



Massachusetts Housing Finance Agency
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December 14, 2018

Mr. Dean Behrend
Riverview Crossing, LLC
869 Worcester Street
Wellesley, MA 02482

Re: The Crossings, Wellesley
Project Eligibility/Site Approval Application
MassHousing ID No. 994

Dear Mr. Behrend:

I write regarding the Application for Chapter 40B Project Eligibility/Site Approval for MassHousing-Financed and New England Fund ("NEF") Rental Projects (the "Application") that you submitted to the Massachusetts Housing Finance Agency ("MassHousing") in connection with your proposal to build 64 rental units on 41,795 square feet of land in Wellesley, Massachusetts (the "Project"). For the reasons set forth herein, MassHousing hereby denies the Application.

Massachusetts General Laws c. 40B, §§ 20-23 ("Chapter 40B") promotes responsible housing growth by creating a streamlined permitting process for eligible projects that utilize subsidized financing to meaningfully accommodate lower-income residents. As the Supreme Judicial Court has recognized, Chapter 40B was enacted to address an acute shortage of decent, safe low- and moderate-cost housing throughout the Commonwealth. The success of the Chapter 40B program is of critical importance to the Commonwealth of Massachusetts as it has, since its enactment, supported the vast majority of affordable housing construction in Massachusetts outside of our largest cities.

MassHousing is an independent, quasi-public agency charged with providing financing for safe, affordable housing in Massachusetts. MassHousing takes its mission seriously, and integrity is among the core values that guide our culture. Indeed, some of the functions that MassHousing performs with respect to the Chapter 40B process are designed to prevent fraud and ensure compliance with the complex regulations governing Chapter 40B projects. Chapter 40B developers must strictly comply with the statute and applicable regulations, including adherence to affordability restrictions and limitations on profits and dividends. In turn, MassHousing must be able to rely on developers to be truthful and forthright throughout the process.

It has come to our attention that on May 8, 2018, one day before you signed the Application, you executed an Administrative Consent Order with Penalty and Notice of Noncompliance ("Consent Order") with the Massachusetts Executive Office of Energy and Environmental Affairs Department of Environmental Protection ("MassDEP"). The Consent Order states that the following facts and allegations led MassDEP to issue the order:

- 1) You asked for and received a fraudulent "clean house" report from an asbestos consultant that concealed the presence of asbestos at a single-family residence in Mashpee, after the consultant indicated that pipe insulation located in the basement of the property was visually identified as asbestos containing material.
- 2) You filed a Demolition Application with the Town of Mashpee that did not disclose that the consultant had visually identified the pipe insulation in the basement as asbestos containing material.
- 3) You demolished the single-family house at the Mashpee property, despite knowing the structure contained asbestos. The asbestos containing material was then placed in three roll-off containers, one of which was illegally removed from the Mashpee property.
- 4) You caused or otherwise allowed an asbestos abatement activity which resulted in an actual or potential threat to human health and safety.
- 5) You failed to disclose the presence of an above-ground oil tank in your demolition permit application to the Town of Mashpee.
- 6) You improperly buried the oil tank at the Mashpee property while it contained approximately six inches of "waste oil/sludge."

We take these matters, which concern your actions as a developer, very seriously and conclude that this information is disqualifying with respect to the Application.

In addition, you did not disclose in the Application that three entities that you managed filed for bankruptcy during the last ten years. Your Application contains a "Certification" section. In this section, you were required to certify under pains and penalties of perjury whether, within the last ten years, you or any of the "Applicant Entities" have "ever been a defendant in a lawsuit involving fraud, gross negligence, misrepresentation, dishonesty, breach of fiduciary responsibility or bankruptcy," and, if so, provide a written explanation of any required disclosure. In response to this question, you checked "No." Further, you certified that the information disclosed in the Application was "true, accurate and complete," and you acknowledged that you "understood that MassHousing [would be] relying on this information in processing the request for Site Approval."

In connection with its review of your Application, MassHousing became aware that Appian LLC, Appian

Corporation (“Appian Corp.”) and Wellesley Realty Associates LLC (“Wellesley Realty”) filed for bankruptcy within the past ten years. On August 10, 2009, Appian LLC filed a Voluntary Petition for Bankruptcy under Chapter 11 of the Bankruptcy Code. On June 20, 2012, Appian Corp. filed a Voluntary Petition for Bankruptcy under Chapter 11 of the Bankruptcy Code. On August 20, 2012, Wellesley Realty filed a Voluntary Petition for Bankruptcy under Chapter 11 of the Bankruptcy Code. The petitions and exhibits filed therewith indicate that you are the sole director of Appian Corp. and the manager of both Wellesley Realty and Appian LLC. Accordingly, you controlled the named Applicant in your Application, Riverview Crossing LLC, as well as Appian LLC, Appian Corp. and Wellesley Realty. Thus Appian LLC, Appian Corp. and Wellesley Realty all constituted “Applicant Entities” as that term is defined in the Application. Their bankruptcies should have been affirmatively disclosed to MassHousing in connection with the Application.

In addition, after we inquired about the bankruptcies, your subsequent explanation to MassHousing did not provide the forthrightness and candor that MassHousing expects and requires from Applicants for Chapter 40B Project Eligibility. This is particularly concerning because it relates to your failure to meet obligations under substantial construction loans.

For example, you stated to MassHousing that Appian Corp. was a corporate entity involved with the construction of a mixed-use project located at 978-980 Worcester Road in Wellesley and that the bankruptcies of Appian Corp. and Wellesley Realty were both related to that project. However, our review of the bankruptcy court records did not uncover any connection between Appian Corp. and the 978-980 Worcester Road project. Appian Corp.’s schedule of real property (Schedule A) and schedule of personal property (Schedule B) filed in connection with Appian Corp.’s bankruptcy petition indicate that its business was developing a different small residential subdivision in Wellesley; holding title to undeveloped residential land in Weston; and holding membership interests in a pair of limited liability companies connected to commercial properties in Wellesley. Neither the Appian Corp. bankruptcy schedules of real and personal property, nor the schedules of creditors and executory contracts indicate any connection to 978-980 Worcester Road.

Wellesley Realty appears to have sought bankruptcy protection after the construction lender for the 978-980 Worcester Road project encountered financial difficulties, was closed by the FDIC, and its successor-in-interest initiated foreclosure proceedings against Wellesley Realty. Appian Corp., on the other hand, was involved in the development of a different four-unit subdivision at 169 Grove Street in Wellesley. The principal remaining on its loan for this project was secured by one of the lots at 169 Grove Street and by 326 Glen Road in Weston. The bank initiated foreclosure proceedings and Appian filed for bankruptcy protection the evening before the scheduled foreclosure auction, not in connection with the 978-980 Worcester Road project.

For all of these reasons, MassHousing hereby denies the Application. MassHousing is also suspending you immediately from further participation in MassHousing’s Chapter 40B site approval process.

Sincerely,

A handwritten signature in black ink, appearing to read 'Paul McMorrow', with a stylized, cursive script.

Paul McMorrow
Director of Communications & Policy

cc: The Honorable Cynthia Stone Creem
The Honorable Richard J. Ross
The Honorable Alice Hanlon Peisch
Jack Morgan, Chair, Wellesley Board of Selectmen
Richard L. Seegel, Chair, Wellesley Zoning Board of Appeals
Blythe C. Robinson, Wellesley Executive Director
Michael D. Zehner, Planning Director