

May 16, 2019

BY HAND

Ms. Katherine Miller
Massachusetts Housing Finance Agency
One Beacon Street
Boston, MA 02108-3110

Re: Project Eligibility Application - 3 Burke Lane, Wellesley, MA

Dear Ms. Miller:

As you may recall, this Firm submitted a comment letter on behalf of neighbors and abutters to the proposed 16-unit Chapter 40B project at 3 Burke Lane, Wellesley, Massachusetts (the "Project" and the "Project Site") on January 28, 2019, to meet your public comment deadline. I have since had the opportunity to take a closer look at the Project Eligibility Application ("PE Application") for this Project, and wish to bring to your attention several additional issues of concern.

A. Application Discrepancies

The Project applicant listed on Page 3 of the PE Application is "Dennis M. DiShino - Cedar Place, LLC."¹ On Page 22, the Applicant is identified solely as Dennis DiSchino. This is not a trivial discrepancy - MassHousing should insist on clarity on this point, since the identity of the applicant is critical for a number of other application questions. For purposes of this comment letter we will assume that Mr. DiSchino, who apparently controls Cedar Place, LLC, intends for the LLC to be the legal entity who will hold all permits and legal title to the Project Site.

On Page 4 of the PE Application, Mr. DiSchino states that there will be a total of 32 resident and visitor parking spaces for 16 units. However, the site plans that accompanied the Application indicate that there are only 25 parking spaces. And, as we noted in our prior comment letter, even that representation is dubious, as the site plans do not appear to delineate more than 23 spaces.

The Application touts its "outdoor sitting and picnic area" on Page 4, but as shown on the site plan this area is, at most, 400 square feet in area, representing approximately 1% of the total

¹ Mr. DiSchino's last name is spelled interchangeably in the PE Application as "DiShino" and "DiSchino."

land area on this Site - 41,307 square feet.² Surprisingly, the Applicant states on Page 10 that 62% of the Site consists of “useable open space,” and that only 37.7% of the Site is covered by buildings and pavement. We find both representations to be misleading. Most of the undeveloped portion of the Site will consist of areas of steep slopes, which are not “useable” under any definition. As for lot coverage, the site plan clearly depicts a Site that is mostly covered by buildings, sidewalks and parking areas, well in excess of 37.7%. We respectfully suggest that MassHousing request clarification on these representations.

On Page 6 of the PE Application, Mr. DiSchino did not answer whether any surrounding land use amenities are available by public transportation. The answer should be “no,” as there are no viable public transportation options at this location.

B. Zoning Waivers

The Applicant itemized waivers it needs from the Zoning Bylaw, including the dimensional requirements in the Single Residence district, which is appropriate. However, it would be instructive to review the Project’s conformity with the more relaxed requirements in the Multi-Family Residence District as well, since the type of housing proposed in the Project is more closely aligned with the housing permitted in that district.

In the MF district, there is a minimum 40% open space requirement. As discussed above, we question the accuracy of the Applicant’s open space calculation, and suggest that MassHousing review that information closely. In the MF district, no structure may be installed within 20 feet of an abutting property boundary. Here, the proposed apartment building is 13 feet from the northerly property boundary, and a retaining wall is proposed to be installed within five feet of the southern property boundary, shared with my client Jared Linder. In our opinion, if the Applicant cannot comply with the zoning requirements in the Single Residence zoning district, it should at least be made to comply with the requirements in the MF district.

C. Applicant’s Qualifications

Cedar Place, LLC appears to be a “single-purpose” limited liability company. It was formed three months ago, and does not appear to have any experience in other real estate projects. The “manager” of the LLC is Dennis M. DiSchino, according to the Certificate of Organization filed with the Secretary of the Commonwealth.

Under Section 6 of the PE Application, the only “managing entity” listed for the Applicant is Mr. DiSchino. No “affiliates” are listed, even though in the attachment to Section 6 Mr. DiSchino provides the relevant experience of Equity Partners, Inc.. That business was created in 1991, and Mr. DiSchino is the only officer appearing in the Secretary of the Commonwealth’s records. If Mr. DiSchino is relying exclusively on the development experience

² We note that this land area calculation was provided by the Applicant, and that the Town Assessor’s records indicate that the Project Site is only 39,020 square feet. The Applicant should address this discrepancy.

and qualifications of Equity Partners, Inc. in support of his PE Application, then Equity Partners, Inc. should have been named as an “affiliate” of the Applicant.

Section 6 of your application requires disclosure of experience in developing residential projects “of similar scale and complexity,” as well as the design and financing of development projects. The Section also requires the Applicant to identify all prior Chapter 40B projects that the Applicant or members of the Applicant’s team has been involved with.

In response, Mr. DiSchino described how Equity Partners, Inc. has been involved in *managing* commercial and residential properties in Wellesley. Mr. DiSchino also stated that he, personally, has developed “commercial property in Wellesley and Worcester.” He further provided a list of 21 properties under the heading “current list of management contracts/development experience.” However, he only singled out two projects for “developer and manage,” and neither were residential, nor affordable housing. While we recognize that this not a prerequisite, per se, it should at least be concerning that the Applicant has no residential development experience.

On Page 24 of the PE Application form, MassHousing asks applicants to certify, “under the penalties of perjury,” a number of factual representations concerning the Applicant and its related entities. Mr. DiSchino answered all of these questions in the negative, but neglected to sign the certification on Page 25.

1. *Litigation*

Concerning the representations themselves, the first is whether there is any “pending litigation with respect to any of the Applicant Entities.” Mr. DiSchino answered “no.” However, Equity Partners, Inc. and Mr. DiSchino personally are both defendants in a civil action currently pending in Norfolk County Superior Court. *Central Street Holding, LLC v. Equity Partners, Inc.*, Docket No. 1682CV00241. Mr. DiSchino is also a plaintiff in two pending actions in Norfolk Probate Court, *DiSchino v. DiSchino*, Docket No. NO12E0105QC, and *DiSchino v. DiSchino*, Docket No. NO13E0020QC. In the latter action, judgment entered against Mr. DiSchino on November 29, 2019, and he subsequently filed a Notice of Appeal on December 14, 2018. Since that was merely two months ago, we find it improbable that Mr. DiSchino forgot about this case.

The PE Application form also asks whether any of the Applicant Entities were a defendant in a lawsuit in the last 10 years involving fraud, gross negligence, misrepresentation, dishonesty, breach of fiduciary responsibility or bankruptcy. By conducting a simple search in court on-line databases, we found several lawsuits in which Mr. DiSchino and Equity Partners have been defendants over the last 10 years, several involving the same counter party, Central Street Holding, LLC. Both DiSchino and Equity were defendants in a 2013 civil action in Norfolk County Superior Court, *Central Street Holding, LLC v. DiSchino*, Docket No. 1382CV00478. In what may have been a related case in Norfolk Probate Court, Mr. DiSchino was the Petitioner in *In re The Central Street Holding, LLC and Delanson Circle Holding, LLC*,

Docket No. NO12P2672PO. Mr. DiSchino was on the other side of the “v” from Central Street Holding, LLC in *DiSchino v. Delanson Circle Holding, LLC*, Docket No. 1582CV01432, filed in Norfolk Superior Court in 2015. Judgment entered in 2018. Mr. DiSchino was a defendant in a Dedham District Court action brought by Central Street Holding, LLC in 2014. See, *Central Street Holding, LLC v. DiSchino*, Docket No. 1454CV000614.

Equity Partners, Inc. was a defendant in a lawsuit filed in Middlesex Superior Court in 2015, *Lucente v. Visions Medical Center, PC*, Docket No. 1581CV04874, which was apparently resolved in 2017. Equity Partners, Inc. was sued in 2010 in what appears to be a contract action; it was dismissed in 2014. See, *Ceppetelli Co., Inc. v. Equity Partners, Inc.* Docket No. 1085CV01139.

While more than 10 years old, Mr. DiSchino was sued by Commerce Bank & Trust Co. in 1993 in a “commercial paper” case, resulting in an agreement for judgment to Commerce “for the outstanding principal plus costs.” See, *Commerce Bank & Trust Co. v. DiSchino*, Docket No. 9385CV00124.

Massachusetts court web sites do not provide access to pleadings, so we do not know whether any of these cases involved the types of claims of concern to MassHousing. However, since Mr. DiSchino did not answer at least the first question truthfully, we respectfully suggest that MassHousing require Mr. DiSchino to provide a detailed explanation for every litigation matter he has been involved with, either personally or through any of his corporate entities, in the last 10 years.

2. *Tax Delinquencies*

The PE Application also asks whether any of the Applicant Entities have failed to comply with Massachusetts laws related to taxes. Mr. DiSchino answered “no.” In 1996, the Town of Framingham took a property owned by Mr. DiSchino, as Trustee of the DMD Realty Trust for nonpayment of real estate taxes. It was redeemed in 2003. Mr. DiSchino was apparently delinquent on his condo fees on the same property - the Smith House Condominium Trust brought a civil action against him in Framingham District Court in 1993 to collect overdue condo fees. See, Docket No. 92-CI-0999.

In conclusion, we hope that MassHousing shares our concern with the material misrepresentations made by Mr. DiSchino in this PE Application, and at the very least requires Mr. DiSchino to provide detailed explanations for incomplete or inaccurate information. Thank you for your attention to this matter.

Very truly yours,

Daniel C. Hill

Ms. Katherine Miller
May 16, 2019
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cc: Clients
Wellesley Board of Selectmen
Wellesley Planning Board
Thomas Harrington, Esq.