

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2385CV00918

CENTRAL MASSACHUSETTS HOUSING ALLIANCE, INC. & others¹

vs.

TOWN OF HOLDEN & others²

**MEMORANDUM OF DECISION AND ORDER ON DEFENDANTS' MOTION TO
DISMISS**

The plaintiffs, Central Massachusetts Housing Alliance, Inc. (CMHA), Lydiana Morales (Morales), and Jennifer Lish (Lish) (together, plaintiffs), commenced this action against the defendants, the Town of Holden (town or Holden), the Board of Selectmen of the Town of Holden (select board), and Peter Lukes, in his official capacity as Holden Town Manager (Lukes) (together, defendants), seeking declaratory relief under G. L. c. 231A. The plaintiffs request a declaration that “compliance with subsection (a)(1) of [G. L. c. 40A, § 3A, the MBTA Communities Zoning Law (§3A)] is mandatory for all MBTA Communities and merely incurring the loss of funding grants pursuant to subsection (b) of [§3A] does not absolve any MBTA Community of its obligation to comply with subsection (a)(1).”

The defendants filed a motion to dismiss pursuant to Mass. R. Civ. P. 12(b)(1) and (6). The plaintiffs filed an opposition to the motion and the court held a hearing on the matter on November 7, 2023.³ Because the plaintiffs lack standing, the defendants' motion to dismiss is

ALLOWED.

¹ Lydiana Morales and Jennifer Lish

² Board of Selectmen of the Town of Holden; and Peter Lukes, in his official capacity as Holden Town Manager

³ The court has reviewed and considered the amici curiae brief filed by Citizens' Housing and Planning Association and Massachusetts Association of Community Development Corporations in support of the plaintiffs and in opposition to the defendants' motion to dismiss.

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BACKGROUND

This case was filed initially with the Supreme Judicial Court. On August 18, 2023, the Supreme Judicial Court transferred the case to Worcester Superior Court.

The following facts are alleged in the complaint and/or found in the materials attached thereto.

1. Parties

The town is located in Worcester County. It is an “MBTA Community” under the statute. See G. L. c. 40A, § 1A; G. L. c. 161A, § 1. The select board is the duly elected policymaking body of the town, comprised of five members elected to three-year terms. Lukes is Town Manager and is being sued in his official capacity.

CMHA is a Massachusetts non-profit corporation with a principal place of business in the City of Worcester. It seeks to eliminate homelessness in Worcester County by providing services to families that are homeless or at risk of homelessness, leading efforts to increase and preserve the supply of affordable housing, and educating the public about homelessness and its causes. Among its array of services, CMHA provides an emergency shelter program in Worcester County that houses families at risk of homelessness. It provides those families with assistance designed to foster long-term housing stability, including help with housing search and placement.

Morales is an adult resident of Westborough in Worcester County. She is a multi-racial Hispanic woman who is disabled, unable to work, and low-income. In October 2022, Morales and her minor child had to leave their apartment in the City of Worcester because she was no longer able to afford the rent. They were unable to find affordable rental housing and remained without stable shelter until February 2023. That month, Morales and her child moved to a Westborough emergency assistance family shelter. They still reside there but can do so only until

December 2023. Morales has been searching for in-state rental housing for months. She is willing to move anywhere in the Commonwealth, including Holden, but cannot find anything in her budget.

Lish is an adult who resides in Holden, having owned a home there since she purchased it in 1999. She is concerned that the town's interpretation of § 3A will cause the town and its residents (like her), to lose the benefits of complying with § 3A, including funding grant eligibility, increased housing infrastructure, a larger and more diverse population, and a greater tax base.

2. Housing in Massachusetts

Both CMHA and Morales, who have been searching frequently for affordable housing placements, have encountered a dearth of affordable rental housing in Holden. The affordable housing crisis strains CMHA's resources and impairs its mission. Homelessness has increased in the City of Worcester, more residents are at risk in Worcester County, and the demand for CMHA's services has increased, making it more difficult for CMHA to find housing for its shelter residents. As a result, CMHA has had to spend more resources on shelter and housing placement than it otherwise would, siphoning resources away from other activities like educational and skill enhancement programming for families in shelters.

Morales's housing instability has been perpetuated by the statewide lack of affordable housing. Since leaving her home in October 2022 because she could not afford the rent, Morales has been under constant stress trying to secure affordable rental housing and meet her child's basic needs. She has experience food insecurity and delayed medical treatment, often skipping meals and postponing medical appointments to save money for rent payments. She has suffered

from lack of sleep, heightened anxiety, and more frequent flare ups of her mental health symptoms.

The defendants have failed to comply with § 3A, with town officials stating repeatedly that the town is exercising its option to not comply. The town missed the January 2023 deadline to file an action plan and continues to do so. The Executive Office of Housing and Livable Communities (HLC) has designated the town as “non-compliant.”

DISCUSSION

1. Standard of Review

“The declaratory judgment act, G. L. c. 231A, § 1, authorizes courts to make binding declarations of right, duty, status and other legal relations where the parties present an actual controversy” (quotations omitted). *Kligler v. Attorney General*, 491 Mass. 38, 44 (2022). “Although the . . . standing requirement[] should be liberally construed in accord with the provisions of G. L. c. 231A, § 9, there are limits to the matters which can be heard in an action for a declaratory judgment.” *Massachusetts Ass’n of Indep. Ins. Agents & Brokers, Inc. v. Commissioner of Ins.*, 373 Mass. 290, 293 (1977). Chapter 231A “does not provide an independent statutory basis for standing.” *Enos v. Secretary of Env’tl. Affairs*, 432 Mass. 132, 135 (2000). “[C]ontroversy in the abstract is not sufficient to allow a plaintiff to invoke the declaratory judgment remedy.” *Massachusetts Ass’n of Indep. Ins. Agents & Brokers*, 373 Mass. at 293.

“[S]tanding [is] an issue of subject matter jurisdiction.” *Ginther v. Commissioner of Ins.*, 427 Mass. 319, 322 (1998). “A defendant may properly challenge a plaintiff’s standing to raise a claim by bringing a motion to dismiss under Mass. R. Civ. P. 12(b)(1) or (6).” *Id.* To survive a motion to dismiss, the complaint must make “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). Under either subsection, the court "accept[s] the factual allegations in the plaintiffs' complaint, as well as any favorable inferences reasonably drawn from them, as true." *Ginther*, 427 Mass. at 322. The plaintiffs have the "burden of proving jurisdictional facts." *Williams v. Episcopal Diocese of Mass.*, 436 Mass. 574, 577 n.2 (2002).

"Injuries that are speculative, remote, and indirect are insufficient to confer standing." *Ginther*, 427 Mass. at 323. "[T]he complained of injury must be a direct consequence of the complained of action." *Id.* In addition, "[a] party has standing when it can allege an injury within the area of concern of the statute . . . under which the injurious action has occurred." *Massachusetts Ass'n of Indep. Ins. Agents & Brokers*, 373 Mass. at 293. "Whether a plaintiff's injury falls within the so-called 'zone of interests' of a statute . . . depends upon a number of factors, including the language of the statute in issue and the Legislature's intent and purpose in enacting the statute" (quotations and citations omitted). *In the Matter of Expungement*, 489 Mass. 67, 73 (2022).

2. G. L. c. 40A, § 3A

The statute at issue here became effective January 14, 2021. It states,⁴ in relevant part, that "[a]n MBTA community shall have a zoning ordinance or by-law that provides for at least 1

⁴ The statute provides in its entirety:

(a)(1) An MBTA community shall 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 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.

(b) An MBTA community that fails to comply with this section shall not be eligible for funds from: (i) the Housing Choice Initiative as described by the governor in a message to the general court dated December

district of reasonable size in which multi-family housing is permitted as of right.” § 3A(a)(1). The multi-family housing cannot be age-restricted and must be suitable for families with children. § 3A(a)(1). It explains that “a district of reasonable size” must “have a minimum gross density of 15 units per acre,” subject to certain limitations, and must “be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.” § 3A(a)(1).

According to subsection (b), “[a]n MBTA community that fails to comply with this section shall not be eligible for funds” further described in the statute. Subsection (c) states that “guidelines to determine if an MBTA community is in compliance with this section” “shall” be promulgated by “[t]he executive office of housing and livable communities, in consultation with the executive office of economic development, the Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation.”

3. Guidelines

HLC is the entity currently responsible for promulgating guidelines under § 3A. HLC promulgated final guidelines on August 10, 2022, which were revised on October 21, 2022. The guidelines provide a series of deadlines for MBTA Communities to meet to achieve compliance with § 3A. The first step is for such a community to submit by January 31, 2023, an action plan detailing how the community plans to create the necessary zoning district. Final compliance is achieved when a community has a multi-family zoning district that complies with § 3A.

11, 2017; (ii) the Local Capital Projects Fund established in section 2E of chapter 29; (iii) the MassWorks infrastructure program established in section 63 of chapter 23A, or (iv) the HousingWorks infrastructure program established in section 27 of chapter 23B.

(c) The executive office of housing and livable communities, in consultation with the executive office of economic development, the Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation, shall promulgate guidelines to determine if an MBTA community is in compliance with this section.

G. L. c. 40A, § 3A. It should be noted that although there is a subsection (a)(1), there is no (a)(2). See *id.*

4. Lack of Standing

The complaint makes clear that CMHA and Morales are overburdened by a lack of affordable housing in Massachusetts. But the complaint contains no allegations connecting the town's failure to comply with § 3A to any harm or injury specific to CMHA and Morales. Rather, CMHA and Morales allege a general, indirect harm that they, like many other individuals and organizations across Massachusetts, suffer from the lack of affordable housing in the state. CMHA merely operates in Worcester County, where the town is located, while Morales lives in in Westborough, a different town in the same county. Holden is only one town among many in Massachusetts where Morales would consider living, if she could find affordable rent.

Lish has a more direct link to Holden: she has owned a home in town and lived there since 1999. But the complaint similarly fails to set forth facts alleging a specific and plausible harm she suffers from the town's failure to comply with § 3A. Lish alleges broad concerns that all of the town's residents may share: that noncompliance could result in the loss of benefits such as funding grant eligibility, increased housing infrastructure, a larger and more diverse population, and a greater tax base. Such speculation does not allege a specific injury that would establish Lish's standing.⁵ See *Kennedy v. Commonwealth*, 92 Mass. App. Ct. 644, 648-649 (2018).

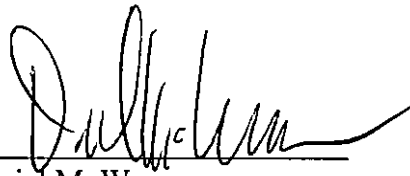
⁵ Because this matter can be disposed of due to the plaintiffs' lack of standing, the court need not discuss in detail the other bases for dismissal offered by the defendants (including ripeness, lack of actual controversy, the plaintiffs' interpretation of § 3A, and failure to comply with Mass. R. Civ. P. 8). However, the court notes that it appears that the defendants are arguably correct that § 3A contains an enforcement mechanism/consequence in that if an MBTA community fails to create a plan and comply with subsection (a), that MBTA community loses its access to the funding set forth in subsection (b).

In addition, it is also worth noting that on March 15, 2023, the Attorney General issued a legal advisory stating that ineligibility for funding grants is an administrative consequence of noncompliance and that § 3A does not provide a mechanism for MBTA Communities to opt out. The Attorney General stated that "Communities that fail to comply with [§ 3A] may be subject to civil enforcement action" and cited the following: "G. L. c. 12, § 10 (the Attorney General shall take notice of 'all violations of law' and bring 'such . . . civil proceedings before the appropriate state and federal courts . . . as [s]he may deem to be for the public interest'); G. L. c. 231A, § 2 et seq. (authorizing declaratory judgment actions to 'secure determinations of right, duty, status, or other legal relations under . . .

ORDER

For the foregoing reasons, it is **ORDERED** that the defendants' motion to dismiss is **ALLOWED**.

DATED: November 30, 2023



Daniel M. Wrenn
Justice of the Superior Court

statute[s]').” Finally, the Attorney General stated that noncompliance “also risk[s] liability under federal and state fair housing laws.”