

TOWN OF HANOVER

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TOWN CLERK

**TOWN OF HANOVER, MASSACHUSETTS  
ZONING BOARD OF APPEALS  
DECISION UPON APPLICATION OF**

**Hanover Woods, LLC**

**FOR AN AMENDMENT TO A PREVIOUSLY GRANTED  
COMPREHENSIVE PERMIT  
PURSUANT TO G.L. c. 40B, ss.20-23 AND 760 CMR 56.00 et seq.**

To: Robert S. Shea, Town Clerk  
Anthony Marino, Director of Community Services/  
Building Commissioner  
Applicant & Interested Parties

Notice: This is to inform you that the Hanover Zoning Board of Appeals (ZBA) has issued a Comprehensive Permit DENIAL for the above referenced project as indicated and described in greater detail below.

Application: Comprehensive Permit (as described herein)

Decision: Denied (for the reasons as described herein) and subject to reservation of rights as discussed herein.

Board Vote: Unanimous

Locus: Project is located off of Woodland Drive, Southerly side of Route 3, portions of Assessor's Map 5, Lot 85, and Assessor's Map 11, Lots 1, 4, 9, 79 through 87, 91 through 97 & 106 in Hanover, Massachusetts, containing approximately 26 acres (hereinafter, the "Property").

Zoning: Interchange Overlay District (see Section 6.12.0) of the Zoning Bylaw

Owner: William J. Murphy, Jr. Trustee of the Xeric Realty Trust  
William J. Murphy, Jr. Trustee of the Berry Street Realty Trust  
Maryanne Chase, Trustee of the South Shore – Hanover Realty Trust

Applicant: Hanover Woods, LLC, c/o John Sullivan, 293R Washington Street,  
Norwell, MA 02063

Engineer: McKenzie Engineering Group, Inc., 150 Longwater Drive,  
Norwell, MA 02061

Architect: The MZO Group, 92 Montvale Avenue, Suite 2400, Stoneham,  
MA 02180

### Exhibits

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The following drawings, documents, reports and exhibits were received by the Board during the public hearing in the original and modified and amended application for a comprehensive permit and are hereby incorporated by reference in the decision.

### Original Application

#### Approved Drawings:

- Drawings entitled "Woodland Village" Comprehensive Permit Plan, Preliminary Design Plans dated April 15, 2011 prepared by McKenzie Engineering Group, Inc. Sheets included in this plan set are according to the follow list of sheet number, title, original date, and most recent revision date as the same are modified by the drawings entitled "Woodland Village" Comprehensive Permit Plan, Preliminary Design Plans dated April 4, 2012, prepared by McKenzie Engineering Group, Inc., sheets 1-5::

<u>Sheet No.</u>	<u>Sheet Title</u>	<u>Date</u>
1	Cover Sheet	April 15, 2011
2	General Notes, Legends, Symbols	April 15, 2011
3	Existing Conditions Index Plan	April 15, 2011
4 - 11	Existing Conditions Plan	April 15, 2011
12	Site Layout Index Plan	April 15, 2011
13 -20	Site Layout Plan	April 15, 2011
21	Grading, Drainage and Utility Index Plan	April 15, 2011
22 -29	Grading, Drainage and Utility Plan	April 15, 2011
30	Roadway Profile Road A Sta. 0+00 – 10+00	April 15, 2011
31	Roadway Profile Road A Sta. 10+00 – 20+00	April 15, 2011
32	Roadway Profile Road A Sta. 20+00 – 30+00	April 15, 2011
33	Roadway Profile Road A Sta. 30+00 – 40+00	April 15, 2011
34	Roadway Profile Road A Sta. 40+00 – End	April 15, 2011
35	Roadway Profile Road B Sta. 0+00 – End	April 15, 2011
36	Roadway Profile Road C Sta. 0+00 – End	April 15, 2011
37	Roadway Profile Road D Sta. 0+00 – End	April 15, 2011
38	Roadway Profile Road E Sta. 0+00 – End	April 15, 2011
39	Typical Roadway Cross Sections	April 15, 2011

- Hanover Fire Truck, Parking Lot Turning – Figure A, dated June 13, 2011 prepared by McKenzie Engineering Group, Inc.

- Hanover Fire Truck, 1810 Washington Street, Turning Analysis – Figure B, dated June 13, 2011 prepared by McKenzie Engineering Group, Inc.
- Drawing Exhibit A, dated September 1, 2011 Preliminary Site Plan, prepared by McKenzie Engineering Group, Inc.
- Drawing Exhibit B, dated September 1, 2011 to Hanover Zoning Board of Appeals, from McKenzie Engineering.
- Drawing Exhibit C, dated September 1, 2011 Subdivision Plan, prepared by McKenzie Engineering Group, Inc.

Reports:

- Original Submission Letter dated October 22, 2009 – Comprehensive Permit Application for "Woodland Village", binder containing:
  - Letter Regarding Application Fee
  - Comprehensive Permit Application
  - Owner's Authorization to File/ Authorized Representative
  - Letter regarding Abutter's Notification
  - Project Description
  - Letter regarding Jurisdictional Requirements and Requested Findings of Fact
  - Certificate of Organization - Hanover Woods LLC
  - Development Team Curriculum Vitae
  - Project Eligibility Letter
  - Purchase and Sale Agreement
  - Preliminary Project Plans
  - Preliminary Architectural Elevations and Floor Plans/ Unit Mix
  - Preliminary List of Requested Exemptions and Waivers
  - Letter regarding MassHousing Final Approval
- Traffic Impact and Access study dated April 13, 2011, Proposed Residential Community, prepared for Woodland Development Company, prepared by Vanasse & Associates, Inc., Andover, MA
- Preliminary Drainage Calculations and Stormwater Management Plan for Woodland Village Comprehensive Permit Plan dated April 15, 2011 with the latest revision date of May 31, 2011. Prepared for Hanover Woods, LLC by McKenzie Engineering Group, Inc.
- MassHousing Housing Starts Project Eligibility Letter Application including a Pro Forma

## Modified and Amended Application

- December 9, 2011 Notice of change of applicant's proposal from the Housing Appeals Committee.
- March 22, 2012 Proposed Conditions Plan Drawing No. 1 prepared by McKenzie Engineering Group, Inc. Woodland Village – 200 Unit Comprehensive Permit Plan.
- March 27, 2012 memo from Victor Diniak, Director of Public Works regarding Comprehensive Permit- Woodland Village – 3/22/12 Plan.
- April 2, 2012 memo from Hanover Conservation Commission Re: Notice of Project Change for Woodland Village Comprehensive Permit – 200 Unit 40-B Rental Development.
- April 3, 2012 E-mail from Barbara Stone, Deputy Fire Chief.
- April 3, 2012 Basin Volume Comparison.
- April 4, 2012 Preliminary Design Plans - Grading and Drainage Index Plans, four (4) sheets prepared by McKenzie Engineering Group, Inc.
- April 11, 2012 Preliminary Design Plans – Grading and Drainage Plans - Revised Post Watershed Layout Plans, five (5) sheets prepared by McKenzie Engineering Group, Inc.
- Preliminary Drainage Calculations and Stormwater Management Plan prepared by McKenzie Engineering Group, Inc. 200 Residential Unit Layout Woodland Village Comprehensive Permit Plan with a revision date of April 11, 2012.
- April 12, 2012 Memorandum to John Sullivan from F. Giles Hamm and Lori Shattuck of Vanasse and Associates containing a Traffic Impact Assessment
- April 12, 2012 Woodlands Village Application for Project Change Comparison of Education and Public Safety Issues prepared by Connery Associates.
- April 18, 2012 Revised 200 unit residential overall site layout plan “Proposed Conditions Plan” prepared by McKenzie Engineering Group, Inc.
- April 18, 2012 152 Unit ZBA Decision Plan & 200 Unit Current Plan Overlay prepared by McKenzie Engineering Group, Inc.
- Pre Development Hydrocad Report prepared by McKenzie Engineering Group, Inc.
- Post Development Hydrocad Report prepared by McKenzie Engineering Group, Inc.
- April 23, 2012 Letter from Bradley McKenzie, President McKenzie Engineering Group, Inc. re: response to Town review Comments Woodland Village 40(B)
- April 24, 2012 letter from Dave Nyman CEI Engineer re: review of Woodland Village 40(B).
- April 24, 2012 Letter from Peter Vasiliou, Manager Traffic Engineering, Jacobs Engineering Group. Peer Review – Traffic Impact Assessment Memorandum - Proposed Woodland Village Residential Development.
- April 24, 2012 letter from John Sullivan Re: Hanover Woods LLC Notice of Project Change.

- April 25, 2012 memo from Victor Diniak, Director of Public Works regarding Woodland Village Comprehensive Permit.
- April 25, 2012 Email from Barbara Stone, Deputy Fire Chief.
- April 26, 2012 Response to review comments proposed Residential Development from Jacobs Engineering from Vanasse & Associates, Inc.
- May 4, 2012 Response to Town Review Comments DPW, Conservation Commission & Fire Department and the Town Consultant Engineer (CEI) Woodland Village 40 (B) – 200 Unit Residential Layout Woodland Drive & Webster Street, from McKenzie Engineering Group, Inc.
- Preliminary Drainage Calculations and Stormwater Management Plan prepared by McKenzie Engineering Group, Inc. 200 Residential Unit Layout Woodland Village Comprehensive Permit Plan with a revision date of May 4, 2012.
- May 15, 2012 petition from residents.
- May 15, 2012 Applicant submits Restated and amended approval of comprehensive permit for “Woodland Village” after remand.
- May 15, 2012, Applicant submits Woodland Village 40B, Addendum B, Draft of requested waivers.
- May 15, 2012 E-mail to Zoning Board of Appeals from Hanover resident, Carol Mattes.
- May 21, 2012 Joint motion to extend date of issuance of decision.
- May 22, 2012 E-Mail from Chris Agostino to Warren F. Baker Subject: FW: Hanover Woods, PE-492 including a chain of emails between Robert D. Smith of MassHousing and Christopher Agostino of Baker, Braverman and Barbadoro, PC discussing the project eligibility letter for Woodland Village
- June 11, 2012 Woodland Village 40B Addendum B- Draft – Requested Waivers.
- June 25, 2012 Zoning Board of Appeals Certification pursuant to G.L. c. 39, Section 23D of Participation in a Session of an Adjudicatory Hearing Where the Undersigned Member Missed a Single Hearing Session.

## **I. APPLICANT AND RELEVANT HISTORY:**

On or about June 21, 2010, Housing Appeals Committee (the “HAC”) issued an interlocutory decision that the Applicant’s comprehensive permit application was not subject to the Town of Hanover’s Housing Production Plan and the “safe harbor” provisions the Town sought to invoke. In addition, the HAC held that the applicant’s failure to timely tender the required filing fee was “easily corrected” and “does not invalidate the application” (In the Matter of Hanover Zoning Board of Appeals and Hanover Woods, LLCv. Barnstable Board of Appeals, No. 10-02 (Mass. Housing Appeals Committee, June 21, 2010).

Notwithstanding the ZBA’s belief that the HAC was incorrect on all matters decided in the above noted decision, the ZBA is bound by decisions of the Supreme Judicial Court in Town of Hingham v. Department of Housing and Community Development, 451 Mass 501 (2008) and Town of Wrentham v. West Wrentham Village, LLC, 451 Mass 511

(2008) holding that an interlocutory decision of the Housing Appeals Committee is not ripe for appeal until a final decision is issued on the Applicant's application.

Accordingly, the Board previously proceeded to hear the merits of the Applicant's proposal and render a decision and, likewise, with regard to the current application, heard the merits of the Applicant's proposal and renders this decision, all the while reserving its safe harbor rights among others, pursuant to 760 CMR 56.00 et seq. Consequently, the Board's findings and decision below are subject to that reservation.

On September 28, 2011, following public hearings held by the Hanover Zoning Board of Appeals (the "ZBA") at the Hanover Town Hall, Hanover, Massachusetts, the ZBA, upon the application of Hanover Woods, LLC (the "Applicant") granted a comprehensive permit with conditions (the "Original Permit"), pursuant to Massachusetts General Laws Chapter 40B, §§ 20-23 (the "Act") and the Town of Hanover Zoning By-Laws, to construct one hundred and fifty (152) for sale dwelling units (the "Project" or the "Site") on approximately 26 acres of land located off Woodland Street in Hanover.

On or about October 18, 2011, the Applicant appealed the ZBA's decision pursuant to G.L. c.40B, s.22 and 760 CMR 56.00 et seq. to the Housing Appeals Committee (the "HAC"). Thereafter, on or about December 9, 2011, the Applicant submitted a new project to the HAC (not the ZBA) seeking approval for a two-hundred (200) unit rental project in lieu of the for sale project, on the Site.

On or about March 12, 2012, the presiding officer of the HAC ordered the Applicant's new project remanded to the ZBA pursuant to relevant regulations, required a new public hearing be held and a new decision rendered. The presiding officer's March 12, 2012 order required the ZBA to issue its decision in this matter on or before June 1, 2012.

During the continued public hearing held in the remanded matter on May 15, 2012, counsel for the Applicant agreed with the ZBA to request an extension of the ZBA's final decision deadline; the new filing deadline to be June 29, 2012. The presiding officer of the HAC approved the joint request for an extension of the ZBA's filing deadline to June 29, 2012 by correspondence dated May 25, 2012. On June 11, 2012, and following a request to counsel for the Applicant and those in attendance during the continued public hearing to submit any additional testimony, written or oral, for the ZBA's consideration, the ZBA voted to close the public hearing in this matter. On June 25, 2012, the ZBA voted to deny the current application for a modified comprehensive permit for the reasons more fully discussed below.

## **II. GOVERNING LAW**

The law governing this case is the Low and Moderate Income Housing Act, Massachusetts General Laws, Chapter 40B, §§ 20-23 (the "Act"), and the regulations promulgated by the Department of Housing and Community Development ("DHCD"), 760 CMR 56.00 et seq. (the "Regulations").

The ostensible purposes of the Act are satisfied if: (a) a town has low or moderate income housing in excess of 10% of the housing units reported in the latest decennial census or (b) which is on sites comprising 1 1/2% or more of the town's total land area zoned for residential, commercial, or industrial use, or (c) if the application results in the commencement of low and moderate income housing construction on sites comprising more than .3% of such total area or 10 acres, whichever is larger, in one year. In addition, the Regulations have expanded the definition of what constitutes satisfaction of the statute to include compliance with the "planned production" provisions of the 760 CMR 56.03(1). Hanover is currently in conformance with the "planned production" criteria and therefore, is "consistent with local needs" pursuant to G.L. c.40B, s.20-23.

That being the case, Hanover's Zoning Bylaw and its other local bylaws and regulations which ordinarily govern development in the Town may be overridden by a comprehensive permit issued by this ZBA only upon a proper showing by the Applicant that the provisions of the Hanover bylaws and regulations, if not fully enforced, would not pose a valid health, safety, environmental design, open space or other concern and, provided that the Board of Appeals concludes that it is in the public interest to approve said comprehensive permit.

### **III. JURISDICTIONAL ELEMENTS**

Pursuant to the Act and the Regulations, an applicant for a comprehensive permit must fulfill three initial jurisdictional requirements:

- The applicant must be a public agency, a non-profit organization, or a limited dividend organization;
- The project must be fundable by a subsidizing agency under a low and moderate income housing subsidy program; and
- The applicant must "control the site." 760 CMR 56.04(1).

As discussed more fully below, the ZBA finds that the Applicant has not provided sufficient information to establish that it will qualify as a limited dividend organization, be fundable by a subsidizing agency and that it "controls the site".

#### **A. Status of Applicant**

Pursuant to the Regulations, an applicant for a comprehensive permit must be a public agency, a non-profit organization, or a limited dividend organization. 760 CMR 56.04(1)(a). The Applicant proposes to satisfy this criteria by forming a limited dividend organization that agrees to legally bind itself to limit the profit it derives from the project authorized by this comprehensive permit. While the ZBA has previously concluded that the Applicant "is or will become a Limited Dividend Corporation" (see Original Permit, p.5), the ZBA notes that the Applicant continues to fail the requirement found in MassHousing's August 27, 2009 project eligibility letter that the "applicant must be a limited dividend organization", as opposed to a condition subsequent that the applicant

*become* a limited dividend organization. The ZBA concludes that the applicant is not presently a limited dividend organization and therefore does not comply with MassHousing's condition precedent requirement for maintaining this application before the ZBA.

### **B. Public Subsidy Requirement**

The housing development being proposed under the comprehensive permit application includes 200 rental dwelling units and must be subsidized under a low and moderate income housing subsidy program. Here, the Applicant has received a project eligibility letter (dated August 27, 2009) from MassHousing for 152 for sale dwelling units. MassHousing is a quasi-public agency that purports to provide below-market financing for the development of affordable housing across the Commonwealth.

While the ZBA previously found that the Applicant has substantially complied with the project subsidy requirement set forth in the Regulations (760 CMR 56.04(1)(b)) for the subsidy programs for which the Applicant has applied (see Original Permit, p. 5), there is nothing in the record before the ZBA providing support or approval from a subsidizing agency for the proposed rental project. The ZBA, through its counsel, raised this issue during the public hearing in this matter on May 15, 2012 questioning the validity of the 2009 project eligibility letter as it relates to the current proposed amended project.

During the continued public hearing on June 11, 2012, the applicant, through its counsel, produced email correspondence between applicant's counsel and Robert Smith Esq., "permit specialist" for MassHousing. While mischaracterizing the ZBA's and its counsel's question—Is there a current and valid project eligibility letter for the proposed rental unit project?—MassHousing responded in relevant part, "As clearly stated above [quoting from the August 27, 2009 letter], if Woodland Development applied for a comprehensive permit by August 27, 2011, then the letter has not expired."

Unfortunately, MassHousing was apparently not asked the relevant question or, if it was, chose to ignore the same. The relevant question remains: "Is there a current and valid project eligibility letter for the proposed rental project?" Based on the record before it, the ZBA answers that question in the negative. The only project eligibility letter that exists relative to this locus is the August 27, 2009 letter purporting to "approve" 152 condominium units. Accordingly, the ZBA concludes that the proposed project is not "fundable" as that term is used in 760 CMR 56.04(1)(b).

### **C. Site Control Issues**

To be eligible to obtain a comprehensive permit under G.L. Chapter 40B, an applicant must demonstrate that it holds legal title to the property that is the subject of the application, or that it otherwise has a sufficient legal right to acquire title to the property, such as under a purchase and sale agreement. 760 CMR 56.04(1)(c).

Here, the Applicant has presented evidence of a purchase and sales agreement wherein the Seller is identified as “Xeric Realty Trust”, “Berry Realty Trust” and “Hanover Realty Trust” and the Buyer is identified as “Hanover Woods LLC”. The purchase and sales agreement states that locus contains “+/- 26 acres” and that the description of the property is “as more particularly described in Addendum A and the plans attached thereto”. The parcel description contained in Addendum A states that the locus consists of “Parcel A” (24.31 acres) and “Parcel C” (1.69 acres). 24.31 acres when added to 1.69 acres equals 26 acres. MassHousing’s August 27, 2009 project eligibility letter identifies the land area as “24.31 acres.”

The plans submitted to the ZBA in this matter include the above noted Parcel A and Parcel C; however they also identify “Parcel B” (see plans accompanying this application dated April 4, 2012, McKenzie Engineering Group, Inc.).

It is not clear as to what portions of the proposed development include “Parcel B” as shown on the plans submitted by the applicant, although both the proposed roadway (Roadway A) and appurtenances of the roadway (stormwater infiltration basins) appear to be contained wholly within “Parcel B”. Moreover, as discussed above, the Applicant has not provided the ZBA with support for the implied claim to have site control with respect to “Parcel B”.

In addition, the original application to the ZBA contained two “Option to Purchase Easements” both dated August 27, 2008, presumably to provide access between the locus and Route 123. The grantor of one easement is Mary Trading Post, Inc. and the other is 1810 Washington LLC; the grantee of both Options is Hanover Woods, LLC. The predecessor in title of the Option between Mary Trading Post, Inc. and Hanover Woods, LLC is William J. Murphy, Jr., a trustee of Xeric Realty Trust and Berry Realty Trust, part sellers of the 26 acre locus subject to the present application.

It is not clear to what land these Options include or whether they include all of the land area necessary to provide the proposed access to the locus. The April 4, 2012 plans submitted as part of the revised application for a comprehensive permit do not identify where or how the proposed easement provides connection to the locus. The plans originally submitted to the ZBA identify the locus on which the easement is purported to apply, but provide no detail as to the width of construction proposed or the location of the easement. Most notably, both Option agreements refer to the easement as a “floating easement”.

For the reasons discussed above, the ZBA concludes that the Applicant has not made a *prima facie* showing that it has site control pursuant to statute and regulations.

#### **IV. THE DECISION OF THE BOARD OF APPEALS**

##### **A. Consistency with Local Needs**

As noted previously, the Town of Hanover is consistent with local needs as that term is defined in G.L. c.40B, s.20 and as that term is calculated pursuant to 760 CMR 56.03(1). Accordingly, the Housing Appeals Committee is without authority to review the Board's decision to deny this application. In addition to the statutory and regulatory support for the Board denying the project due to the Town's consistency with local needs status, the Board believes that the project must be denied for the reasons discussed below.

### **B. The Locus and Prior Permitting History**

The proposed project lies within the Town of Hanover's zoning district, adopted in 2008 and commonly referred to as "the Interchange District", so named given the locus' proximity to State Route 3 and the Exit 13 interchange onto Route 53.

The Interchange District has been the subject of comprehensive plans and land use studies since 2004 and is notably included in the Town of Hanover's "2008 Master Plan/Strategic Action Plan" following years of discussion and analysis by the "Route 53 Study Committee". Pursuant to recommendations made during the planning process and ultimately as approved by Town Meeting, the locus subject to the current application as well as abutting and nearby properties were to be reserved for non residential uses and for a broad range of clearly defined economic development options. This is precisely the fact pattern where, in 2008 in *28 Clay Street v. Middleborough Board of Appeals*, No. 08-06 (Mass. Housing Appeals Committee, September 29, 2009), the Housing Appeals Committee upheld the Middleborough Board of Appeals denial of a comprehensive permit for 200 rental dwellings near the Middleborough Rotary. See further discussion of this fact pattern and the HAC's decision in the Middleborough matter, below.

Accordingly, the Board concludes that the long term planning history of the locus, leaves the Board (and, if jurisdiction were found, the Housing Appeals Committee, see *Groton Board of Appeals v. Housing Appeals Committee*, 451 Mass. 35 (2008)) without authority to approve the project as proposed.

### **C. The Locus and Route 53**

The locus lies just south of State Route 3 and west of State Route 53. Route 53 operates at a degraded Level of Service and is the site of hundreds of motor vehicle accidents over the past several years. Plans to improve the traffic and safety conditions along Route 53 have been prepared by the Commonwealth and the Town, including a comprehensive vision that led to the adoption of the Interchange Overlay District that governs the locus and surrounding properties. The proposed project defeats the purpose and intent of these studies and Town Meeting's adoption of the Interchange Overlay District and in doing so, jeopardizes decades of state-wide plans and planning.

In addition to the proposed project's impact on the pervasive state and local planning efforts for the future Route 53, the ZBA has concluded that the public health and safety of the proposed residents of the project, the users of adjacent commercial properties, including but not limited to the Hanover Mall and the public at large, will be endangered

due to the current and resulting traffic volumes entering and exiting Route 53 from Woodland Drive. As noted, Route 53 has been the location of hundreds of accidents in the past several years alone; the addition of residential traffic as proposed by this project, when coupled with the road's existing traffic volume and the conflicts that will undoubtedly emerge between commercial traffic—trucks—and residential traffic—cars—is, in the Board's opinion, a public safety disaster that it cannot countenance.

The Applicant's response to the traffic conflicts and volumetric problems (prepared by Vanasse & Associates, Inc.) are frivolous (in responding to the ZBA's traffic consultant's concerns regarding volume and safety issues at the Route 53 and Woodland Drive intersection, Vanasse & Associates, Inc. stated, "[t]here is no safety issue at this intersection". See Vanasse & Associates, Inc. May 23, 2011 letter to Mr. John Sullivan) and do not respond to the serious public safety issues raised by the ZBA, Hanover's public safety officials and common sense.

Accordingly, the Board concludes that increased residential traffic flows from, and abutting, an active commercial corridor park along one of southeastern Massachusetts' most congested and dangerous roadways raises public safety issues that outweigh the regional need for affordable housing. Moreover, the Applicant has not provided the Board with any evidence that it can or will be able to mitigate the risks associated with the traffic flows adjacent to the proposed project.

#### **D. The Locus and Plans and Planning Efforts to Create Affordable Housing and Protect Commercial Land Uses**

The proposed project is radically inconsistent with over two decades of state and municipal plans and planning and with owners and tenants of the abutting commercial properties, including but not limited to, the Hanover Mall. The record before the Board provides solid proof of these planning efforts and their relative successes, most notably, the rezoning of the locus and abutting properties to accommodate and develop, a modern, competitive and viable commercial center.

As noted, the locus lies within the Interchange Overlay District; a zoning overlay district specifically intended to provide for regional and local economic growth through a carefully planned and historically successful permitting process. The Interchange Overlay District is aptly named: the Town of Hanover has limited land area that is not zoned residential (81% of the Town is residentially zoned) and intentionally created this overlay district within which commercial—and not residential—uses could be maximized. The underlying premise behind the creation of "segregated" commercial centers is historic: heavy commercial use, with their attendant truck traffic, constant operations, noise, dust and vibration, are land uses that are incongruous with residential dwellings. The stated purpose of the Overlay District is "to encourage and promote development of projects that are characterized by economically viable commercial uses which are regional in nature and benefit from or require adjacent highway access." See Section 6.12.0 of the Hanover Zoning Bylaw.

The Overlay District specifically and unequivocally precludes residential uses, listing the same as “Prohibited Uses”. See Section 6.12.50 of the Hanover Zoning Bylaw.

The Town’s approved Affordable Housing Plan (2008), prepared in accordance with then applicable DHCD regulations (now codified as 760 CMR 56.03(4)) identifies the concerns the Town had (and continues to have) with respect to residential uses in these limited districts.

The Board restates the position of the Planning Board and the Board of Selectmen, that preserving vibrant and contained commercial districts are key to the Town’s and the region’s future. If the purpose of the comprehensive permit statute is to provide housing, then surely an equally important goal is for the Town to support the creation of jobs and the generation of income to purchase and rent the housing created by the statute.

Accordingly, the Board concludes that preserving the locus for non-residential uses is consistent with local needs and outweighs the local and regional need for affordable housing.

**E. Hanover’s Consistency with the Guidelines Announced in *Stuborn v. Barnstable and 28 Clay Street v. Middleborough***

The Board cites to 760 CMR 56.07 (3)(g) (Municipal and Regional Planning) as well as the Housing Appeals Committee’s decisions in *Stuborn, Ltd. Partnership v. Barnstable Board of Appeals*, No. 98-01 (Mass. Housing Appeals Committee, September 18, 2002) and *28 Clay Street v. Middleborough Board of Appeals*, No. 08-06 (Mass. Housing Appeals Committee, September 29, 2009) with respect to the Board’s claim that the proposed project is inconsistent with local needs due to the project’s direct contravention of formally adopted and ongoing plans and polices.

Specifically, as in *Stuborn* and *Middleborough*, the Town of Hanover has satisfactorily addressed—and continues to address—the three questions posed by the Housing Appeals Committee in *Stuborn* and *Middleborough*.

*First, is the plan the Board relies upon to deny this project bona fide?* The ZBA answers in the affirmative and cites to the formally adopted plans, studies and regulations specifically identifying the locus as needed for, and consistent with, commercial and not residential uses.

In addition, the Board cites to the Town’s track record in approving comprehensive permit projects over the past several years, most recently the approval of sixty six units at Barstow Village and the Town’s current Subsidized Housing Inventory demonstrating that as of May 10, 2012, the Town of Hanover’s calculated SHI is 9.1%

*Second, does the plan promote affordable housing?* As with the facts in *Barnstable* and *Middleborough*, Hanover can point to the fact that the Board of Appeals has approved over 185 affordable dwelling units pursuant to comprehensive permits in the past ten

years alone and has adopted and is implementing, an approved Affordable Housing Plan (“Planned Production Affordable Housing Plan”, January 23, 2008). Moreover, there can be no question that the Town’s Affordable Housing Plan promotes affordable housing and that the Board of Appeals has routinely approved comprehensive permit projects—without appeals being taken.

*Third, has the plan been implemented in the area of the site?* The Board answers in the affirmative and cites to the record assembled in this matter, the results “on the ground” illustrating a successfully operating commercial district and MassHousing’s acknowledgement that the Town raised the fact that the proposed residential use of the locus was inconsistent with the Town’s planning efforts and the “adequate planning defense” was put forth as stated in Stubborn (and more recently, in Middleborough). MassHousing Project Eligibility letter, August 27, 2009, page 3. There can be no question that the Town’s plans for the Overlay District within the area abutting and surrounding the locus have been and continue to be, implemented and enhanced.

The Town has exceeded the requirements set forth in Stuborn and Middleborough with regard to the viability of the Town’s plans and policies concerning affordable housing development and the specific uses of the subject site. Accordingly, the Board concludes that limiting the use of the property to non-residential uses is consistent with long term and serious planning efforts, is consistent with local needs, and outweighs the local and regional need for affordable housing.

## V. CONCLUSION

For all the reasons stated above and pursuant to the Board of Appeals’ authority found in G.L. c.40B, s.20-23, the modified comprehensive permit application of Hanover Woods, LLC for a 200 dwelling unit rental project off of Woodland Street, Hanover, Massachusetts is hereby DENIED. The Board reserves the right to cause this Decision to be recorded at the Plymouth County Registry of Deeds.

This concludes the Decision of the ZBA.

**(Signature page follows on next page)**

NOW, THEREFORE, by vote of the Zoning Board of Appeals this Amended Comprehensive Permit application is hereby DENIED consistent with the requirements of G.L. c.40B §§20-23 and 760 CMR 56.00 et seq.

Any person aggrieved by this decision, other than the Applicant, may appeal to the Superior Court, or the Land Court, or to the District Court Departments of Plymouth County, MA praying that the decision of this ZBA be annulled. Appeals must be made within twenty (20) days of the filing of this decision with the Town Clerk.

Matthew W. Perkins, Chairman

F. Daniel Ahern, Jr.

Linda Martin Dyer

John Tuzik

June 28, 2012

Filed with the Town Clerk on (Date)

JoAnne O'Connor Asst Town Clerk  
Robert Shea, Town Clerk

I hereby certify that 20 days have elapsed from the date this decision was filed with this office and no notice of appeal was received during that period or that if such appeal was filed, that it has been dismissed or denied.

A TRUE COPY      ATTEST

TOWN CLERK      DATE

**-END OF DOCUMENT-**