

Dear Zoning Board of Appeals:

We have asked this Board to consider the Local Concerns as we have set them out in light of Local Need and we have asked this Board to consider reducing the size of the Puddingstone Project. It has been as always the Developer's response that reducing the size will render the project "uneconomic." I want to draw this Board's attention to the fact that what is "uneconomic" in this context is defined in the 40B Regulations and DHCD Guidelines – and not with respect to the profit aspirations of the Developer – whether or not reasonable in his personal estimation.

The regulations provide the definition of "uneconomic" at 760 CMR §56.02:

56.02 Uneconomic – means any condition imposed by a Board in its approval of a Comprehensive Permit, brought about by a single factor or a combination of factors, to the extent that it . . . makes it impossible for a Limited Dividend Organization to proceed and still realize a *reasonable return* in building or operating such Project [emphasis supplied].

The Department of Housing and Community Development ("DHCD") provides the definition of "reasonable return" in its Guidelines regarding 40B Comprehensive Permit Projects:

DHCD 40B Comprehensive Permit Projects - Guidelines 1. Introduction, A. Definitions

Minimum Return on Total Cost – means a Return on Total Cost that is less than the *sum of the ROTC Threshold Increment and the Applicable Ten-Year U.S. Treasury Rate, which shall be the minimum return necessary to realize a reasonable return* from the operation of a Project for purposes of determining whether a condition imposed by a Zoning Board in its approval of a Comprehensive Permit results in a Project being Uneconomic [emphasis supplied].

Therefore the "reasonable return" which is "economic" is the "Minimum Return on Total Cost";

By definition therefore,

Minimum ROTC = ROTC Threshold Increment + Applicable 10-Yr Treasury Rate (date of PEL)

The ***ROTC Threshold Increment*** is defined in the Appendix to the Guidelines as 4.5% (450 basis points).

The Ten-Year Treasury Rate is set at the rate for the date of the PEL – in this case 1.81% (see Table included below).

Therefore the minimum reasonable return for the Puddingstone Project would be

$$6.31\% = 4.5\% + 1.81\%$$

We have urged this Board to reduce the size of the Puddingstone Project on the basis of Local Concerns. In doing so, the Board should not assume without analysis that a reasonable – defensible reduction in the size of the Project would necessarily render the project “uneconomic.” To be uneconomic the project would have to return less than approximately 6.3%.

No doubt there will be disagreement in calculating the ROTC regarding what “income” counts in the numerator and what “costs” should count in the denominator. In this regard I urge the Board to make reductions in the project with sensitivity to what contributes to cost. For example,

1. Reducing the footprint of the Puddingstone building would reduce the amount of blasting and rock removal from the site. Also,
2. Any non-residential facility, such as office space and other non-essential “amenities” should be removed from the scope of the 40B project.

Thank you for your attention,

Stephen Chiumenti, TMM 16

DHCD GUIDELINES

Updated December 2014

G.L. C. 40B Comprehensive Permit Projects

Regulatory Authority: see 760 CMR 56.00

Subsidized Housing Inventory

- I. Introduction
 - A. Definitions

...

Amount – means, as used in the definition of Reasonable Return at 760 CMR 56.02(c) and (d) with respect to profit to the Developer or payment of development fees from the initial construction of the Project, the greater of (i) such profit or fees expressed as a dollar amount; (ii) such profit or fees expressed as a percentage of total development costs, or (iii) with respect to the payment of development fees from the initial construction of the Project only, the maximum total developer fee payable to the Developer pursuant to a formula established by the Subsidizing Agency under its regulations or guidelines for the Project Subsidy, expressed either as a dollar amount or a percentage of total development costs.

Applicable 10-Year U.S. Treasury Rate – means the interest rate for 10-year notes as published by the U.S. Treasury on the later of the date of (a) the Project Eligibility Application, (b) if applicable, a revised pro forma is submitted to the Board, or (c) if applicable, on appeal to the Housing Appeals Committee, the date of the Pre-Hearing Order.

...

Minimum Return on Total Cost – means a Return on Total Cost that is less than the sum of the ROTC Threshold Increment and the Applicable Ten-Year U.S. Treasury Rate, which shall be the minimum return necessary to realize a reasonable return from the operation of a Project for purposes of determining whether a condition imposed by a Zoning Board in its approval of a Comprehensive Permit results in a Project being Uneconomic.

...

Return on Total Cost (ROTC) -- means, in calculating Reasonable Return, projected NOI of a Project, divided by the projected total development cost (including development fees and overhead). Revised December 2014 Definitions I - 5

ROTC Threshold Increment – means a percentage determined by the Department and confirmed or modified annually based upon an analysis of current real estate market data. See Appendix I-1 of these Guidelines.

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Uneconomic – means any condition imposed by a Board in its approval of a Comprehensive Permit, brought about by a single factor or a combination of factors, to the extent that it makes it impossible (a) for a public agency or a nonprofit organization to proceed in building or operating a Project without financial loss, or (b) for a Limited Dividend Organization to proceed and still realize a reasonable return in building or operating such Project within the limitations set by the Subsidizing Agency on the size or character of the Project, or on the amount or nature of the Subsidy or on the tenants, rentals, and income permissible, and without substantially changing the rent levels and unit sizes proposed by the Applicant. See 760 CMR 56.02, 56.05(8)(d) and the definitions above for Amount, Applicable 10-Year U.S. Treasury Rate, Minimum Return on Total Cost, Net Operating Income, Return on Total Cost, and ROTC Threshold Increment.

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APPENDIX I.1

ROTC Threshold Increment – . . . 450 basis points [4.5%].

[10 Year Treasury April 2016 approx. 1.81%; plus 4.5% ROTC Threshold Increment = 6.31%]

10 Year Treasury Rate by Month

Date	Value
10-Sep-18	2.94%
1-Sep-18	2.90%
1-Aug-18	2.89%
1-Jul-18	2.89%
1-Jun-18	2.91%
1-May-18	2.98%
1-Apr-18	2.87%
1-Mar-18	2.84%
1-Feb-18	2.86%
1-Jan-18	2.58%
1-Dec-17	2.40%
1-Nov-17	2.35%
1-Oct-17	2.36%
1-Sep-17	2.20%
1-Aug-17	2.21%
1-Jul-17	2.32%
1-Jun-17	2.19%
1-May-17	2.30%
1-Apr-17	2.18%
1-Mar-17	2.48%
1-Feb-17	2.42%
1-Jan-17	2.43%
1-Dec-16	2.49%
1-Nov-16	2.14%
1-Oct-16	1.76%
1-Sep-16	1.63%
1-Aug-16	1.56%
1-Jul-16	1.50%
1-Jun-16	1.64%
1-May-16	1.81%
1-Apr-16	1.81%
1-Mar-16	1.89%
1-Feb-16	1.78%
1-Jan-16	2.09%