

On Sep 26, 2024, at 10:08 AM, Mary Foley> wrote:

Gail and Tiffany, would you please forward to MBTA Task Force members and post to the MBTA Task Force webpage under Correspondence? Thanks.

Hello MBTA Task Force Members,

I want to thank you for your countless hours of service to our Town. I know that you have each spent many hours working on the objectives and deliverables that the Planning Board and Select Board have given to you.

I will be sending 2 emails to you in the short-term. This first one addresses some bigger and broader questions that I have. The second will be more specific to the Draft MBTA Overlay Bylaw submitted to the State for review.

With most of these questions, Town Counsel input and answers will be very important so that residents may have a clear understanding of these various issues. I have submitted some of these questions to the State, and will let you know what I hear back.

Thank you for your review and responses back on these questions.

40A 3A

1. The law states -

Section 3A. (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.**"

Question(s):

- "**shall be without age restriction**" and "**shall be suitable for families**". Does this mean that 55+, 62+, 1 bedroom units can not be developed under MBTA Overlay Bylaw?

- If the above can be allowed to be built under this Bylaw, how does that happen without following the criteria?

- What is the State definition of "suitable for families"? Is it number of bedrooms? Requiring Open Space for yards?

- How does a Town determine a project is without age restrictions and suitable for families?

- Does this determination happen with the Planning Board? The Building Inspector?

2. The law states -

Section 3A. (b) "An Mbita community that fails to comply with this section **shall** not be eligible for funds from...". And lists these four funds:

- (i) Housing Choice Initiative
- (ii) Local Capital Projects Fund
- (iii) MassWorks
- (iv) HousingWorks

- "**shall** not be eligible for funds **from**...". Only four funds are listed in the law.

Question(s):

- On what grounds are other funds added and used as a penalty for non-compliance to this Law?

3. The law states -

Section 3A (c) "The department of housing and community development, in consultation with 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.**"

- This law defines that Guidelines are only to be used to **determine compliance** with what is laid out in the four paragraph law. Period.

Question(s):

- How can Guidelines be used as an extension of the law to **add** requirements that are not **in** the Law?
- How can the State add-on the ability to sue a Town for non-compliance when this is not **in** the Law?

4. Housing Authority land -

- A Manchester Housing Authority site is Deed Restricted for elderly housing.

Question(s):

- Can Deed Restricted land be used within an MBTA Overlay District to generate market rate housing suitable for families and not age restricted?
- If so, how does this happen? What happens to the Deed Restriction of the land?
- Does EOHLC have a copy of the Deed Restriction with the Manchester Application sent to the State for MBTA Zoning?
- Does voting for an MBTA Overlay on Deed Restricted land negate the Deed Restriction?

5. It has been stated at Public Meetings that if Manchester does not pass this State MBTA Overlay Bylaw, that the State can then come to Manchester and create MBTA Overlay zones in Manchester.

Question(s):

- **Where in the law is this stated?**
- Where in the law is this authority given?

6. **Can a Variance be applied for under By-Right zoning, when using MBTA Overlay Bylaw?**

7. **Question using an example: A triple decker is built using the MBTA Overlay Bylaw. A year later the land and units sell to a new buyer. Can the new buyer revert this property back to a Single Family similarly by-right?**

8. **An MBTA Multi-family Overlay Bylaw can pass at Town Meeting with a Simple Majority vote.**

Question(s):

- **What are the steps the Town would need to take to remove an MBTA Overlay Bylaw?**

9. **Site Plan Review and Design Review. There are many legal reviews, articles and Town Counsel opinions that clearly state - Design and Site Plan Review cannot be used as a tool to impose discretionary review on As-of-Right uses. Prudential Ins. Co. of Am. v. Board of Appeals Westwood. Site Plan Review is not even mentioned in the Zoning Act. An applicant may have Design and Site Plan review, but as long as the project conforms with all relevant provisions of the By-Law, the project may proceed. It also takes a different procedural path than a Special Permit, and Site Plan is linked to the Building Permit.**

Question(s):

- **Is this stated clearly in the Draft Bylaw that Site Plan and Design Review are not tools or processes to impose any discretionary requirements?**

- Does this also mean that since no Special Permit will be required under MBTA Overlay **Zoning for the following** (though Special Permit is required for all of our other zoning on these), that there is no standing to ensure compliance with the specific criteria in these Bylaws?:

- Earth Removal and Filling
- Flood Control District
- Ground and Surface Water Overlay Protections Districts
- Does Site Plan Review require a simple-majority vote of the Planning Board and not a super majority vote, as a Special Permit does?

10. KP Law P.C., which is also Manchester's Town Counsel, has submitted Brief of Amicus Curiae on behalf of Hamilton and Middleborough in support of the Town of Milton. Our own

Town Counsel, argues for Hamilton - that the AG does not possess the authority to enforce **this statute; this will overburden public school system, traffic, water and sewer infrastructure,** disturbances to wetlands and areas subject to flooding and habitats, and more.

- If our Town Counsel has submitted for other, neighboring towns, what is their opinion on the impacts for Manchester?
- Has Town Counsel been asked to weigh in on the effects to Manchester of this MBTA Multi-Family Overlay mandate?

11. A complete Fiscal Impact Analysis is needed before residents are asked to vote on such a big zoning change.

Question(s)

- **What is the Task Force providing for residents with regards to this Financial Analysis?**

- Middleborough has submitted a letter to the State Auditor asking for a determination of the fiscal impact, including expenses, direct and indirect with respect to Massachusetts General Law Chapter 40A Sec 3A. **The reason for this request is so that residents will have critical information that will explain how all extraordinary costs resulting from the Act will be paid by the Commonwealth. Has Manchester submitted such a request?**

Thank you again for answering these questions.

Mary Foley