

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
No. SJ-2024-0078

ATTORNEY GENERAL

vs.

TOWN OF MILTON and JOE ATCHUE, in his official capacity

RESERVATION AND REPORT

This matter came before the court, Georges, J., on a complaint in which the Attorney General sought declaratory, injunctive, and other relief. I hereby reserve and report this case for determination by the Supreme Judicial Court for the Commonwealth.

In her complaint, the Attorney General sought a declaration that G. L. c. 40A, § 3A (a), affirmatively obligates the Town of Milton (Town) to have a zoning bylaw providing for at least one district of reasonable size in which multi-family housing is permitted as of right, which district also satisfies the other requirements of § 3A (a) and the related "Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act" (Guidelines), issued by what is now the Executive Office of Housing and Livable Communities (EOHLC). Further, the Attorney General sought declarations to the effect that the Town has

failed to meet its obligations under the statute and the Guidelines, as well as injunctive and other relief compelling compliance.

The Attorney General moved the court to reserve and report this matter to the Supreme Judicial Court for the Commonwealth. The Town and Joe Atchue<sup>1</sup> opposed the motion, and a hearing was held. The defendants speculated that fact disputes may arise but did not point to any specific material fact in the Attorney General's complaint which they dispute. Rather, they argued that the case did not raise a novel issue, and they made a number of legal arguments, including (1) that the exclusive remedy against municipalities failing to comply with § 3A (a), is to be found in § 3A (b), which makes such municipalities ineligible for certain funds, and (2) that the Attorney General's Office lacks authority and standing to enforce compliance. In effect, the former is a legal argument that the statute permits the Town to "opt out" of the obligations described in § 3A (a) and the Guidelines.

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<sup>1</sup> Atchue is sued only in his official capacity as the Town's Building Commissioner. See Porter v. Treasurer & Collector of Taxes of Worcester, 385 Mass. 335, 343 (1982), quoting Monell v. Department of Social Servs. of the City of N.Y., 436 U.S. 658, 690 n.55 (1978) ("official-capacity suits generally represent only another way of pleading an action against an entity of which an officer is an agent").

After considering the parties' submissions, I believe that this case raises novel questions of law which are of public importance, and which are time sensitive and likely to recur, i.e., the scope of a municipality's legal obligations under G. L. c. 40A, § 3A, and under the related Guidelines, and whether the Attorney General has authority and standing to enforce compliance with the same. Therefore, in my opinion, the matter would best be decided by the full court, and as noted above, I hereby reserve and report this case for its determination.

The parties shall prepare and file in the full court a comprehensive statement of agreed facts necessary to resolve the issues raised. The statement of agreed facts shall be prepared in time for inclusion in the parties' record appendix. The failure to agree on all necessary facts could impair the court's ability to resolve the matter.

The record before the full court shall consist of the following:

1. All papers filed in SJ-2024-0078;
2. The docket sheet in SJ-2024-0078;
3. The statement of agreed facts; and
4. This reservation and report.

The Attorney General, as the plaintiff, shall be deemed the appellant, and the defendants shall be deemed the appellees.

Oral argument shall take place in October 2024 or such other time as the full court may order. The parties shall confer with the Clerk of the Supreme Judicial Court for the Commonwealth to determine a schedule for the service and filing of briefs and the date of oral argument. This matter shall otherwise proceed in all respects in accordance with the Massachusetts Rules of Appellate Procedure.

By the Court

/s/ Serge Georges, Jr.  
Serge Georges, Jr.  
Associate Justice

Entered: March 18, 2024