



January 2, 2008

Mr. Michael Rosa, Chairman, Board of Selectmen
Mr. Rocco Longo, Town Manager
Town of Billerica
365 Boston Road
Billerica, MA 01821

Re: Inspector General's Review of Salisbury Hill Estates in Billerica

Dear Chairman Rosa and Manager Longo:

Citizens' Housing and Planning Association (CHAPA) received a copy of a letter from Inspector General Sullivan (dated December 7, 2007) regarding his Office's review of Salisbury Hill Estates. We appreciate the Inspector General's (IG) thorough review of this project and the points his office identified regarding cost-certification audits for Chapter 40B homeownership developments. I am writing to clarify CHAPA's monitoring role and some issues raised in the IG's letter.

CHAPA's Monitoring Role

CHAPA has been a monitoring agent for the past seven years. The state agencies, the Federal Home Loan Bank of Boston, and the municipalities requested that CHAPA perform monitoring services. The Billerica Zoning Board of Appeals, the Billerica Housing Authority, and the Federal Home Loan Bank of Boston asked that CHAPA conduct monitoring services for Salisbury Hill Estates. They requested we do so because of our expertise in affordable housing and our knowledge of Chapter 40B regulations, policies, and procedures. CHAPA agreed to monitor Salisbury Hill Estates and signed a monitoring services agreement on February 18, 2003.

Pursuant to this agreement, CHAPA's role includes the following activities:

- Reviewing the developers' marketing and lottery plans to ensure compliance with state guidelines and affirmative marketing requirements and overseeing the lottery to ensure it is done in accordance with the plans (CHAPA does not conduct lotteries).
- Certifying buyers, after the lottery has been held, for the affordable housing units to ensure that they are income eligible (80% of area median income or below), which

involves a careful review of applicant tax returns, W-2 and 1099 forms, bank statements, and other documentation.

- Conducting a **review** of the cost-certification audit. The developer is responsible for engaging an independent certified public accountant. CHAPA contracts with an independent consultant to review the developer's audit, and based on that audit, to determine whether the developer exceeded the 20% profit limitation.
- Reviewing any refinancing request of the affordable unit buyers and coordinating the resales of the affordable units.

CHAPA commissions an independent and comprehensive review of every cost-certification audit by a qualified, independent firm. CHAPA and its consultants carefully and objectively review all of the audits subject to "agreed upon procedures" that have been reviewed by the state agencies, independent experts, and the Federal Home Loan Bank of Boston. Upon completion of the review, CHAPA issues a report to the municipality on all aspects of our monitoring.

Clarification of CHAPA's Review

Salisbury Hill Estates is a 40B project which was built using financing from the New England Fund Program (NEF). As the Inspector General's letter specifies, the developer (Salisbury Hill Corporation) received a project eligibility letter from the Stoneham Cooperative Bank in August 2001 and received a comprehensive permit in May 2002. Salisbury Hill Estates is considered an "old NEF" project because it received its project eligibility letter prior to July 22, 2002 (see 760 CMR 31.01 (2)(g)). It was approved several years prior to the adoption of state guidelines for the New England Fund Program (NEF) of February 2003 and the Massachusetts Housing Partnership guidelines of November 2005.

In this case, the developer submitted an independent audit of the project in August 2005, which was conducted by Feeley & Driscoll in accordance with "auditing standards generally accepted in the United States of America." CHAPA, in turn, hired an independent accounting firm (Alexander Aronson & Finning) to review the audit and issue an independent report to the Town of Billerica. This review was based on the audit submitted to CHAPA and conducted in accordance with "attestation standards established by the American Institute of Certified Public Accountants." CHAPA submitted a report to the Billerica ZBA and then met with the ZBA to discuss the report. No issues were raised at this meeting nor have any concerns been raised to us subsequent to this meeting—either verbally or in writing.

The Inspector General's office contracted with Melanson Heath & Company (Melanson) to conduct an audit of Salisbury Hill Estates. This audit involved verification of all invoices, cancelled checks, and timesheets. This scope of work exceeds that which CHAPA was asked to perform. Our agency is responsible for conducting a *review* of the developer's audit (in accordance with the monitoring services and regulatory agreements), not an entirely new audit.

We wanted to provide further explanation of several areas of our review of the cost-certification audit:

1. Land Value

Melanson's draft audit reduced the allowable land acquisition cost from \$610,000 (as stated in the Feeley & Driscoll audit) to \$418,200 to "reflect the land's assessed value of \$418,200 at the time of its purchase."

CHAPA's consultant scrutinized the land value and determined that the site was purchased in arms-length transactions. Because this is an "old NEF" project, the New England Fund Program did not require the submission of a "pre-permit" appraisal of the land and the developer did not submit a pre-permit appraisal to us nor was there a requirement that the land value be based on a pre-permit appraisal. This class of NEF projects is defined as that which received site approval letters prior to July 22, 2002 as specified in 40B regulation 760 CMR 31.09 (3). Today, there are specific state rules governing land value and other expenses.

The report from Alexander Aronson & Finning (AAF) states: "Further review of the acquisition value does not appear to be warranted in this case due to the substantiated land cost of \$610,000 and the regulatory agreement language which allows a land value that is approximately \$1.6 million more than what the audit included for the land value."

2. Disallowed Project Expenses

In addition to excluding a land value amount of \$191,800, the IG's report disallows approximately \$1.3 million in project expenses because the developer did not have adequate supporting documentation. According to the draft Melanson audit, this includes expenses of \$858,394 for which checks were issued by the developer to pay for the expenses but for which invoices or other appropriate documentation were not provided. According to the draft Melanson audit, these disallowed project expenses also include an additional \$266,358 reported to Moore's Lumber for "instances of payment without back-up documentation and instances of valid invoices for which we could not determine the check on which payment was made." (see page 4 of Melanson draft audit).

The IG contracted with Melanson to conduct an audit of the developer's cost-certification audit, involving verification of all invoices, cancelled checks, and timesheets. This scope of work exceeds that which CHAPA was asked to perform. Our agency is responsible for conducting a *review* of the developer's audit (in accordance with the monitoring services and regulatory agreements), not an entirely new audit.

CHAPA's review of the developer's cost-certification audit is consistent with other affordable housing programs in Massachusetts, such as the Low Income Housing Tax Credit Program. It is also consistent with the methods used by the state housing agencies to conduct reviews of cost-certification audits. Based on the fact that we conduct an independent review rather than an audit, CHAPA relies on the numbers presented in the independent audit submitted by the CPA.

Frequently, we do ask for additional documentation regarding project expenses and revenues if there appears to be questionable expenses or if the expenses appear above industry standards. In this case, the direct construction costs were \$142,105 per unit as reported in the Feeley & Driscoll audit (for 2 bedroom townhouse condominiums), which we believed to be well within industry standards.

3. Developer Overhead, Brokerage Commissions, and Lottery Costs

The draft Melanson report and CHAPA's review by AAF were similar in terms of developer overhead, brokerage commissions, and lottery expenses. With regard to developer overhead, the draft Melanson report states: "We did not have sufficient evidence to support the need for an adjustment to the amount reported as Development Overhead." (page 7). With regard to brokerage commissions, the Melanson report reclassified \$63,742 in brokerage commissions to building construction costs. The AAF review found the brokerage commissions of the market rate units to be 4.45% or "within the 4-6% range generally accepted by state program administrators." Finally, both the Melanson and AAF reports did not make any adjustments in lottery costs.

4. Sales Revenue of Market Rate Units

CHAPA's report by AAF and the Melanson report both made similar adjustments in the revenues of market rate unit sales to account for the sales of units at a discount to Charlene McCarthy (the broker) and Mary Carron (the land seller).

5. Related-Party Payments

The audit submitted to CHAPA reported related-party expenses as \$422,320, which was 6.75% of direct construction costs. The state guidelines allow 14% for builders profit, general conditions, and overhead. AAF "backed out" the related-party profit of \$70,000 to determine its impact on the 20% profit limitation. The draft Melanson report excludes \$161,495 in related-party costs because back-up documentation was not provided.

CHAPA looks forward to continuing our monitoring work on behalf of the Billerica ZBA. Please feel free to call me if you have any questions or comments regarding our monitoring activities.

Sincerely,



Aaron Gornstein
Executive Director

cc: Doris Pearson, Chair, Billerica ZBA
Steven Dresser, Salisbury Hill Corporation
Inspector General Gregory Sullivan
Tina Brooks, Undersecretary, DHCD
Thomas Gleason, Executive Director, MassHousing