

COMMERCIAL REAL ESTATE INSIGHT & NEWS

The Bowditch & Dewey Real Estate Blog

What Does the Town of Milton's Noncompliance Mean for Future Compliance with MBTA Communities Law?

BY JOSEPH R. DUQUETTE • MARCH 6, 2024

On October 21, 2022, the Commonwealth of Massachusetts Executive Office of Housing and Economic Development ("EOHED") issued final guidelines to the Commonwealth's 177 MBTA communities for compliance with M.G.L. c. 40A, § 3A ("Guidelines"). For those communities designated as Rapid Transit Communities under the Guidelines, such as the Town of Milton, the deadline to submit a full compliance application to the Executive Office of Housing and Living Communities ("EOHLC") was December 31, 2023.

During an interview in December 2023, sensing mounting opposition, Governor Healey warned communities against disregarding the MBTA Communities Act: "If you don't comply with the act, then you're going to see us withholding state money for any number of programs that you're used to receiving money for" … "That includes for schools, it includes for roads and bridges, it includes for a whole host of things that are important to communities."

On February 14, 2024, 54% of Milton voters decided they were willing to test the waters when they rejected the proposed zoning by-law known as "Article 1" by referendum vote. Article 1 sought to create an MBTA Communities Multi-family Overlay District to allow multi-family housing as of right in accordance with the Guidelines. Milton had been previously awarded community planning grants totaling $80,000 for technical assistance to craft the new zoning by-law, which was voted down. Shortly thereafter, EOHLC Secretary Edward M. Augustus Jr. sent Milton Town Administrator Nicholas Milano a letter notifying the town, amongst other penalties, that it is no longer eligible for a $140,800 grant for sea wall and access improvements because the grant was contingent on the town complying with the Guidelines.

Additionally, on February 27, 2024, Attorney General Andrea Joy Campbell filed suit against the Town of Milton seeking declaratory, injunctive and other relief and requesting, in part, (1) that the Attorney General is entitled to injunctive remedies to secure the Town's compliance with the Guidelines, and (2) that an injunction be entered requiring Milton to create a zoning district that complies with the Guidelines within three months of the injunction.

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The lack of zoning for multi-family housing is undoubtedly a barrier for new housing development in Massachusetts, and the outcome of this litigation will likely play a large role for future compliance with the Guidelines. The next deadline to submit a full compliance application to EOHLC pertains to Commuter Rail Communities and Adjacent Communities (130 of the remaining 165 MBTA Communities) and is **December 31, 2024.**

For applicable deadlines for your community, please refer to our prior blog post "Critical Deadline for Action Plans Approaches for Certain MBTA Communities."

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