



The Commonwealth of Massachusetts  
Office of the Inspector General

GREGORY W. SULLIVAN  
INSPECTOR GENERAL

JOHN W. MCCORMACK  
STATE OFFICE BUILDING  
ONE ASHBURTON PLACE  
ROOM 1301  
BOSTON, MA 02108  
TEL: (617) 727-9140  
FAX: (617) 723-2334

June 19, 2008

Diane L. McGlynn, Esq.  
McGlynn & McGlynn  
Attorneys at Law  
4 Norman Street  
Salem, MA 01970

Subject: Review of Actual Site Development Costs Incurred by Crossroads  
Development, LLC

Dear Attorney McGlynn:

The purpose of this letter is to provide a summary of this Office's findings and observations related to the site development costs incurred by your client (Crossroads Development, LLC) in constructing the Chapter 40B housing development at 244 Main Street in Acton. During the period of time from March 2007 through August 2007, this Office received from you and your client documentation purported to support the project's actual site development costs paid by Crossroads Development, LLC to a related party (James Fenton & Son General Contracting, Inc.). This Office has reviewed this documentation in detail. Highlighted below are the pertinent findings and observations related to these site development costs.

The financial statements provided by your client to the town as part of the cost certification for the Crossroads housing project included \$396,334 in site development costs paid to James Fenton & Son General Contracting, Inc., a developer related entity. In conducting our initial investigation, this Office on multiple occasions, requested the back-up documentation supporting these related party payments. Since this supporting documentation had not been provided by your client, this Office included an adjustment to the financial statements which essentially eliminated these related party site development costs as an allowable project expense. This Office published its initial investigative report with the relevant financial adjustments in May 2006.

The following is a summary of our understanding regarding the audit trail for the professed actual costs provided to this Office. The purpose of this summary is to ensure

a common understanding of the source data and the subsequent work performed in validating this information. In March 2007 this Office received the first installment of documents supporting the actual site development costs for this project. On behalf of your client, you provided to this Office a binder of documents which you indicated was support for the actual costs associated with this project. At the time, as you communicated to this Office, these documents consisted of schedules summarizing costs by labor, equipment rental and materials. You also stated that these costs were supported by vendor invoices, employee time sheets and equipment usage logs. After receiving your binder, this Office requested the source documents supporting the site development costs including the employee time sheets, the associated payroll reports, the equipment usage logs and the expense journals. Based on the documents received against this request and a clarifying memo dated March 28, 2007 from Donna Cisek (accountant for James Fenton & Son Contracting, Inc), it is clear that time sheets maintained by "James Fenton & Son Contracting, Inc." were not kept or accounted for on a project basis nor were equipment logs maintained by job.

Through this process we also came to understand that the "Daily Job Reports" provided to this Office were not kept contemporaneously as the project progressed, but were created in early 2007, approximately three years after the site work was actually completed, as a way to reconstruct the actual site development costs. These "Daily Job Reports" reflect on a daily basis the total labor (broken out by employee), material, and equipment charges purported to represent the actual costs for the Crossroads project.

The primary sources for creating these entries to the "Daily Job Reports" were the diaries maintained by the site supervisors. It is our understanding that when a job is in process, the site supervisor will keep a diary which reflects the job location, employees present, the work performed and material and equipment used. Since employee timesheets were not kept on a project basis and equipment logs were not maintained, these supervisor site diaries were the foundation for preparing the "Daily Job Reports".

The documentation provided by your client in support of the actual site development costs includes a summary of costs totaling \$460,792.84 and is comprised as follows; \$126,850.00 in labor, \$136,502.50 in equipment costs, \$154,600.08 in materials, \$41,890.26 in overhead costs, and \$950.00 of miscellaneous equipment moving charges. These alleged actual site development costs submitted in March 2007 by your client exceed the charges of \$396,334 reflected in the original cost certification (January 2005) by \$64,458.84 or 16%. In order to validate these professed actual costs, this Office took each cost category (labor, equipment, materials etc.) and performed detailed validation procedures in order to substantiate the amounts claimed as project site development costs. This work is described in more depth in the individual cost category sections below.

## **I. Labor:**

As indicated above, your client has claimed actual site development labor costs of \$126,850. In analyzing the "Daily Job Reports", labor related site development costs were comprised of 2,383 hours of work performed from April 2, 2003 through April 29, 2004 by 12 identified employees of James Fenton & Son Contracting, Inc. The actual hourly labor rates submitted by your client for these activities ranged from \$40 to \$60 per hour and the average hourly rate for these activities was determined to be \$53.23.

In order to corroborate these purported actual labor costs, this Office obtained the pertinent weekly payroll register reports from James Fenton & Son Contracting, Inc. and which identify by employee the regular and overtime hours worked along with respective hourly rates. These payroll reports also breakout each employee's gross salary, withholdings and net pay for the week. The "Daily Job Reports" were summarized by week and by employee. These weekly project related costs were compared against the actual weekly salaries paid to each employee during the corresponding time-period. This comparative analysis was utilized in order to determine if the hourly wages actually paid to the identified employees matched the actual rates claimed by your client on the Daily Job Reports.

In addition, in order to validate the actual employee labor hours reflected by your client in the Daily Job Reports, this Office compared the employee information reflected in the site supervisor diaries to the Daily Job Reports. Through these procedures, which were focused on confirming both the actual labor rate and the actual labor hours, we endeavored to substantiate the total actual labor related site development costs as professed by your client.

### **Findings - Labor**

- Through analysis of the weekly payroll register reports, this Office determined that the actual hourly gross wages paid to these 12 employees during this time frame ranged from \$10.00 to \$33.75 with an average hourly rate of \$21.16 as opposed to the \$40-\$60 (\$53.23 average) range asserted by your client.
- Applying the actual hourly rates as determined through the analysis of the weekly payroll register reports to the alleged actual hours (2,383) claimed by your client results in an actual labor cost of \$50,419.16 for the site development work as contrasted to the purported \$126,850.00 submitted by your client.
- This Office determined the fully burdened labor costs at \$57,477.84 (assuming the purported actual hours are correct) by applying the maximum allowable builder's profit/overhead rate of 14% for related party transactions as detailed in the "Local 40B Review and Decision Guidelines" published in November 2005 by the Massachusetts Housing Partnership .

- The schedule provided by your client, which summarized the labor and equipment charges for the professed actual site development costs broke out these charges by day worked and encompassed a total of 125 distinct work days. Your client also provided the Daily Job Reports for each of these 125 work days. In order to validate the daily activity charges to the project, this Office compared each Daily Job Report to the corresponding daily entry in the site supervisor's diary. These site supervisor diaries highlighted work done at numerous projects, however, activities at the Crossroads project were referenced on only 46 of the 125 days claimed in the Daily Job Reports. Even in those 46 cases where activities for the Crossroad's project were referenced in the site supervisor's diary, we were unable to reconcile individual employee activities. The diaries seldom mentioned all the employees which were identified on the Daily Job Reports, nor did the diaries provide a clear hourly accounting of these activities. In comparing the site supervisor's diary entries to the Daily Job Reports, we identified numerous instances of conflicting or contradictory information. As an example, the Daily Job Report for June 16, 2003 indicates that four employees were each on site at the Acton Crossroads project for 8 hours. In contrast the site supervisor's diary entry for that day documents that three of these employees worked the entire day at another site in Boxboro (Boxboro Meadows). There is no indication or reference in the site supervisor's diary of any work being done at the Acton Crossroads project on that day.

## **II. Equipment Rental:**

As previously noted, your client has claimed an actual equipment rental billable amount of \$136,502 related to site development work at the Crossroads project. The Daily Job Reports provided by your client detail hourly equipment rentals totaling 1,527 hours from April 2, 2003 through April 29, 2004. There were 11 distinct pieces of equipment identified as doing this site development work and included: three excavators (18 ton/35 ton/50 ton); three backhoes; a bulldozer; a bobcat; a stone compactor; a compressor; and, a 10 wheel dump truck. Hourly billing for this equipment ranged from \$60 per hour to \$150 per hour with an average calculated hourly rate of \$89.39.

Although your client references "equipment rental" as an actual cost category, it was clarified to this Office that the equipment actually used on the project was owned and not rented by James Fenton & Son General Contracting, Inc. Therefore in order to verify the actual equipment charges to the project, this Office obtained Fixed Asset and Depreciation schedules from your client that detailed this equipment and included: the original acquisition date; the original acquisition cost; the useful life; the accumulated depreciation; and, the annual depreciation. The "Daily Job Reports" were summarized by week and the identified operators/employees for each piece of equipment were noted. The actual hourly labor rates for these operators/employees were also obtained from the applicable weekly payroll register reports as referenced in the Labor section above. Actual operator costs were then calculated by this Office by applying the actual

hourly payroll rates against the equipment hours reflected in the Daily Job Reports. In order to arrive at an estimated actual cost for the equipment used on the project, this Office took and applied the full year's (2002) depreciation as reflected on the Fixed Asset schedules provided by your client.

Since we did not have available a usage log by project for the equipment, we conservatively applied the entire 2002 depreciation against the Crossroads project. In order to substantiate the actual equipment hours reflected by your client in the Daily Job Reports, this Office compared the equipment references in the site supervisor diaries to the Daily Job Reports. Through these procedures, this Office attempted to confirm through source verification the equipment hours billed by your client to the Crossroads project along with the reasonableness of the combined operator/equipment billing rates used.

### **Findings – Equipment Rental**

- This Office determined an actual equipment/operator cost of \$42,423 (assuming the equipment hours documented by your client are accurate) for the Crossroads site development work as contrasted to the purported \$136,592 submitted by your client. This cost was determined by applying the actual hourly labor rates for the identified equipment operators as determined through analysis of the weekly payroll register reports provided by your client to the alleged actual equipment hours (1,527) and adding to this operator cost the full year (2002) depreciation expense for the 11 pieces of equipment professed to be used as part of the overall site development work.
- This Office determined the fully burdened equipment/operator cost at \$48,362 (assuming the purported actual hours are correct) by applying the maximum allowable builder's profit/overhead rate of 14% for related party transactions as detailed in the "Local 40B Review and Decision Guidelines" published in November 2005 by the Massachusetts Housing Partnership.
- The schedule provided by your client which summarized the labor and equipment charges for the purported actual site development costs broke out these charges by day worked and encompassed a total of 125 distinct work days. Your client also provided the Daily Job Reports for each of these 125 work days. In order to validate the daily activity charges to the project, this Office compared each Daily Job Report to the corresponding daily entry in the site supervisor's diaries. These site supervisor diaries highlighted work done at numerous projects, however, activities at the Crossroads project were referenced on only 46 of the 125 days claimed. Even in those 46 cases where activities for the Crossroad's project were referenced in the site supervisor's diaries we were unable to reconcile individual employee or equipment activities. The diaries seldom mentioned all the employees and equipment which were identified on the Daily Job Reports, nor

did the diaries provide a clear hourly accounting of these activities. In comparing the site supervisor's diary entries to the Daily Job Reports, we identified numerous instances of conflicting or contradictory information. As an example, the Daily Job Report for April 8, 2003 indicates that an employee was on site for 8.5 hours hauling out unsuitable loam using the 35-ton excavator. In contrast the site supervisor's diary entry for that day indicated that there was snowfall of two to three inches and that the 35 ton excavator was in the shop getting new pistons.

### **III. Overhead:**

The schedule provided by your client that summarized the actual site work costs included an overhead cost allocation totaling \$41,890. This overhead cost was applied as a 10% burden rate or surcharge against the subtotal cost representing the following cost categories: total employee labor and equipment rental; total materials purchased; total materials trucked in and out; and, miscellaneous site costs. In order to determine the allowable overhead costs for this site development work performed by a related party entity, this Office applied a 14% rate against construction costs as determined in the labor and equipment sections above. The 14% rate used is consistent with the guidance provided in the "Local 40B Review and Decision Guidelines" published in November 2005 by the Massachusetts Housing Partnership.

#### **Findings – Overhead**

- This Office determined that the allowable overhead cost for this site development work (assuming that the labor and equipment hours as detailed by your client are accurate) is \$12,998 or \$28,892 less than the \$41,890 amount declared by your client.

### **IV. Total Materials Purchased:**

The summary schedule of site development work costs provided by your client included a total of \$60,294 of materials allegedly purchased for the project. Copies of vendor invoices were also provided by your client as backup for these purported Crossroads related expenses. In order to corroborate these costs as actual Crossroads related expenses, this Office reviewed each of the invoices to determine its relationship to the Crossroads housing development. There were 71 vendor invoices provided by your client from 19 distinct vendors. These vendors included Acton Hardware, Aggregate Solutions, Aubuchon Hardware, Baystate Waterworks, Boxboro Police, Butler Lumber, Cavalier, Eugene Moloy, F.P. Mabardy, Hilti, Ideal Concrete, Lazaro, Maynard Supply, Middlesex Sheriff, Mill Metals, NE Concrete, Shea Concrete, Stow

Police and United Rentals. The total cost reflected and supported through these 71 invoices was \$50,245.23.

### **Findings – Total Materials Purchased**

- Included as part of the total \$60,294.28 in material purchased costs provided by your client was an arbitrary 20% (\$10,049.05) burden or overhead charge above and beyond the vendor invoice amounts. In other words, there were supporting vendor invoices totaling only \$50,245 in assumed Crossroads related site development costs, the remaining \$10,049.05 was in effect a “20% surcharge” imposed by your client against the project. In the opinion of this Office, this surcharge is not a valid or an allowable development cost.
- In reviewing the vendor invoices provided by your client, this Office found three invoices (all from Baystate Water Works Supply, Inc) which totaled \$11,261.25 for the purchase of 55 “18 LEBARON SNOOTS” . It appears through a technical assessment and review that the maximum number of snouts required for the Crossroads development would be 2 snouts for a total cost of \$409.50. A “snout” is a plastic composite hood device which is attached to the inside wall of a catch basin structure designed to cover the outlet pipe in such a manner as to prevent the exit of floating debris and oil. The manufacturer’s data suggest that in moderate traffic and pollutant load areas a snout in at least every other structure is indicated. It should be noted that there are a total of two catch basin structures in the Crossroads development. Furthermore, only one of the two invoices had an identified ship to location and in this particular instance that location was identified as the “Littleton Job”. It appears that the Crossroads development project in Acton was “overcharged” by \$10,851.75 for these materials.
- This Office noted another Baystate Water Works Supply, Inc. invoice that totaled \$517.13 which was also not related to the Crossroads development project. These materials related predominantly to a different project in Boxboro.

### **V. Total Materials Trucked In & Out of Project:**

In addition to the materials discussed above, your client has represented to this Office that the actual cost of materials trucked in and out of the Crossroads project in performing the related site development work totaled \$94,305.80. The summary schedules provided by your client reflect 118 individual line items and depicts deliveries of various material resources including but not limited to loam, gravel, fill, sand, stone, and pac. Associated with each line item in these schedules are a dollar value and a quantity measurement (such as cubic yards or tons).

In order to confirm that these material related charges were actually incurred in

developing the Crossroads project, this Office requested that your client provide the supporting back-up documentation including vendor invoices that reflect actual billing amounts (dollars and quantities) to the related subcontractor (James Fenton & Son General Contracting, Inc.) and delivery of the materials to the Crossroads development site. Through this validation process that was focused on confirming both the actual material acquisition rates (cost per cubic yard etc) and the actual material quantities trucked in & out of the site, we attempted to substantiate the total actual material related site development costs claimed by your client.

**Findings – Materials Trucked In & Out of Project**

- Validation of these material costs proved problematic. There was limited production of documentation to support these costs. This Office was provided with vendor invoices that related to only 18 of the 118 line items. Of the 18 invoices provided, we could only correlate 8 of them to the material quantities reflected through the detailed schedules. Although the remaining 10 invoices demonstrated a connection as to the type of material, they did not provide a direct relationship as to the quantities of material nor the pricing. In general, these 10 invoices reflected smaller quantities and lower pricing than what was reflected in the schedules provided by your client.
- This Office compared the pricing reflected in the 8 invoices that could be correlated against the equivalent values professed by your client. In all cases the actual vendor invoice price was significantly lower than the values represented by your client. Highlighted below is a schedule of these differences.

<u>Material</u>	<u>Quantity</u>	<u>Value/Developer</u>	<u>Invoice Price</u>	<u>\$ Difference</u>	<u>% Difference</u>
Gravel	120 Cu Yds	\$1,440.00	\$252.00	\$1,188.00	471%
Gravel	312 Cu Yds	\$3,744.00	\$655.20	\$3,088.80	471%
Gravel	364 Cu Yds	\$4,368.00	\$764.40	\$3,603.60	471%
Gravel	156 Cu Yds	\$1,872.00	\$327.60	\$1,544.40	471%
DW Gravel	88 Tons	\$1,452.00	\$1,139.58	\$312.42	27%
Stone	18 Tons	\$216.00	\$137.26	\$78.74	57%
Stone	20 Tons	\$180.00	\$148.29	\$31.71	21%
Stone	64 Tons	\$864.00	\$503.07	\$360.93	72%
<b>Subtotal</b>	<b>NA</b>	<b>\$14,136.00</b>	<b>\$3,927.40</b>	<b>\$10,208.60</b>	<b>260%</b>

The average cost difference between the material value claimed by your client and the corresponding vendor invoice cost for these 8 transactions represents approximately a 260% overcharge to the Crossroads project.



Since the supporting back-up documentation was lacking, this Office performed a separate analysis to determine the reasonableness of the material costs as portrayed by your client. Current pricing quotes for equivalent material were solicited from various regional suppliers. These quotes were compared against the dollar values provided by your client. The current value of this material, based on these quotes, is approximately half (53%) of the 2003-2004 values submitted by your client. This analysis runs counter to expected industry costing trends and provides another indicator that the material costs submitted by your client as actual site development costs are inappropriately inflated.

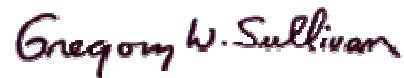
- The supporting documentation obtained from your client was deficient in providing a means for validating that all the material was actually placed on the Crossroads development site. Specific material deliveries to the site could not be matched to daily site log records. In order to determine the reasonableness of the claims made by your client, this Office performed an alternative analysis. The total quantities of materials claimed to have been removed and the materials professed to have been delivered to the site were reviewed against the site topography. The rise in mean elevation of the site was calculated based upon the total net volume of material purported to have been placed on site. As a starting point, this Office calculated the total cubic yards of material claimed to have been placed on the site and from that total we deducted the material claimed to have been removed from the site. This provided us with a net of 5,657 cubic yards of material placed on the site. Based on the project site drawings prepared by Stamski and McNary, Inc. (dated August 29, 2002), it was estimated that there were approximately 48,750 square feet of land on the upland portion of the site that could have received these materials. This simple analysis reflects a rise in mean elevation on the buildable portion of the site of more than three feet. Given the topography of the site, it is our opinion that the material claims made by your client that would result in such a significant increase in site elevation are not realistic and reflect unacceptable errors or omissions.
- James Fenton & Son General Contracting, Inc. charged the Crossroads project \$13,244 for the cost of fill removed from the Crossroads site and placed on another development site in Boxboro. In essence, this related party contractor charged \$12 for each cubic yard of material dug out of the Acton site and moved to a construction site in Boxboro. There were no vendor invoices associated with this material since this material was not purchased by Fenton but rather the material was already resident on the development site. This Office supports as allowable development costs the actual trucking charges to move this material off the Crossroads development site, but cannot support the material charges of \$12 per cubic yard. It is the opinion of this Office that the charges for this fill rather than being a project expense should be revenue to the Crossroads project since the material appears to have been delivered to another related development site for use.

**V. Conclusion:**

Based on review of the documentation provided by your client, this Office concludes that the professed actual site development costs for the Crossroads' project are grossly overstated and are not reflective of actual costs incurred. The hourly labor and equipment "rental" rates claimed by your client are significantly exaggerated (152% and 222% respectively) as are the unit (cost per cubic yard/ton) material acquisition costs. The claimed labor hours, equipment hours and the quantity of materials trucked onto the site are not adequately supported by your client and appear to be appreciably inflated.

Let me know if you have any questions regarding this assessment.

Sincerely,



Gregory W. Sullivan  
Inspector General

CC: James Fenton; Crossroads Development, LLC  
Steve Anderson; Andersen & Kreiger, LLP  
Michael Smith; Vitale, Caturano and Co. LTD  
Tina Brooks; Undersecretary - DHCD  
Lauren S. Rosenzweig; Chair – Acton Board of Selectmen  
Steve Ledoux; Acton Town Manager  
Kenneth Rozik; Chair- Acton Board of Appeals