



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

TEL: 617.854.1000 | FAX: 617.854.1091  
VP: 866.758.1435 | www.masshousing.com

November 24, 2014

Mayor Setti D. Warren  
Newton City Hall  
1000 Commonwealth Ave  
Newton Centre, MA 02459

Please find enclosed MassHousing's final report based on its analysis of Covenant Commonwealth Newton, Inc's cost examination (the "Cost Examination") dated September 30, 2009 and received by MassHousing on October 15, 2009 for the Covenant Residences on Commonwealth development built pursuant to M.G.L. c. 40B. MassHousing has evaluated the Cost Examination pursuant to our responsibilities under the New England Fund Program.

MassHousing distributed a draft of our report regarding the Cost Examination on October 15, 2014, requesting that written comments or concerns regarding the report be submitted to MassHousing no later than November 21, 2014. As of the date of this letter we have not received any written comments from the City of Newton and therefore our report is being issued in its final form.

Very truly yours,

Gregory P. Watson  
Manager, Comprehensive Permit Programs

Enclosure

cc: Susan Gittelman, Covenant Commonwealth Newton, Inc.,  
Eric G. Montague, CPA, CohnReznick LLP, formerly Ercolini & Company LLP  
Brooke K. Lipsitt, Chairman, Zoning Board of Appeals  
Carolyn Dymond, DHCD  
Chris Norris, Executive Director, Metropolitan Boston Housing Partnership



**Report on MassHousing's Analysis  
of the Cost Examination  
Dated September 30, 2009  
and  
Received by MassHousing on October 15, 2009**

**Submitted by  
Covenant Commonwealth Newton, Inc.**

**Covenant Residences on Commonwealth  
a M.G.L. Chapter 40B Development  
PE-382**

**Date of Report: October 15, 2014**

## Executive Summary

On October 15, 2009, MassHousing received an Independent Accountant's Report dated September 30, 2009 for the Covenant Residences on Commonwealth housing development (the "Project") located in Newton, Massachusetts (the "Town"). In said Independent Accountant's Report, Ercolini & Company LLP (the "CPA") stated that they have examined the Schedule of Chapter 40B Maximum Allowable Profit from Sales and Total Chapter 40B Project Costs (the "Cost Examination") of Covenant Commonwealth Newton, Inc. (the "Developer"), and that in their opinion the Cost Examination presents fairly, in all material respects, the Chapter 40B Maximum Allowable Profit from Sales and Total Chapter 40B Project Costs of the Developer for the period January 1, 2007 to August 31, 2009, in conformity with guidelines prescribed by the Department of Housing and Community Development ("DHCD") and MassHousing.

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 two conclusions:

1. Certain adjustments, which are identified below, should be made to the information contained in the Cost Examination to be consistent with then-existing guidelines and practices.
2. Notwithstanding these adjustments, MassHousing believes that the Developer has not exceeded the maximum profit allowed to be earned on this development as a limited dividend entity.

The following schedule, more fully described in Appendix A, reflects the final profit calculation as adjusted for project sales and cost findings noted in this Report:

<i>Description</i>	<i>Per Cost Examination</i>	<i>Proposed Adjustments</i>	<i>Ref.</i>	<i>Final Per MassHousing</i>
Sales	\$ 20,999,037	\$ -		\$ 20,999,037
Subsidy Income	1,950,000	(600,000)	A	1,350,000
Restricted Income	250,000	(250,000)	B	-
Total Sales/Revenue	<u>\$ 23,199,037</u>	<u>\$ (850,000)</u>		<u>\$ 22,349,037</u>
Project Costs:				
Site Acquisition	\$ 4,657,010	\$ -		\$ 4,657,010
Hard Costs	10,338,190			10,338,190
Soft Costs	6,145,533	(1,284,245)	C, D, E, F	4,861,288
Total Project Costs	<u>\$ 21,140,733</u>	<u>\$ (1,284,245)</u>		<u>\$ 19,856,488</u>
Computed Profit from Sales/Revenue	<u>\$ 2,058,304</u>	<u>\$ 434,245</u>		<u>\$ 2,492,549</u>
Profit Percentage	<u>9.74%</u>			<u>12.55%</u>
Excess Profit Due to Municipality	<u>\$ -</u>			<u>\$ -</u>

- A. This downward adjustment represents the reclassification of subsidy repayments to offset subsidy income as more fully described in Section V, Part C.5e below.
- B. This downward adjustment represents the reclassification of remediation costs to offset restricted income as more fully described in Section V, Part C.5b below.
- C. The \$250,000 component of this downward adjustment represents the reclassification of remediation costs to offset restricted income as more fully described in Section V, Part C.5b below.
- D. The \$600,000 component of this downward adjustment represents the reclassification of subsidy repayments to offset subsidy income as more fully described in Section V, Part C.5e below.
- E. The \$346,000 component of this downward adjustment represents the portion of the developer's overhead charged to the Project that was disallowed as more fully described in Section V, Part C.3 below.
- F. The \$88,245 component of this downward adjustment represents brokerage commissions that were disallowed as more fully described in Section V, Part C.1 below.

After taking into account the proposed adjustments noted above, we conclude that the Cost Examination is free of material mathematical errors, reflects project sales revenue from all units, reflects project costs that appear to be reasonable and/or consistent with then-existing policy, 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.

Depending on the timing of a project, different projects will be governed by different sets of rules. The “Local 40B Review and Decision Guidelines” (the “MHP Guidelines”), published in November 2005, were the guidelines in effect when MassHousing issued the project eligibility (site approval) and final approval letters for this Project.

MassHousing issued cost certification guidance on August 7, 2007 (“MassHousing Guidance”) and DHCD promulgated its February 2008 M.G.L. Chapter 40B amended regulations at 760 CMR 56.00 (most recently amended April 2012) and its associated guidelines, most recently revised in 2013 (the “Guidelines”), both of which provided much needed additional guidance to Developers, CPAs, Subsidizing Agencies and municipalities. In this case, the Developer and its CPA did have the benefit of such guidance.

## I. Overview

According to the Cost Examination, the Developer was formed on July 5, 2005 to own, develop, and invest in real estate property located in Newton, Massachusetts (the "City") and to provide low income, moderate-income and market-rate income housing through the rehabilitation, construction, renovation, operation (including conversion to cooperative or condominium form of ownership and sale of condominium units) in accordance with requirements of M.G.L. c. 40B.

The Developer purchased two parcels of land with existing conditions of a dilapidated single family home and an existing 12 unit apartment building with improvements. These two parcels were developed into 57 residential condominiums, 15 designated as affordable units.

On April 25, 2006, MassHousing issued a project eligibility letter evidencing fundability of the Project under both the "*Housing Starts*" and the "*New England Fund*" ("NEF") programs.

On May 4, 2006, MassHousing issued a modification to the project eligibility letter. The Board of Alderman had awarded \$1.2 million of Community Preservation Funds for the Project and had also expressed a preference for one additional affordable unit, increasing the total number of affordable units in the project to 15 and the total units in the project to 57. The modification was acceptable under the Housing Starts program.

On July 14, 2006, the Newton Zoning Board of Appeals issued a Comprehensive Permit for the Project.

On July 13, 2007, MassHousing issued a final approval letter under 760 CMR 31.09(3).

MassHousing, the Developer and the City entered into a Regulatory Agreement dated February 5, 2007 and recorded on February 6, 2007 at the Middlesex County Registry of Deeds in Book 48956, Page 79.

MassHousing, The Metropolitan Boston Housing Partnership, the Developer and the City entered into a Monitoring Services Agreement dated February 5, 2007, and recorded on February 6, 2007, at the Middlesex County Registry of Deeds in Book 48956, Page 111.

Pursuant to the Regulatory Agreement, MassHousing has the responsibility to evaluate the limited dividend requirement, which involves determining the Developer's compliance with the allowable profit limitation through approval of total development costs.

## 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 Independent Accountant's Report, Schedule of Chapter 40B Maximum Allowable Profit from Sales and Total Project Costs, and Notes to Schedules<sup>1</sup>.
- Developer's Certificate dated September 30, 2009, from Susan Gittelman on behalf of Covenant Commonwealth Newton, Inc.
- General Contractor's Certificate dated August 26, 2009, from Robert E. Richard on behalf of Pilot Construction, Inc.
- Construction Manager's Certificate with Construction Manager Acting as Owners Agent dated August 23, 2009, from Peter Poras on behalf of Chestnut Hill Realty Development, LLC.
- Land appraisal dated March 22, 2006, valuing the land as of March 2006, prepared by Byrne McKinney & Associates, Inc. and commissioned by MassHousing (the "Appraisal").
- "Housing Starts Process and Guidelines."
- "Guidelines for Housing Programs in Which Funding is Provided through a Non-Governmental Entity" (the "NEF Guidelines").
- The MHP Guidelines.
- MassHousing Guidance.
- The Guidelines.

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

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<sup>1</sup> 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 Sales/Revenue

MassHousing reviewed documentation for all fifty-seven (57) unit sales.

<u>Sales Revenue from all 57 units</u>	<u>Amount</u>
Affordable Unit Sales Per Cost Examination - 15 units	\$ 2,492,300
Market Unit Sales Per Cost Examination units - 42 units	18,506,737
Total Sales Revenue Per Cost Examination	<u>20,999,037</u>

Our analysis included reviewing a sample of HUD-1 Settlement Statements for unit sales and sales documentation provided by the Developer. The average unit sales price for an affordable unit was \$166,153 while the average unit sales price for a market rate unit was approximately \$440,637. Unit sales included a parking space in the purchase price. The parking spaces are not deed restricted.

There are certain restrictions imposed on the resale of any affordable unit under Chapter 40B. It is the responsibility of the Monitoring Agent to review and approve on MassHousing's behalf the subsequent sale of all affordable units.

### IV. Related Party: Sale of Units

According to the Developer's Certificate, signed under the penalties of perjury, there were no sales made to a related party.

### V. Project Costs

#### A. Land

The site consists of two parcels of land with an approximate total acreage of 1.47, located at 27-29 and 35 Commonwealth Avenue in Newton Massachusetts (the "Site").

The land value stated in the Cost Examination is \$4,657,010, which represents the Developer's purchase price of \$4,590,000 plus carrying costs of \$67,010.

The Site was acquired for \$4,590,000, based on the following two Quitclaim Deeds: (i) The first parcel was acquired for \$1,250,000 based on a Quitclaim Deed from Joseph Melikian and Anne B. Melikian, in their respective capacities as trustees under the Second Commonwealth Melikian Trust ("Seller of Parcel One") to Covenant Commonwealth Newton, Inc. dated January 18, 2007 and recorded on February 6, 2007 at the Middlesex (South) Registry of Deeds in Book 48956 page 62 and (ii) the second parcel was acquired for \$3,340,000 based on a Quitclaim Deed from Earl Cate, in his capacity as trustee under the Melkian Comm. Land Trust ("Seller of Parcel Two") to Covenant Commonwealth Newton, Inc. dated January 18, 2007 and recorded on February 6, 2007 at the Middlesex (South) Registry of Deeds in Book 48956 page 67). According to the Developer, the transactions are arm's length between sellers and the buyer.



**A. Land (continued)**

The Appraisal states that the “as is” value of the Site was \$5,100,000.

The MHP Guidelines, which were in effect at the time the project eligibility letter was issued, state that the “as is” appraised land value, which values the land without the benefit of a comprehensive permit, plus reasonable carrying costs, is the appropriate value to use as the acquisition amount in the cost certification. Reasonable carrying costs may not exceed 20% of the as-is market value of the site unless the carrying period exceeds 24 months from the date of application for a project eligibility letter, and are permitted if verifiable.

The carrying costs included in the Cost Examination did not exceed 20% of the “as is” market value and the costs were verified.

In this case, and under the MHP Guidelines, the appropriate land acquisition value for cost certification purposes is \$5,167,010, which is the “as is” land value from the Appraisal (\$5,100,000) plus reasonable carrying costs (\$67,010).

<u>Land Value</u>	<u>Amount</u>
Land Value per Cost Examination	\$ 4,657,010
Land Value per "as is" Appraisal + Carrying Costs	5,167,010
Difference	<u>\$ (510,000)</u>

As indicated in the Monitoring Services Agreement, the role of MassHousing is not to calculate the precise level of developer profit on every Chapter 40B development, but rather first to determine whether the Developer has exceeded the 20% profit limitation and then further, in cases where the limitation has been exceeded, to determine the exact amount of the excess profit.

Since the Project complied with the profit requirement even when using the actual purchase price of the land (plus carrying costs), which was \$510,000 lower than the “as is” appraised value (plus carrying costs), MassHousing will not make an upward adjustment to the land value and will not review in greater depth the question of whether a higher land value might have appropriately been attributed to the Project.

## B. Hard Costs

### 1. RS Means

When analyzing the Cost Examinations of Chapter 40B developments, one issue which MassHousing focuses on is whether construction costs were inflated in an effort to increase developer return. For this reason, MassHousing Guidance introduced, for purposes of establishing a “safe harbor” regarding hard construction costs, RS Means data.

RS Means is recognized as an independent cost authority in the home construction business. The RS Means “Cost Data” guides provide reasonably accurate cost information to help developers, contractors and others estimate costs for new construction when only a general description of size and amenities are available. For purposes of our review we used, for comparison purposes only, new home construction cost data from the RS Means Residential Cost Data Guide 2009, 28th, Annual Edition (“RS Means”).

MassHousing notes that the Cost Examination contains hard costs pertaining to (i) new construction of a 44 unit building and (ii) renovation of an existing 12 unit brick apartment building.

RS Means does not standardize a square footage cost for renovation projects due to the uniqueness of each project.

For purposes of this exercise, only costs pertaining to new construction (“35 Commonwealth Avenue”) will be analyzed through the use of RS Means data, which equates to \$7,751,160 or 91% of Residential Construction.

The Cost Examination results for 35 Commonwealth Avenue were compared to the RS Means 2009 Base Residential Cost per Square Foot and the 43,592 total square footage was based upon information reported by the Developer. MassHousing estimates that the reported cost per square foot for 35 Commonwealth Avenue was \$177.81, which was approximately \$15.14 lower than the RS Means residential construction cost.

Since MassHousing Guidance allows for up to 110% of the RS Means residential construction cost per square foot as a safe harbor, the calculation below shows the reported cost per square foot as \$34.43 lower than the safe harbor cost per square foot.

See calculations below.

**1. RS Means (continued)**

Total Residential Construction	\$	7,751,160
Divided by 35 Commonwealth Avenue Square Footage	\$	43,592
Cost per Square Foot	\$	177.81
		<i>Market Units</i>
RS Means Residential Construction Cost	\$	192.95
Allowable Percentage Factor		110%
Allowable Cost per Square Foot		212.24
Actual Cost per Square Foot		177.81
Difference	\$	34.43

As a result of our analysis, we determined that the calculated construction costs per square foot as reported in the Cost Examination for 35 Commonwealth Avenue did not exceed the RS Means residential construction cost and also did not exceed the 110% safe harbor cost, which would be allowed under MassHousing Guidance and the Guidelines.

**2. Builder's Profit, Builder's Overhead and General Requirements**

According to the Developer's Certificate, signed under the penalties of perjury, the Project did not utilize a related party general contractor. This section is therefore not applicable.

**C. Soft Costs**

As noted and discussed more fully above, the MHP Guidelines were in effect for this Project.

**1. Commissions/Advertising – Market Rate Units**

The Cost Examination reported total brokerage commissions/advertising costs of \$1,157,480 or 5.5% of total actual market rate sales prices.

**Related Party Broker 27-29 Commonwealth Avenue**

According to the Developer's Certificate, signed under the penalties of perjury, the Project utilized a related party broker (Chestnut Hill Realty) for the portion of the project located at 27-29 Commonwealth Avenue. The limit imposed by the MHP Guidelines for related party broker commissions is 5% and must include advertising costs. The total market sales prices and brokerage commissions/advertising costs reported in the Cost Examination for the units at 27-29 Commonwealth Avenue are shown in the table below:

<i>Selling Price</i>	<i>Commission Percentage</i>	<i>Amount up to 5% considered reasonable</i>	<i>Amount per Cost Examination</i>	<i>Favorable Difference</i>
\$ 2,907,281	5%	\$ 145,364	\$ 133,268	\$ 12,096

**1. Commissions/Advertising – Market Units (continued)**

As a result of our analysis, we determined that the commissions/advertising costs charged on the units at 27-29 Commonwealth Avenue did not exceed the allowable limits set forth in the MHP Guidelines.

Third Party Broker 35 Commonwealth Avenue

According to the Developer, the brokerage firm used to market the units located at 35 Commonwealth Avenue was not a related party. The limit imposed by the MHP Guidelines for third party broker commissions is 6% and must include advertising costs. The total market sales prices and brokerage commissions/advertising costs reported in the Cost Examination for the units at 35 Commonwealth Avenue are shown in the table below:

<i>Selling Price</i>	<i>Commission Percentage</i>	<i>Amount up to 6% considered reasonable</i>	<i>Amount per Cost Examination</i>	<i>Unfavorable Difference</i>
\$ 15,599,456	6%	\$ 935,967	\$ 1,024,212	\$ (88,245)

As a result of our analysis, we determined that the commissions and advertising costs reported for the units at 35 Commonwealth Avenue exceeded the allowable limits set forth in the MHP Guidelines by \$88,245 and therefore a downward adjustment was made to the brokerage commissions/advertising line item for market rate units in the Cost Examination.

**2. Commissions/Marketing/Lottery Costs – Affordable Units**

MHP Guidelines state that the maximum allowable commissions/marketing/lottery costs - affordable units should be the greater of \$20,000 or 3% of the sum of the actual unit sales price.

The Cost Examination included commissions/marketing/lottery costs related to affordable units of \$39,072 or 1.6% of actual affordable unit sales.

As a result of our analysis, we determined that the commissions/marketing/lottery costs charged to the Project did not exceed the allowable limits set forth in the MHP Guidelines.

**3. Developer’s Overhead Costs**

The total developer’s overhead reported in the Cost Examination was \$500,000.

MHP Guidelines limit developer’s overhead costs to \$154,000 (base amount of \$80,000 plus \$2,000/unit for units 21-57). As a result of our analysis, we determined that the reported amount of developer’s overhead (\$500,000) exceeded the \$154,000 limitation imposed by the MHP Guidelines by \$346,000. The difference of \$346,000 will be deducted from developer’s overhead in the Cost Examination.

#### **4. Accruals/Accounts Payable**

According to the Developer, the Cost Examination includes \$76,051 of costs related to accounting, legal, and consulting fees incurred but not yet paid as of August 31, 2009 (the Cost Examination cut-off date). Project costs incurred but not yet paid at the time of the Cost Examination cut-off date, when verifiable, are allowable costs.

We reviewed supporting documentation for the abovementioned costs, including vendor invoices and canceled checks provided to us by the Developer. The costs have been paid as of the date of our Report.

#### **5. Soft Cost Reasonableness Test**

MassHousing Guidance includes a soft cost reasonableness test of 28% of residential construction. MassHousing Guidance states that if total soft costs exceed the 28% limit, a facts and circumstances test shall be employed to determine reasonableness of the excess costs. In such cases, the Developer shall provide the Subsidizing Agency with additional information pertaining to specific soft cost requests.

In this case, the soft costs (after the commissions/advertising adjustment made by MassHousing in Section V, Part C.1 above) were 67% of residential construction. As a result of the extraordinary high soft costs, MassHousing requested and received further information from the Developer for the following soft cost line items, which were greater than 6% of total soft costs, and that were not previously mentioned in our Report. Further scrutiny was given to these line items: (a) construction manager; (b) engineering; (c) legal; (d) architectural; and (e) payments to lenders (financing).

##### **a. Construction Manager**

According to the Developer's Certificate, executed under seal and under the pains of perjury, Chestnut Hill Realty ("CHR"), a related party (aka Chestnut Hill Realty Development, LLC) was the construction manager for the building renovation portion of the Project at 27-29 Commonwealth Avenue.

According to the Developer, Building Initiatives assumed the role of construction consultant primarily on the new construction portion of the Project at 35 Commonwealth Avenue.

The Cost Examination reported construction manager costs of \$377,740. According to documentation received from the Developer, construction manager fees consisted of the following:

**a. Construction Manager (continued)**

<u>Construction Manager Costs per Cost Examination</u>	<u>Amount</u>
CHR - construction management reimbursement (27-29 Comm. Ave.)	\$ 88,904
Building Initiatives - construction consultant (primarily 35 Comm. Ave. w/coord w/27-29 Comm. Ave.)	250,000
Konigisor Luciano - construction sub consultant for Building Initiatives (35 Comm. Ave.)	11,096
Gilman, McLaughlin & Hanrahan LLP - legal fees incurred by CHR (27-29 Comm. Ave.)	27,350
Total Construction Manager Costs per Cost Examination	<u>\$ 377,350</u>

MassHousing compared this Project's construction manager costs, on a per unit basis, to other 40B projects for which MassHousing has issued final reports regarding their cost examinations. As a result of our analysis, we have determined that this Project's construction manager costs had a slightly higher than average cost on a per unit basis (\$6,620 compared to \$5,010).

Even if we were to limit the construction manager costs to \$285,570, (calculated using the average cost per unit of the 40B projects mentioned above multiplied by the number of units in this Project \$5,010 X 57 units), as a "worst case" scenario, it would not change the fact that the Developer is still under the 20% profit limitation. Therefore, no adjustment to construction manager costs will be made.

**b. Engineering**

The Cost Examination reported engineering costs of \$459,323.

According to Note 7 of the Cost Examination, "*As a condition of the initial acquisition of the Property, the seller was required to escrow \$250,000 to be used to fund certain costs related to the environmental engineering of the Project. These funds were fully spent for their intended use and the applicable costs are included in the accompanying Schedule of the Total Chapter 40B Project Costs.*"

MassHousing reviewed the Purchase and Sale Agreement and the First Amendment ("Amendment") by and between Seller of Parcel One, Seller of Parcel Two (collectively "Seller") and the Developer's present entity. The Amendment addressed the need for remediation of certain environmental conditions at the property. Costs were estimated for removal of contaminated soil, removal of asbestos and various related consultants and filing fees. The Seller agreed to pay for a portion of these costs. At the closing, the Seller escrowed a total of \$250,000 from their sales proceeds, as required by the Amendment. All \$250,000 of the escrowed funds were spent on environmental remediation as agreed to by the parties. Given that \$250,000 of the engineering costs reported in the Cost Examination were paid out of the Seller's funds and not the Developer's funds, we are reducing the engineering costs by \$250,000 and also reducing the other income-restricted improvement account by \$250,000. These adjustments are essentially a wash and do not change the fact that the Developer complied with the profit limitation.

**b. Engineering (continued)**

MassHousing reviewed documentation relative to the remaining engineering costs of \$209,323. We compared this Project's engineering costs, on a per unit basis, to other 40B projects for which MassHousing has issued final reports regarding their cost examinations. As a result of our analysis, we have determined that this Project's engineering costs had a lower than average cost on a per unit basis (\$3,672 compared to \$4,072) and therefore are not considered to be unreasonable.

**c. Legal Costs**

The Cost Examination reported legal costs of \$571,374 or \$10,024 per unit.

According to the Developer, there were many issues raised throughout the permitting process that necessitated numerous revisions by both the legal and architectural consultants due to the complexity of the Project, location of the property, and proximity to Boston College.

The legal costs associated with the Project included a lengthy permitting process, financing from multiple lenders, and standard legal closing costs for 57 properties sold. Legal services were further broken down into the following categories: financing, permitting, including MHC/City of Newton representation, land control/acquisition, condominium documents plus all closing counsel.

Our review resulted in finding costs in areas that appeared overlapping. Billing descriptions on legal invoices appeared very similar/duplicative to other legal invoices and/or consulting invoices. Though it is clear that a legal perspective is necessary under such a complex project it appeared at times that the time allotted for specific work was being performed by multiple legal counsels and/or consultants. We would assume each individual played a distinct separate role in the Project's development and progress but costs are not clearly traceable to actual costs for specific tasks separate and distinct from each other and for each contract's scope of services.

MassHousing compared this Project's legal costs, on a per unit basis, to other 40B projects for which MassHousing has issued final reports regarding their cost examinations. As a result of our analysis, this Project's legal costs had a significantly higher than average cost on a per unit basis (\$10,024 compared to \$4,069).

Even if we were to limit the legal costs to \$231,933, (calculated using the average cost per unit of the 40B projects mentioned above multiplied by the number of units in this Project \$4,069 X 57 units), as a "worst case" scenario, it would not change the fact that the Developer is still under the 20% profit limitation. Therefore, no adjustment to legal costs will be made.

**d. Architectural Costs**

The Cost Examination reported architectural costs of \$573,035 or \$10,053 per unit.

As mentioned above, according to the Developer, there were many issues raised throughout the permitting process that necessitated numerous revisions by both the legal and architectural consultants due to the complexity of the Project, location of the property, and proximity to Boston College.

According to the Developer, architectural costs included payment under a base contract which included previous design renditions that were adjusted and updated throughout the permitting process. The costs included in the architectural line item also included peer reviews, and an acoustical consultant which was needed for the permitting process when the neighbors expressed concern over potential noise from HVAC equipment. The building height, unit square footage as well as safety concerns for the blasting, and traffic issues took considerable amounts of time to resolve with those parties involved and abutters. Landscape design expenses were also included in this line item.

MassHousing compared this Project's architectural costs, on a per unit basis, to other 40B projects for which MassHousing has issued final reports regarding their cost examinations. As a result of our analysis, this Project's architectural costs had a significantly higher than average cost on a per unit basis (\$10,024 compared to \$4,072). Even if we were to limit the architectural costs to \$232,104, (calculated using the average cost per unit of the 40B projects mentioned above multiplied by the number of units in this Project \$4,072 X 57 units), as a "worst case" scenario, it would not change the fact that the Developer is still under the 20% profit limitation. Therefore, no adjustment to architectural costs will be made.

**e. Payments to Lenders (financing)**

The Cost Examination reported payments to lenders (financing) of \$600,000.

As part of the funding of the Project, the Developer received \$1,200,000 from the City of Newton. The Developer paid back \$300,000 to the City as part of their financing agreement and this cost was included within the payments to lenders line item in the Cost Examination.

As part of the funding of the Project, the Developer was awarded \$750,000 from the Commonwealth's Affordable Housing Trust Fund ("AHTF"). MassHousing and DHCD jointly administer AHTF. The Developer paid back \$300,000 as part of their financing agreement and this cost was included within the payments to lenders line item in the Cost Examination.

We have reclassified these repayments of principle (totaling \$600,000) from soft costs to a reduction to revenue, in the other income-development subsidy receipts line item. We note that this reclassification adjustment has no effect on the profit limitation, it simply reduces total development revenue and total development costs by \$600,000.



MassHousing  
Review of Cost Examination Report  
Covenant Residences on Commonwealth  
No. PE-382

**Appendix A**

<u>Categories</u>	<u>Per Cost Examination</u>	<u>Adjustments</u>	<u>Adjusted Balance</u>
<b>Project Sales/Revenue</b>			
Market	\$ 18,506,737	\$ -	\$ 18,506,737
Affordable	2,492,300		2,492,300
Other Income - development subsidy receipts	1,950,000	\$ (600,000)	1,350,000
Other Income - restricted improvement account	250,000	\$ (250,000)	-
<b>Total Project Sales/Revenue</b>	<b>\$ 23,199,037</b>	<b>\$ (850,000)</b>	<b>\$ 22,349,037</b>
<b>Project Costs</b>			
Site Acquisition - Land	\$ 4,657,010	\$ -	\$ 4,657,010
<b>Hard Costs</b>			
Residential construction	8,501,160		8,501,160
Site Preparation	1,730,403		1,730,403
Landscaping	106,627		106,627
<b>Total Hard Costs</b>	<b>10,338,190</b>	<b>-</b>	<b>10,338,190</b>
<b>Soft Costs</b>			
Architectural	573,035		573,035
Surveys and Permits	130,100		130,100
Engineering	459,323	(250,000)	209,323
Legal	571,374		571,374
Consulting	101,116		101,116
Appraisal	18,375		18,375
Construction Manager	377,350		377,350
Utilities	100,127		100,127
Accounting	44,145		44,145
Real estate taxes	65,312		65,312
Insurance	81,071		81,071
Construction Loan Interest	919,325		919,325
Payments to Lenders	600,000	(600,000)	-
Financing/Application Fees	165,423		165,423
Maintenance	163,314		163,314
Developer's Overhead	500,000	(346,000)	154,000
Lottery	38,841		38,841
Brokerage Commissions/Lottery - Affordables	231		231
Brokerage Commissions - Model Units	79,591		79,591
Brokerage Commissions/Advertising - Market	1,157,480	(88,245)	1,069,235
<b>Total Soft Costs</b>	<b>6,145,533</b>	<b>(1,284,245)</b>	<b>4,861,288</b>

<u>Categories</u>	<u>Per Cost Examination</u>	<u>Adjustments</u>	<u>Adjusted Balance</u>
Total Project Costs	\$ 21,140,733	\$(1,284,245)	\$ 19,856,488
Computed Profit from Sales/Revenue	\$ 2,058,304	\$ 434,245	\$ 2,492,549
Profit Percentage	9.74%		12.55%
Maximum allowable (20% of total project costs)	\$ 4,228,147		\$ 3,971,298
Excess Profit Due to Municipality	\$ -		\$ -