



Massachusetts Housing Finance Agency
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January 10, 2022

Virginia Crocker Timmins, Chair (via email)
Select Board, Town of Chelmsford
50 Billerica Road
Chelmsford, MA 01824

Dear Chair Crocker Timmins:

Enclosed please find MassHousing's draft report regarding the cost examination for the Beaver Brook Crossing rental development built pursuant to M.G.L. c. 40B ("Chapter 40B"). This report is based on our analysis of Beaver Brook Crossing LLC's cost examination (the "Cost Examination") dated November 30, 2021 and received by MassHousing on December 9, 2021 (a copy of which is enclosed). We have undertaken this analysis pursuant to our responsibilities as the Subsidizing Agency (defined under the provisions of 760 CMR 56.02) for certain Chapter 40B programs; specifically the New England Fund Program. It is our responsibility to determine whether the Cost Examination complies with applicable accounting and reporting standards, as well as legal requirements and published guidelines for the preparation of these examinations.

Prior to MassHousing issuing a final report regarding the Cost Examination for Beaver Brook Crossing and releasing the developer's financial surety, we would like to offer you, as the Chief Elected Official of the Town of Chelmsford, an opportunity to comment on this draft report, identify any issues that you might have with the content, or raise any questions that you believe should be addressed. I would appreciate it if all comments could be sent to us by February 11, 2022 so that we may consider them prior to the issuance of our final cost examination report for this development. Comments should be sent to Jennifer Wierl, Auditor, Planning and Programs. Ms. Wierl can be reached at (617) 854-1136 or jwierl@masshousing.com should you have any questions.

Very truly yours,



Jessica L. Malcolm
Manager, Planning and Programs

Enclosure

cc (via email):

Charles Emanouil, Beaver Brook Crossing LLC
Don Yadisernia, CPA, Morris & Morris, P.C.
Evan Belansky, Community Development Director
Chelmsford Zoning Board of Appeals
Margaux LeClair, DHCD

Charles D. Baker, Governor
Karyn E. Polito, Lt. Governor

Michael J. Dirrane, Chairman
Ping Yin Chai, Vice Chair

Chrystal Kornegay, Executive Director



**Report on MassHousing's Analysis
of the Cost Examination
Dated November 30, 2021
and
Received by MassHousing on December 9, 2021**

**Submitted by
Beaver Brook Crossing LLC
Regarding**

**Beaver Brook Crossing
a M.G.L. Chapter 40B Rental Development
Chelmsford, Massachusetts
Project ID# 912**

Date of Report: January 10, 2022

Executive Summary

On December 9, 2021, MassHousing received an Independent Accountants' Report dated November 30, 2021 for the Beaver Brook Crossing housing development (the "Project") located in Chelmsford, Massachusetts (the "Town"). In said Independent Accountants' Report, Morris & Morris, P.C. (the "CPA") stated that they have examined the Schedule of Actual and Budgeted Development Sources & Uses, Schedule of Total Chapter 40B Maximum Allowable Developer Fee and Overhead, and Schedule Showing Calculation of Owner's Equity and Limited Dividend under Chapter 40B (collectively, the "Cost Examination" or "Schedules") of Beaver Brook Crossing LLC (the "Developer"), and that in their opinion the Cost Examination presents fairly, in all material respects, the Schedules of the Developer as of September 30, 2021, in conformity with the accounting practices prescribed by the requirements of the Inter-Agency 40B Rental Cost Certification Guidance for Owners, Certified Public Accountants, and Municipalities (the "Guidance").

MassHousing, acting as the Subsidizing Agency (formerly, "Project Administrator") for this development, conducted an analysis of this Cost Examination to ensure that it was in compliance with applicable accounting standards, reporting standards, legal requirements and applicable Chapter 40B guidelines.

MassHousing has completed its analysis and has prepared this report (the "Report"). In the process, we have reached the following conclusions:

1. The Cost Examination is consistent with applicable guidelines and practices.
2. MassHousing believes that the Developer has not exceeded the Chapter 40B maximum fee and overhead allowed to be earned on this development by the Developer as a limited dividend entity.
3. MassHousing has determined that the maximum allowable developer fee and overhead is \$1,866,368 as further described in Section IV below.
4. MassHousing has determined that the owner's equity is \$2,766,368 as further described in Section V below.
5. MassHousing has determined that the allowable annual limited dividend distribution is \$276,637 as further described in Section V below.

Executive Summary (continued)

The following schedule reflects the final calculations noted in this Report:

USES OF FUNDS

Pre-Permitting Land Value, defined as the sum of the "as is" appraised land value and reasonable carrying costs. (This value is shown for Chapter 40B purposes and is used in Maximum Developer Fee and Limited Dividend calculations.)

\$ 900,000

<i>Description</i>	<i>Per Cost Examination</i>	<i>Proposed Adjustments</i>	<i>Ref.</i>	<i>Final Per MassHousing</i>
Development Costs:				
Land Acquisition	\$ -	\$ -		\$ -
Building Structural Costs (Hard Costs)	13,650,113	-		13,650,113
Site Work (Hard Costs)	1,486,764			1,486,764
Builder's OH, Profit & General Conditions	-			-
General Development Costs	2,081,367			2,081,367
Developer Fee & OH	-	-		-
Capitalized Reserve	-	-		-
Total Development Costs	<u><u>\$ 17,218,244</u></u>	<u><u>\$ -</u></u>		<u><u>\$ 17,218,244</u></u>

SOURCES OF FUNDS

<i>Description</i>	<i>Per Cost Examination</i>	<i>Proposed Adjustments</i>	<i>Ref.</i>	<i>Final Per MassHousing</i>
Private Equity:				
Owner's Cash Equity	\$ -	\$ -		\$ -
Developer Fee/OH Contributed or Loaned	-			-
Subordinate Debt:				-
Permanent Debt (Senior):	17,218,244			17,218,244
	<u><u>\$ 17,218,244</u></u>	<u><u>\$ -</u></u>		<u><u>\$ 17,218,244</u></u>

MassHousing concludes that the Cost Examination is free of material mathematical errors; reflects the Schedule of Actual and Budgeted Development Sources & Uses; reflects development costs that appear to be reasonable; and reflects the number of units in the Project as agreed to in the Regulatory Agreement. The Notes to Schedules appear to cover the full scope and time frame of the Project.

I. Overview

According to the Cost Examination, Beaver Brook Crossing LLC was formed as a limited liability company on December 7, 2016 for the purpose of acquiring and developing 84 units of rental housing in Chelmsford, Massachusetts, of which 20 percent (17 units) must be rented to qualifying income eligible individuals and households.

On February 9, 2017, MassHousing issued a project eligibility letter evidencing fundability of the Project under the New England Fund (“NEF”) Program of the Federal Home Loan Bank of Boston.

On August 24, 2017, the Zoning Board of Appeals issued a Comprehensive Permit to the Developer.

On May 30, 2018, MassHousing issued a final approval letter under 760 CMR 56.04(7).

MassHousing and the Developer entered into a Regulatory Agreement dated May 30, 2018 and recorded on June 6, 2018 at the Middlesex North County Registry of Deeds Book 32130, Page 100.

Pursuant to the Regulatory Agreement, MassHousing is responsible for evaluating the limited dividend requirement, which involves determining the Developer’s compliance with the allowable developer fee and overhead limitation through approval of total development costs.

The Cost Examination states that substantial completion of the Project occurred on September 30, 2021, when the last of the certificates of occupancy were obtained.

II. Procedures

In connection with its responsibilities under the Regulatory Agreement, MassHousing reviewed documentation and information related to Chapter 40B and specifically to the Project, including but not limited to the following:

- The Cost Examination, including the Independent Accountants' Report.¹
- Owner's Certificate from Charles Emanouil on behalf of Beaver Brook Crossing LLC, dated November 30, 2021.
- General Contractor's Certificate from Stacey L. Cochrane on behalf of Stateside Construction Group Inc. dated November 2, 2021.
- Land appraisal, commissioned by MassHousing, dated January 24, 2017, valuing the land as of January 9, 2017, prepared by Marotta Valuation Advisors (the "Appraisal").
- Architect's Certificate from Andrew t. Zalewski, AIA (the "Architect").
- M.G.L. c. 40B ("Chapter 40B") regulations at 760 CMR 56 and its associated guidelines, most recently revised in 2014.
- The Guidance.

In order to verify the contents of the Cost Examination, MassHousing obtained the "Owner's Certificate" referenced above. This certification, executed under seal and under the pains and penalties of perjury, serves as an additional safeguard in verifying the data set forth in the Cost Examination.

¹ Throughout this report we use the term "Cost Examination" rather than "audit". For various technical reasons, a Chapter 40B cost examination report prepared by a CPA may not meet the requirements of the U.S. Auditing Standards established by the American Institute of Certified Public Accountants (AICPA). We note, however, that we require the CPA's report to be the result of an "attestation examination" and that under AICPA standards (i) the objective of an attestation examination parallels that of an audit, (ii) the required level of evidence which must be accumulated for an attestation examination parallels that of an audit, (iii) the professional requirements for performing an attestation examination parallel that of an audit, and, finally, (iv) an attestation examination is the equivalent of an audit in situations where the financial statements have been prepared based on a set of specific rules (here, the requirements of our detailed 40B Cost Certification Guidance) that do not constitute accounting principles generally accepted in the United States ("GAAP").

III. Project Costs

A. Land

The site consists of 9.48 acres of land located at Hunt Road in Chelmsford, Massachusetts (the “Site”).

The Site was acquired for a nominal fee, based on a Quitclaim Deed from Emanouil Farms LLC to Beaver Brook Crossing LLC dated May 14, 2018 and recorded on May 15, 2018 at said Deeds in Book 32071, Page 192. The transaction was between related parties.

The Appraisal stated that the “as is” value of the land was \$900,000. MassHousing has determined that the Appraisal is acceptable.

For purposes of calculating the Chapter 40B Maximum Allowable Developer Fee and Overhead (Section IV below) and the Limited Dividend (Section V below), the above stated land values are considered as described below.

The pre-permitting land value is defined as the sum of the As Is Market Value² (\$900,000) plus Reasonable Carrying Costs³ (\$0). The Cost Examination reports the pre-permitting land value as \$900,000.

MassHousing has determined that the pre-permitted land value is appropriate.

The allowable acquisition cost (“AAC”) is defined as the lesser of the pre-permitting land value (\$900,000) and land acquisition cost (\$0). The Cost Examination reports the AAC as \$0.

MassHousing has determined that the AAC as reported is appropriate.

² As Is Market Value is the value of the property under current zoning at the time of the Developer’s application for a Project Eligibility Letter, and it must exclude any value created by a previously-issued Comprehensive Permit. It should be supported by an appraisal of this as-is market value.

³ Reasonable Carrying Costs (RCC) may include the following, up to a maximum of 20% of As-Is Market Value:

- a. If site control is established through an option or purchase-and-sale agreement, RCC may include non-refundable option and extension fees.
- b. If site control is established through ownership of the parcel to be developed, RCC may include taxes, insurance and interest costs on acquisition financing.
- c. Any interim income earned from existing operations on the site must be deducted from RCC

B. Construction Costs

The Guidance states that the Developer “is required to provide an explanation for the development’s actual hard costs if they exceed, by more than 10%, the estimated cost determined for a similar development through the use of the RS Means cost estimating tools.”

MassHousing has reviewed the RS Means Cost Analysis Reporting Form (the “RS Means Form”) certified to by the Architect, which states that the applicable RS Means standard construction costs for the Project are \$18,820,721. In the process of our review, MassHousing noted that the preliminary building structure costs for building 2 erroneously included contractor’s overhead & profit of \$1,970,127 and architectural fees of \$689,544 in its calculation. The instructions for preparing the RS Means Form specifically directs the user to use zero in these cost fields as the contractor fees are calculated later, in Step III of the form, and the architectural fees are reported as soft costs in the Cost Examination. The inclusion of these fees has resulted in an overstatement of the RS Means standard construction costs of \$2,039,081. MassHousing has made an adjustment to the RS Means Form by \$2,039,081, resulting in adjusted RS Means standard construction costs of \$15,788,696.

Actual construction costs for the Project are reported in the Cost Examination as \$15,136,877, which is \$651,819 less than the adjusted RS Means standard of \$15,788,696.

As a result, the Project’s total construction costs do not exceed the RS Means standard construction costs adjusted by MassHousing and also do not exceed the 110% safe harbor allowed under the Guidance, and therefore, no further analysis or explanation is required.

C. Builder’s Profit, Builder’s Overhead, General Conditions

The Guidance allows, for related party general contractors, a builder’s profit of 6% of construction costs, builder’s overhead of 2% of construction costs, and general requirements of 6% of construction costs. It is acceptable for a particular line item to exceed the limit set forth above so long as the total of the three line items does not exceed 14%.

According to the Owner’s Certificate, the general contractor was not a related party and therefore this section is not applicable.

D. Related Party Costs

The following related party transactions were identified by the Developer as part of the Owner's Certificate:

Emanouil Brothers, Inc., a related party, was paid \$1,187,015 for services that they provided to the Project as the site contractor, including demolition, cut and fill, excavation and backfill, drainage, water service, sewer service, electric service, gas service, paving, off-site work, landscaping and site improvements.

Based on MassHousing's experience with other projects of a similar nature, it has been determined that the reported site development costs are reasonable.

IV. Calculation of Maximum Allowable Chapter 40B Developer Fee and Overhead

The Cost Examination reports a Maximum Allowable Developer Fee and Overhead of \$1,866,368 (as shown in the calculation below).

Step 1: Calculation of 5% or 2.5% of Allowable Acquisition Cost

	<u>Per Cost Examination</u>	<u>Per MassHousing</u>	<u>Difference</u>
Allowable Acquisition Cost (AAC) Lesser of Pre-Permit Land Value and Actual Acquisition Cost	\$ -	\$ -	\$ -
Multiplied by 2.5% if Identity of Interest	2.5%	2.5%	0.0%
Adjusted Allowable Acquisition Cost	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>

Step 2: Calculation of Adjusted Development Cost

	<u>Per Cost Examination</u>	<u>Per MassHousing</u>	<u>Difference</u>
Total Development Costs (TDC) AAC+hard costs+soft costs+fee/oh+reserves	<u>\$ 17,218,244</u>	<u>\$ 17,218,244</u>	<u>\$ -</u>
Less:			
Allowable Acquisition Costs	-	-	-
Developer Fee	-	-	-
Developer Overhead	-	-	-
Development Consulting Fees	-	-	-
Capitalized Reserves	-	-	-
Total Deductions	<u>-</u>	<u>-</u>	<u>-</u>
Adjusted Development Costs (ADC)	<u>\$ 17,218,244</u>	<u>\$ 17,218,244</u>	<u>\$ -</u>

IV. Calculation of Maximum Allowable Chapter 40B Developer Fee and Overhead (continued)

Step 3: Calculation of Maximum Allowable 40B Developer Fee and Overhead

	<u>Per Cost Examination</u>	<u>Per MassHousing</u>	<u>Difference</u>
Adjusted Allowable Acquisition Cost (from Step 1 above)	\$ -	\$ -	\$ -
Plus: 15% of First \$3,000,000 of ADC*	450,000	450,000	-
Plus: 12.5% of Next \$2,000,000 of ADC*	250,000	250,000	-
Plus: 10% of (difference between \$5MM and \$15MM)	1,000,000	1,000,000	-
Plus: 7.5% of (difference between \$25MM and \$15MM)	166,368	166,368	-
Plus: 5% of amount greater than \$25MM	-	-	-
Maximum Allowable 40B Developer Fee and Overhead	<u>\$ 1,866,368</u>	<u>\$ 1,866,368</u>	<u>\$ -</u>

* ADC from Step 2 above

MassHousing has determined that the Maximum Allowable Developer Fee and Overhead as reported is allowable.

Step 4: Calculation of Total Development Fees and Overhead Actually Received

	<u>Per Cost Examination</u>	<u>Per MassHousing</u>	<u>Difference</u>
Actual Paid Developer Fee	\$ -	\$ -	\$ -
Plus: Actual Paid Developer Overhead	-	-	-
Plus: Actual Paid Development Consulting Fees	-	-	-
Plus: 80% of All Reserves to be Funded to Owner within 5 years of completion	-	-	-
Total Development Fees and Overhead Actually Received	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>

According to the Cost Examination, the Developer elected not to take a developer fee.

V. Limited Dividend

A. Calculation of Owner's Equity

The Cost Examination reports Owner's Equity of \$2,766,368.

Owner's Equity is determined by taking the greater of the amounts determined by the Cost Method and the Value Method.

The Value Method looks at the "as-complete" appraised value after construction, minus the amount of permanent debt. In this case, the Developer elected to use the Cost Method alone for determining Owner's Equity (as shown below).

Step 1: Maximum Allowable Development Fee for Purposes of Calculating Limited Dividend

	<u>Per Cost Examination</u>	<u>Per MassHousing</u>	<u>Difference</u>
Maximum Allowable 40B Developer Fee and Overhead (from Section IV, Step 3 above)	<u>\$ 1,866,368</u>	<u>\$ 1,866,368</u>	<u>\$ -</u>

Step 2: Calculation of Total Development Fees and Overhead Actually Received

	<u>Per Cost Examination</u>	<u>Per MassHousing</u>	<u>Difference</u>
Actual Paid Developer Fee	\$ -	\$ -	\$ -
Plus: Actual Paid Developer Overhead			-
Plus: Actual Paid Development Consulting Fees			-
Plus: 80% of All Reserves to be Funded to Owner within 5 years of completion			-
Total Development Fees and Overhead Actually Received (from Section IV, Step 4 above)	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>

A. Calculation of Owner's Equity (continued)

Step 3: Calculation of Owner's Equity

	<u>Per Cost Examination</u>	<u>Per MassHousing</u>	<u>Difference</u>
Cash Equity Invested by Owner	\$ -	\$ -	\$ -
Plus: Deferred Portion of Maximum Allowable Development Fee	1,866,368	1,866,368	-
Plus: Amount, if any, by which Pre-Permitting Land Value Exceeds Acquisition Cost	900,000	900,000	-
Less: Amount, if any, by which Acquisition Cost Exceeds Pre-Permit Land Value	-	-	-
Owner's Equity by Cost Method	<u>\$ 2,766,368</u>	<u>\$ 2,766,368</u>	<u>\$ -</u>

MassHousing has determined that the Owner's Equity, as reported, is allowable.

B. Calculation of Annual Limited Dividend:

Under the Guidance, the Annual Limited Dividend is 10% of Owner's Equity.

	<u>Per Cost Examination</u>	<u>Per MassHousing</u>	<u>Difference</u>
Owner's Equity by Cost Method	\$ 2,766,368	\$ 2,766,368	\$ -
Multiplied by 10%	10%	10%	10%
Annual Limited Dividend	<u>\$ 276,637</u>	<u>\$ 276,637</u>	<u>\$ -</u>

MassHousing has determined that the Chapter 40B Maximum Annual Limited Dividend, as reported in the Cost Examination, is allowable.