

CLERK'S NOTICE	DOCKET NUMBER 2181CV00818	Trial Court of Massachusetts The Superior Court 
CASE NAME: Town Of Stoneham Board Of Appeals vs. Housing Appeals Committee et al		Michael A. Sullivan, Clerk of Court Middlesex County
TO: Robert W Galvin, Esq. Galvin and Galvin, PC 10 Enterprise St Suite 3 Duxbury, MA 02332		COURT NAME & ADDRESS Middlesex County Superior Court - Woburn 200 Trade Center Woburn, MA 01801
<p style="text-align: center;">You are hereby notified that on 07/21/2022 the following entry was made on the above referenced docket:</p> <p>Endorsement on Motion for Judgement on the pleadings and cross motion for JOP (#12.0): Other action taken On March 15, 2021, defendant Housing Appeals Committee ("HAC"), an administrative agency within the Department of Housing and Community Development, issued a decision vacating an underlying Comprehensive Permit issued on April 28, 2016, by the plaintiff Stoneham Zoning Board of Appeals ("Board") and ordering the Board to issue an amended comprehensive permit to defendant, Weiss Farm Apartments, LLC ("Weiss Farm"), for the construction of an affordable housing development in Stoneham. The Board appealed HAC's decision to this court pursuant to G.L. c. 30A, § 14.</p> <p>In its appeal, the Board elected to focus on a single legal issue: whether HAC acted beyond the scope of its authority and in contravention of the Comprehensive Permit Act, G.L. c. 40B, and related regulations, when it found that Weiss Farm's proposed project was "uneconomic as proposed" and determined that the Board's conditions rendered it "significantly more uneconomic," thus imposing the same statutory burden-shifting scheme that applies to an "economic as proposed" project that is rendered "uneconomic" by imposed conditions. See Plaintiff's Reply Memorandum, Paper No. 12.6, at 2.</p> <p>The Supreme Judicial Court recently answered this precise question in the negative. When addressing a very similar factual situation, the SJC held:</p> <p>"N]either the regulations nor the guidelines address the specific scenario presented in this case, that is, where a developer has received a project eligibility letter that does not include a calculation of the expected return, and then seeks and receives a comprehensive permit subject to conditions, and, subsequently, when a rate of return for the original proposal absent the conditions is calculated, the proposal does not meet the minimum reasonable return set out elsewhere in the guidelines and regulations [i.e., the project is considered "uneconomic as proposed"].</p> <p>This scenario has, however, been specifically and consistently addressed in prior administrative adjudications by HAC. In these circumstances, for over a decade, the agency responsible for interpreting the statute and its own regulations has applied the "significantly more uneconomic" test to determine whether the conditions imposed have made it impossible for the developer who is still willing to proceed to receive a reasonable return on its investment. This adjudicative interpretation fills in a gap in the statutory and regulatory regime, and absent a clear directive from the Legislature to the contrary, regulatory agencies are entitled to fill such gaps. Such a consistent administrative adjudicatory interpretation of statutory and regulatory language is also entitled to deference. . . .</p> <p>HAC's application of the "significantly more uneconomic" standard is plainly in accord with its legislative mandate, as it allows developers willing to pursue less lucrative projects to avail themselves of the act's streamlined processes, paving the way for development of more affordable housing.</p> <p>In light of the above, we conclude that HAC's construction of the act and attendant regulatory scheme is reasonable, consistent with the statutory language and purposes, and appropriate. We therefore agree that HAC has authority to apply the "significantly more uneconomic" standard in cases like this one, where developers are willing to proceed</p>		
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