

NOTICE TO APPEAR FOR HEARING ON MOTION TO INTERVENE		DOCKET NUMBER 2484CV02351	Massachusetts Trial Court The Superior Court Department	
CASE NAME Winthrop Says No to 3A Committee vs. Executive Office of Housing & Livable Communities			John E Powers, III Suffolk County Civil	
TO: James J Cipoletta, Esq. Town of Winthrop Winthrop Town Attorney Town Hall 1 Metcalf Square Winthrop, MA 02152			COURT NAME AND ADDRESS Suffolk County Superior Court - Civil Suffolk County Courthouse, 12th Floor Three Pemberton Square Boston, MA 02108	
The Court will hear the following event: HEARING ON MOTION TO INTERVENE Counsel should appear as follows: Date: 08/25/2026 Time: 10:30 AM Event Type: In Person Session/ Courtroom Location: BOS-4th FL, CR 403				
Further Orders of the Court.				
Please note change of motion to be heard.				
DATE ISSUED 7/24/26		ASSOCIATE JUSTICE		

Notify

✓ 7/24

Commonwealth of Massachusetts
Superior Court

Suffolk,ss.

Winthrop Says No to 3A Committee, the Town of
Winthrop, and Diana Viens and Carol Facella and
Frederick Bagley and Paula Bagley and Winthrop Town
Councilor Rob DeMarco, Member at Large, Winthrop
Town Councilor Patrick Costigan, Precinct 1, Gus
Martucci, Peter Gill, Joseph Lawrence Powers, Paul
Varone, and Margaret A. Riley

Plaintiffs,

v.

Executive Office of Housing & Livable Communities
Defendant.

Docket No.2484CVO2351A

July 23, 2026 - The motion is denied. See Decision on EOHLC's Motion to Dismiss Second Amended Complaint. The Hearing scheduled for August 25, 2026 shall be on the issue of whether the pending motion to intervene should be considered, and if so, the merits of the motion.

Mark C. Gildea

MOTION FOR LEAVE TO AMEND COMPLAINT

Preliminary Statement / Relief Requested

Pursuant to Massachusetts Rule of Civil Procedure 15(a), the Plaintiffs, a coalition including the Town of Winthrop, the Winthrop Says No to 3A Committee, and individual residents and public officials (collectively, "Plaintiffs"), respectfully move for leave to file the attached Third Amended Complaint. This amendment is necessitated by new and material circumstances that have arisen since the filing of the previous complaint. These changed circumstances include, but are not limited to, the actualization of threatened harms through the denial of critical state grants to the Town of Winthrop; retaliatory regulatory actions by the Defendant, the Executive Office of Housing and Livable Communities ("EOHLC"); the commencement of a separate enforcement action by the Attorney General against the Town; and new, severe financial strains on the Town that directly relate to the density issues at the heart of this case. As justice requires

✓ 7/24

notify

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2484CV002351

WINTHROP SAYS NO TO 3A COMMITTEE

vs.

EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES

**MEMORANDUM OF DECISION AND ORDER ON
DEFENDANT'S MOTION TO DISMISS SECOND AMENDED COMPLAINT**

This matter involves enforcement of G. L. c. 40A, § 3A, known as the MBTA Communities Act ("Act"). The Act imposes zoning requirements upon municipalities as a condition of receiving certain state funding. The plaintiff, Winthrop Says No to 3A Committee ("Committee"), is a group of residents from the town of Winthrop ("Winthrop") who object to enforcement of the Act.¹ The defendant, Executive Office of Housing and Livable Communities ("EOHLC") is a Massachusetts executive office that promulgates and enforces requirements concerning municipalities' compliance with the Act.

The Committee's Second Amended Complaint is the operative pleading, to which the EOHLC has filed a motion to dismiss. For the following reasons, EOHLC's motion is **ALLOWED**.

BACKGROUND

The following facts are drawn from the Committee's Second Amended Complaint, documents referenced therein, and public information concerning the Act.

¹ At various times in the record, several additional individuals, residents of Winthrop, are identified by name as plaintiffs, then at other times the Committee is identified as the sole plaintiff. Where these individuals are described as members of the committee, the court will treat the Committee as the sole plaintiff.

1. General Facts

In 2021, the Massachusetts Legislature enacted the Act. The Act creates new zoning requirements mandating that all MBTA communities zone at least one district in which multi-family housing is permitted as of right, subject to other requirements. See G. L. c. 40A, § 3A. Under the Act, EOHLC is tasked with “promulgat[ing] guidelines to determine if an MBTA community is in compliance with this section.” *Id.* § 3A(c). Winthrop is considered an “adjacent community” under the statute and therefore subject to the requirements of the Act.

On July 19, 2024, legal counsel for the Committee, on behalf of “a citizens committee for the Town of Winthrop,” wrote to the EOHLC and submitted a “petition for administrative rulemaking” (“Petition”). The Petition stated:

“Firstly, Towns which conscientiously comply with the affordable housing mandate of Chapter 40B should not be punished under the MBTA communities law. Secondly, Winthrop suffers a number of wholly unique geographic factors which should weigh in favor of it being granted a town-specific exemption, or at least a dramatic reduction in the number of units they must zone for.”

The Petition went on to describe the geographic features of Winthrop and provided a historical description of how transportation developed in the community. It also requested the opportunity to appear before the EOHLC for an administrative rulemaking hearing to present evidence in support of the Committee’s cause.

On August 10, 2024, legal counsel for the Committee sent a follow-up letter to EOHLC concerning the Petition. Per the correspondence, counsel stated that the “citizens committee for the Town of Winthrop” intended to proceed with litigation due to EOHLC’s failure to respond to the Petition.

On August 26, 2024, EOHLC responded and denied the Petition. Among other reasons for the denial, the EOHLC wrote:

“The Petition does not fall within the scope of G.L. c. 30A, § 4, which states that: “Any interested person may petition an agency requesting the adoption, amendment or repeal of any regulation....” The Petition seeks an individualized determination or waiver from the 3A Guidelines, not the “adoption, amendment or repeal” of a regulation. Furthermore, Petitioner’s arguments for such waiver are outweighed by the purposes of G.L. c. 40A, § 3A (“MBTA Communities Law”)-to address the housing crisis that is having an adverse economic, social, and environmental impact on residents across the Commonwealth.”

2. Procedural History

The Committee filed its initial complaint on September 4, 2024 and an amended complaint on September 23, 2024. Its Second Amended Complaint is before this court. In the Second Amended Complaint, the Committee alleges that Winthrop has a very high population density, with approximately 20,000 residents living within 1.6 square miles. Further, the Committee alleges that Winthrop has almost no developable land and implementing the Act would change the entire character of the town. It additionally alleges that increased density will significantly impact traffic congestion, thus raising concerns about access for emergency vehicles in the event fire or other rescues services are needed. Moreover, the Second Amended Complaint alleges that properties within the town would need to be demolished to comply with the Act.

The Second Amended Complaint asserts ten causes of action. Although styled as different causes of action, the Second Amended Complaint has distilled the claims as follows:

“the Winthrop Says No to 3A Committee, for the benefit of the Town of Winthrop, seek[s] an exemption from compliance with the MBTA Communities Act (G. L. c. 40A, § 3A), on the grounds that the application of this law is neither fair nor equitable concerning Winthrop. The application of this law would have profound, harmful effects on the current residents of the Town.

The Winthrop Says No to 3A Committee seeks relief from this Court as the Executive Office of Housing and Livable Communities (EOHLC) has failed to act upon a Petition for Administrative Rulemaking within the statutory 30-day requirements of MGL ch. 30A, § 4. Given the lack of actual space to accommodate the high-density zoning sought by § 3A, and with Winthrop’s deadline to formulate a compliance plan by the end of the

year, EOHLC's failure to act has created a timing issue, causing chaos and community division."

DISCUSSION

In seeking dismissal of the Second Amended Complaint, EOHLC advances three arguments: 1) the Committee lacks standing; 2) the Committee's claims are moot; and 3) the Second Amended Complaint does not state a claim upon which relief can be granted. As discussed below, the Committee cannot satisfy standing requirements to bring this suit. Thus, the court need not address the additional arguments raised in EOHLC's motion.

1. Standing

"A party has standing when it can allege an injury within the area of concern of the statute or regulatory scheme under which the injurious action has occurred" (citations and quotations omitted). *City of Revere*, 476 Mass. 591, 607 (2017). The injury must be "different in nature or magnitude from that of the general public." *Friedman v. Conservation Comm'n of Edgartown*, 62 Mass. App. Ct. 539, 543 (2004). "[T]he plaintiff must put forth credible evidence to substantiate his allegations" (citation and quotations omitted). *Perisho v. Board of Health of Stow*, 103 Mass. App. Ct. 593, 597-598 (2023). In affirming the allowance of a motion to dismiss, the Massachusetts Appeals Court has held "in the case before us, the plaintiffs have failed to claim, much less show, that the action they sought to have reviewed resulted in 'substantial injury' or 'manifest injustice' to them, rather than to the public in general." *Friedman*, 62 Mass. App. Ct. at 545. Additionally, a plaintiff's injury "must be more than speculative." *Marashlian v. Zoning Bd. of Appeals of Newburyport*, 421 Mass. 719, 721 (1996).

Here, the Committee is comprised of several residents who object to the Act. The Second Amended Complaint focuses upon the Act's impact on population density, and the residual effects on the community at large. In this regard it raises concerns about traffic

congestion and the potential for limiting access for emergency vehicles. The Second Amended Complaint further speculates that buildings will need to be demolished in order for Winthrop to comply with the Act.

None of these claims are unique to the Committee or its members. Instead, they are all generalized concerns that may impact the community at large. The Second Amended Complaint does not identify how any of the particular Committee members would be separately injured if Winthrop were required to comply with the Act. As such, where the Committee is comprised of several residents who lack standing in their individual capacity, there is no basis to confer standing to the Committee. Further, and importantly, the Committee may not presently share the same opinion as the majority of Winthrop residents.² Thus, the Committee should not be permitted to act on behalf of the entire town concerning enforcement of the Act.

Moreover, the allegations in the Second Amended Complaint are speculative. Compliance with the Act might not result in detriments to the town if population density is increased pursuant to the Act. The Committee has not advanced any evidence, expert or otherwise, to substantiate the purported negative impact.

The Committee therefore lacks standing under Massachusetts common law, and the EOHLC's motion to dismiss is **ALLOWED** as to this issue.

2. The Committee Misinterprets Provisions of G. L. c. 30A

The Committee argues that it had the right to petition pursuant to G. L. c. 30A, § 4 ("Section 4"), which addresses Massachusetts administrative procedure. This statute states in pertinent part:

² Per the Committee's submissions, on "November 19, 2024, the Winthrop Town Council voted to reject a plan based on the same guidelines that were later reissued as emergency regulations." However, this vote was conducted over a year and a half ago. The residents of Winthrop, mindful of restrictive state funding, many not presently share this position.

“Any interested person may petition an agency requesting the adoption, amendment or repeal of any regulation, and may accompany his petition with such data, views and arguments as he thinks pertinent. Each agency shall prescribe by regulation the procedure for the submission, consideration and disposition of such petitions.”

General Laws Chapter 30A provides a process whereby an individual or entity can seek judicial review of agency action. “Any person or appointing authority aggrieved by a final decision of any agency in an adjudicatory proceeding, whether such decision is affirmative or negative in form, shall be entitled to a judicial review thereof.” G. L. c. 30A, § 14 (“Section 14”). When read together, Section 4 articulates how an individual or entity may petition an agency, and Section 14 articulates the process by which an individual or entity may seek judicial review of an agency determination. Additionally, Section 7 of Chapter 30A states “judicial review of any regulation or of the sufficiency of the reasons for its adoption as an emergency regulation may be had through an action for declaratory relief in the manner and to the extent provided under chapter two hundred and thirty-one A.” G. L. c. 30A, § 7 (“Section 7”).

Contrary to the Committee’s position, Chapter 30A does not establish a basis to bring this lawsuit. First, the Committee conduct in purported petitioning does not fit with any of the types of petitioning articulated in Section 4, which is limited to: “petition[ing] an agency requesting the adoption, amendment or repeal of any regulation.” Instead, the Committee seeks an exemption from the Act. While its causes of action do make generalized averments regarding the legality of the Act, the facts alleged by the Committee are limited to the scope of the Act’s impact upon Winthrop and its residents.

Second, the EOHLC’s August 25, 2024 response to the Committee’s previous correspondences does not reflect “a final decision of any agency in an adjudicatory proceeding” as required by Section 14. The EOHLC’s position was not subject to an adjudicatory proceeding. Third, the scope of the Committee’s request for judicial review does not raise

questions of the sufficiency of the reasons behind enactment of the Act within the scope of Section 7. Much like this court's consideration of Section 4, the review sought concerns the Act's impact specific to Winthrop, rather than the state-wide impact of the Act. As such, the judicial review contemplated by Sections 7 and 14 does not apply to the Committee's claims in this case.

The Committee's claims therefore are not cognizable under Chapter 30A, and the EOHLIC's motion to dismiss is **ALLOWED** as to this issue

ORDER

For the foregoing reasons, it is **ORDERED** that the defendants' motion is **ALLOWED**.

Mark C. Gildea

July 23, 2026

Mark C. Gildea
Justice of the Superior Court