

# Supreme Judicial Court

FOR THE COMMONWEALTH OF MASSACHUSETTS

---

No. SJC-13580

---

The Attorney General,  
Plaintiff-Appellant,

v.

Town of Milton, *et al.*,  
Defendant-Appellees,  
(and a companion case).<sup>1</sup>

---

On A Reservation And Report By A Justice Of  
The Supreme Judicial Court For Suffolk County

---

**BRIEF OF AMICUS CURIAE MASSACHUSETTS HOUSING AND  
SHELTER ALLIANCE, INC. ET AL. IN SUPPORT OF  
PLAINTIFF-APPELLANT'S REQUEST FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

---

Matthew J. Connolly  
BBO #676954  
mconnolly@nutter.com

Valerie A. Moore  
BBO #684849  
vmoore@nutter.com

Nutter McClennen & Fish, LLP  
155 Seaport Boulevard  
Boston, Massachusetts 02110  
(617) 439-2000

Dated: September 16, 2024

---

<sup>1</sup> Att'y General v. Town of Milton, et al., SJ-  
2024-0078

## **CORPORATE DISCLOSURE**

Under Supreme Judicial Court Rule 1:21, Massachusetts Housing and Shelter Alliance, Inc. ("MHSA"), states that it is a 26 U.S.C. § 501(c)(3) not-for-profit corporation organized under the laws of the Commonwealth of Massachusetts. MHSA does not issue stock or any other form of securities and does not have any publicly owned parent, subsidiary, or affiliate companies.<sup>2</sup>

---

<sup>2</sup> A list of all amici curiae that join in this brief is set forth in Appendix A.

### **RULE 17 DISCLOSURE**

Under Mass. R. App. P. 17(c)(5), MHSA declares that: (a) no party or party's counsel authored this brief in whole or in part; (b) no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; (c) no other person or entity contributed money that was intended to fund preparing or submitting this brief; and (d) neither MHSA nor its counsel represents or has represented one of the parties to this appeal in another proceeding involving similar issues, nor were or are either of them a party or a representative of a party in a proceeding or legal transaction that is at issue in this appeal.

## TABLE OF CONTENTS

CORPORATE DISCLOSURE.....	2
RULE 17 DISCLOSURE.....	3
TABLE OF AUTHORITIES.....	5
STATEMENT OF ISSUE PRESENTED FOR REVIEW.....	8
STATEMENT OF IDENTITY AND INTEREST.....	8
ARGUMENT.....	9
I.    Introduction.....	9
II.   A housing and homelessness crisis besets the Commonwealth, especially in the Greater Boston Metropolitan Area.....	10
III.  The low availability and high cost of housing in the Commonwealth directly drives the high homelessness rate.....	13
IV.   As-of-right zoning, like that in the MBTA Communities Act, is critical to addressing the Commonwealth's housing and homelessness crisis.....	16
V.    The difference as-of-right zoning makes.....	22
CONCLUSION.....	28
CERTIFICATE OF SERVICE.....	29
CERTIFICATE OF COMPLIANCE.....	30
APPENDIX A.....	31
ADDENDUM.....	32

## TABLE OF AUTHORITIES

### CASES :

<i>Batchelder v. Allied Stores Corp.</i> , 393 Mass. 819 (1985).....	21
<i>Dufault v. Millennium Power Partners, L.P.</i> , 49 Mass. App. Ct. 137 (2000).....	25
<i>Quincy v. Planning Board of Tewksbury</i> , 39 Mass. App. Ct. 17 (1995).....	24

### STATUTES :

G.L. c. 12, § 10.....	9, 22
G.L. c. 40A.....	19
G.L. c. 40A, § 3A.....	8, 9, 19, 21, 22
G.L. c. 40A, §§ 8 and 15.....	18
G.L. c. 40A, § 9.....	22, 23, 24, 26, 27
G.L. c. 40A, § 17.....	18, 24, 25
G.L. c. 40B.....	23

### RULES :

Mass. R. App. P. 17(c) (5).....	3
---------------------------------	---

### REGULATIONS :

760 CMR 56.05.....	23
780 CMR 105.3.1.....	27

### OTHER AUTHORITIES :

Taelor Candiloro, <u>What Is the Median Down Payment by State in 2024?</u> , This Old House (June 12, 2024), <a href="https://www.thisoldhouse.com/studies/down-payment-by-state">https://www.thisoldhouse.com/ studies/down-payment-by-state</a> .....	12, 13
--	--------

Peter Ciurczak et al., <u>Homelessness in Greater Boston: Trends in the Context of Our Broader Housing Crisis</u> , Boston Indicators (Aug. 5, 2024), <a href="https://www.bostonindicators.org/reports/report-detail-pages/homelessness_and_housing">https://www.bostonindicators.org/reports/report-detail-pages/homelessness_and_housing</a> .....	10, 16
Gregg Colburn & Clayton Page Aldern, <u>Homelessness is a Housing Problem: How Structural Factors Explain U.S. Patterns</u> 9-10 (2022).....	13, 14
Executive Office of Housing and Livable Communities, <u>Emergency Assistance (EA) Family Shelter Resources and Data</u> , <a href="https://www.mass.gov/info-details/emergency-assistance-ea-family-shelter-resources-and-data#quarterly-emergency-assistance-legislative-reports-">https://www.mass.gov/info-details/emergency-assistance-ea-family-shelter-resources-and-data#quarterly-emergency-assistance-legislative-reports-</a> (last visited Sept. 13, 2024) .....	10
Federal Reserve Bank of Boston, <u>The Color of Wealth in Boston</u> (March 25, 2015), <a href="https://www.bostonfed.org/publications/one-time-pubs/color-of-wealth.aspx">https://www.bostonfed.org/publications/one-time-pubs/color-of-wealth.aspx</a> .....	12
Alex Horowitz et al., <u>How Housing Costs Drive Levels of Homelessness</u> , Pew Charitable Trusts (Aug. 22, 2023), <a href="https://www.pewtrusts.org/en/research-and-analysis/articles/2023/08/22/how-housing-costs-drive-levels-of-homelessness">https://www.pewtrusts.org/en/research-and-analysis/articles/2023/08/22/how-housing-costs-drive-levels-of-homelessness</a> .....	15, 16
HUD, <u>The 2023 Annual Homelessness Assessment Report (AHAR) to Congress</u> (Dec. 2023), <a href="https://www.huduser.gov/portal/sites/default/files/pdf/2023-ahar-part-1.Pdf">https://www.huduser.gov/portal/sites/default/files/pdf/2023-ahar-part-1.Pdf</a> .....	10
Jason Laughlin et al., <u>Homelessness is surging in Greater Boston. A new study blames the state's housing crisis</u> , Boston Globe (Aug. 9, 2024, 1:36 PM), <a href="https://www.bostonglobe.com/2024/08/09/metro/homeless-boston-shelter-migrant-teen-study">https://www.bostonglobe.com/2024/08/09/metro/homeless-boston-shelter-migrant-teen-study</a> .....	12

Andrew Mikula, Supply Stagnation: The Root Cause of Greater Boston's Housing Crisis and How to Fix It, Pioneer Institute (May 2024), <https://pioneerinstitute.org/wp-content/uploads/Supply-Stagnation-The-Root-Cause-of-Greater-Bostons-Housing-Crisis-and-How-to-Fix-It.pdf>.....12, 13

Vivi Smilgius, Report: Average rent in Boston surpasses \$3,000, Boston.com (June 20, 2023), <https://www.boston.com/real-estate/renting/2023/06/20/report-average-rent-in-boston-surpasses-3000/>.....13

Zillow - Massachusetts, <https://www.zillow.com/home-values/26/ma/> (last visited Sept. 12, 2024).....12

## **STATEMENT OF ISSUE PRESENTED FOR REVIEW**

Whether it is in the public interest for the Attorney General to address the Commonwealth's housing and homelessness crisis by enforcing the as-of-right housing requirements in the MBTA Communities Act, G.L. c. 40A, § 3A.

## **STATEMENT OF IDENTITY AND INTEREST**

MHSA is a nonprofit, public policy advocacy organization dedicated to ending homelessness in the Commonwealth. MHSA partners with over 90 community-based organizations statewide to introduce new innovations and address the systemic issues contributing to homelessness. MHSA's advocacy aims to reduce the Commonwealth's costly reliance on emergency resources and increasing recognition of the critical role of housing in the health of individuals and communities. MHSA has also introduced some of the most innovative programs in the country for ending homelessness.

MHSA submits this brief in support of the Attorney General's position that she may enforce the as-of-right requirements in the MBTA Communities Act because the requirements are an essential tool in



addressing the Commonwealth's critical housing and homelessness crisis.

## **ARGUMENT**

### **I. Introduction**

The MBTA Communities Act requires communities serviced by the Massachusetts Bay Transportation Authority ("MBTA") to have a zoning ordinance or by-law that allows multi-family housing as-of-right in a zoning district located within 0.5 miles of a transit station. G.L. c. 40A, § 3A. In support of her authority to enforce the MBTA Communities Act and the implementing guidelines issued by the Executive Office of Housing and Livable Communities ("EOHLC"), the Attorney General mainly relies on both a "general statutory mandate" (G.L. c. 12, § 10) and a "common law duty" to "represent the public interest and enforce public rights." A.G. Opening Br. at 32, 54; Reply Br. at 7-8 (quoting Comm. v. Mass. CRINC, 392 Mass. 79, 88 (1984)).

As discussed below, there is a strong public interest in as-of-right housing to address the Commonwealth's housing and homelessness crisis. The Attorney General is therefore acting well within her authority when she acts to ensure that municipalities

implement the MBTA Communities Act's zoning requirements.

## **II. A housing and homelessness crisis besets the Commonwealth, especially in the Greater Boston Metropolitan Area.**

The statistics on the Commonwealth's housing and homelessness crisis are sobering. In 2023, the Commonwealth had the 10th highest homelessness rate in the country with about 19,141 people experiencing homelessness, 27 out of every 10,000 people.<sup>3</sup> According to EOHLIC, as of September 12, 2024 there are 7,250 homeless families in the Commonwealth's shelter system.<sup>4</sup> Boston ranked second in the country among major cities, with 801 people experiencing homelessness out of every 100,000 people.<sup>5</sup> New York

---

<sup>3</sup> HUD, The 2023 Annual Homelessness Assessment Report (AHAR) to Congress (Dec. 2023), <https://www.huduser.gov/portal/sites/default/files/pdf/2023-ahar-part-1.Pdf>, at 105.

<sup>4</sup> Executive Office of Housing and Livable Communities, Emergency Assistance (EA) Family Shelter Resources and Data, <https://www.mass.gov/info-details/emergency-assistance-ea-family-shelter-resources-and-data#quarterly-emergency-assistance-legislative-reports-> (last visited Sept. 13, 2024).

<sup>5</sup> Peter Ciurczak et al., Homelessness in Greater Boston: Trends in the Context of Our Broader Housing Crisis, Boston Indicators (Aug. 5, 2024), [https://www.bostonindicators.org/reports/report-detail-pages/homelessness\\_and\\_housing](https://www.bostonindicators.org/reports/report-detail-pages/homelessness_and_housing), at 6.

City was the only city in the country that had a higher homelessness rate.<sup>6</sup>

The Greater Boston Metropolitan Area more broadly, which much of the MBTA Communities Act covers, has seen a 27 percent increase, up to almost 12,700 people, in people experiencing homelessness from 2022 to 2023.<sup>7</sup> Greater Boston is also experiencing “residential overcrowding,” which is up 55 percent since 2006.<sup>8</sup> Residential overcrowding “is an indicator of extreme housing instability” where residential properties are accommodating more people than they have legal capacity for.<sup>9</sup> While not technically homeless, people in this situation are typically on the brink of becoming homeless.

The rise in homelessness comes amid extreme shortages in housing, especially affordable housing. According to state officials, Massachusetts needs to create at least 200,000 new housing units by 2030 to

---

<sup>6</sup> Id.

<sup>7</sup> Id. at 4.

<sup>8</sup> Id. at 2.

<sup>9</sup> Id. at 7.

keep up with the existing demand.<sup>10</sup> The average Massachusetts house now costs over \$626,000,<sup>11</sup> and a median down payment for a house in Greater Boston was \$105,300 at the end of last year.<sup>12</sup> That is more than the median annual income of the region, and Zillow estimates it will take most buyers over 12 years to afford that.<sup>13</sup> When race is considered, these numbers only worsen. The Federal Reserve has found that the median net worth of black households is \$8.00.<sup>14</sup> These housing costs rank as the 7th highest metropolitan

---

<sup>10</sup> Jason Laughlin et al., Homelessness is surging in Greater Boston. A new study blames the state's housing crisis, Boston Globe (Aug. 9, 2024, 1:36 PM), <https://www.bostonglobe.com/2024/08/09/metro/homeless-boston-shelter-migrant-teen-study>.

<sup>11</sup> Zillow - Massachusetts, <https://www.zillow.com/home-values/26/ma/> (last visited Sept. 12, 2024).

<sup>12</sup> Andrew Mikula, Supply Stagnation: The Root Cause of Greater Boston's Housing Crisis and How to Fix It, Pioneer Institute (May 2024), <https://pioneerinstitute.org/wp-content/uploads/Supply-Stagnation-The-Root-Cause-of-Greater-Bostons-Housing-Crisis-and-How-to-Fix-It.pdf>, at 4; Taelor Candiloro, What Is the Median Down Payment by State in 2024?, This Old House (June 12, 2024), <https://www.thisoldhouse.com/studies/down-payment-by-state>.

<sup>13</sup> Candiloro, supra.

<sup>14</sup> Federal Reserve Bank of Boston, The Color of Wealth in Boston (March 25, 2015), <https://www.bostonfed.org/publications/one-time-pubs/color-of-wealth.aspx>, at 20.

area in the nation.<sup>15</sup> As of June 2023, the average monthly rent for an apartment in Boston rose above \$3,000 for the first time in history.<sup>16</sup> From 2010 to 2020, there was a 10.7 percent increase in the number of households in Greater Boston, while the number of housing units in the region only increased by 7.9 percent, leaving vacancy rates well below the national average.<sup>17</sup>

**III. The low availability and high cost of housing in the Commonwealth directly drives the high homelessness rate.**

The correlation between lack of housing supply/high housing costs and homelessness is no coincidence. As Gregg Colburn and Clayton Page Aldern explain in their book Homelessness is a Housing Problem, the main cause of homelessness is the lack of housing and high cost.<sup>18</sup> According to their research, regions of the country with the highest homelessness

---

<sup>15</sup> Candiloro, supra.

<sup>16</sup> Vivi Smilgius, Report: Average rent in Boston surpasses \$3,000, Boston.com (June 20, 2023), <https://www.boston.com/real-estate/renting/2023/06/20/report-average-rent-in-boston-surpasses-3000/>; Mikula, supra, at 4.

<sup>17</sup> Mikula, supra, at 5-6.

<sup>18</sup> Gregg Colburn & Clayton Page Aldern, Homelessness is a Housing Problem: How Structural Factors Explain U.S. Patterns 9-10 (2022)

rates--like the Commonwealth--have a positive correlation between population growth and inelastic housing stock.<sup>19</sup> In contrast, areas of the country that have experienced either (a) a decline in population or (b) an increase in population but with sufficient housing stock both have homelessness rates well below the national average.<sup>20</sup>

Mecklenburg County, North Carolina is one region that saw a spike in population growth between 2007 and 2019. But **“quick and substantial** construction of new housing” in Mecklenburg County, including in the City of Charlotte, managed to keep homelessness rates “well below” other growing cities that had failed to grow their housing stock at comparable rates.<sup>21</sup> (Emphasis supplied.)

Like Colburn and Aldern, Pew Charitable Trusts confirmed in 2023 that a lack of availability coupled with high housing costs were the main drivers of homelessness:

A large body of academic research has consistently found that homelessness in an area is driven by housing costs, whether expressed in terms of rents, rent-to-income ratios, price-to-

---

<sup>19</sup> Id. at 160-65.

<sup>20</sup> Id.

<sup>21</sup> Id. at 136-37.

income ratios, or home prices. Further, changes in rents precipitate changes in rates of homelessness: homelessness increases when rents rise by amounts that low-income households cannot afford. Similarly, interventions to address housing costs by providing housing directly or through subsidies have been effective in reducing homelessness. That makes sense if housing costs are the main driver of homelessness, but not if other reasons are to blame. Studies show that other factors have a much smaller impact on homelessness.<sup>22</sup>

According to the report, "housing costs explain far more of the difference in rates of homelessness than variables such as substance use disorder, mental health, weather, the strength of the social safety net, poverty, or economic conditions."<sup>23</sup> "[T]hese [other] factors play only a minor role in driving rates of homelessness compared with the role of housing costs."<sup>24</sup>

Boston Indicators found the same correlation between homelessness and lack of housing for Greater Boston in 2024:

Factors usually associated with homelessness include substance use, mental health challenges, poverty, and a history of incarceration. While

---

<sup>22</sup> Alex Horowitz et al., How Housing Costs Drive Levels of Homelessness, Pew Charitable Trusts (Aug. 22, 2023), <https://www.pewtrusts.org/en/research-and-analysis/articles/2023/08/22/how-housing-costs-drive-levels-of-homelessness>.

<sup>23</sup> Id.

<sup>24</sup> Id.

these factors increase the risk of homelessness at the individual level, they cannot explain population-level trends in homelessness. After all, Greater Boston has similar, and often lower, rates of these factors than many other U.S. regions. But we still experience much higher rates of homelessness.<sup>25</sup>

According to the report, "what is different" is Greater Boston's "severe shortage of affordable market-rate housing, limiting the ability of people of more modest means to find decent housing without public support."<sup>26</sup>

**IV. As-of-right zoning, like that in the MBTA Communities Act, is critical to addressing the Commonwealth's housing and homelessness crisis.**

Because homelessness and insufficient housing supply are directly correlated, the solution is straightforward: build more housing. According to the Pew report, "[t]he academic research has consistently found that allowing more homes to be built keeps housing costs down. In tandem with the work showing that housing costs are the primary driver of homelessness, the findings suggest that allowing more housing to be built, whether subsidized or not, can reduce homelessness."<sup>27</sup>

---

<sup>25</sup> Ciurczak, supra, at 2.

<sup>26</sup> Id.

<sup>27</sup> Horowitz, supra.



The way to build more housing is also straightforward: reform zoning laws to allow more housing. As Pew found, “cities that added to their housing supply in recent years, typically by reforming their local zoning codes to allow more apartments to be built, succeeded in keeping rent growth low” and “several areas in which homelessness spiked had added little to their local housing supply.”<sup>28</sup> The as-of-right zoning requirement in the MBTA Communities Act requires reforming local zoning codes to allow more apartments to be built, exactly as Pew found will add to housing supply.

There are many examples of the costly delays and roadblocks encountered when the local zoning code does not permit multifamily housing as-of-right. In June 2013, Father Bill’s and MainSpring (“FBMS”) acquired a property in Brockton on which it proposed to build two buildings, a 20-unit building for homeless single adults and a 2-unit building for homeless families with onsite supportive educational services. Under the local Zoning Ordinance, the project was required to undergo site plan review by the local Planning

---

<sup>28</sup> Id.

Board. After the Planning Board issued the site plan approval, FBMS undertook the expensive process of preparing construction drawings for its building permit application. Once the project was fully funded and ready to commence construction, FBMS applied for its building permit only to receive a denial from the Building Inspector in July of 2014 for failure to conform to the local Zoning Ordinance. FBMS appealed the denial of the Building Permit to the local Zoning Board of Appeals pursuant to G.L. c. 40A, §§ 8 and 15. The Zoning Board of Appeals held a public hearing and denied FBMS's appeal in August of 2014. Accordingly, FBMS had to further appeal to the Superior Court pursuant to G.L. c. 40A, § 17. The case was resolved by motion in January 2015 with the Superior Court ordering that the City issue a building permit. The Building Permit ultimately issued in February 2015 and construction commenced in April 2015, nearly two years after FBMS acquired the property. As a result of this year long delay, FBMS's construction costs increased by \$475,000, which does not include attorneys' fees for the appeal (which FBMS received *pro bono*). When a municipality does not allow a project to proceed as-

of-right, the real costs of development increase significantly and the delays are substantial.

The Independence at Charlestown Navy Yard ("Independence Project") is another case-in-point of the difficulties in housing production when a project is not permitted as-of-right. After nearly a year of preliminary community engagement, the Planning Office for Urban Affairs and St. Francis House (collectively, "Developers") submitted a final plan to the Boston Planning & Development Agency ("BPDA") in September 2023 for the project.<sup>29</sup> Through more than 16 public meetings and conversations with over 200 Charlestown residents, the Developers had scaled the project back from its original 126 apartment units (with 96 of those being permanent supportive housing) to 100 apartment units (with 48 of those being permanent supportive housing). They had also added and reconfigured the project to include specific feedback from the community, including adding more two-bedroom units, units for women and veterans experiencing

---

<sup>29</sup> While G.L. c. 40A, § 3A is not applicable in Boston, the extensive review process undertaken by the Boston Planning & Development Agency is similar to that undertaken pursuant to G.L. c. 40A in surrounding communities.

homelessness, enhanced security, and private transportation for residents to get to appointments.

After completion of this preliminary yearlong community process and submittal of the final plan to the BPDA, the project underwent further review and input through Article 80 of Boston's zoning code. The BPDA Board, in December 2023, authorized development of the Independence Project. But soon after, 11 individuals filed suit to stop the project. As this ongoing litigation winds its way through the judicial system, the Developers face rising construction costs, legal fees, and further delay in providing much needed housing to the region.

The experiences of FBMS and the Independence Project highlight the need for as-of-right multifamily zoning. This situation is all too common throughout the Commonwealth. Too often, good housing projects subject to discretionary zoning review are needlessly shrunk, delayed, or denied without a consistent or fair basis. Even worse, many good projects never begin because developers cannot risk the delays and exorbitant costs. The inevitable results are abandoned housing projects, less housing, and more homelessness.

The Legislature understood these problems. To that end, it acted in the public interest when it passed the MBTA Communities Act, establishing that each 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." G.L. c. 40A, § 3A(a)(1). The MBTA Communities Act is a remedial statute, intended to address the housing and homelessness crisis and accordingly is entitled to liberal construction to effectuate its intended purpose. See Batchelder v. Allied Stores Corp., 393 Mass. 819, 822 (1985) ("The rule for the construction of remedial statutes is that cases within the reason, though not within the letter, of a statute shall be embraced by its provisions.") The same is true for the Attorney General and her actions in this case. It is well within her authority to "represent the public interest and enforce public rights" to ensure that towns comply with the as-of-right requirements and thereby take important steps to

address the Commonwealth's housing and homelessness crisis.<sup>30</sup>

**V. The difference as-of-right zoning makes.**

When a housing project cannot be constructed as-of-right, local zoning generally requires the proposal to go through two different types of discretionary approval processes: special permits and site plan review, sometimes requiring both.

The process for a municipality's issuance of discretionary special permits is established by G.L. c. 40A, § 9. Section 9 provides that "the special permit granting authority shall hold a public hearing, for which notice has been given as provided in section eleven, on any application for a special permit within

---

<sup>30</sup> In arguing that the Attorney General lacks authority to enforce the MBTA Communities Act, Milton blindly speculates that the Legislature might have recognized that "increased housing density is not an unmitigated good" and "[r]easonable people can debate the relative costs and benefits of adding hundreds or thousands of residential units to a particular town or neighborhood." Milton Br. at 25. Nothing in the text or history of the law supports these assertions. And Section 3A's mandate proves just the opposite: that the Legislature determined that housing density in MBTA communities was in the public interest and thus mandated it. It is for the Legislature--not Milton--to decide whether housing density is a public good, which the Legislature did in Section 3A. Likewise, under G.L. c. 12, § 10 and at common law, it is the Attorney General's decision--not Milton's--to decide whether to bring a suit in the public interest.

sixty-five days from the date of filing of such application." G.L. c. 40A, § 9, para. 12. Thus, right out of the gate, there is an over two-month period from when the application is filed before a municipality is even required to open the public hearing. Importantly, Section 9 contains **no time limit on the public hearing itself**. Id. By comparison, Mass. Gen. Laws c. 40B and its regulations set forth what is supposed to be a "streamlined process that overcomes regulatory barriers to the development of Low or Moderate Income Housing" (750 CMR 56.05(3)) by limiting the hearing itself to 180 days, thereby implying that without the benefit of Chapter 40B, public hearings can extend much longer. 760 CMR 56.05(3) ("[A] hearing shall not extend beyond 180 days from the date of opening the hearing."). Section 9 also provides that "[t]he decision of the special permit granting authority shall be made within ninety days following the date of such public hearing." Accordingly, even not accounting for the actual time of the public hearing itself, the statute builds **five months** into the review timeline for a special permit from filing to decision. The statute also allows the parties to extend by written agreement

"the required time limits for a public hearing and said action." G.L. c. 40A, § 9. Once the special permit granting authority issues its decision, it is subject to a 20-day appeal period. G.L. c. 40A, § 17.

Municipalities can also establish site plan review processes through their by-laws or ordinances. No statute governs site plan review; it is the proverbial wild west in terms of the processes that may be established, varying significantly by municipality. Some municipalities establish site plan review *special permit* processes, thereby opting their site plan review into the statutory time frames set forth in Section 9 and the 20-day appeal period set forth in Section 17. For those that do not opt-in to the special permit process and its appeal period, the appeal period from the site plan review decision runs not from when the decision issues, but from when the building permit issues, often many months later, creating an extended period of uncertainty and further project delay. See Quincy v. Planning Board of Tewksbury, 39 Mass. App. Ct. 17 (1995). Further complicating the matter, the site plan review decision must first be appealed to the Zoning Board of Appeals before it may be appealed to a court. Id. That means



that unless the by-law provides for its site plan review as a special permit, a project must endure: (1) site plan review before the Planning Board; (2) apply for building permit; (3) potential appeal to Zoning Board of Appeals; (4) potential appeal to Superior or Land Court. See Dufault v. Millennium Power Partners, L.P., 49 Mass. App. Ct. 137, 143 (2000).

Those five months set forth in the statute for a special permit are only a fraction of the timeline for local permitting. They do not reflect the months of time associated with developing plans and costly supporting materials, such as traffic reports and stormwater reports, that are generally required to file a special permit application. Nor do they include any required community outreach or engagement process that is generally expected to occur before filing. They also do not include the public hearing itself, which can extend for months if the project is controversial.

Special permit decisions can be appealed to either the Land Court or the Superior Court. G.L. c. 40A, § 17. The Superior Court's time standards for processing such claims are set forth in Standing Order 1-88. Under that standing order, Zoning Appeals filed

under Section 17 are assigned to the so-called "Fast Track." The "Fast Track" in Superior Court establishes a time frame of 22 months (660 days) to resolution and the issuance of judgment. Standing Order 1-88. Assuming that time frame is complied with and not extended, that is nearly two years from the end of an already lengthy permitting process. The Land Court's Standing Order 1-04 is slightly faster, establishing a time frame of 16 months to trial (not decision) for cases assigned to the "Fast Track," which again includes appeals filed under Section 17.

The Trial Court's decision is not the end of the road for many projects. Should a further appeal be taken to the Appeals Court, the Supreme Judicial Court's January 1983 Order on the issuance of decisions provides for 130 days following oral argument for a decision to issue. This follows the 84-day briefing schedule provided for in the Rules of Appellate Procedure Rule 19, and any time between the completion of briefing and the scheduling of oral argument and does not account for any extension of time. Accordingly, at a minimum, an appeal can add 214 additional days to the permitting timeline, which is about seven months.

Following only the minimum timeframes set forth in Section 9, the Court's Standing Orders, and the Rules of Appellate Procedure, for a project requiring a special permit that is ultimately appealed, that is **nearly three years** of delay assuming only **one night** for a hearing. That does not include an appeal to the Zoning Board of Appeals if a site plan review decision was required. More realistically, with a multiple night hearing and time included for preparing plans and materials, that time frame may look more like **four to five years**.

By contrast, if a project is as-of-right, requiring only a building permit to proceed, the ability to appeal and contest that building permit is far more constrained. The Massachusetts Building Code limits a building inspector's time to review a building permit application to 30 days. 780 CMR 105.3.1. The ability to begin construction **30 days** from submittal of a permit application is significantly less than the potentially months to years long special permit and site plan review process.

Every additional day a permit application is pending before the municipality and in court is a day

the project is not under construction and represents another night that housing units are unavailable. These extended review and appeal timelines cannot support the quick and substantial construction of new housing necessary to address the housing and homelessness crisis. Accordingly, the MBTA Communities Act is essential in remediating this crisis.

#### **CONCLUSION**

For these reasons, MHSA asks this Honorable Court to direct the entry of the declarations sought by the Attorney General's complaint, direct the entry of judgment denying relief on Milton's counterclaim, and take such other steps to ensure that the as-of-right zoning requirements in the MBTA Communities Act are implemented.

Respectfully submitted,

/s/ Matthew J. Connolly

MATTHEW J. CONNOLLY

BBO #676954

mconnolly@nutter.com

Valerie A. Moore

BBO #684849

vmore@nutter.com

Nutter, McClennen & Fish, LLP

155 Seaport Boulevard

Boston, Massachusetts 02110

(617) 439-2000

Dated: September 16, 2024

### **CERTIFICATE OF COMPLIANCE**

This brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to: Mass. R. A. P. 16(a)(6) (pertinent findings or memorandum of decision); Mass. R. A. P. 16(3) (references to the record); Mass. R. A. P. 16(f) (reproduction of statutes, rules, regulations); Mass. R. A. P. 16(h) (length of briefs); Mass. R. A. P. 18 (appendix to the briefs); and Mass. R. A. P. 20 (form of briefs, appendices, and other papers).

I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. A. P. 20 because it is produced in the monospaced font Courier New at size 12 point, 10.5 characters per inch, and contains 21 total non-excluded pages, prepared with Microsoft Word 2013.

/s/ Matthew J. Connolly  
Matthew J. Connolly

**CERTIFICATE OF SERVICE**

I hereby certify that on this 16th day of September 2024, I have served on all parties the foregoing Brief of Amicus Curiae Massachusetts Housing and Shelter Alliance, Inc. via the Massachusetts Tyler Host electronic filing system and by email upon:

Eric A. Haskell  
BBO No. 665533  
Jonathan Burke  
BBO No. 673472  
Erin E. Fowler  
BBO No. 707188  
Assistant Attorneys General

Attorney General of  
Massachusetts  
One Ashburton Place  
Boston, Mass. 02108  
(617) 963-2855  
eric.haskell@mass.gov

Jaime A. Santos  
BBO No. 689946  
Kevin P. Martin  
BBO No. 655222  
Christopher J.C. Herbert  
BBO No. 703492

Goodwin Procter LLP  
100 Northern Avenue  
Boston, MA 02210  
(617) 570-1000  
jsantos@goodwinlaw.com  
Kmartin@goodwinlaw.com  
Cherbert@goodwinlaw.com

Peter L. Mello  
BBO No. 659680  
Murphy Hesse Toomey &  
Lehane, LLP  
50 Braintree Hill  
Office Park, Suite 410  
Braintree, MA 02184  
(617) 479-5000  
pmello@mhtl.com

/s/ Matthew J. Connolly  
Matthew J. Connolly

**APPENDIX A**  
**LIST OF ADDITIONAL AMICI CURIAE**

**Father Bill's & MainSpring, Inc. ("FBMS")**

FBMS is a 26 U.S.C. § 501(c)(3) not-for-profit corporation organized under the laws of the Commonwealth of Massachusetts. FBMS does not issue stock or any other form of securities and does not have any publicly owned parent, subsidiary, or affiliate companies.

**Planning Office for Urban Affairs, Inc. ("POUA")**

POUA is a 26 U.S.C. § 501(c)(3) not-for-profit corporation organized under the laws of the Commonwealth of Massachusetts. POUA does not issue stock or any other form of securities and does not have any publicly owned parent, subsidiary, or affiliate companies.

**United Way of Massachusetts Bay, Inc. ("UWMB")**

UWMB is a 26 U.S.C. § 501(c)(3) not-for-profit corporation organized under the laws of the Commonwealth of Massachusetts. UWMB does not issue stock or any other form of securities and does not have any publicly owned parent, subsidiary, or affiliate companies.



# **ADDENDUM**

**ADDENDUM**  
**TABLE OF CONTENTS**

Statutory Provisions

G.L. c. 40A, § 3A .....	Add. 35
G.L. c. 40A, § 8 .....	Add. 36
G.L. c. 40A, § 9 .....	Add. 36
G.L. c. 40A, § 15 (excerpt) .....	Add. 44
G.L. c. 40A, § 17 (excerpt) .....	Add. 45
G.L. c. 12, § 10 .....	Add. 45

**G.L. c. 40A, § 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.

[ Subsection (b) effective until May 30, 2023. For text effective May 30, 2023, see below.]

(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 (b) as amended by 2023, 7, Sec. 152 effective May 30, 2023. See 2023, 7, Sec. 298. For text effective until May 30, 2023, see above.]

(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; (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.

[ Subsection (c) effective until May 30, 2023. For text effective May 30, 2023, see below.]

(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.

[ Subsection (c) as amended by 2023, 7, Sec. 153 effective May 30, 2023. See 2023, 7, Sec. 298. For text effective until May 30, 2023, see above.]

(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, § 8**

An appeal to the permit granting authority as the zoning ordinance or by-law may provide, may be taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of this chapter, by the regional planning agency in whose area the city or town is situated, or by any person including an officer or board of the city or town, or of an abutting city or town aggrieved by an order or decision of the inspector of buildings, or other administrative official, in violation of any provision of this chapter or any ordinance or by-law adopted thereunder.

**G.L. c. 40A, § 9**

Zoning ordinances or by-laws shall provide for specific types of uses which shall only be permitted in specified districts upon the issuance of a special permit. Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law, and shall be subject to general or specific provisions set forth therein; and such permits may also impose conditions, safeguards and limitations on time or use.

Zoning ordinances or by-laws may also provide for special permits authorizing increases in the permissible density of population or intensity of a particular use in a proposed development; provided that the petitioner or applicant shall, as a condition for the grant of said permit, provide certain open space, housing for persons of low or moderate income, traffic or pedestrian improvements, installation of solar energy systems, protection for solar access, or other amenities. Such zoning ordinances or by-laws shall state the specific improvements or amenities or locations of proposed uses for which the special permits shall be granted, and the maximum increases in density of population or intensity of use which may be authorized by such special permits.

Zoning ordinances or by-laws may provide that special permits may be granted for multi-family residential use in nonresidentially zoned areas where the public good would be served and after a finding by the special permit granting authority, that such nonresidentially zoned area would not be adversely affected by such a residential use, and that permitted uses in such a zone are not noxious to a multi-family use.

Zoning ordinances or by-laws may provide for special permits authorizing the transfer of development rights of land within or between districts. These zoning ordinances or by-laws shall include incentives, such as increases in density of population, intensity of use, amount of floor space or percentage of lot coverage, that encourage the transfer of development rights in a manner that protects open space, preserves farmland, promotes housing for persons of low and moderate income or further other community interests; provided, however, that nothing herein shall prohibit a zoning ordinance or by-law from allowing transfer of development rights to be permitted as of right, without the need for a special permit or other discretionary zoning approval.

Zoning ordinances or by-laws may also provide that open space residential developments or planned unit developments shall be permitted upon the issuance of a special permit.

Notwithstanding any provision of this section to the contrary, zoning ordinances or by-laws may provide that open space residential developments shall be permitted upon review and approval by a planning board pursuant to the applicable provisions of sections 81K to 81GG, inclusive, of chapter 41 and in accordance with its rules and regulations governing subdivision control; provided, however, that nothing herein shall prohibit a zoning ordinance or by-law from allowing open space residential developments to be permitted as of right, without the need for a special permit or other discretionary zoning approval.

Zoning ordinances or by-laws may also provide that special permits may be granted for reduced parking space to residential unit ratio requirements after a finding by the special permit granting authority that the public good would be served and that the area in which the development is located would not suffer a substantial adverse effect from such diminution in parking.

"Planned unit development" means a mixed use development on a plot of land containing a minimum of the lesser of sixty thousand square feet or five times the minimum lot size of the zoning district, but of such larger size as an ordinance or by-law may specify, in which a mixture of residential, open space, commercial, industrial or other uses and a variety of building types are determined to be sufficiently advantageous to render it appropriate to grant special permission to depart from the normal requirements of the district to the extent authorized by the ordinance or by-law. Such open space, if any, may be situated to promote and protect maximum solar access within the development.

Zoning ordinances or by-laws may also provide for the use of structures as shared elderly housing upon the issuance of a special permit. Such zoning ordinances or by-laws shall specify the maximum number of elderly occupants allowed, not to exceed a total number of six, any age requirements and any other conditions deemed necessary for the special permits to be granted.

Zoning ordinances or by-laws may provide that certain classes of special permits shall be issued by one special permit granting authority and others by another special permit granting authority as provided in the ordinance or by-law. Such special permit granting authority shall adopt and from time to time amend rules relative to the issuance of such permits, and shall file a copy of said rules in the office of the city or town clerk. Such rules shall prescribe a size, form, contents, style and number of copies of plans and specifications and the procedure for a submission and approval of such permits.

Zoning ordinances or by-laws may provide for associate members of a planning board when a planning board has been designated as a special permit granting authority. One associate member may be authorized when the planning board consists of five members, and two associate members may be authorized when the planning board consists of more than five members. A city or town which establishes the position of associate member shall determine the procedure for filling such position. If provision for filling the position of associate member has been made, the chairman of the planning board may designate an associate member to sit on the board for the purposes of acting on a special permit application, in the case of absence, inability to act, or conflict of interest, on the part of any member of the planning board or in the event of a vacancy on the board.

Each application for a special permit shall be filed by the petitioner with the city or town clerk and a copy of said application, including the date and time of filing certified by the city or town clerk, shall be filed forthwith by the petitioner with the special permit granting authority. The special permit granting authority shall hold a public hearing, for which notice has been given as provided in section eleven, on any application for a special permit within sixty-five days from the date of filing of such application; provided, however, that a city council having more than five members designated to act upon such application may appoint a committee of such council to hold the public hearing. The decision of the special permit granting authority shall be made within ninety days following the date of such public hearing. The

required time limits for a public hearing and said action, may be extended by written agreement between the petitioner and the special permit granting authority. A copy of such agreement shall be filed in the office of the city or town clerk. A special permit issued by a special permit granting authority shall require a two-thirds vote of boards with more than five members, a vote of at least four members of a five member board, and a unanimous vote of a three member board.

A special permit issued by a special permit granting authority shall require a simple majority vote for any of the following: (a) multifamily housing that is located within 1/2 mile of a commuter rail station, subway station, ferry terminal or bus station; provided, that not less than 10 per cent of the housing shall be affordable to and occupied by households whose annual income is less than 80 per cent of the area wide median income as determined by the United States Department of Housing and Urban Development and affordability is assured for a period of not less than 30 years through the use of an affordable housing restriction as defined in section 31 of chapter 184; (b) mixed-use development in centers of commercial activity within a municipality, including town and city centers, other commercial districts in cities and towns and rural village districts; provided, that not less than 10 per cent of the housing shall be affordable to and occupied by households whose annual income is less than 80 per cent of the area wide median income as determined by the United States Department of Housing and Urban Development and affordability is assured for a period of not less than 30 years through the use of an affordable housing restriction as defined in section 31 of chapter 184; or (c) a reduced parking space to residential unit ratio requirement, pursuant to this section; provided, that a reduction in the parking requirement will result in the production of additional housing units.

Failure by the special permit granting authority to take final action within said ninety days or extended time, if applicable, shall be deemed to be a grant of the special permit. The petitioner who seeks such approval by reason of the failure of the special



permit granting authority to act within such time prescribed, shall notify the city or town clerk, in writing within fourteen days from the expiration of said ninety days or extended time, if applicable, of such approval and that notice has been sent by the petitioner to parties in interest. The petitioner shall send such notice to parties in interest by mail and each such notice shall specify that appeals, if any, shall be made pursuant to section seventeen and shall be filed within twenty days after the date the city or town clerk received such written notice from the petitioner that the special permit granting authority failed to act within the time prescribed. After the expiration of twenty days without notice of appeal pursuant to section seventeen, or, if appeal has been taken, after receipt of certified records of the court in which such appeal is adjudicated, indicating that such approval has become final, the city or town clerk shall issue a certificate stating the date of approval, the fact that the special permit granting authority failed to take final action and that the approval resulting from such failure has become final, and such certificate shall be forwarded to the petitioner. The special permit granting authority shall cause to be made a detailed record of its proceedings, indicating the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reason for its decision and of its official actions, copies of all of which shall be filed within fourteen days in the office of the city or town clerk and shall be deemed a public record, and notice of the decision shall be mailed forthwith to the petitioner, applicant or appellant, to the parties in interest designated in section eleven, and to every person present at the hearing who requested that notice be sent to him and stated the address to which such notice was to be sent. Each such notice shall specify that appeals, if any, shall be made pursuant to section seventeen and shall be filed within twenty days after the date of filing of such notice in the office of the city or town clerk.

Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than 3 years, which shall not include such time required to

pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.

Zoning ordinances or by-laws shall also provide that uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a special permit provided the granting authority finds that the proposed accessory use does not substantially derogate from the public good.

In any city or town that accepts this paragraph, zoning ordinances or by-laws may provide that research and development uses, whether or not the uses are currently permitted as a matter of right, may be permitted as a permitted use in any non-residential zoning district which is not a residential, agricultural or open space district upon the issuance of a special permit provided the special permit granting authority finds that the uses do not substantially derogate from the public good.

"Research and development uses" shall include any 1 or more of investigation, development, laboratory and similar research uses and any related office and, subject to the following limitations, limited manufacturing uses and uses accessory to any of the foregoing.

"Limited manufacturing" shall, subject to the issuance of the special permit, be an allowed use, if the following requirements are satisfied: (1) the manufacturing activity is related to research uses; (2) no manufacturing activity customarily occurs within 50 feet of a residential district; and (3) substantially all manufacturing activity customarily occurs inside of buildings with any manufacturing activities customarily occurring outside of buildings subject to conditions imposed in the special permit.

A hazardous waste facility as defined in section two of chapter twenty-one D shall be permitted to be constructed as of right on any locus presently zoned for industrial use pursuant to the ordinances and by-laws of any city or town provided that all permits and licenses required by law have been issued to the developer and a siting agreement has been established pursuant to sections twelve and thirteen of chapter twenty-one D, provided however, that following the submission of a notice of intent, pursuant to section seven of chapter twenty-one D, a city or town may not adopt any zoning change which would exclude the facility from the locus specified in said notice of intent. This section shall not prevent any city or town from adopting a zoning change relative to the proposed locus for the facility following the final disapproval and exhaustion of appeals for permits and licenses required by law and by chapter twenty-one D.

A facility, as defined in section one hundred and fifty A of chapter one hundred and eleven, which has received a site assignment pursuant to said section one hundred and fifty A, shall be permitted to be constructed or expanded on any locus zoned for industrial use unless specifically prohibited by the ordinances and by-laws of the city or town in which such facility is proposed to be constructed or expanded, in effect as of July first, nineteen hundred and eighty-seven; provided, however, that all permits and licenses required by law have been issued to the proposed operator. A city or town shall not adopt an ordinance or by-law prohibiting the siting of such a facility or the expansion of an existing facility on any locus zoned for industrial use, or require a license or permit granted by said city or town, except a special permit imposing reasonable conditions on the construction or operation of the facility, unless such prohibition, license or permit was in effect on or before July first, nineteen hundred and eighty-seven; provided, however, that a city or town may adopt and enforce a zoning or non-zoning ordinance or by-law of general application that has the effect of prohibiting the siting or expansion of a facility in the following areas: recharge areas of surface drinking water supplies as shall be reasonably defined by rules and regulations of the department of environmental protection, areas subject to section forty of chapter

one hundred and thirty-one, and the regulations promulgated thereunder; and areas within the zone of contribution of existing or potential public supply wells as defined by said department. No special permit authorized by this section may be denied for any such facility by any city or town; provided, however, that a special permit granting authority may impose reasonable conditions on the construction or operation of the facility, which shall be enforceable pursuant to the provisions of section seven.

**G.L. c. 40A, § 15(excerpt)**

Any appeal under section eight to a permit granting authority shall be taken within thirty days from the date of the order or decision which is being appealed. The petitioner shall file a notice of appeal specifying the grounds thereof, with the city or town clerk, and a copy of said notice, including the date and time of filing certified by the town clerk, shall be filed forthwith by the petitioner with the officer or board whose order or decision is being appealed, and to the permit granting authority, specifying in the notice grounds for such appeal. Such officer or board shall forthwith transmit to the board of appeals or zoning administrator all documents and papers constituting the record of the case in which the appeal is taken.

Any appeal to a board of appeals from the order or decision of a zoning administrator, if any, appointed in accordance with section thirteen shall be taken within thirty days of the date of such order or decision or within thirty days from the date on which the appeal, application or petition in question shall have been deemed denied in accordance with said section thirteen, as the case may be, by having the petitioner file a notice of appeal, specifying the grounds thereof with the city or town clerk and a copy of said notice including the date and time of filing certified by the city or town clerk shall be filed forthwith in the office of the zoning administrator and in the case of an appeal under section eight with the officer whose decision was the subject of the initial appeal to said zoning administrator. The zoning administrator shall forthwith transmit to the board of appeals all documents and papers constituting

the record of the case in which the appeal is taken. An application for a special permit or petition for variance over which the board of appeals or the zoning administrator as the case may be, exercise original jurisdiction shall be filed by the petitioner with the city or town clerk, and a copy of said appeal, application or petition, including the date and time of filing, certified by the city or town clerk, shall be transmitted forthwith by the petitioner to the board of appeals or to said zoning administrator.

**G.L. c. 40A, § 17 (excerpt)**

Any person aggrieved by a decision of the board of appeals or any special permit granting authority or by the failure of the board of appeals to take final action concerning any appeal, application or petition within the required time or by the failure of any special permit granting authority to take final action concerning any application for a special permit within the required time, whether or not previously a party to the proceeding, or any municipal officer or board may appeal to the land court department, the superior court department in which the land concerned is situated or, if the land is situated in Hampden county, either to said land court or, superior court department or to the division of the housing court department for said county, or if the land is situated in a county, region or area served by a division of the housing court department either to said land court or superior court department or to the division of said housing court department for said county, region or area, or to the division of the district court department within whose jurisdiction the land is situated except in Hampden county, by bringing an action within twenty days after the decision has been filed in the office of the city or town clerk. If said appeal is made to said division of the district court department, any party shall have the right to file a claim for trial of said appeal in the superior court department within twenty-five days after service on the appeal is completed, subject to such rules as the supreme judicial court may prescribe. Notice of the action with a copy of the complaint shall be given to such city or town clerk so as to be received within such twenty days. The complaint shall allege that the decision exceeds the authority of the board or

authority, and any facts pertinent to the issue, and shall contain a prayer that the decision be annulled. There shall be attached to the complaint a copy of the decision appealed from, bearing the date of filing thereof, certified by the city or town clerk with whom the decision was filed.

**G.L. c. 12, § 10**

He shall take cognizance of all violations of law or of orders of courts, tribunals or commissions affecting the general welfare of the people, including combinations, agreements and unlawful practices in restraint of trade or for the suppression of competition, or for the undue enhancement of the price of articles or commodities in common use, and shall institute or cause to be instituted such criminal or civil proceedings before the appropriate state and federal courts, tribunals and commissions as he may deem to be for the public interest, and shall investigate all matters in which he has reason to believe that there have been such violations. Whenever it appears to the attorney general that the commonwealth or any city, town, or other governmental agency, body or authority established under the laws of the commonwealth has been so injured or damaged by any conspiracy, combination or agreement in restraint of trade or commerce or similar unlawful action, as to entitle the commonwealth, a city, town, or other such governmental agency, body or authority to a right to bring any action or proceeding for the recovery of damages under the provisions of any federal anti-trust or other similar law, the attorney general shall have authority to institute and prosecute any such actions or proceedings on behalf of the commonwealth or of any city, town, or other governmental agency, body or authority established under the laws of the commonwealth, and shall have authority to intervene on behalf of the commonwealth or of any city, town or other governmental agency, body or authority in such actions or proceedings. For the purposes of this section, he may appoint necessary assistants, with such compensation as, with the approval of the governor and council, he may fix, and may expend such sums as may be approved by the governor and council. In criminal proceedings hereunder he may require district attorneys to assist him and under his

direction to act for him in their respective districts.