing is thereby permitted "as of right" based upon Milton's half-mile proximity to MBTA Commuter Rail stations.

7. Here, in summary is why that is the case and why Milton seeks a declaratory judgment to that effect: Such compliance by Milton with the Act and it regulations is based in two key elements: First is the statute's core compliance paragraph 1(a)(1), and Second is EOHLC's regulation 72.08(1)(c). Specifically:

8. First, The MBTA Communities Act itself inserted a new Section 3A into the state's Zoning Act, Chapter 40A of the Massachusetts General Laws:

Section 3A paragraph 1 (a)(1) states: "An MBTA community shall have a zoning ordinance or bylaw that provides for at least 1 district of reasonable size in which multi-family zoning is permitted as of right…For the purposes of this section, a district of reasonable size shall (i) have a minimum gross density of 15 units per acre…, and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable." (emphasis added)

9. The EOHLC has contended that Milton must adopt an as of right multi-family ordinance or bylaw requiring unit capacity equal to 25% of its total housing units because EOHLC wrongly contends that Milton has developable land located

within 0.5 miles of an MBTA subway station. That is not so as is explained below. But solely for purposes of this declaratory judgment action, and without waiving Milton's right to continue to contest that misapplication of the statute to Milton by EOHLC, the reality is that even if Milton were located 0.5 miles from an MBTA subway station, that is a moot point. Why? Because inarguably, indisputably, Milton is located within 0.5 miles from MBTA commuter rail stations. That adjacency is "applicable" to Milton to quote from the statute. And the statute itself states that Milton must have "at least 1 district....located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable." That word "or" is dispositive: Even if Milton had 0.5 mile proximity to a subway station (which it does not have) Milton can choose to locate its multi-family zoning ordinance based on its half-mile proximity to commuter rail stations. "Or" means it can choose either to be the basis of its at least 1 district of reasonable size. And the EOHLC's own regulations, that only recently became effective, explicitly recognize this, which is the Second key compliance element here:

10. Second, on April 14, 2025, more than four years after the statute's enactment, regulations written by EOHLC became lawfully effective for the first time. EOHLC's regulation 72.08(1)(c) specifically states:

"(c) A community with Transit station areas associated with more than one Transit station may locate the Multi-family zoning district in any of the Transit station areas. For example, a Rapid transit community with Transit station area around a Subway station in one part of town, and Transit station area around a Commuter

rail station in another part of town, may locate its Multi-family zoning district in either or both Transit station areas."

11. Consequently, under the statute's express wording and the express wording of the, now effective, regulations adopted by EOHLC itself, Milton can choose to locate its multi-family zoning based on its indisputable half-mile proximity to commuter rail stations.

12. Every word matters. Chief Justice Tauro explained this decades ago:

"Elementary rules of statutory construction require that each statute be interpreted as enacted. Davey Bros. Inc. v. Stop & Shop, Inc., 351 Mass. 59, 63 (1966). No portion of the statutory language may be deemed superfluous. Commonwealth v. Woods Hole, Martha's Vineyard Nantucket *S.S. Authy.* 352 Mass. 617, 618 (1967). No portion of the statutory language may be deemed superfluous. When the statutory language is plain, the words must receive their "usual and natural meaning." Commonwealth v. Thomas, 359 Mass. 386, 387 (1971). Tilton v. Haverhill, 311 Mass. 572, 577 (1942). G.L.c. 4, § 6, Third. Statutory language should constitute the principal source of insight into legislative purpose. Commissioner of Corps. Taxn. v. Chilton Club, 318 Mass. 285, 288 (1945)."

Commonwealth v. Gove, 366 Mass. 351, 354 (1974) Tauro, C.J. (holding that the litigant's "construction would require that we overlook plain statutory language and deviate from ordinary word meanings.").

13. Despite requests to EOHLC by Milton's Elect Board and Planning Board representatives, as well as by its State Senator William Driscoll and State Representative Richard Wells, as described below, EOHLC has not agreed with Milton's request that EOHLC acknowledge Milton's right to do so. Hence this complaint for declaratory judgment. Without such a declaration EOHLC and the Attorney General will: (1) continue to assert that Milton is in noncompliance with

EOHLC's misapplication of "subway station" proximity, ignoring that the statute and regulations give Milton the right to choose commuter rail station proximity, (2) continue to withhold funding from Milton that it is entitled to under the statute, and (3) require Milton needlessly to expend funds to address those EOHLC mistreatments of it by means of additional court action to address the inapplicability of "subway station" proximity and invalid withholding of funding by EOHLC. This declaratory judgment case dispositively focuses on Milton's entitlement under the statute and regulations and thereby resolves those three harms.

STATEMENT OF FACTS

14. The Town of Milton is a community located in Norfolk County adjacent to Boston.

15. On January 14, 2021, Governor Baker signed into law the MBTA Communities Act, St. 2020, c. 358. The act requires "MBTA communities" to zone for "at least one district of reasonable size" in which multifamily housing is thereby permitted "as of right." Milton falls within the "MBTA communities" definition.

16. The Executive Office of Housing and Livable Communities purported to administer the Act in compliance with applicable law, by issuing Guidelines on

January 24, 2021, which it revised December 15, 2021, and then revised again on August 10, 2022.

17. The Town of Milton questioned EOHLC's application of the statute and Guidelines to it on various grounds, and the Attorney General brought suit against Milton. The EOHLC has withheld substantial state grant funding from Milton asserting that Milton had not undertaken to comply with Act and its guidelines as purportedly applied by EOHLC itself, notwithstanding Milton's objections that the guidelines were not lawfully promulgated and thereby were legally ineffective such that because Milton was not noncompliant with operative regulations EOHLC was not entitled to withhold state funding grants from Milton.

18. On January 8, 2025, the Supreme Judicial Court ruled that, as the Town of Milton and its Amici had argued to the Court, EOHLC had not complied with the Massachusetts Administrative Procedures Act (APA) because EOHLC failed to properly and fully obtain comments from affected residents and others. The SJC emphasized the need for EOHLC to promulgate enforceable regulations through the proper administrative process. (The SJC decision is submitted herewith as ADDENDUM A-1. See pages 3, 6-9 and 18-23. The MBTA Communities Act is submitted in A-2, and the Regulations are submitted herewith in A-3.)

19. In response, more than three years after Governor Baker had signed the statute into law, EOHLC then conducted a so-called "emergency" Comments Period to which the Town of Milton, Its Select Board and Planning Board submitted comments, as did Amici. After years of delay, municipalities had to submit comments in a matter of weeks. Also, concurrently, EOHLC continued to withhold numerous state funding grants from Milton while the AG publicly labeled Milton a non-compliant MBTA Communities Act municipality despite the fact that the SJC in its January 8, 2025 decision specifically stated that "HLC's guidelines were not promulgated in accordance with the APA" (SJC decision at 9) and stated "Because HLC failed to comply with the APA, HLC's guidelines are legally ineffective and must be promulgated in accordance with G.L. c. 30A Sec. 3 before they may be enforced." (SJC decision at 22 emphasis added, repeated at 23). Nevertheless, EOHLC has continued to withhold funding from Milton and continues to publicly criticized Milton as non-compliant, despite the SJC ruling that the guidelines were "rendered ineffective by EOHLC's failure to comply with the APA" (Id.).

20. Most significantly, in their respective Comments, the Milton Select Board, its Planning Board, and Amici (including State Senator William Driscoll, and State Representative Richard Wells) each reiterated that Milton has long stated its intention to comply with the MBTA Communities Act but has concurrently expressed its rejection of how EOHLC has classified Milton in its guidelines.

21. At pages 7 to 9 of its decision, the SJC summarized the steps that Milton and EOHLC each respectively took back-and-forth from January 2001 to January 2025. Although the declaratory judgment sought here does not require addressing details of Milton's analysis of EOHLC's misclassification of Milton as a so-called 25% MBTA community, the following summary of Milton's and the State Senator and State Representative Comments submitted February 21, 2025 following Milton's successful effort the have the SJC order a public comments process provides context.

22. Milton is not located within 0.5 miles of any subway station. The nearest subway station to Milton is located 0.95 miles from its border. But Milton is located not more than 0.5 miles from three commuter rail stations. That is "applicable." Therefore, Milton can fully comply with Section 3A by implementing a zoning ordinance or bylaw that provides for 15 multi-family units per acre within the total of 37.5 acres of developable land in Milton that is located not more than 0.5 miles from the Fairmount, Readville and Blue Hills Ave MBTA commuter rail stations. That is how the Statute's words and math clearly apply to Milton.

23. The Chapter 40A Section 3A statute's explicit wording yields the statutorily required total Milton Section 3A multi-family zoning to be 563 multi-family units: 15 multi-family units per acre x 37.5 acres = 562.5 multi-family units (rounded-up,

that is 563 multi-family units). Milton can fully comply with Section 3A by implementing that zoning. And the Guidelines provide further support for Milton.

24. Under the EOHLC's Guidelines Definitions (Section 72.02 of its proposed Emergency Regulations), Milton is an "Adjacent Community" because Milton is "an MBTA community that (1) has within its boundaries less than 100 acres of Developable station area, and (ii) is not an Adjacent small town." Consequently, at the instance of its Select Board, Milton has made it known publicly and directly to the EOHLC that the compliant plan that Milton is developing for consideration by its Town Meeting members' consideration will fully comply with the EOHLC's Adjacent Community classification, with multi-family zoning capacity of 1000 units (i.e. more than 10% of all Milton housing unit capacity), across 50 acres, with requisite contiguity and 15 units per acre. Milton's plan also will comply with the EOHLC regulations regarding (a) total acreage zoned for Multi-family housing to comply with the regulation's total acreage requirement (Regulation72.05(1)(a)); and (b) compliance with the incremental percentages of Multi-family housing within half-mile Commuter Rail station proximity requirement (Regulation 72.08(1)(a)1). In addition, Milton has spent countless hours of Planning Board members' time and expert consultants' time developing a multi-family zoning plan that would comply with EOHLC's asserted 25% compliance metrics should that be needed. Both of those efforts are ongoing

and the EOHLC due date for the 25% plan it asserts is required is July 16, 2025. Should this declaratory judgment case still be in process at that time, Milton would seek extension of that July 16 date from EOHLC or from this Court if EOHLC declines to agree to it.

COUNT I

25. The facts asserted in paragraphs 1 to 24 of this Verified Complaint are hereby incorporated by reference and reasserted as if fully set forth herein.

26. By adopting a zoning ordinance or bylaw that under the express wording of the MBTA Communities Act, G.L. 40A, Sec. 3A(a)(1) and the express wording of the, now effective, Regulation 72.02 definition of Adjacent Community as now promulgated by EOHLC itself, Milton can choose to locate its multi-family zoning as an Adjacent Community based on its indisputable half-mile proximity to commuter rail stations. Yet, EOHLC continues wrongfully to assert that Milton must adopt a "Subway station" based Multi-family zoning ordinance or bylaw. That assertion by EOHLC, and the penalties EOHLC is imposing on Milton based thereon, are each invalid and unenforceable.

PRAYERS FOR RELIEF

WHEREFORE, the Plaintiff, the Town of Milton, requests this Honorable Court to:

A. Issue a Short Order of Notice scheduling a hearing on Milton's Motion for Declaratory Judgment filed contemporaneously herewith;

B. After a hearing, enter declaratory judgment that the Town of Milton can comply with the MBTA Communities Act, G.L. 40A Sec. 3A and its Regulations, 760 CMR 72.02, by adopting a zoning ordinance or bylaw that under the statute's express wording and the express wording of those, now effective, regulations adopted by EOHLC itself, Milton can choose to locate its multi-family zoning as an Adjacent Community based on its indisputable half-mile proximity to commuter rail stations. EOHLC's disregard of Milton's right to do so must cease so that such proposed zoning can be reviewed in the normal course.

C. After a hearing, award Milton reimbursement for its costs and attorneys' fees associated with bringing this action; and

Grant such other relief as this court deems just and equitable.

Respectfully submitted,

PLAINTIFF,
TOWN OF MILTON,

BY ITS ATTORNEYS,

Dated: May __, 2025

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[CERTIFICATE OF SERVICE AND ELECTRONIC FILING]