

P.O. Box 1149
Sterling, MA 01564-1149
21 March 2023

Attorney General Andrea Campbell
1 Ashburton Place, 20th Floor
Boston, MA 02108

RE: Mass. Gen. Laws Ch. 40A, Sec. 3A

Dear Attorney General Campbell,

In 2022 the Massachusetts Department of Housing and Community Development (DHCD) promulgated 17 pages of completely arbitrary and capricious so called 'Guidelines' (see link, below) in an effort to extort the many so-called 'MBTA Communities' into creating 'Multifamily affordable housing zoning districts.' In other words, to do what DHCD wants or face the cut-off of three (3) state funding sources. The REAL villains behind all this are the gutless cretins constituting the Massachusetts Legislature. In drafting Mass. Gen. Laws Ch. 40A, Section 3A they failed to set forth any meaningful limits, standards, parameters, or definitions because they did not want to face any blowback. In true cowardly fashion they directed DHCD to 'promulgate' the 'Guidelines.'

The DHCD "Guidelines Team," in turn, vomited out the 17 pages' worth of completely arbitrary and capricious junk. It is not inaccurate to say that that 'Team' pulled the 'Guidelines' entirely out of their asses. The so-called 'MBTA Communities' willing to prostitute themselves under those 'Guidelines,' in return for purported state funding that can be limited or zeroed-out by the very same gutless Legislature in any future budget, face dire economic, infrastructure, schooling, transportation, traffic, water, and sewer consequences from high density so-called 'affordable housing.'

For the definition of so-called 'MBTA communities' see Mass. Gen. Laws Ch. 161A, Section 1 -- <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXII/Chapter161A/Section1>

Massachusetts General Laws Ch. 40A, Section 3A provides:

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

[Subsection (c) effective until July 29, 2021. For text effective July 29, 2021, see below.]

(c) The department, 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.

[Subsection (c) as amended by 2021, 29, Sec. 10 effective July 29, 2021. For text effective until July 29, 2021, see above.]

(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” (emphasis added).

Section 3A refers to “**An MBTA community,**” NOT “All MBTA communities.” It is clear from the language actually employed, therefore, that **ONLY AN** ‘MBTA community’ that has land 0.5 miles or closer to one of the relevant stations or terminals is subject to the ‘Multifamily’ districting dictates and that Sec. 3A is **not “applicable”** to municipalities that have no land within that specified proximity to a pertinent station or terminal.

The Department of Housing and Community Development ignored and subverted that clear language and the clear legislative intent in its so-called ‘Guidelines’ by attempting to extort ALL ‘MBTA communities’ into adopting ‘Multifamily’ zoning districts, even the cities and towns having NO land 0.5 miles or closer to any relevant station or terminal.

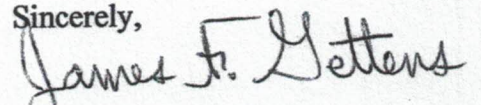
SEE: <https://www.mass.gov/doc/data-sources-and-methodology-document-link/download>

The Town of Sterling, where I reside, is a so-called ‘MBTA community’ having NO land 0.5 miles or closer to any station or terminal referred to in Section 3A. The Town of Sterling, therefore, and other cities and towns like it, ARE NOT subject to the bogus DHCD ‘Guidelines’ referred to above.

The **ONLY** statutory sanction permitted against any city or town upholding its territorial integrity by refusing to implement those bogus DHCD ‘Guidelines’ is the cut-off of funds referred to in Sec. 3A(b). Your threats to impose additional sanctions constitute empty bluster.

I applaud the four (4) Massachusetts municipalities resisting your gasbag threats.

Sincerely,


James F. Gettens, Esq.

cc:

Peter Lukes, Town Manager, Holden, MA
Select Board, Town of Middleborough, MA
Town Planner, Sterling, MA
Greg Vasil, CEO, Greater Boston Real Estate Board