



The Commonwealth of Massachusetts  
Office of the Inspector General

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Board of Selectmen  
Town of Rehoboth  
148 Peck Street  
Rehoboth, MA 02769

Zoning Board of Appeals  
Town of Rehoboth  
148 Peck Street  
Rehoboth, MA 02769

Subject: Abuse of the Commonwealth's Affordable Housing Laws

The Office of the Inspector General initiated an investigation into the affordable housing lottery and the associated oversight process for the Horton Estates housing development in Rehoboth, MA built under provisions of Chapter 40B, the state's affordable housing law. The investigation was prompted based on complaints received by this Office. The investigation was focused on Michael Costello, a long-time Rehoboth Planning Board member, a recently elected (April 4, 2011) Chairman of the Board of Selectmen and an affordable housing lottery applicant and subsequent lottery "winner".

As is discussed in more detail throughout this letter, this Office has determined that Mr. Costello improperly obtained an affordable home in the Horton Estates' development that he was not entitled to or qualified to purchase. False and misleading statements made by Michael Costello and a lack of full disclosure on his part enabled the abuse.

Included in the body of this letter are recommendations that this Office believes will help remedy this abuse of the affordable housing law carried out by Mr. Costello.

**Background:**

In 1969 the Massachusetts legislature passed what is commonly referred to as the Comprehensive Permit Law or Chapter 40B of the Massachusetts General Laws. This legislation was designed to increase the supply and improve the regional distribution of low and moderate income housing by allowing an override of certain local requirements and regulations. Through the mechanism of a comprehensive

permit, Chapter 40B provides for a streamlined review process and relief from local zoning and other regulations that can impede the construction of low and moderate income housing.

A developer utilizing the benefits afforded through Chapter 40B must provide a percentage (typically 25%) of the housing units to income/asset eligible households (typically 80% of the area median income and a maximum of \$50,000 in liquid assets). These developers must also agree to limit their profits which are usually capped at 20% of allowable development costs. Although the Chapter 40B profits are limited they are typically significantly greater than what a for-profit developer could reasonably expect to earn from developing the same site under existing local zoning bylaws and regulations. In return for providing affordable housing units to qualified households and also for limiting the associated development profits, a developer utilizing Chapter 40B obtains a streamlined review process. The local zoning board of appeals provides all local approvals and an override to local bylaws, which normally results in a significant density bonus for the developer.

Subsidizing agencies such as the Department of Housing and Community Development (DHCD) and the Massachusetts Housing Financing Agency (“MassHousing”) are responsible for regulating the individual projects. Subsidizing agency responsibilities include ensuring that developers are limited dividend organizations, that development costs and profits are reasonable and within program limits and that housing is sold or rented to income/asset qualified households in compliance with fair housing laws.

Selection of qualified affordable home buyers or tenants is typically done through an “affordable housing lottery”. In most cases, the developer will administer the lottery process (including the marketing and buyer selection). The developer in many cases will elect to hire an experienced consultant or non-profit agency to conduct the affordable lottery and the associated marketing. The lottery process provides a mechanism to rank eligible applicants for individual housing programs.

Subsidizing agencies are responsible to monitor and enforce the requirements imposed on a development. Monitoring of these projects is performed either by the subsidizing agency directly or by an organization called a monitoring agent under contract to the subsidizing agency. The monitoring agent is retained to perform monitoring and enforcement services regarding compliance of the project with the affordability requirements and compliance of the developer with the limited dividend requirement.

### **Overview of Horton Estates:**

Horton Estates was developed by Horton Estates Development Trust (John P. DuVally and Ryan B. DuVally – Trustees) under provisions of Chapter 40B, the state’s affordable housing law. The development is situated near Plain Street (Route 118) in Rehoboth, Massachusetts and included a planned total of sixty-six (66) detached single family condominium homes. Seventeen (17) of the homes or 26% were designated as affordable. The initial sale price of each affordable unit was targeted at \$155,000. In order to qualify as a buyer of one of the affordable units, the family/household income of the buyer could not exceed 80% of the base area median family income. The development included an age restriction for prospective buyers. This age restriction provided that at the time of home purchase at least one household member had to be at least 55 years of age.

The developer contracted with Delphic Associates LLC (“Delphic”) to provide both development and marketing consulting services for the project. As the lottery agent, Delphic prepared the marketing plan

for the development and oversaw the implementation of the affordable housing lottery. Delphic was also responsible for determining the appropriate advertising and outreach to attract the greatest number of applicants. CHAPA was the monitoring agent for the project. As the monitoring agent, CHAPA was responsible to perform monitoring and enforcement services regarding compliance of the Horton Estates project with the affordability requirements. Funding for the project was provided through a non-governmental entity and therefore MassHousing assumed the role of project administrator for the development, acting on behalf of the DHCD.

### **Horton Estates' – Affordable Housing Program:**

As mentioned before, the planned Horton Estates development consists of 66 detached single-family condominium homes of which 17 are designated as "affordable units". Each of the affordable units has three bedrooms.

Horton Estates was targeted for buyers over the age of 55. In determining the eligibility of prospective affordable buyers, it was a stated program requirement that at least one household member be 55 years of age or older at the time of purchase. The unit deeds memorialized this age restriction by incorporating language that made it a requirement that one of the fee owners of each unit be over 55 years of age and also be a resident of the unit. A household was defined as the number of persons living in the home regardless of marital status. There were specific household limits on income in order to qualify as an affordable buyer. Gross income from all household members was to be considered in determining compliance with the income eligibility requirements. These income limits provided that the combined household income could not exceed 80% of the local area median income.

In addition to the income limits discussed above, the affordable housing program for Horton Estates also included maximum household financial asset limits for prospective affordable buyers. For eligible affordable households, the total gross household liquid asset limitation was \$50,000 excluding real estate equity (i.e. the proceeds retained by a household member from the sale of their primary residence). The total amount of allowable equity was \$150,000. The total combined asset limitation for households over the age 55 was \$200,000 (\$50,000 plus up to \$150,000 from the sale of a primary residence).

The developer contracted with Delphic to prepare the marketing plan for the development and to oversee the implementation of the lottery and the affirmative fair housing marketing plan. Applications for affordable units were made available beginning on September 28, 2005. All completed applications for the housing lottery were due at Delphic's offices by November 30, 2005 and the lottery was conducted on December 7, 2005 at the Rehoboth Senior Center.

### **Michael Costello's Affordable Housing Application:**

Michael Costello, a local Rehoboth resident and at the time a member of the town's planning board (today Mr. Costello is Chairman of the Board of Selectmen) applied for the Horton Estates' affordable housing lottery. Mr. Costello became a lottery "winner" and eventually purchased one of the units in the development. Highlighted below is a chronology of key events associated with Michael Costello's affordable housing application process.

October 30, 2005: Michael Costello and his mother Marie Costello submit an affordable housing lottery application to Delphic for consideration in the Horton Estates' development

December 7, 2005 Delphic conducts the affordable housing lottery - the Costello's become lottery "winners"

January 4, 2006: Delphic issues letter to CHAPA requesting CHAPA's approval of the Costello's as affordable buyers in the Horton Estates development

February 28, 2006: CHAPA informs Delphic that Michael Costello is not eligible to purchase an affordable unit at Horton Estates since his assets exceed the maximum program level

April 10, 2006: Michael Costello appeals CHAPA's decision of his ineligibility

May 22, 2006: CHAPA reconsiders Michael Costello's eligibility and provides "Eligibility for Purchase Certificate" for Michael and Marie Costello

March 1, 2007: Michael and Marie Costello purchase as joint tenants an affordable housing unit (11 Judith Ann Circle) in the Horton Estates Development for \$155,000

December 4, 2009: Michael and Marie Costello transfer ownership (convey title) of 11 Judith Ann Circle solely to Michael Costello - Marie Costello's name is removed from the deed

### **Abuse of the Affordable Housing Program by Michael Costello:**

As summarized below, it was through Michael Costello's apparent deceit (false and misleading statements) that Mr. Costello was able to improperly acquire an affordable housing unit in Rehoboth's Horton Estates development.

On October 30, 2005 Michael Costello submitted an application for the Horton Estates affordable housing lottery. The application reflected both Mr. Costello and his mother Marie Costello as household members for this affordable housing opportunity. At the time of the application, Michael Costello was 51 years old and his mother was 71 years of age. As previously noted, the Horton Estates development was restricted to buyers over the age of 55. In order to meet this requirement at least one of the household members had to be at least 55 years of age at the time of home purchase and also had to physically reside in the unit. Michael Costello on his own would not qualify for an affordable unit since he was under the age of 55. However, since Mr. Costello and his mother Marie Costello had represented themselves as a household and since Marie was 71 years old, they qualified from an age restriction perspective as affordable housing lottery applicants.

The Costellos submitted their affordable housing lottery application to Delphic, the lottery agent for the development. This application was signed by both Michael and Marie Costello under full penalty of perjury and included a statement that indicated that both applicants acknowledged that they were qualified based upon the program guidelines and both agreed to comply with applicable regulations.

Delphic determined that the Costellos were qualified to participate as affordable housing applicants in the lottery. Delphic assigned the Costellos a confirmation code and entered them in the lottery pool. On December 7, 2005 the lottery was conducted by Delphic at the Rehoboth Senior Center. At the lottery drawing, the Costellos were awarded the fifth spot (out of a possible 12) in the local preference pool.

On January 4, 2006 Delphic requested from CHAPA, the monitoring agent for the project, approval of the Costellos as affordable homebuyers in the Horton Estates development. Delphic advised CHAPA that the Costellos were income qualified to become affordable homeowners. CHAPA responded to Delphic's request on February 28, 2006. Its response indicated that based on its review of Michael Costello's application, CHAPA had determined that Mr. Costello's assets exceeded the established limit of \$50,000 for a household under the age of 55 and therefore concluded that Michael Costello was not eligible to purchase an affordable unit at Horton Estates.

CHAPA's response pointed out further that since Michael Costello was not 55, he did not qualify for the first time homebuyer exemption for households over the age of 55 that additionally allows for an increased asset limit of \$150,000 from proceeds from the sale of a home<sup>1</sup>. CHAPA understood and recognized that Marie Costello planned to live with her son in the new residence and that Mr. Costello had owned a home exclusive of his mother, and sold that home to earn approximately \$130,000 in assets. CHAPA found that the assets were not household assets but belonged solely to Michael Costello.

In a letter to CHAPA, dated April 10, 2006, Michael Costello appealed the determination of his ineligibility status. Mr. Costello referenced the program eligibility requirements as reflected in the affordable housing lottery guidelines for the Horton Estates project. The interpretations that CHAPA had alluded to in arriving at its ineligibility determination were not clearly articulated in these guidelines. Mr. Costello reinforced that his mother had no assets and depended on him financially. He also stated that he could not afford a home at the current market values in Rehoboth and that he did not want to move out of Rehoboth. In closing, Mr. Costello asked CHAPA's Executive Director, Aaron Gornstein, to look into this case as this was the only opportunity for him and his mother to live in the town of Rehoboth that they both loved. Unbeknownst to CHAPA and incongruent with Mr. Costello's statements is the fact that also in April 2006, Marie Costello had moved from Rehoboth to an apartment in Attleboro. Since April 2006 through the present Marie Costello has resided in Attleboro.

CHAPA reconsidered and changed its ineligibility determination for Michael Costello. On May 22, 2006 CHAPA issued the "Eligibility for Purchase Certificate" for Michael Costello and Marie Costello. This eligibility certification indicated that CHAPA had reviewed the lottery winners' information and established that their income was below the maximum limit (\$46,400) and that their assets were within the established limit. It is the understanding of this Office that the decision by CHAPA to change the eligibility status for the Costellos was based on guidance regarding the asset limits that was requested of and received from the DHCD. Although this Office agrees with CHAPA's original determination we also understand CHAPA's decision to reconsider and change its original assessment given the ambiguity within the lottery guidelines. Based on this revised eligibility determination, Michael and Marie Costello purchased an affordable three bedroom unit at Horton Estates (11 Judith Ann Circle) on March 1, 2007.

As highlighted below, it is apparent that Michael Costello provided false and misleading information to both Delphic and CHAPA for the purpose of acquiring an affordable housing unit for himself that he was

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<sup>1</sup> In September 2005 Michael Costello received \$130,650.49 from the sale of his personal residence at 81 School Street in Rehoboth, MA

not entitled/qualified to buy. Marie Costello, Michael's mother, in direct breach of the program requirements, never took up residency in the affordable housing unit at 11 Judith Ann Circle. The entire qualification and eligibility for the purchase of this unit by the Costellos was based on the representation that Marie Costello, who was the only purported household member over the age of 55, would be a resident of the unit.

As previously mentioned, Marie Costello has been a resident of the town of Attleboro from April 2006 through the present. In April 2008 Marie Costello and her longtime friend moved from a private apartment complex in Attleboro into a subsidized public housing unit also in Attleboro where she continues to reside. Investigators from this Office interviewed both Marie Costello and her friend in December 2009. The investigators showed Ms. Costello a picture of 11 Judith Ann Drive in Rehoboth. Immediately upon seeing the picture, Ms. Costello stated that she knew that what she did was wrong. When asked by the investigators to explain what she meant by this statement, Ms. Costello stated that she was asked by her son Michael to pretend that she was going to live with him in order for Michael to qualify for participation in an affordable housing lottery.

Sometime in 2005 while Marie Costello was still living in Florida, Michael Costello asked his mother to help him in getting qualified for an upcoming affordable housing lottery taking place in Rehoboth. Michael Costello shared with his mother the fact that the affordable housing lottery was targeted for homebuyers age 55 and older. Since Michael on his own could not qualify as a homebuyer due to this age restriction he asked his mother if she would sign several documents in order for both of them to become eligible for an affordable unit. Michael told his mother that she didn't even need to move from Florida to Massachusetts because they could do it over the phone as well as through faxes and FED-EX packages.

Ms. Costello also suggested that prior to the lottery her son was confident that he would obtain an affordable unit in Horton Estates. She indicated that her son and the developer (John DuVally) had it already worked out, meaning that Michael was going to get the unit before the lottery was even conducted. Marie indicated that her son and John DuVally are friends and that they vacation and ride their motorcycles together. This relationship between Michael Costello and John DuVally is discussed in more detail in a subsequent section entitled "Conflict of Interest Concerns".

Marie Costello told her son that she would sign any document and write any letter that would help him qualify for an affordable housing unit. The investigators showed Ms. Costello a handwritten letter that had been presented to CHAPA as part of the eligibility/qualification process. The letter was signed by Marie Costello and was addressed To Whom It May Concern. The letter read in part as follows: *"I plan on living with him (her son, Michael Costello) because without his support I am unable to live on my own. My name will also be going on the deed."* Ms. Costello acknowledged to the investigators that she had written the letter and she further stated that it was all a lie and that she never intended to live with her son at Horton Estates.

When Michael and Marie Costello purchased 11 Judith Ann Circle in Rehoboth, Marie was living in Attleboro. She did not move in with her son but stayed in Attleboro. Michael moved into the new home along with his newlywed wife<sup>2</sup> Susan Pisano Costello who was also under the age of 55 and hence could

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<sup>2</sup> Michael Costello and Susan Pisano Costello were married in November 2006 or more than three months before Michael Costello and Marie Costello took ownership of the affordable unit at 11 Judith Ann Circle on March 1, 2007.

not qualify them as eligible homebuyers in this restricted development. Marie Costello indicated that the plan was for her to go over to 11 Judith Ann Circle three times a week, usually from 9:00 a.m. to 2:00 p.m. in order to make it look like she was living there. Marie Costello indicated that she would clean and do the laundry while there but never spent the night. According to Marie Costello, her son insisted that she come over to keep up the appearance of her living there.

During the December 2009 interview, Ms. Costello also indicated that just a few days earlier she had gone to an attorney's office at the request of her son in order to sign over the deed to the affordable unit. She stated that this was done because her son Michael was now 55 years of age and therefore was qualified to legally live in the development on his own. This Office independently verified this change in ownership through the registry of deeds. Marie Costello's name was removed from the deed on December 4, 2009.

The Costellos were obligated under the terms of the Deed Rider for this affordable housing unit to notify in writing both the town of Rehoboth and the monitoring agent (CHAPA) of any intention they had to convey the property or any portion thereof. Through this notification process, the monitoring agent is informed so that a formal determination can be made as to whether the planned conveyance will be made to an eligible purchaser. The Costellos failed to notify the town and the monitoring agent of the planned conveyance of the deed for the affordable housing unit from Michael Costello and Marie Costello to only Michael Costello. Proper notification by the Costellos to CHAPA would have created an opportunity for a review of the circumstances surrounding this conveyance and potentially could have led to discovery of the original fraud.

On March 17, 2010 an investigator from this Office and a special agent from the Federal Bureau of Investigations interviewed Michael Costello at his home. Mr. Costello indicated that he knew why the investigators were there and that his mother had told him everything about her interview with the investigators from the Office of the Inspector General.

Mr. Costello stated that he knew what his mother told the investigators during her interview and what she told them was not correct. He stated that when he started the application process for an affordable housing unit at Horton Estates he had every intention to have his mother live with him when they won the lottery. He told the investigators that the plan was that his mother and her longtime friend would live in the basement of the new three bedroom home. According to Michael Costello, his mother and her friend never moved in with him because his mother felt that she and her friend would be disruptive to him and his newlywed wife. He went on to state that even though his mother never lived with him fulltime at 11 Judith Ann Circle; she did come over three to four days a week to clean the house. Also according to Mr. Costello, his mother did this because she felt guilty that he was paying for half of her and her friend's rent (\$400/month) for an apartment in Attleboro while he fixed up the basement at 11 Judith Ann Circle for them to live in.

Michael Costello told the investigators that the statements that his mother made while being interviewed about this matter were not true. He reinforced that throughout this process, he had every intention to have his mother live with him and that it was his mother's decision not to move in with him because of his new marriage. He also stated that he was not going to lie for his mother and that almost everything in her interview, concerning 11 Judith Ann Circle was not true.

Mr. Costello admitted that he took his mother off the deed after he turned 55 because he was now legal to stay in the unit. He also acknowledged that he had taken out the mortgage for 11 Judith Ann Circle in

his own name alone, and not in both their names, because all that was required, to live in the development, was to have his mother's name on the deed. Michael Costello denied that he ever discussed the lottery with John DuVally and he also added that the lot where his house is currently located was not his first choice.

Reflected above is the substance of the interviews conducted with both Marie Costello and her son Michael Costello. In the opinion of this Office, Marie Costello's responses were sincere and believable whereas those of Michael Costello appeared to be self serving and lacking in credibility. The reality is that Marie Costello never resided in the affordable housing unit at 11 Judith Ann Circle. In order for Michael Costello to qualify to live in this unit it was an absolute requirement that his mother not only be reflected on the deed but that she also physically resided in the unit. This was not the case. Marie Costello never resided in this home. Rather than living with his mother in the new affordable unit, Michael Costello moved in with his wife, Susan Costello. This Office is not aware of any disclosures made by Mr. Costello to either Delphic or CHAPA of this change in plan nor has this Office been provided with any financials which included earnings attributed to Susan Costello for determination of financial eligibility (assuming of course that Marie Costello would continue as a planned household member).

During his interview, Michael Costello indicated that his plan had been to have both his mother and her close friend live with him in the basement of the new home (the lottery application submitted by Mr. Costello did not list the mother's friend). He also stated that while he fixed up the basement he paid for half their rent (his mother's and her friend's) for an apartment in Attleboro. This Office does not find Mr. Costello's statements convincing. If the actual plan was to include both Marie Costello and her friend as household members than the application for the housing lottery should have reflected all three individuals along with their projected incomes. If this had been the plan and all three incomes were consolidated it would have become evident that this household of three would not have qualified based on their combined income exceeding the prescribed program levels. Marie Costello and her friend took up residency in an apartment building in Attleboro in April 2006. Contrary to the suggestion made by Michael Costello that he was paying for half of their rent while he fixed up the basement, his mother and her friend had moved to Attleboro nearly a year before Michael Costello had purchased the affordable unit in Horton Estates and hence before any work on the new unit could be performed.

### **Conflict of Interest Concerns:**

As previously highlighted, Michael Costello was a public official (elected planning board member for the town of Rehoboth) when he applied for the Horton Estates' affordable housing lottery and he continued to serve on the planning board until his election to the Board of Selectmen in April 2011. Mr. Costello's conduct as a public official is governed by Chapter 268A (Conflict of Interest Law) of the state's general laws. The Conflict of Interest Law prohibits a public official from participating in certain actions including, but not limited to, the following: accepting anything worth \$50 or more from anyone with whom they have official dealings; or taking any action (unless properly disclosed) that could create an appearance of impropriety, or could cause an impartial observer to believe that the public official's actions are tainted with bias or favoritism.

As part of our investigation, this Office received allegations that Mr. Costello had accepted gifts in excess of the \$50 limit from the developer of Horton Estates (John DuVally). Although Mr. Costello as a planning board member did not have any official dealings with respect to the Horton Estates development (Horton Estates was built under provisions of Chapter 40B which is subject to the zoning



board of appeals as opposed to the planning board), it is the understanding of this Office that Mr. DuVally as a local builder has come before Mr. Costello and the Rehoboth Planning Board for some of his other projects.

It was alleged that Mr. Costello had accepted tickets to professional sporting events from John DuVally. This Office questioned Mr. DuVally regarding these concerns. Mr. DuVally responded to this inquiry by stating that in December 2008 he had in fact taken Mr. Costello, Dave Marciello (Rehoboth Town Administrator) and Bruce Andrews (member of Rehoboth's Conservation Commission) to a New England Patriots football game in Foxboro. Mr. DuVally indicated that he had four season tickets and that he would take many of his friends and family to these football games. He pointed out that he typically provides the tickets and his guests will usually bring the food or buy lunch/dinner and drinks. Mr. DuVally stated that Michael Costello was his friend and he also reinforced that "it is very hard to live in a town for almost your entire life and not know most of the people or have them know you." In a December 2009 interview, Mr. DuVally told investigators from this Office that during the time when he took his friends who were also public officials to these football games he did not think it was a big deal, but he now understood how an appearance of impropriety could be drawn from such acts.

In further addressing these concerns, Mr. DuVally stated that he never got anything of value or used his friendship with Michael Costello or any other public official to get an advantage over another developer or for himself. He also advised that there was never any discussion of or actual bribery between him and Mr. Costello. In fact, Mr. DuVally stated that Michael Costello over the years had been extremely strict on his various developments in Rehoboth and that Mr. Costello never cut him a break on anything in his official capacity as a town planning board member. When asked if he rigged the affordable housing lottery so that his friend would be able to get an affordable unit, Mr. DuVally stated no. He denied that he and Michael Costello had conspired to rig the lottery or that he used his friendship to influence the lottery agent, Paul Cussons of Delphic, to grant Michael Costello an affordable unit.

During her December 2009 interview with investigators from this Office, Marie Costello had indicated that her son Michael and John DuVally were good friends. She also pointed out that her son and Mr. DuVally would vacation together at Daytona Beach, Florida and that they also rode their motorcycles together. During this interview Marie Costello also indicated that John DuVally and her son Michael Costello had it already worked out that Michael was going to get one of the affordable units at Horton Estates before the lottery was even conducted.

Michael Costello's ex-wife Sarah Costello<sup>3</sup> was interviewed in January 2010 by investigators from this Office. She validated much of the information provided to this Office by Michael's mother, Marie Costello. Sarah Costello acknowledged that Michael Costello and John DuVally were good friends and that they went motorcycling, on cruises and even to Daytona Beach together. She also affirmed that Michael Costello had chosen the building lot before the lottery was scheduled and even before the roads were constructed throughout the development. Sarah Costello said that she often overheard Michael Costello on the phone with John DuVally discussing his new house in Horton Estates.

During his interview in March 2010 Michael Costello advised the investigators that he had never discussed the lottery with John DuVally and that the lot where his house is currently located was not his first choice. Mr. Costello indicated that he wanted a different lot but someone else picked that lot

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<sup>3</sup> Michael Costello and Sarah Costello were married in September 1978. In September 2005 they filed a joint petition for divorce with the Probate and Family Court in Taunton, MA.

before it was his turn to pick a lot. He also declared that there was no quid pro quo with John DuVally in getting the lot where his home is located. Mr. Costello's statements were confirmed by John DuVally. Mr. DuVally informed the investigators that he left the lottery process in the hands of Delphic and he was not involved at all in the selection process for the lottery winners.

After Michael Costello had "won" the lottery and Delphic/CHAPA had approved him as an affordable homebuyer, Mr. Costello requested upgrades to his affordable unit. In total an additional \$17,734.29 in upgrades were charged to the project by DuVally Contracting, Inc. and paid for by Michael Costello. These upgrades included the following: additions for AC and plumbing upgrades (\$7,231.00), tile and carpet upgrade (\$3,287.00), a stainless steel package (\$1,700.00), a counter top upgrade (\$1,441.00), electrical upgrades (\$1,338.00), labor for an underground barrel and plumbing (\$775.00), light fixture upgrade (\$600.00), material and labor to frame a doghouse (\$550.00), plumbing fixture upgrade (\$512.29), and repaint master bedroom and walk in closet (\$300.00).

In addition to the upgrades referenced above, DuVally Contracting Inc. also performed the following services for Michael Costello's affordable unit at no cost to Mr. Costello: additional plaster and board hanging in garage (\$0.00), extra cost for market rate color scheme and upgrade to eggshell finish (\$0.00), upgrade interior doors to solid core and baseboard to 5 ¼" (\$0.00) and boiler/water heater upgrade (\$0.00).

In order to determine if the no cost upgrade benefits provided to Michael Costello were consistent with upgrade charges for similar work performed on other housing units, this Office requested all invoices detailing the DuVally Contracting Inc. billing amounts for all upgrades at Horton Estates. This Office was provided with sixty-two (62) invoices detailing upgrade activities for the individual homes in the development. Unfortunately, there were no upgrades identified on these invoices that matched on an apple- to- apple basis with the work done on Mr. Costello's unit. Within all the upgrade invoices provided there was only one invoice that reflected a "no charge" service and this was detailed as follows: "eliminate doors on small master bed closet".

Although the invoices do not provide an obvious indication of the potential abuse, it is the opinion of this Office that these no charge upgrade benefits (that we believe have a value in excess of \$50.00) received by Mr. Costello from his friend's company further reinforce the appearance of a conflict of interests.

## **Conclusion:**

It is imperative for the success of the state's affordable housing efforts that affordable housing units created under Chapter 40B are provided to qualified and deserving households.

Based on our investigation, this Office concludes that Michael Costello, a former planning board member for the town of Rehoboth and currently the Chairman of the Board of Selectmen, improperly obtained for himself an affordable housing unit in the Horton Estates housing development. Mr. Costello was not eligible based on existing Chapter 40B Rules, Regulations and Guidelines to take advantage of this opportunity. However, through his false/misleading statements and associated actions, Michael Costello abused the state's affordable housing law. Through his abuse of the system, Mr. Costello was able to obtain a three bedroom home in this Chapter 40B development at the affordable sales price of

\$155,000. At the time of his home purchase, similar market rate units in this development were selling for approximately \$400,000.

It was a specific program requirement that at least one member of each household be over the age of 55 and physically reside in the home in order to qualify for an affordable unit in Horton Estates. Michael Costello who at the time of his application was 51 years old did not qualify on his own as an affordable housing applicant in this development. By including his mother Marie Costello on the affordable housing application he made it appear that the two of them together were a qualified household for an affordable unit in the development.

After the Costellos were awarded an affordable unit, Marie Costello never took up residency in the new home. Instead of moving into the unit with his mother, Michael Costello moved in with his wife who also would not qualify under the age requirement. This change in planned residency was never disclosed to the lottery agent, the monitoring agent or the town of Rehoboth. Michael Costello through his act of non-disclosure of this pertinent information was able to avoid oversight review and program disqualification.

Marie Costello informed investigators from this Office that it was never intended that she would move into this unit with her son. She stated that her son as part of the application process had asked her to pretend that she was going to live with him in order for him to qualify as an affordable housing applicant.

Michael Costello denies his mother's statements, and indicated to this Office that it was always his intent to have his mother live with him. In the opinion of this Office, Marie Costello's statements are more credible than her son's and the fact remains that in contravention to the program requirements Marie Costello never took up residency in the new home. Mr. Costello was also quick to remove his mother from the deed once he turned of legal age.

It is the opinion of this Office that Michael and Marie Costello had entered into a conspiracy in order for Michael Costello, to obtain an affordable housing unit that he was not entitled to purchase. In order to realize this scheme, it appears that both Michael and Marie Costello perjured themselves when they signed and submitted the affordable lottery application for Horton Estates.

It is also the opinion of this Office that Michael Costello's failure to notify both the town of Rehoboth and the monitoring agent (CHAPA) of his intention to convey the property solely to him was deliberate. By not disclosing his intentions, although required to do so by the deed rider to the property, Mr. Costello avoided review of the circumstances surrounding the planned conveyance that could have potentially resulted in the discovery of his original and ongoing fraudulent acts.

Since Michael and Susan Costello did not initially qualify as an eligible affordable household for residency in Horton Estates, it is the opinion of this Office that their supposed affordable housing unit at 11 Judith Ann Circle should not be carried as an affordable housing unit on the state's subsidized housing inventory, assuming the unit remains under the current ownership. Suggestions for changes to this affordable unit's status are included in a subsequent section of this letter entitled "Recommendations".

It is the opinion of this Office that the longstanding personal relationship between Michael Costello and John DuVally impairs Mr. Costello's ability as a public official to appear unbiased to an impartial observer

in his official dealings with Mr. DuVally. Exacerbating these concerns and this appearance of impropriety are: the no charge upgrades provided by Mr. DuVally to Mr. Costello; the access to a New England Patriot football outing; and, the statements made by both Marie and Sarah Costello (although contradicted by both Michael Costello and John DuVally) suggesting that Mr. Costello and Mr. DuVally had an arrangement in place that preceded the lottery process for Michael Costello to obtain an affordable housing unit in Horton Estates.

As part of this Office's review into this matter, we had the opportunity to review the lottery/oversight process that was associated with this development. We observed certain weaknesses in this process and identified areas needing improvement. This Office will publish a separate formal finding and recommendation report addressing these concerns for consideration and action by both the DHCD and MassHousing in order to improve the overall Chapter 40B process moving forward. Although it should be noted that when individuals conspire and are willing to lie and perjure themselves in order to scam the system it is unreasonable to expect that the oversight process, including the lottery agent and the monitoring agent, can identify and prevent these willfully fraudulent actions.

### **Recommendations:**

The town of Rehoboth and CHAPA in concert with the DHCD and MassHousing should take appropriate actions to remedy the current situation whereby an unqualified/ineligible household has improperly gained possession of an affordable home. Highlighted below are two possible alternatives available to resolve this issue.

Consideration of civil action against Michael Costello: seeking an order to convey 11 Judith Ann Circle to an eligible affordable purchaser. For a similar court case - see *Town of Franklin v. Nikki Bertoni and Sean McInnes* (Norfolk Superior Court, Docket No. 07-177771). This action would allow the town to maintain this as an affordable housing unit on the state's subsidized housing inventory.

Another possible solution that would permit Mr. Costello to continue living at this residence would be to establish through an independent appraisal process the market rate value of this home and allow Mr. Costello the option of paying to the town the difference between this market rate price and the affordable price he already paid in initially purchasing the unit. In doing so the affordable deed rider should be lifted and the money received by the town could be used to further affordable housing opportunities for actual deserving/eligible households in Rehoboth.

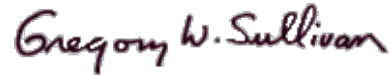
It is the understanding of this Office that under the terms of the Monitoring Agreement, CHAPA as the monitoring agent has the right, with the consent of the town, to take enforcement action against Mr. Costello based on violations of the provisions of the deed rider. The Monitoring Agreement entitles CHAPA to seek recovery of its fees and expenses incurred in enforcing the deed rider and to assert a lien on Mr. Costello's home to secure payment of such fees and expenses.

The DHCD should publish guidance in order to establish a clear policy regarding the methodology to be followed by subsidizing agencies, monitoring agents and lottery agents in determining attribution of liquid assets when qualifying age restricted household members combine with unqualified or ineligible age restricted household members to form a new qualifying age restricted household.

In addition we recommend that Michael Costello, in his role as a public official, should disqualify or recuse himself from participation in future decisions that would involve his good friend, John DuVally, on the grounds of his personal involvement with this individual.

I would be happy to arrange a meeting with you in order to discuss these findings and recommendations in more detail. If you have any questions or concerns, or if I can be of other assistance, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink that reads "Gregory W. Sullivan". The signature is written in a cursive, slightly slanted style.

Gregory W. Sullivan  
Inspector General

CC: Tina Brooks, Undersecretary, DHCD  
Thomas Gleason, Executive Director, MassHousing  
Karen L. Nober, Executive Director, State Ethics Commission  
John Zambarano, Executive Director, Attleboro Housing Authority  
Aaron Gornstein, Executive Director, CHAPA  
Paul Cusson, Managing Member, Delphic Associates, LLC  
John Duvally, Developer, Horton Estates  
Michael Costello  
Marie Costello