COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2582CV00586

SIXTEEN TAXABLE INHABITANTS OF THE TOWN OF MILTON

vs.

COMMONWEALTH OF MASSACHUSETTS EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION AND DEFENDANT'S MOTION TO DISMISS

Sixteen Taxable Inhabitants of the Town of Milton (the "plaintiffs" or "Sixteen Taxpayers") filed a complaint seeking declaratory and injunctive relief to enjoin enforcement of General Laws chapter 40A, Section 3A ("§ 3A"), the Massachusetts Bay Transportation Authority ("MBTA") Communities Act, and/or regulations issued by the Executive Office of Housing and Livable Communities ("EOHLC") (760 CMR 72.00: Multi-Family Zoning Requirements for MBTA Communities). The Sixteen Taxpayers seek a preliminary injunction enjoining EOHLC from enforcing the compliance requirements set forth in § 3A and the related regulations alleging that "[i]rreparable harm will befall the Town of Milton and its taxpayers after July 14 when the Commonwealth has promised to withhold innumerable state funds and grants". The defendant opposes the motion for a preliminary injunction and moves to dismiss the Sixteen Taxpayers' complaint.[1] For the following reasons, the Sixteen Taxpayers' motion for a preliminary injunction is **DENIED** and the defendant's motion to dismiss is **ALLOWED**.

[1] On June 11, 2025, shortly before the hearing on the pending motions, the plaintiffs filed an amended complaint. On June 23, 2025, the parties stipulated that arguments made in support of, and in opposition to, dismissal of the original complaint apply equally to the amended complaint.

BACKGROUND

The EOHLC, established in 2023, is a state agency that seeks to create more homes and lower housing costs throughout Massachusetts. MassDevelopment provides funding and resources to municipalities in Massachusetts for economic development. The EOED is a cabinet-level office of the Commonwealth that provides grant funding and resources through the MassWorks Infrastructure Program to the Commonwealth's municipalities for economic development.

The Division of Local Mandates ("DLM"), an agency of the Office of the State Auditor, has authorization under G. L. c. 29, § 27C ("§ 27C"), the Massachusetts Local Mandate Statute, to conduct inquiries and issue determinations regarding the fiscal propriety of new statutes and regulations.

I. The Massachusetts Bay Transportation Communities Act

On January 14, 2021, § 3A went into effect.[2] The Legislature created § 3A to combat Massachusetts' ongoing housing crisis. Section 3A creates new zoning requirements mandating that all MBTA communities zone at least one district in which multi-family housing is permitted as of right, subject to other requirements. See G. L. c. 40A, § 3A. An "MBTA community" is defined as, among other things, "one of the 14 cities and towns as defined in section 1 of chapter 161A...." G. L. c. 40A, § 1A. Milton is one of such cities and towns.

Section 3A requires MBTA communities to

> have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right; provided, however, that such multi-family housing shall be without age restrictions and shall be suitable for families with children. For the purposes of this section, a district of reasonable size shall: (i) have a

[2] The Legislature has since amended § 3A on several occasions. See § 10 of Chapter 29 of the Acts of 2021, effective July 29, 2021, further amended by §§ 152-153 of Chapter 7 of the Acts of 2023, effective May 30, 2023, further amended by § 9 of Chapter 150 of the Acts of 2024, effective August 6, 2024, and further amended by §§ 2, 2A, 2B, and 20-26 of Chapter 238 of the Acts of 2024, effective November 20, 2024.

> minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.

G. L. c. 40A, § 3A(a)(1). An MBTA community that fails to comply with § 3A becomes ineligible for funds from the Housing Choice Initiative, the Local Capital Projects Fund, the MassWorks Infrastructure Program, and the HousingWorks Infrastructure Program. *Id.* at (b). Section 3A directs the EOHLC, in consultation with other state agencies, to promulgate regulations to determine if an MBTA community complies with § 3A. *Id.* at (c).

The EOHLC passed its final guidelines on August 17, 2023. On January 8, 2025, the Supreme Judicial Court ("SJC"), however, invalidated the guidelines because the EOHLC did not comply with the Administrative Procedure Act ("APA"). See *Attorney General* v. *Milton*, 495 Mass. 183, 185, 193-196 (2025) ("*Milton*"). The SJC otherwise found § 3A to be constitutional and that the Attorney General could enforce it. *Id.* at 185, 188-193.

II. Revised Regulations

Six days after the SJC's decision in *Milton*, EOHLC filed emergency regulations with the Secretary of the Commonwealth, and committed to adopt new regulations complying with the APA within ninety days. See 760 Code Mass. Regs. § 72.00.[3] The emergency regulations provided MBTA communities an additional six months to adopt compliant zoning bylaws, provided they filed an interim action plan with EOHLC by February 13, 2025. If a timely interim action plan was submitted, the MBTA community would have until July 14, 2025, to submit a "District Compliance Application" to EOHLC. The District Compliance Application would set forth information about current zoning, past planning for multi-family housing, and

[3] The defendants submitted a copy of the regulations with their submissions. See Appendix at 271-289.

potential locations for a multi-family zoning district, including a timeline for compliance with § 3A and EOHLC's regulations.

III. DLM Review of § 3A

The Towns of Wrentham, Middleborough, and Methuen filed written requests with DLM seeking a determination that § 3A imposed an unfunded mandate on the cities and towns required to comply with § 3A. See G. L. c. 29, § 27C.[4] In short, § 27C provides that any state rule, law, or regulation taking effect after January 1, 1981, that imposes additional costs on a city or town, excluding incidental local administration expenses, is conditional on local acceptance or full funding by the Commonwealth. *Id.*

On February 21, 2025, DLM concluded that § 3A constituted an unfunded mandate. In its letter, DLM stated that § 3A "imposes direct service or cost obligations on municipalities by the Commonwealth that amount to more than incidental local administrative expenses." DLM stated, however, that it could not determine the amount of such deficiency, in part, because EOHLC had failed to provide a fiscal impact analysis as required by chapter 30A, § 5. DLM stated such analysis would be completed when EOHLC provided its statutorily required fiscal impact analysis. DLM further indicated that affected MBTA communities could petition the Superior Court to seek exemptions from compliance pending funding or reimbursement of direct costs imposed by the statute or regulation.

Based on DLM's determination, many towns sent letters to their legislators seeking funding to comply with § 3A or an exemption from compliance.

[4] The requests pre-dated the SJC's ruling in *Milton*. DLM initially indicated that it could not make such a determination given the pending litigation.

On March 6, 2025, EOHLC sent DLM a statement regarding the fiscal impact analysis, finding that there would be no fiscal effect. Included therein was also a small business impact statement, which indicated that there would be no impact on small businesses.

IV. The Sixteen Taxpayers' Motion for Preliminary Injunction

The allegations in this matter, including the motion for preliminary injunction, are similar to the allegations and those motions that were before me in the case of Town of Duxbury v. Commonwealth of Massachusetts et al, 2583CV00303 and eight specially assigned cases[5]. In a Memorandum and Decision issued in those actions (hereinafter "MOD"), I declined to enter preliminary injunctive relief and dismissed the nine actions on the grounds that the actions failed to state any claim as a matter of law

DISCUSSION

I. Standard of Review

There are two separate, but interrelated, motions before this court: the plaintiffs' motion for a preliminary injunction, and the defendant's motion to dismiss.

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[5]Together with Duxbury, the following matters involving the MBTA Communities Act have been specially assigned to this court:

- Ten Taxable Inhabitants of Hamilton vs. Commonwealth of Massachusetts, et al., Suffolk Superior Court, Civil No. 2584CV01171;
- Town of Hanson, et al. vs. Commonwealth of Massachusetts, et al., Plymouth Superior Court, Civil No. 2583CV00209;
- Town of Holden, et al. vs. Commonwealth of Massachusetts, et al., Worcester Superior Court, Civil No. 2585CV00431;
- Town of Marshfield, et al. vs. Commonwealth of Massachusetts, et al., Plymouth Superior Court, Civil No. 2583CV00184;
- Town of Middleton, et al. vs. Commonwealth of Massachusetts, et al., Essex Superior Court, Civil No. 2577CV00249;
- Town of Wenham, et al. vs. Commonwealth of Massachusetts, Essex Superior Court, Civil No. 2577CV00430;
- Town of Weston vs. Commonwealth of Massachusetts, Middlesex Superior Court, Civil No. 2581CV00917; and
- Town of Wrentham, et al. vs. Commonwealth of Massachusetts, et al., Norfolk Superior Court, Civil No. 2582CV00259

As to the plaintiffs' motion, a party seeking a preliminary injunction must demonstrate "(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction" (citations omitted). *Garcia* v. *Department of Hous. and Community Dev.*, 480 Mass. 736, 747 (2018). "Where a party seeks to enjoin government action, the judge also must determine that the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public" (quotations and citations omitted). *Id.* at 747.

As to the defendant's motion, to survive a motion to dismiss for failure to state a claim pursuant to Mass. R. Civ. P. 12 (b)(6), a complaint must contain "factual 'allegations plausibly suggesting (not merely consistent with)' an entitlement to relief." *Iannacchino* v. *Ford Motor Co.*, 451 Mass. 623, 636 (2008), quoting *Bell Atl. Corp.* v. *Twombly*, 550 U.S. 544, 557 (2007). The factual allegations must be "more than labels and conclusions" and "raise a right to relief above the speculative level." *Iannacchino*, 451 Mass. at 636, quoting *Bell Atl. Corp.*, 550 U.S. at 555. In assessing a complaint under Rule 12(b)(6), the court accepts as true the well-pleaded factual allegations in the complaint and draws all reasonable inferences in the claimant's favor. See *Fairhaven Hous. Auth.* v. *Commonwealth*, 493 Mass. 27, 30 (2023). The extent of the court's review generally is limited to the factual allegations in the complaint and any facts contained in any attached exhibits. See *Eigerman* v. *Putnam Invs., Inc.*, 450 Mass. 281, 285 n.6 (2007). However, the court also may consider matters of public record, items in the record of the case, and documents cited and relied upon in the complaint. See *Marram* v. *Kobrick Offshore Fund, Ltd*, 442 Mass. 43, 45 n.4 (2004); *Schaer* v. *Brandeis Univ.*, 432 Mass. 474, 477 (2000).

As with the Municipalities in the MOD, the Sixteen Taxpayers cannot show a likelihood of success on the merits if their complaints are dismissed for failure to state a claim under Mass. R. Civ. P. 12(b)(6). Thus, dismissal of their claims would require denial of their motion for a preliminary injunction.

II. Unfunded Mandate Analysis

The unfunded mandate conclusions reached in the MOD for the related actions apply equally here. 1) § 3A is not an unfunded mandate; 2) the Sixteen Taxpayers have failed to identify nonspeculative direct costs requiring appropriation for anticipated infrastructure costs; 3) the court is not bound by DLM's determination; 4) § 3A is a zoning regulation that does not compel construction; and 5) the Town of Milton has recourse in pursuing grants specifically intended to fund infrastructure considerations upon compliance with § 3A.

Given such conclusions, the Sixteen Taxpayers have not shown a likelihood of success on the merits of their claims that § 3A constitutes an unfunded mandate as to costs alleged by the Sixteen Taxpayer, both for the costs for designating a § 3A district[6] and for possible infrastructure costs[7]. Thus, the defendant's motion to dismiss as to the plaintiffs' unfunded mandate argument is therefore **ALLOWED**. Given such conclusion, the plaintiffs have not shown a likelihood of success on the merits of their claims that § 3A constitutes an unfunded mandate. Their motion for a preliminary injunction is therefore **DENIED** as to this argument.

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[6] The Amended Complaint alleges: i) "The Act...have and/or will impose direct and non-incidental costs for zoning, planning, special town meetings, fire, public safety, schools, public works and other required costs and services necessitated by legislative and regulatory unfunded mandates." See Amended Complaint, ¶ 40; and ii) The Sixteen Taxpayers also allege the projected cost of $70,000 to $100,00 for an economic feasibility analysis. See Amended Complaint, ¶ 43.

[7] The Amended Complaint alleges: "Such expenses include the expenditure of hundreds of millions of dollars in required infrastructure upgrade, capital costs and increases in annual operating expenses across all departments, particularly for public safety, schools and health and human service." See Amended Complaint, ¶ 117

III. Standing

The Sixteen Taxpayers, as a group of ten taxable inhabitants of the Town of Milton, have standing under the Unfunded Mandate Law, G.L. c. 29, § 27C(e). However, the standing conferred by such statute does not extend to the balance of the relief sought in this action beyond the unfunded mandate issue. The court agrees with EOHLC's analysis on pages 10 to 12 of its Memorandum (Paper No. 5.1) that the plaintiffs lack standing beyond that conferred by G.L. c. 29, § 27C(e).

The allegations in the Amended Verified Compliant (Paper No. 6) docketed on June 11, 2025 do not change the court's position. See Amended Complaint ¶ 6 ("Two of the 16 Taxpayer Plaintiffs...have homes and own property within the proposed 25% per cent plan zoning map....) and ¶ 7 (Seven of the 16 Taxpayer Plaintiffs...are current Town of Milton Town Meeting Members...) The court disagrees that the Amended Complaint alleges sufficient facts showing standing to property owners or that the Declaratory Judgment Act gives standing to each of the 279 individual members of Town Meeting to seek the relief sought in this action. See Amended Reply Brief – Paper No. 8 ("It is contrary to the purposes of the Declaratory Judgment Act to deprive Town Meeting Members of the Court's guidance as to what is lawful or unlawful with respect to administrative restrictions").

Thus, the defendant's motion to dismiss for lack of standing is therefore **ALLOWED**. In the absence of standing, the plaintiffs' motion for a preliminary injunction is therefore **DENIED**.

IV. Milton's Status as Rapid Transit Community versus Adjacent Community

The Sixteen Taxpayers allege that Milton should be designated an Adjacent Community versus a Rapid Transit Community. Even if the Sixteen Taxpayers had standing on this issue, the court agrees with EOHLC that the mere use of a "rapid transit" category is not arbitrary and

capricious simply because that category is not found in § 3A (adjacent community is not found in § 3A either). The court agrees that the four community categories set forth in 760 CMR 72.00 represents EOHLC's application of its substantive expertise to "tailor the [regulations] to fit the 'real-word' conditions of each MBTA community affected by the act." *Attorney General* v. *Town of Milton*, 495 Mass. 183, 185 (2025).

Thus, the defendant's motion to dismiss as to the plaintiffs' arbitrary and capricious argument is therefore **ALLOWED**. Given such conclusion, the plaintiffs have not shown a likelihood of success on the merits of their claims that the applicable regulations are arbitrary and capricious. Their motion for a preliminary injunction is therefore **DENIED** as to this argument.

ORDER

For the aforementioned reasons, the Sixteen Taxpayers' motion for a preliminary injunction is **DENIED**[8] and the defendant's motion to dismiss is **ALLOWED**.

Mark C. Gildea

June 25, 2025

Mark C. Gildea
Justice of the Superior Court

[8] On June 23, 2025, the parties stipulated as well that since this matter was argued, Milton's Town Meeting adopted Article 6 at its Special Town Meeting of June 16, 2025. Article 6 creates an overlay district intended to meet the criteria set forth for Milton in 760 CMR 72.00, including a minimum multi-family unit capacity of 25%. The passage of such Article calls into question the claim of the Sixteen Taxpayers that the Town "is not going to be able to create such a district by the new July 14, 2025 deadline" and any need for the requested injunctive relief staying the July 14, 2025 deadline for Milton to submit its Zoning Plan.