

-Final

TOWN OF LITTLETON
LITTLETON, MASSACHUSETTS 01460

ZONING BOARD OF APPEALS

FINDING AND DECISION

Re: Mannion Place
for a Comprehensive Permit (the "Application")
for the property at 14 Mannion Place, Littleton, Massachusetts 01460

Date: June 29, 2006

A. PROCEDURAL HISTORY

1. On or about February 14, 2006, Mannion Place Development, LLC, a Massachusetts Limited Liability Company with a principal address of 14 Mannion Place (the "Applicant"), applied for a Comprehensive Permit, pursuant to M.G.L. c. 40B, for the development of twelve (12) condominium units consisting of three (3) units located in one (1) existing dwelling and nine (9) new units to be constructed in five (5) additional housing structures (the "Development") on approximately 2.63 acres of land at 14 Mannion Place in Littleton, Massachusetts (the "Property"). The Property is recorded in the Middlesex District Registry of Deeds in book 30398, page 326. The Development will be a "for sale" project.
2. A duly advertised public hearing of the Littleton Zoning Board of Appeals (the "Board") was opened on March 16, 2006 and continued to the following dates: April 13, 2006 and May 11, 2006.
3. The public hearing was closed on May 11, 2006. Working sessions were held on May 18, May 25, June 15, June 22 and June 29, 2006.
4. As part of its application the Applicant provided information on the Local Initiative Program, the Property, the Development, Requested Waivers, the Owner Applicant and a history of the Development. Additionally the Applicant provided a Site Eligibility Letter, Site Plans, Architectural Plans, Construction Phasing Details, Site Control Documentation, Pro Forma, Tabulation of Proposed Buildings and Units, Traffic Generation Report, Drainage Study and Alternatives Report, Corporate Documentation of the Applicant and Comment Letters from various Town Boards and Departments.

5. During the course of the public hearing the Board reviewed information from the Applicant, Abutters and various Town Boards and Departments as well as Consultants to the Board.
6. The List of Documents and Exhibits received during the public Hearing is attached as **Exhibit A** and is hereby incorporated by reference in this Decision.

B. FINDINGS

1. The Applicant is qualified to make the Application pursuant to 760 CMR 31.01 in that:
 - a. Mannion Place LLC is a "limited dividend corporation" as that term is used in M.G.L. c. 40B, s. 21 and 760 CMR 31.01(1);
 - b. Mannion Place LLC has a funding commitment from a subsidizing agency as evidenced by the Site Approval letter issued by the Department of Housing and Community Development ("DHCD) under its Local Initiative Program ("LIP"); and
 - c. Mannion Place LLC has "control of the site" as that term is used in 760 CMR 30.01, in that it owns the Property.
2. The Town of Littleton does not currently meet the statutory minimum set forth in M.G.L. c. 40B, s. 20 or 760 CMR 31.04, nor is affordable housing located on sites comprising one and one-half percent or more of the total land area zoned for residential, commercial or industrial use. The development of Affordable Units consistent with this Application will not result in the commencement of construction of such housing on sites comprising more than three tenths of one percent of such land area.
3. The Property is situated on Assessors Map R1 Parcel 2, within the Residential Zoning District, as set forth in the Littleton Zoning Bylaw. The site has 270.47 +/- feet of frontage on Mannion Place.
4. The prevailing zoning surrounding the site is exclusively residential. Currently there exist a number of moderately-sized and larger single-family homes adjacent to the site. There are

no businesses, commercial or industrial uses in close proximity to the site.

5. The Property is comprised of approximately 2.63 acres of land area.
6. The property currently has a Renovated Victorian Home containing three (3) units of housing, a dairy milking barn, a conventional barn and a silo on it. The site has a history of agricultural uses.
7. Existing public utilities available to the Property include telephone, electric, gas and cable television/internet.
8. The Town of Littleton does not have a municipal sewer system.
9. The Applicant has proposed two separate on-site wastewater disposal systems.
10. The Applicant has proposed to bring Town Water to the site at the Applicant's own expense.
11. The Applicant has proposed a development consisting of twelve (12) condominium units located in one (1) existing dwelling and five (5) additional housing structures.
12. As finally proposed, twenty-five percent (25%) of the twelve (12) dwelling units, or three (3) units (the "Affordable Units"), would be reserved for sale to families earning no more than eighty percent (80%) of the median household income for the Boston-Cambridge-Quincy, MA-NH HMFA, as defined by the U.S. Department of Housing and Urban Development (HUD) and as adjusted for household size.
13. The Applicant has proposed two parking spaces per unit plus six (6) additional visitor parking spaces.
14. The Board retained the following consultants to assist in the review of the Application:
 - a. Civil Engineering: H2O Engineering Consulting Associates Inc., Bedford, MA.

- b. Fire Safety: City Point Fire, Weymouth, MA.
 - c. Financial Review Consultant: Edward Marchant, Brookline, MA
 - d. Town Counsel: Miyares and Harrington LLP, Watertown, MA.
- 15. Information on the proposed development was distributed to the following municipal officers or agencies:
 - a. Board of Health
 - b. Planning Board
 - c. Building Inspector
 - d. Conservation Commission
 - e. Fire Department
 - f. Department of Public Works
 - g. Board of Selectmen
 - h. Police Department
 - i. Littleton Housing Authority
- 16. After reviewing the Applicant's stormwater management and wastewater disposal plans, the Board's engineering consultants prepared detailed reports indicating that the Development, as conditioned below, would not endanger public health or safety or the environment.
- 17. The Development, as conditioned below, is consistent with local needs.

C. DECISION

Pursuant to M.G.L. c. 40B, the Zoning Board of Appeals of Littleton, after a public hearing and findings of fact, hereby grants a Comprehensive Permit to the Applicant for the development of twelve (12) dwelling units on the Property consisting of three (3) garden style units in the existing Victorian home and nine (9) new townhouse style units in five (5) new structures as shown on the Site Plans, and associated infrastructure improvements, subject to the following conditions. The term "Applicant" as set forth herein shall mean the Applicant, its

heirs, successors and assigns, including the required Unit Owners Association. The term "Board" as set forth herein shall mean the Littleton Zoning Board of Appeals. Unless otherwise indicated herein, the Board may designate an agent to review and approve the matters as set forth herein. The Development shall be a "for sale" project.

Conditions:

1. The Development shall be constructed in substantial conformance with the following plans of record (collectively, "the Plans"):

- a. Site Plans: "Site Plan For A Comprehensive Permit (M.G.L. CH. 40B Section 20-23) 14 Mannion Place, Littleton, Massachusetts," as drawn by R. Wilson and Associates of Littleton, MA 01460, dated July 28, 2004, with revisions through June 26, 2006, containing five (5) sheets.
- b. Architectural Plans: "Proposed Dell Dale Farm Condominium, Mannion Place, Littleton, Massachusetts" Prepared for Daniel A. & Susan L. Harvey, 14 Mannion Place, Littleton, Massachusetts; Prepared by Paul L Davies & Associates, Architects, 635 Rogers Street, #4, Lowell, Massachusetts, dated January 2004, containing eight (8) sheets.
- c. "Outline Specifications," dated June 29, 2006, nine (9) pages.
- d. "Assessor's Street Number and Name" listing.

Any substantial deviation from these plans and/or documents shall require a modification of this Comprehensive Permit by the Board as set forth in 760 CMR 31.03.

2. The Development, as authorized by this permit, shall be limited to twelve (12) home-ownership dwelling units located in six (6) buildings. Nine (9) of the dwelling units shall have two (2) bedrooms each. Three (3) of the dwelling units shall have three (3) bedrooms each. The Board hereby limits the total number of bedrooms in the Development to twenty-seven (27). The number of bedrooms per unit as shown on the Plans will not be allowed to be increased. Said restriction shall be included in the Condominium Master Deed for the

Mannion Place Condominiums. Three (3) of the twelve (12) Units shall be "Affordable" units.

3. The Development shall contain a minimum of 30 parking spaces.
4. Twenty-five percent (25%) of the twelve (12) dwelling units, or three (3) units (the "Affordable Units"), shall be reserved for sale to households earning no more than eighty percent (80%) of the Median Family Income for the Boston-Cambridge-Quincy, MA-NH HMFA, or applicable PMSA in the event of a change, as determined by the HUD and as adjusted for household size. None of the required Affordable Units shall be located within the existing three (3) unit Victorian style structure. All Affordable Units shall be newly constructed townhouses.

The maximum initial sales price for the Affordable Units shall be set at a price no greater than "that which can be afforded" (including principal and interest payments based upon a zero points, 30-year fixed interest rate amortizing mortgage loan, realistic Unit Owners Association fees that accurately project the anticipated costs of operating the private Wastewater Disposal System, property insurance, real estate taxes, and private mortgage insurance) by households earning no more than seventy percent (70%) of the applicable Median Family Income, adjusted for household size. However, in no case shall the initial sales prices for each of the three (3) Affordable Units be greater than the sales prices listed in the DHCD Project Eligibility Letter.

Households purchasing Affordable Units must also satisfy applicable First Time Home Buyer, Asset Limitation, and any other applicable Local Initiative Program eligibility requirements as established by the Massachusetts Department of Housing and Community Development, including the requirement that mortgage loans of buyers of Affordable Units be thirty (30) years, fixed interest rate, level payment amortizing loans.

Finance/Legal:

5. All Affordable Units shall remain affordable in perpetuity or the longest period allowed by law and shall contain a restriction that remains senior to any other lien on the property. An affordable housing restriction, enforceable by the Town of Littleton, requiring that the

Affordable Units remain affordable in perpetuity, in the form approved by the Board's Counsel, shall be recorded senior to any liens on the Premises to protect the continued availability of and requirement for the Affordable Units in the event of any foreclosure, bankruptcy, refinancing or sale. The Applicant shall not receive a building permit until evidence of the recording of such affordable housing restriction has been provided to the Board. The Unit Owners Association Documents shall provide that the premises described in the Master Deed are subject to the terms and provisions of this restriction and that any amendment purporting to alter, amend or delete this restriction shall be void and of no force and effect unless in compliance with the termination and extinguishment provisions of this restriction.

6. For cost certification purposes, General Conditions, Builder's General Overhead, and Builders Profit as well as any other work done by related parties must have pricing consistent with normally accepted industry standards.
7. Should there be an identity of interest between the Applicant and the Real Estate Broker, the brokerage fee on the market-rate units shall not exceed 5%. No brokerage fee shall be allowed on Affordable Units. Lottery fees shall be allowed on Affordable Units consistent with industry standards.
8. To the extent permitted by law, preference for the sale of seventy percent (70%) the Affordable Units in the initial round of sales shall be given to households who satisfy all eligibility requirements and who are either (a) Littleton residents, which shall mean current residents of the Town of Littleton, and/or (b) the parents or children of current Littleton residents, and/or (c) employees of the Town of Littleton, including all employees of the Littleton public schools. The local preference shall be subject to applicable state and federal fair housing guidelines and/or regulations. The lottery shall be implemented by a Lottery Agent approved by the Board. Prior to conducting the Lottery, the Lottery Agent shall submit a final Lottery Plan, including the proposed sales price for the Affordable Units with a clear explanation of assumptions used to project the proposed sales price, to the Board for its approval. All costs associated with the Lottery shall be exclusively the Applicant's.
9. Prior to the issuance of any building permit, the Applicant shall submit the final drafts of a

Regulatory Agreement, a Monitoring Agreement, an Affordable Unit Deed Rider and an Affirmative Marketing Plan to the Board for approval by the Board's legal counsel. Prior to the issuance of any building permit, the Regulatory Agreement shall be executed by and with the Board and/or the Town and shall be transmitted to the Department of Housing and Community Development (DHCD). The Applicant shall comply with all DHCD Local Initiative Program submission and program requirements. Prior to the issuance of any building permit, the Monitoring Agreement shall be executed by and with the Town. The Regulatory Agreement shall contain at a minimum, the following terms:

- a. The Affordable Units shall be reserved for sale in perpetuity to households earning no more than eighty percent (80%) of the Median Family Income for the Boston-Cambridge-Quincy, MA-NH HMFA, or applicable PMSA in the event of a change, as determined by the U.S. Department of Housing and Urban Development and as adjusted for household size.

Any mortgage loan to an Affordable Unit buyer that is secured by any of the three (3) Affordable Units shall be subordinate to the perpetual Chapter 40B affordability requirement that is a fundamental condition of this Comprehensive Permit. The form of Deed Rider to be used is the "Affordable Housing Deed Rider For Projects in Which Affordability Restrictions Survive Foreclosure", now commonly referred to as the "Universal Deed Rider".

- b. The right of first refusal to purchase an Affordable Unit on resale shall be granted to the Town of Littleton, or its designee, which shall be the Littleton Housing Authority. The Littleton Housing Authority shall comply with all applicable eligibility requirements.
- c. The actual Affordable Units shall be as identified in the Regulatory Agreement.
- d. The Affordable Units shall be owner-occupied, except for bona fide temporary absences, during which rental may be permitted to qualified households upon approval of the Littleton Housing Authority.
- e. The development shall be limited to twenty-seven (27) bedrooms. Nine (9) units shall

only have two (2) bedrooms, and three (3) of the units shall only have three (3) bedrooms. There shall be no conversion of any other space into bedrooms. This condition shall also be placed in the Master Deed of the Unit Owner's Association.

- f. Unit Owners Association fees and applicable betterment fees for the Affordable Units shall be established in accordance with MGL Chapter 183A. As a result, the percentage of interest allocated to Affordable Units shall be based upon the restricted market value of the Affordable Units and therefore the percentage of interest shall be less than that assigned to a similar sized market unit.
 - g. The Monitoring Agent for this development shall be the Littleton Housing Authority subject to the approval of DHCD..
10. The Applicant shall bear all reasonable expenses associated with services provided by the Monitoring Agent for the cost certification monitoring and monitoring of the initial sale of each of the three (3) Affordable Units.
 11. As a "Limited Dividend Organization," the Applicant's profit shall not exceed twenty percent (20%) of its approved development costs in the Project. Any profit in excess of such amount shall be paid to the Town, in a form that will allow the Town to use such funds to facilitate the development of affordable housing. Review of the Applicant's limited dividend obligations shall be done in accordance with a Regulatory Agreement approved by the Board's Counsel. No building permit may be issued until such Regulatory Agreement is approved by the Board's Counsel and executed by the Applicant, the Town and DHCD. The Applicant shall provide to the Board and the Monitoring Agent a full certification of total development costs and total revenues, including revenues and expenses associated with upgrades and/or options on a federal income tax basis prepared and certified by a certified public accountant acceptable to the Board, to enable the Board to make its own determination as to whether the Applicant has complied with the Regulatory Agreement. The Applicant shall provide a copy of the deed and HUD settlement statement for the sale of each unit of the Project. In order to facilitate the Board's rights, the Applicant shall permit the Board, or its duly authorized representatives, to examine or audit the Applicant's records during normal business hours and shall, upon the Board's request, explain the methods of keeping the records.

12. The Affordable Units shall not be segregated from the market-rate units.
13. The exterior of the Affordable Units shall be indistinguishable from the market-rate units. The interior finishes of the Affordable Units shall be consistent with the building specifications submitted to the Board.
14. During construction, the Applicant shall comply with all applicable local, state and federal regulations, guidelines, procedures, and laws not otherwise waived in this Decision.
15. The Applicant, its successors and assigns, shall be responsible for payment of all reasonable costs to review any documents in order to effectuate this Permit.

Traffic:

16. All fire lanes and parking areas shall be kept clear at all times, and all snow shall be removed from these areas to ensure access by fire trucks and other public safety vehicles. Fire lanes shall be posted as such; vehicles parked in such fire lanes shall be towed at the owner's expense.

Civil:

17. The Applicant has proposed, and the Board hereby requires, that the following common facilities and services of the Development shall be and shall remain forever private, and that the Town of Littleton shall not have, now or ever, any legal responsibility for operation or maintenance of same:
 - a. All roadways and parking areas;
 - b. Stormwater management system, including the maintenance of catch basins and detention basins and the like;
 - c. Snow plowing;

- d. Landscaping and landscape maintenance;
- e. Trash removal;
- f. Street lighting;
- g. Subsurface sewage disposal system.

The common facilities shall be maintained in perpetuity by the Unit Owners Association and/or Management Company. The roadway within the Development shall not be dedicated to or accepted by the Town.

18. The Applicant shall establish a Unit Owners Association to maintain and repair all common areas, including the stormwater management system, the subsurface sewage disposal system, landscaping, and other improvements within the subject property and each owner shall be a member thereof. Littleton's Town Counsel shall review the Unit Owners Association documentation including all condominium documents as to consistency with this Decision. Such documents shall set forth the obligations of the Unit Owners Association for the operation and maintenance of all such common areas and improvements and shall reference the affordability requirements upon which the Comprehensive Permit is conditioned. Prior to the issuance of any certificate of occupancy, the Applicant shall provide documents establishing such Unit Owners Association to the Board for approval by legal counsel as to form and for verification that such documents are in conformance with this decision and shall certify to the Board's Counsel that same are in compliance with M.G.L. c. 183A. The Unit Owners Association shall adopt rules and regulations and a copy shall be provided to the Board.
19. The Applicant shall be responsible for the installation, operation, and maintenance of all aspects of the common facilities and services set forth in Condition #18 above, until the transfer of the last dwelling unit. Thereafter, such operation and maintenance shall be the responsibility of the Unit Owners Association. In the event that a management company is engaged, the Applicant or the Unit Owners Association shall provide the Board with a copy of the contract.

20. The Applicant shall not expand the paved sections of the Development beyond that which is depicted in the Plans.
21. The Applicant shall maintain the landscaping within the common areas in perpetuity. Any dead vegetation shall be removed immediately and replaced in accordance with the specifications on the Site Plan.
22. The Applicant shall be responsible for the installation, operation, and maintenance of all aspects of the stormwater management system until all of the units have been conveyed. At such time, the operation and maintenance of the stormwater management system within the development shall be the responsibility of the Unit Owners Association.
23. In the event that the Applicant, its successors, or agent fails to maintain the stormwater management system or wastewater disposal system in accordance with such guidelines for operation and maintenance or in any manner which fails to safeguard public health and safety or in the event the Applicant, its successors, or agent fails to properly maintain the roadway for safe and adequate emergency vehicle access/egress as determined by the Littleton Fire Department, Police Department or Highway Department, the Town may conduct such emergency maintenance or repairs, and the Applicant shall convey any easement necessary to implement such guidelines, including, if applicable, a "Title V Covenant and Easement" pursuant to 310 CMR 15.00 et seq. In the event the Town conducts such maintenance or repairs, the Applicant shall promptly reimburse the Town for all reasonable expenses associated therewith; if the Applicant fails to so reimburse the Town, the Town may place a lien on the Development or any unit therein to secure such payment.
24. The Applicant shall assure that the proper covenants are included in the Unit Owners Association's documents as well as the deeds to each of the units to address the following:
 - a. There shall be no additions beyond the building envelope shown on the Plans.
 - b. Garages shall not be converted for habitable use.
 - c. An alternative to road salt shall be used for de-icing in the winter.

- d. No disposal of yard and landscaping waste shall be permitted in the surrounding wooded areas on the site.
 - e. Trash barrels shall be stored inside the garages except on collection day.
 - f. Water conservation measures shall be implemented insofar as care and maintenance of the landscaped areas.
 - g. There shall be a prohibition on the enclosing of porches, decks and patios except for screening that has been approved by the Board.
 - h. There shall be a prohibition on the addition of sheds or other outdoor enclosures.
25. Prior to the construction of the stormwater management system, its final design shall be approved by the Board or its agent. Prior to such construction, the Applicant's registered professional engineer shall prepare guidelines for the operation and maintenance of the stormwater management system, subject to the approval of the Board, for incorporation by reference in the documents of the Condominium Association. Prior to the time at which the Applicant turns over the operation and maintenance of the stormwater management system to the Unit Owners Association, the Applicant shall provide the Board with proof that an appropriate budget has been established and funded to maintain the stormwater management system as set forth in such guidelines. In the event that the Applicant fails to maintain the stormwater management in accordance with such guidelines for operation and maintenance, the Town may make emergency repairs to the system at the sole expense of the Applicant. The Applicant shall convey any easement necessary to implement such repairs, which shall be approved as to form by the Board's legal counsel. In the event that the Applicant fails to reimburse the Town for such repairs, the Town may place a lien against the Unit Owners Association and its assets.
26. The Applicant shall be responsible for all permits and fees as required under the Town of Littleton Rules, Regulations, By-Laws, and orders.
27. Prior to the issuance of a building permit and construction, the Applicant shall prepare a set

of Final Detailed Design Site Plans, said documents shall be approved by the Board to confirm that they include final working drawings and specifications prepared in accord with standard engineering practice that fully incorporate all requirements of the Conditions of Approval as set forth herein. The working drawings shall be endorsed by the Board's agent prior to inception of construction. The Applicant shall pay reasonable peer review fees to facilitate review of the Final Detailed Design Site Plans by the Board's agent, the Littleton Building Inspector, prior to endorsement.

28. Prior to the issuance of a building permit for any dwelling unit, the Applicant shall submit the following final plans and/or documents for approval by the Board or its agent, the Littleton Building Inspector.

- a. Landscaping, as approved on the Site Plan;
- b. Detailed grading and drainage plan;
- c. Final utilities plan including water, gas, electric, telephone, and cable;
- d. Final signage plan, in accordance with the requirements of the Littleton Zoning Bylaw, if signs are located on the Development;
- e. Architectural plans and Specifications;
- f. Draft Builder's Warranty
- g. Guidelines for the operation and maintenance of the wastewater disposal system including, if applicable, a "Title V Covenant and Easement" pursuant to 310 CMR 15.00 et seq.

29. In the preparation of the final plans set forth in Condition #28 above, the Applicant shall incorporate the following matters:

- a. Design and install the stormwater management system consistent with the DEP Stormwater Management Policy;

- b. Wherever practicable, existing trees and vegetation shall be preserved. New trees and shrubs shall be installed to provide shade and screening. Additionally, all disturbed areas on the Property shall, at a minimum, be loamed and seeded. Landscaping shall be completed in substantial compliance with the landscape plan included in the Site Plans, including but not limited to, the installation of trees and fencing along the southern property line. Provision for the maintenance and survival of the trees and fencing shall be incorporated into the Mannion Place Condominium documents.
- 30. There shall be no garbage disposals. This condition shall be placed in the Master Deed of the Unit Owners Association.
- 31. The number and arrangement of the fire hydrants shall be shown on the Plans and with the approval by the Fire Department prior to the issuance of a building permit.
- 32. The construction process shall conform to the requirements of the following:
 - a. A detailed Construction Schedule, which shall include installation of landscaping as approved by the Board.
 - b. Applicable local, state and federal laws and regulations regarding noise, vibration, dust and sedimentation, use and interference with town roads.
 - c. The Applicant shall at all times use all reasonable means to minimize inconvenience and disturbance which may affect residents, businesses, and traffic in the general area. Construction shall not commence on any weekday before 7:00 a.m. and shall not continue beyond 6:00 p.m. Construction shall not commence on any Saturday before 8:00 a.m. and shall not continue beyond 4:00 p.m. There shall be no construction on any Sunday or on any state or federal legal holiday. There shall be no exception to the construction hours unless with prior written permission of the Littleton Building Inspector. For this condition, construction activities shall be defined as: start-up of equipment or machinery, delivery of building materials and supplies; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of

earth materials; installation of utilities both on and off the site; demolition of existing structures; removal of stumps and debris; and the erection of new structures.

- d. Inspections during the construction phase shall be conducted by the Town of Littleton Building Department staff and/or appropriate Town Agencies.
 - e. Upon completion of the Project, the Applicant shall provide to the Board an as-built survey of all site work, including utilities, building improvements and land grading.
33. Prior to the issuance of any certificate of occupancy, the Applicant shall demonstrate to the satisfaction of the Board or its designee (which shall be the Littleton Board of Health), that there is a maintenance contract for the Development's Subsurface sewage disposal system for the initial five (5) year period. The Unit Owners Association shall provide proof of the maintenance contract for operating periods beyond year five, as required by DEP, or if DEP does not establish a time period, then every five (5) years.
34. The Applicant shall not cause or allow the expansion of the Development beyond that which is depicted in the Final Plans.

General:

35. The Applicant shall promptly pay the reasonable fee of the consulting engineer and the Board's legal counsel and Chapter 40B Advisor for review of the Plans or documents described herein. The Board may require the establishment of an escrow account to assure such payment, with an initial deposit not to exceed \$5,000.00 said deposit to be replenished upon reasonable notice. Failure to replenish same within a reasonable period of time will be cause for the issuance of a cease and desist order. Inspections during the construction phase shall be conducted at the expense of the Applicant, in accordance with the Rules and Regulations of the Planning Board, where applicable. The Board may appoint an agent or agents to conduct such inspections.
36. Prior to any earth removal, the Applicant shall comply with all requirements of all relevant

Town bylaws and zoning bylaws.

37. The Applicant is required to comply with all applicable state building and fire codes in the Construction and design of the project.
38. The Applicant shall obtain all necessary permits from the Board of Health, Building Department, Water Department, Highway Department and/or the Conservation Commission.
39. The Board of Health's permit for wastewater disposal or the DEP's permit, if any, shall be made a part of this Comprehensive Permit. If there is any inconsistency between the plan of record for this permit and the Plans as may be approved by said agencies, the Applicant shall submit an amended plan to the Littleton Zoning Board of Appeals for approval. Said amended plan shall be accompanied by a letter setting forth any and all changes from the submitted plan of record and shall include revised drainage calculations, if applicable.
40. The Town of Littleton Water Department has agreed to conduct periodic water quality testing of the wells of the immediate abutters to the Development for no charge. In the event said testing shows contamination of any of the wells, and it is determined that the contamination has been caused by the operation or failed operation of the Development's subsurface sewage disposal system, the Unit Owners Association, at its sole cost and expense, shall be responsible for installing Town water to any immediate abutter so affected.
41. A working capital reserve of \$2250.00 for the subsurface sewage disposal system, associated leaching fields and potential Town water provision to abutters shall be established by the Applicant, said funds will be put into the capital reserve in the amount of \$250.00 per market rate closing. The capital reserve will be for the benefit of the Unit Owners Association and language shall be provided within the Unit Owners Association Trust and the Condominium Master Deed to provide for collecting additional funds as part of the condominium fee to fund future subsurface sewage disposal system maintenance, repair and replacement, or Town water installation to abutting properties.
42. Construction authorized by this Decision shall commence within two (2) years of the date of

filings of this Decision with the Littleton Town Clerk. The Development shall be completed within five years of the date of filing of this Decision with the Town Clerk, except that the Board may grant an extension of time for completion upon showing of good cause by the Applicant. These periods shall be tolled in the event an appeal is taken from this Decision. Failure to exercise these rights within the stated time period or without extension shall cause this permit to lapse. In the event of a lapse, this Decision may be re-established only after notice and a new hearing.

43. No certificate of occupancy for any unit shall be issued until (a) the improvements specified in this decision and set forth on the Plans of record are constructed and installed so as to adequately serve said unit; and (b) there is substantial completion of the landscaping as set forth on the Plans; or (c) adequate security has been provided, reasonably acceptable to the Board of Appeals, to ensure such completion of (a) and/or (b), above. Any such performance guarantee shall be governed by the subdivision rules and regulations of the Planning Board and shall be approved as to form by the Board's legal counsel.

44. In determining the amount of the bond or surety, the Board shall be guided by the following formula in setting the sum of security:

- a. The Board's estimate of the cost to complete the work; plus
- b. a fifteen percent (15%) margin for error; plus
- c. an appropriate rate of inflation over a five year period.

45. All performance bonds shall contain the following provision:

If the Applicant shall fully and satisfactorily observe and perform in accordance with the qualifications and time schedule set forth herein specified in all the covenants, agreements, terms and provisions set forth in the following:

- a. The plan of record;
- b. The Decision attached thereto as Exhibit A with all Exhibits thereto; and

then this obligation shall be void; otherwise, it shall remain in full force and effect and the aforesaid sum shall be paid to the Town of Littleton as liquidated damages.

46. If there is any dispute about whether the Site Plans are being implemented in accordance with this Decision, the disputants shall present their concerns to the Board or its designee, which shall be the Littleton Zoning Enforcement Officer (aka Littleton Building Inspector), for resolution. If there is any dispute relative to any decision of the Monitoring Agent, relative to the cost or profits of the Applicant, the disputants shall present their concerns to the Board, or its designee, for resolution. The Department of Housing and Community Development will be the final arbiter on disputes relating to decisions of the Monitoring Agent.
47. The Applicant has requested, and the Board has granted, the waivers from local rules set forth in **Exhibit B** hereto.
 - a. Said **Exhibit B** is hereby incorporated by reference in this Decision.
 - b. To the extent the Site Plans are silent on a particular issue, the appropriate Town by-law shall apply.
 - c. In the event the Applicant, the Board's consulting engineer or Agent determines, in the final design of the Development, that additional waivers, not shown on the Site Plans are required, the Applicant shall be required to request such additional waivers in writing from the Board.
 - d. The Board may grant such additional waivers in accordance with applicable rules and regulations.
 - e. No fees of any kind are waived for either the market-rate or Affordable Units.
48. Until the Chapter 40B Cost Certification requirements have been completed to DHCD's satisfaction, the Applicant shall provide annual financial reports regarding the Development

to the Board for its review. Such reports shall be issued no later than July 1 of each year and shall be generated in accordance with Generally Accepted Accounting Principles (GAAP) and reviewed by a Certified Public Accountant (CPA).

49. The development and sale of the "affordable" units shall be proportional to the development and sale of the "market-rate" units such that one Affordable Unit must be constructed for every three market-rate units constructed. Therefore, building permits shall be issued in a ratio of 3:1 such that only three market-rate unit building permits are issued for each affordable rate unit building permit issued. Also, therefore, certificates of occupancy shall be issued in a ratio of 3:1 such that only three market-rate unit certificates of occupancy are issued for each affordable rate unit certificate of occupancy issued. Prior to the issuance of the certificate of occupancy of the last three market-rate dwelling units, the Applicant shall complete construction and obtain the certificate of occupancy for the last Affordable Unit.
50. If any provision of this Decision or portion of such provision or the application thereof to any person or circumstances is for any reason held invalid or unenforceable, the remainder of this Decision (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.
51. The terms, provisions and conditionals of this Decision shall burden and benefit the successors and assigns of the Town and the Applicant with the same effect as if mentioned in each instance where the Town or the Applicant is named or referred to.
52. Any and all references to the "Applicant" herein shall include any successors or assigns of the Applicant including, but not limited to, any Unit Owners.

RECORD OF VOTE

The following members of the Littleton Zoning Board of Appeals vote to **GRANT** a Comprehensive Permit subject to the above-stated terms:

Raymond H. Cornish
Raymond Cornish, Chair

Julia Adam
Julia Adam

John Cantino
John Cantino

Bradford Miller
Bradford Miller

William Farnsworth
William Farnsworth

Filed with the Town Clerk on _____, 2006.

Fax

To: Sherry Gould **From:** Beverly Cyr

Fax: 978-486-9434 **Pages:** 22, including cover

Phone: 978-486-9566 **Date:** July 23, 2007

Re: Mannion Place 40B Findings and Decision **CC:**

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

• Comments:

Sherry,

I believe this is what you asked for.
Sorry it's late – I had a lunch date.

Bev

This fax is intended for the recipient only. Please deliver this to the recipient.