

Don Johnson

3/13 (10)

**From:** Nancy Tavernier  
**Sent:** Thursday, March 09, 2006 6:50 AM  
**To:** Board of Selectmen  
**Cc:** Christine Joyce; Acton Community Housing Corporation  
**Subject:** Monitoring agent request to BOS.doc



Monitoring agent  
request to BO...

Attached please find an ACHC request for your consideration.

Nancy

**Acton Community Housing Corporation**

**Nancy Tavernier, Chairman**

**TOWN OF ACTON**

Acton Town Hall

472 Main Street

Acton, Massachusetts, 01720

Telephone (978) 263-9611

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TO: Board of Selectmen  
FROM: Nancy Tavernier, Chair  
SUBJECT: 40B Monitoring Agent – request for change  
DATE: March 9, 2006  
cc Don Johnson, John Murray

The ACHC has voted to ask the Board of Selectmen to re-define its designation of us as the Monitoring Services Agent for current and future 40B developments and to take whatever action is required to relieve us of this assignment. ACHC began to be the Monitoring Agent in 2002 for the Crossroads Condominium, and since then, the Board has designated us for Fort Pond Brook Place, Franklin Place, and anticipates doing so for The Woodlands. This was a new official term for the work we normally did, or so we thought. It was done in each case with our consent and as a condition to each Comprehensive Permit but we have now reconsidered that agreement.

Monitoring 40B's involves two areas of focus, 1) monitoring the compliance of the Project with the Affordability Requirements and 2) monitoring the compliance of the Developer with the Limited Dividend Requirement. The ACHC has always done the monitoring of the affordability requirements for housing developments. This is what we do best due to our knowledgeable and experienced members. We want to continue to monitor this aspect of development but not the post-development financial aspect.

The Limited Dividend Requirement review is not an area that we have any expertise in and we feel this is the time to terminate that activity. Since we have never actually completed this requirement, we cannot even say what the duties are but they primarily relate to the post-development financial reports from the developer for the purpose of verifying whether or not the limited profit has been met or exceeded. The post-development audit for Crossroads was ready to begin in January 2005 and to date has not been completed nor have we had any recent updates on its progress. Dan Hill has been supervising the contract for the Town, we have not. The Franklin Place audit is due to be underway but has not yet begun and it could be quite complicated. We wish to be relieved of the financial responsibility for Crossroads and Franklin Place and the same going forward with The Woodlands and other 40B's to be approved by the ZBA. We

are holding \$10,000 in escrow for the Franklin Place audit, it should be in the Town's hands and we shall return it as soon as this is ironed out.

Listed below are the Monitoring Agent functions that ACHC would like to continue to be responsible for, the compliance of each project with the Affordability Requirements.

Before the lottery process commences, the developer must submit a lottery and affirmative marketing plan to the monitoring agent (ACHC) for approval, which must include a mechanism for selecting affordable households from among the set of affordable applicants where the number of affordable applicants exceeds the number of available affordable units in development.

The monitoring agent (ACHC) will review the plan to ensure that it meets basic threshold requirements of Chapter 40B guidelines and regulations, provisions of the comprehensive permit for the development, and conforms to best practices. Once ACHC approves the lottery and marketing plan, a written letter of approval will be sent to the developer and the subsidizing agency.

The monitoring agent will review:

- Sale prices of the affordable units
- Maximum income and asset eligibility and size of households applying for the affordable units
- Marketing and outreach plan to ensure affirmative fair marketing is being undertaken
- Deed riders used to ensure continued affordability
- Sample advertisements to be used and list of publications where ads will be placed

We ask that the BOS take whatever votes are required to rescind the assignment of ACHC as the Monitoring Agent responsible for the Limited Dividend Requirements of Crossroads, Franklin Place, The Woodlands, and any future 40B's. We are aware that this could be a tangled web since ACHC is listed as the Monitoring Agent in all of these Permits and Nancy has signed several documents on ACHC's behalf. If we need to make the Town the designee in our place, we are prepared to vote to do that but again only for the Limited Dividend Requirements of 40B's.

Thank you for your attention to this matter.