INSIGHTS + NEWS

Client Alert: Supreme Judicial Court Upholds MBTA Communities Act; Invalidates Noncompliant Guidelines

BY JOSEPH R. DUQUETTE • JANUARY 8, 2025

BACKGROUND

On January 8, 2025, the Massachusetts Supreme Judicial Court (SJC) issued a significant decision in *Attorney General v. Town of Milton*, SJC-13580, affirming the constitutionality of the Massachusetts Bay Transportation Authority (MBTA) Communities Act (G. L. c. 40A, § 3A). This statute mandates that municipalities with MBTA service zones establish at least one district permitting multifamily housing "as of right" near transit facilities. The case arose after Milton residents rejected a proposed zoning plan intended to comply with the Act, prompting the Attorney General to initiate the enforcement action.

KEY FINDINGS

- **Constitutionality of the Act**: The SJC upheld the MBTA Communities Act, confirming the Legislature's authority to require municipalities to adopt zoning laws that facilitate multifamily housing near transit stations. The SJC found the MBTA Communities Act underscores the state's commitment to addressing housing shortages by promoting higher-density development in transit-accessible areas and the Act's delegation of authority to the Executive Office of Housing and Livable Communities (HLC) to promulgate guidelines does not violate Art. 30 of the Massachusetts Declaration of Rights.
- **Attorney General's Enforcement Authority**: The Court affirmed that the Attorney General possesses the authority to enforce compliance with the Act through equitable relief, emphasizing the role of the Attorney General in ensuring adherence to state laws designed to promote public welfare.
- **Invalidation of Noncompliant Guidelines**: The SJC determined that the guidelines issued by HLC to implement the Act were ineffective because they were promulgated without adhering to the rulemaking procedures required by the Administrative Procedure Act (APA), G. L. c. 30A. As a result, these guidelines cannot be enforced until properly established in compliance with the APA. Importantly, the Governor's office announced that HLC is prepared to file emergency regulations by the end of this week, consistent with the SJC's decision.

IMPLICATIONS FOR MUNICIPALITIES AND DEVELOPERS

- **Municipal Compliance**: Municipalities served by the MBTA are obligated to establish zoning districts that permit multifamily housing as of right near transit facilities. The SJC made clear that compliance with the Act is mandatory and **not** a fiscal decision to be made by the municipality. Failure to comply may result in enforcement actions by the Attorney General's office.
- **Guideline Validity**: The emergency regulations will be effective immediately upon filing and for a period of three months thereafter unless they're promulgated in accordance with the rulemaking procedures in the APA.
- **Development Opportunities**: The decision reinforces opportunities for developers to pursue multifamily housing

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projects in transit-accessible areas, aligning with the state's objectives to increase housing availability.

NEXT STEPS

Developers should engage with land use counsel and municipal planning authorities to explore potential projects in anticipation of compliant zoning changes. This will help developers prepare for opportunities arising from increased housing demand in transit-accessible areas.

For more information, you may refer to the full decision, Attorney General v. Town of Milton, SJC-13580, or contact your Bowditch attorney.

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