

NEW BUSINESS

For approval on **09/23/2024**

f. Vote to send MBTA Zoning Letter to State Auditor.

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Town of Middleborough
Massachusetts

SELECT BOARD

September 12, 2024

Diana DiZoglio, State Auditor
Massachusetts State House
Room 230
Boston, MA 02133

RE: Request for opinion on MBTA Communities Funding

Auditor DiZoglio:

On behalf of the residents and taxpayers of the Town of Middleborough, we the Select Board, request that the State Auditor provide a determination of the fiscal impact of the potential mandate under the provisions of G.L. c. 29, s. 27c, including all expenses, direct and indirect, with respect to Massachusetts General Law Chapter 40A Section 3A known as the MBTA Communities Act.

The MBTA Communities Act is a mandate by the Commonwealth requiring high density “family friendly” housing zoning in all cities in towns designated by the Act to increase housing stock in the state.

The Town of Middleborough is currently one of the 177 communities in the Commonwealth of Massachusetts identified under MBTA Communities Act. More specifically, Middleborough is designated as a commuter rail host community with a zoning compliance mandate of December 31, 2024.

The Town of Middleborough is holding its Special Town Meeting on Monday, October 7, 2024. The MBTA Communities zoning change is on the warrant. The State Auditor’s fiscal impact determination will provide the voters critical information to explain how all extraordinary costs resulting from the Act will be paid for by the Commonwealth.

Information with respect to the Town of Middleborough and the MBTA Communities Act follows. This information may not be all inclusive:

1. Mass General Laws Chapter 59, Section 21C, known as Proposition 2½, was passed in 1980 by the voters and forbids the Commonwealth from creating unfunded mandates on unwilling Massachusetts communities.
2. In 2016, the Commonwealth Legislature amended Chapter 40R to further encourage housing development but no communities chose to opt-in.
3. In 2021, MBTA Communities was promulgated by the Legislature and signed into law by then Governor Baker.
4. Regulatory agencies of the Commonwealth created a mandatory zoning requirement with a density of no less than 15 units per acre in all identified MBTA communities except Boston.
5. The Attorney General of the Commonwealth of Massachusetts in their June 3, 2024 brief in Commonwealth v. Town of Milton specifically refers to the MBTA Communities law as a “Mandate” by the Commonwealth of Massachusetts. They refer to the MBTA Communities Law as a “**Legislative Mandate**” on pages 37, 41, 56.
6. The Attorney General of the Commonwealth in their brief discusses “zoning in the Commonwealth” beginning on page 12. On page 14, they discuss “the legislative attempts to address the crisis (housing) through voluntary means.” This was done through “opt-in” zoning programs such as Chapter 40R in 2004.

“Opt-in” is not “mandated”.

7. The Town of Middleborough has **unwillingly** participated in the Commonwealth MBTA Communities Act mandate every step of the way.
8. At no time has the Town of Middleborough willingly accepted any provision of the MBTA Communities Act mandates.
9. The Town of Middleborough is unable to find compensation measures within the law or current budget of the Commonwealth of Massachusetts for the MBTA mandate to cover all direct and indirect costs associated with the Act which we believe would be an unfunded mandate pursuant to Proposition 2½.
10. Former State Auditor Joseph Dinucci stated that the Commonwealth Legislature’s change in United States Senatorial replacement from Gubernatorial appointment to special election in 2004 was an unfunded mandate when the late Senator Kennedy passed away and a special election was called. The Commonwealth was required to reimburse all costs to communities for that election.

11. The MBTA Communities Act mandates requirement specific to the Town of Middleborough is to zone by right 1,471 family friendly (3 or more bedrooms) units on 50 acres of land within 0.5 miles of the MBTA station.
12. The Act's mandated zoning could potentially amount to approximate 1,250 units in addition to units that could be constructed under current zoning.
13. If constructed, the Town of Middleborough could be subjected to potential extraordinary immediate expenses in excess of half a billion dollars (\$617,500,000) and annual budget expenses of \$21.8M (see Potential Extraordinary MBTA Communities Expenses - Town of Middleborough breakdown attached).

Your determination of the fiscal impacts of the MBTA Zoning requirements under the provisions of G.L. c. 29, s. 27c will be paramount to provide the voters at Town Meeting the information necessary to make an educated decision.

Thank you for your assistance,

Middleborough Select Board

cc: Senator Marc Pacheco
Representative Susan Gifford
Representative Norman Orrall
Representative Katherin Lanatra
Middleborough Planning Board
Middleborough Zoning Board
Jonathan G. Murray, Esq. KP Law

Potential Extraordinary MBTA Communities Expenses - Town of Middleborough

This is a simple analysis of immediate and obvious potential extraordinary expenses that the Town of Middleborough may incur if the build out of the area zoned under the MBTA Communities Act is passed at Town Meeting and Election. Furthermore, it does not take into account possible changes in the Act if the Legislature makes changes in the future that had even more costs that cannot be anticipated at this time. It is not a professional accounting or engineering estimate but based on information available publicly.

Annual Budget Costs are estimated using a per capita basis. School is based on the “family friendly” 3-bedroom by right zoning and General Government is based on 3.5 persons per unit.

Regardless of the one-time or annual costs estimated herein, we are unable to find 100% funding sources for any of these potential costs (shown below) within the budget of the Commonwealth.

Perpetual Annual Budget Costs: \$21,750,000 (2024 dollars)

One Time Costs: \$617,500,00 (2024 dollars)

School Needs – \$16.5 Million annually inflated every year, \$475 Million in 2024 One Time School Building Costs

Annual Budget:

Assume a minimum of 1.25 children for each of the 1,250 additional “family friendly” homes to be built results in 1,563 additional children in the Middleborough School District. With **3,036** students enrolled (MA DESE School and District Profiles 2022-2023) We would see an enrollment **increase of 51.5%** (1,563/3036). This growth is beyond natural organic growth of current zoning in Middleborough.

FY 2023 Budget Numbers for the School

\$18 M –Operating Budget less Chapter 70

\$4 M – Transportation

\$10 M – Employee Benefits

\$32 M Current Town Cost of Education Mandated by the State

\$32 M x 51.5% Enrollment Increase = **\$16.5 Million in New State Aid to Offset Mandate Annually plus inflation**

Additional School Construction:

If used, the Massachusetts School Building Authority (MSBA) would need to change their current process in order cover 100% of costs associated with additional school construction (building, infrastructure and land acquisition) without restraint of per pupil caps that are not feasible to build any usable school. Furniture, Fixtures and Equipment (FF&E) per pupil cost reimbursement rates of the MSBA do not reflect the current actual reality.

Middleborough High School houses 4 grades, the futures program and post graduate Special Education programs. It was designed and built in 2019 for \$100 M students (originally a 550 school by MISER inaccurate projection built for 720 and opened with 800 students).

We estimate the cost of a new high school, with land acquisition, for the 4 grades/13 grades x 1,563 for a total of 483 students will cost about **\$175 M (2024 dollars)**. Nashoba construction (925 Students) is \$241.7 M (per MSBA Website).

We estimate the cost of a addition/renovation of the current middle school, for 3 grades/13 grades x 1,563 for a total of 360 students will cost about **\$125 M (2024 dollars)**. Brookline addition/renovation (725 students) is \$211.9 M (per MSBA Website).

We estimate the cost of a new elementary complex, with land acquisition and infrastructure upgrades, for 6 grades/13 grades x 1,563 for a total of 720 students will cost about **\$175 Million (2024 Dollars)**. New Bedford construction (760 student) without land acquisition nor infrastructure expansion is \$119.7 M (per MSBA Website).

General Government Needs - \$5.25 Million annually inflated every year

Estimated Population Increase:

1,250 additional “family Friendly” homes x 3.5 persons = 5,148.

Percent Increase – $4,375 / 24,219$ (US Census DP05) = 18.1% Increase beyond organic current zoning growth.

With an 18.1% population increase, there will be increased needs across all town departments and the accelerated plan by the MBTA communities mandate could result in budget increase based on the increase in population. We estimate the increase in unrestricted aid from the Commonwealth as follows.

FY 2023 Budget Numbers for the General Government

\$12M – Public Safety

\$2 M – Human Services

\$1 M – Cultural Services
\$4 M – General Government
\$10 M – Employee Benefits
\$29 M Current Town Cost of General Government

\$29 M x 18.1% Population Increase = **\$5.25 Million in New Unrestricted State Aid to Offset the Mandate**

Water Needs - \$62.5 Million for infrastructure

1,250 “family friendly” units x 3 Bedroom x 2 persons x 65 residential gallons per capita day = 487,500 gallons per day (gpd) of new demand.

MA DEP requires infrastructure to be designed for summer peaks. Using a peaking factor of 1.5 times, the 1,250 potential new units demand for $1.5 \times 487,500 = 731,250$ gpd in new peak demand

In order to meet the potential demands of the new units, **Two** new wells would have to be built at 400,000 to 500,000 gpd each at a cost of \$20M to \$25M to acquire land and Zone II rights, build transmission mains, develop and construct the well and treatment for potability. Basis of pricing is cost for land, well construction cost, current estimate for treatment plant in Middleborough.

2 wells x \$25M for \$50 Million

An additional Storage Tank would be needed in order to sustain peak hour flows and fire flows especially in a mandated high-density zoning on 50 acres which would require about 2,500 gallons per minute over 2 hours. The current cost to acquire land, install transmission mains and build the new elevated storage tank would be at \$10M to \$12.5M. Basis of pricing is the cost for land, infrastructure costs, and the recent water tank in Middleborough.

1 new tank for \$12.5 Million

All ratepayers would pick up the cost of operational increases and staffing through the water rates as the town uses an enterprise fund for the Water Department

Sewer Needs - \$90 Million for infrastructure

$1,250 \times 3 \text{ Bedrooms} \times 2 \text{ persons per bedroom} \times 55 \text{ gallons per day per person (310 CMR 15 = Title V)} = 412,500 \text{ gpd in new flow}$

To accommodate the new flow, the current sewer treatment plant would need to be upgraded for basic treatment at \$40M to \$60M and if a stricter discharge permit for Nitrogen and Phosphates into the Nemasket River (headwaters of Mount Hope Bay) is required, an additional \$15M might be needed. The cost is an estimate based on land acquisition for treatment plant expansion, advanced treatment of all sewer because of the increased flow and unknown regulatory issues.

Upgraded Sewer Plant \$70 Million

To collect the flows and pump from the area around the MBTA station will require pump station and sewer pipe improvements that has been estimated at between \$15M and \$25M. The Town of Middleborough has studied the cost associated with sewer provided to the area around the MBTA station under current zoning, the increased zoning will cause additional issues along the interceptor corridor.

Upgraded Sewer Collection \$20M.

All ratepayers would pick up the cost of operational increases and staffing through the sewer rates as the town uses an enterprise fund for the Sewer Department.