



Massachusetts Housing Finance Agency
One Beacon Street, Boston, MA 02108

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Videophone: 857.366.4157 or Relay: 711

December 10, 2021

VIA EMAIL: gengler@s-e-b.com
AND FEDERAL EXPRESS

Mr. Geoffrey Engler
SEB Wellesley, LLC
257 Hillside Avenue
Needham, MA 02494

Re: Chapter 40B Program Suspension

Dear Mr. Engler:

We write to inform you that the Massachusetts Housing Finance Agency (“MassHousing”) is suspending you immediately from any involvement in MassHousing’s Chapter 40B application process, whether as an owner, applicant, consultant, or otherwise, with respect to any applications filed on or after today’s date. MassHousing is suspending you due to your lack of the forthrightness and candor that MassHousing expects and requires from applicants for Chapter 40B project eligibility, with respect to a material misrepresentation that you made in connection with your application for project eligibility for a proposed Chapter 40B project at 136 & 140 Worcester Street in Wellesley (the “Project”).

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 Chapter 40B projects 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 very 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. Accordingly, MassHousing must be able to rely on applicants and developers to be truthful and forthright throughout the process.

As set forth in detail in our letter to you regarding eligibility for the Project (also of today's date), which is incorporated by reference herein, your representation, made in the cover letter of your February 13, 2019 application for a determination of Project Eligibility (the "Application"), that "the previous applicant (Riverview Crossings, LLC —Dean Behrend, Principal) does not have any membership or financial interest in SEB Wellesley, LLC and **is no longer involved in the development process,**" cannot be reconciled with the terms of the Development Agreement that you executed on behalf of SEB Wellesley, LLC ("SEB"), with Mr. Dean Behrend, on behalf of himself, the Worcester Road Realty Trust (the "Trust"), and Behrend Construction, LLC ("Behrend Construction"), on March 11, 2019.^{1/}

Pursuant to your Development Agreement, which states that it was effective February 11, 2019, two days before you submitted the Application to MassHousing, SEB agreed to pursue a Comprehensive Permit for Mr. Behrend and entities that Mr. Behrend controlled so as to allow Behrend Construction to construct the Project, and you specifically agreed to cancel the P&S and Assignment through which you established site control if the Comprehensive Permit issued, and to transfer the Comprehensive Permit to Behrend Construction or an entity to be designated by Behrend Construction. Mr. Behrend further retained the right to participate in design decisions and "other matters that may arise during obtaining the Entitlements" and review and consider proposals for architectural and environmental work. Mr. Behrend also agreed to pay, "directly," fees of Project consultants.

None of these rights and duties are consistent with your representation that "the previous applicant (Riverview Crossings, LLC —Dean Behrend, Principal)is no longer involved in the development process." Your representation to the contrary was false or misleading when made or became false or misleading when you executed the Development Agreement (to be effective

^{1/} The Town of Wellesley brought the Development Agreement to our attention after it was disclosed in and attached to a Complaint filed by SEB against Mr. Behrend over unpaid fees, allegedly due under the Development Agreement. *SEB Wellesley LLC vs. Behrend, Dean F. et al.* Norfolk Superior Court, 2182CV00687. A copy of the Town's October 13, 2021 letter to MassHousing is enclosed herein. MassHousing has conducted its own independent review of the facts set forth herein.

before you made the representation). Indeed, according to SEB itself, “SEB agreed to undertake the permitting process pertaining to Owner’s [(Mr. Behrend, the Trust, and Behrend Construction)] **proposed development** of [the Property.]” *SEB Wellesley LLC vs. Behrend, Dean F. et al.* Norfolk Superior Court, 2182CV00687, Complaint ¶ 5 (emphasis added). Moreover, you never corrected your representation that Mr. Behrend was no longer involved in the development process or disclosed the Development Agreement to MassHousing before applying for a comprehensive permit for the Project or thereafter.

On May 17, 2019, MassHousing issued the PEL to SEB for the Project based on your representation concerning Mr. Behrend. After explaining that we had previously denied Mr. Behrend’s application due to concerns related to his qualifications and capacity, the PEL states:

MassHousing’s review of the Project as proposed by SEB Wellesley, LLC is conditioned upon the previous applicant no longer having any membership, financial interest, or involvement in the Project.

The Development Agreement demonstrates that Mr. Behrend remained involved in the Project and had a financial interest in the Project effective before you submitted the Application and continuing through the date that MassHousing issued the PEL. Though MassHousing made clear that our review was conditioned on Mr. Behrend having no financial interest or involvement in the Project, on May 24, 2019, SEB filed an application for a comprehensive permit, without disclosing Mr. Behrend’s financial interest and involvement to MassHousing. We take these matters very seriously. As a result of our review of your actions with respect to the Project, you, and any entities owned, managed or controlled by you, are immediately suspended from any involvement in MassHousing’s Chapter 40B application process as an owner, applicant, consultant, or otherwise, with respect to any applications filed on or after today’s date.

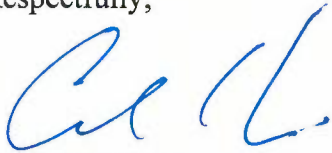
MassHousing understands that you, or entities owned, managed or controlled by you, are currently involved (either as the applicant, owner or consultant) in other Chapter 40B projects for which MassHousing has already granted preliminary site approval or final approval or completed cost certification, or for which MassHousing is currently considering a project eligibility application, including, but not limited to, the list of developments below (collectively, the “Current SEB Projects”):

1. The Pines at Marsh Hill, Dracut
2. Madalene Village, Frankling
3. Kickamuit Woods, Swansea
4. The Village at Sudbury Station, Sudbury
5. Tarrant Lane Apartment, Wakefield
6. Pond View Commons, Lunenburg
7. The Flats @ Merrimac Square, Merrimac
8. Residences at 1180 Boylston, Brookline

9. 85 Plymouth, Bridgewater
10. The Residences on the Charles, Newton
11. Mashpee Commons – Phase 1A (JWT Phase 1A), Mashpee
12. Beaver Pond Commons, Milford
13. Settler’s Landing, Barnstable
14. Sippican Woods, Marion
15. 21 Crown, Brookline
16. Babcock Place, Brookline
17. The Metropolitan at Reading Station, Reading
18. 1299 Beacon, Brookline
19. Edge Hill Road, Sharon
20. Rosewood Apartments at Swansea, Swansea
21. 16 Stearns Road, Wellesley
22. Wellesley Park, Wellesley
23. Old Bridgewater Place, West Bridgewater
24. Sailmaker Place, Marblehead
25. Greenwood Station, Wakefield
26. Dunstan East, Newton
27. Island Cove Apartments, Tisbury
28. The Cottages at Old Oaken Bucket, Scituate
29. 45 Bartlett, Brookline
30. Wakefield North Apartments, Wakefield
31. 45 Marion Street, Brookline
32. The Point at Merrimack River, Andover
33. Audubon Easterly, Walpole
34. The Point at Wrentham, Wrentham
35. Broadstone Bare Cove, Hingham
36. 455 Harvard, Brookline
37. 680 Worcester, Wellesley
38. Winchester North, Winchester
39. The Village on Main, Hingham
40. Herring Brook Meadow, Scituate
41. 19-35 River Street, Winchester
42. The Village at Silver Hill, Weston
43. Red Robin Pastures, Dover
44. Sanctuary at Manchester-by-the-Sea, Manchester

MassHousing requests that you certify in writing that you have made no false or misleading statements in your applications and/or other submissions to MassHousing in connection with the Current SEB Projects, and that you know of no undisclosed facts, agreements or changes of circumstances that would cause statements in your applications or other submissions to MassHousing to be false or misleading, or inaccurate. If you fail to supply such certification within thirty (30) days, MassHousing will not permit you, or any entities owned, controlled or managed by you, to remain involved in the Current SEB Projects. A form of certification acceptable to MassHousing is included below.

Respectfully,



Colin McNiece
General Counsel

Enclosure: October 13, 2021 letter from Thomas J. Harrington, Esq. to Chrystal Kornegay

CERTIFICATION

The undersigned hereby declares, under the pains and penalties of perjury, that, in connection with the Current SEB Projects, I have made no false or misleading statements in applications and/or other submissions to MassHousing, and know of no undisclosed facts, agreements or changes of circumstances that would cause statements made to MassHousing to be false, misleading, or inaccurate.

[Signature]

[Print name]

[Date]