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February 21, 2025

Secretary Ed Augustus
Executive Office of Housing and Livable Communities
100 Cambridge Street, Suite 300
Boston, MA 02114

Re: Town of Milton's Comments on 760 CMR 72.00

Dear Secretary Augustus:

Please find enclosed the Town of Milton's comments on 760 CMR 72.00 MULTI-FAMILY ZONING REQUIREMENT FOR MBTA COMMUNITIES.

The Town of Milton finds itself uniquely affected by the Executive Office of Housing and Livable Communities' ("EOHLC") Regulations and its previously issued Guidelines because its primary transit access is a limited capacity, legacy trolley system that connects two larger transportation hubs. The Town has long stated its intention to comply with the MBTA Communities Act but has simultaneously expressed its rejection of how the Town is impacted by the Guidelines/Regulations.

MGL Chapter 40A, section 3A states, "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...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.

760 CMR 72.00 uses the following definition: "Subway station" means any of the stops along the Massachusetts Bay Transportation Authority Red Line, Green Line, Orange Line, or Blue Line, including but not limited to the Mattapan High Speed Line and any extensions to such lines.

This definition in the regulations conflicts with the statute and categorizes the Mattapan High Speed Line alongside four transit lines that each operate partly underground while the Mattapan High Speed Line travels exclusively above ground.

As the Town wrote in its brief in *Attorney General v. Town of Milton*:

The plain meaning of “subway,” consistently reflected in dictionary definitions, is a “railway” that runs “partly or entirely underground.” See Webster’s Third New Int’l Dictionary (“a usually electric railway built partly or entirely underground and usually for local transit in metropolitan areas”); The American Heritage Dictionary (defining subway as “an underground urban railroad, usually operated by electricity”); Concise Oxford English Dictionary (defining subway as “an underground railway”).

This definition of subway also does not account for significant differences between the Mattapan High Speed Line and the other identified subways. It ignores historical precedent, infrastructural characteristics, and policy history making this definition neither methodologically sound nor administratively justifiable.

Trolley History

The Mattapan High Speed Line, operational since 1928, functions as a light rail trolley service rather than a rapid transit system. Its use of PCC (Presidents’ Conference Committee) streetcars—first introduced in the 1940s—demonstrates its reliance on an antiquated yet distinct mode of transport that fundamentally diverges from subway operations. Unlike subway networks, which operate within fully grade-separated and subterranean environments, this trolley system remains at surface level, necessitating interaction with vehicular and pedestrian traffic at at-grade crossings. The infrastructural and operational attributes of this line, therefore, do not conform to the definition of a subway as commonly understood within transportation planning.

From a legal and administrative perspective, precedents such as *Daniels-Finegold v. Massachusetts Bay Transportation Authority* have reinforced the conceptual and operational distinction between the Mattapan Line and subway services. The MBTA itself has consistently acknowledged this differentiation, even in recent public documents issued in 2019 where the MBTA describes the Mattapan Trolley as connecting to the Red Line (not an extension of the Red Line), to many bus routes, and to the Neponset Greenway. Such explicit institutional recognition further undermines any justification for classifying this service as a subway.

<https://cdn.mbtta.com/sites/default/files/projects/mattapan-high-speed-line/mattapan-line-public-meetings-spring2019-accessible.pdf>

Additionally, the MBTA once proposed an extension of the Red Line subway from Ashmont to Mattapan in the 1960s that was ultimately abandoned. As a result, the Mattapan High Speed Line has remained largely unchanged since its inception substantiates its classification as a heritage trolley rather than an integral extension of the subway system.

Mattapan Trolley Investment

Compounding the misclassification of the Mattapan High Speed Line is the persistent pattern of underinvestment and systemic neglect that has contributed to its decline in service quality. Over several decades, the MBTA has failed to adequately modernize infrastructure, replace aging rolling stock, or implement service enhancements commensurate with regional transit demands. The reliance on historic PCC streetcars—all of which have exceeded their intended operational lifespan—exemplifies a broader reluctance to integrate this transit mode into a forward-looking mobility strategy. This stagnation has resulted in increasingly unreliable service, mechanical failures, and prolonged service disruptions that

disproportionately affect environmental justice, transit-dependent populations in Mattapan, Milton, and Dorchester. The lack of capital investment not only undermines the efficiency of this transit link but also exacerbates transit inequities within the MBTA network, rendering the classification of the line as a "subway" even more untenable.

The MBTA has given no clear indication when, or even if at all, the Mattapan Line Transformation project will resume.

Level of Service and Reasonable Size

760 CMR 72.05 Determining "Reasonable Size" groups communities into different categories based on the level of transit access EOHLC deems each to have. The Town objects to these classifications because EOHLC provides no methodology or background information that explains how EOHLC arrived at these arbitrary percentages.

All rapid transit communities are treated equally whether they have multiple transit lines that provide direct access to Boston or no direct access. For example, Newton has both commuter rail and subway service and is classified as rapid transit. Milton has neither a commuter rail nor a subway and is classified as rapid transit. Even if the Town were to accept EOHLC's definition of subway, the level of transit access and capacity in Milton pales significantly in comparison to each of the other rapid transit communities, except for Lynn and Chelsea which like Milton have no subway.

In addition, each trolley has capacity akin to a 40-foot bus with approximately 38 seats available on each car; however, the line has far less reliable and consistent service with aging infrastructure, vehicles that are far beyond their intended useful life, and chronically underfunded investment. The Mattapan Line Transformation Project to invest in the rail infrastructure and equipment has lagged far behind schedule and it is unclear whether the MBTA is continuing to work on the project at all. The last public meeting was held on June 20, 2023, which anticipated the 15% design would be completed in Fall/Winter 2023/24, but there is no public indication if this milestone has been achieved by the MBTA.

The definitions and classifications do not sufficiently account for varying levels of service across the different subway lines, nor do they account for the varying levels of access to job centers that lines provide. Passengers on the Mattapan High Speed Line do not have a single seat ride into Boston, Somerville, or Cambridge or other major job centers; rather the Mattapan High Speed Line connects riders to a bus station (Mattapan Square) and a bus / Red Line Station (Ashmont). A minimum two-seat ride is required to reach downtown Boston compared to each of the other lines that provide rapid, direct one-seat rides.

Further compromising EOHLC's classifications is the meaningful difference between the level of transit access found in commuter rail communities compared to Milton. Many commuter rail communities have significantly greater transit access than rapid transit communities like Milton. Needham has four commuter rail stations and the longest ride into Boston from Needham is a one-seat ride that takes approximately 45 minutes. Wellesley has three commuter rail stations that provide a one-seat ride for a similar length. Dedham has two commuter rail stations that provide a one-seat ride for less than 40 minutes.

EOHLC has not demonstrated the rationale for its decision-making nor has the classification accounted for significantly different transit access, service, and opportunity. EOHLC has also not provided the methodology for why a rapid transit community should create a district that has a zoned capacity for 25% of its housing stock. It is not clear where the 25% metric

is derived nor did EOHLC show its work in making this determination as opposed to other percentages – why not 30%, why not 20%? Commuter Rail communities are required to create a district with a zoned capacity of 15% of their housing stock. EOHLC has provided no methodology as to why there's a ten percent differential between commuter rail communities and rapid transit communities. EOHLC has greatly exceeded its authority under the statute by developing these arbitrary capacity targets.

Statute and EOHLC's Regulations

The statute's words and math applied to Milton are dispositive: The statute's term "Developable land located not more than 0.5 miles from a commuter rail station" is "applicable" to Milton.

That is dispositive because Milton has developable land located not more than 0.5 miles from three commuter rail stations. Therefore, Milton can fully comply with the statute's mandate by adopting a multi-family-zoning ordinance that provides for "at least 1 District of reasonable size" as defined by the statute itself.

Specifically, Milton will fully comply with the statute's exact wording by adopting a multi-family zoning ordinance that provides zoning for multi-family units, "with minimum gross density of 15 units per developable acre" "located not more than 0.5 miles from a commuter rail station" as the statute specifies.

The requisite statutory multi-family zoning area is 37.5 developable acres. The Fairmount, Readville, and Blue Hills Ave MBTA Commuter rail stations have a total of 37.5 acres of developable land in Milton located not more than 0.5 miles from them.

The statute's clear wording and math as applied to Milton define the required "at least 1 District of reasonable size" with total Milton Section 3A multi-family zoning to be zoning for 563 multi-family units. (i.e. 15 units per developable acre multiplied by 37.5 such acres within 0.5 miles of the three commuter rail stations). The statute's words and the statute's math govern, not EOHLC's inapposite guidelines/proposed regulations.

The effect of EOHLC's proposed regulations is to impose additional and unfunded direct service or cost obligations upon Milton that exceed "incidental local administration expenses" to comply with them [see MGL chapter 29, § 27C(c)]. Direct cost obligations include disqualification from at least thirteen grant programs other than those listed in MGL chapter 40A, § 3A(b). The proposed regulations are required to indicate, but currently fail to indicate, that municipal compliance with the regulations is voluntary as is required when unfunded direct service or cost obligations of any rule or regulation exceed incidental local administration expenses [see MGL chapter 29, § 27C(g)].

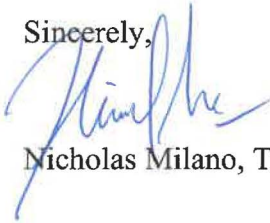
Conclusion

It is evident that the misclassification of this transit system has led to an inequitable and inconsistent application of zoning regulations under the MBTA Communities Act. Communities genuinely served by subway infrastructure face regulatory expectations that are being inappropriately extended to Milton, despite the absence of comparable transit service. This administrative inconsistency results in an arbitrary regulatory landscape.

In light of these findings, the Milton Select Board strongly urges EOHLC to reevaluate its classification of the Mattapan High Speed Line. An accurate and empirically justified designation will facilitate zoning policies that align with actual transit capabilities and investment while ensuring equitable urban planning outcomes that reflect the realities of transportation infrastructure in Milton and surrounding areas.

Thank you for your attention to this critical matter. We look forward to your response and an opportunity to discuss this issue further.

Sincerely,



Nicholas Milano, Town Administrator, on behalf of the Milton Select Board