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VIA FIRST CLASS AND E-MAIL (townclerk@sandisfieldma.gov)

April 5, 2021

Board of Selectmen, Sandisfield MA
Mr. Brian O'Rourke, Chair
Mr. George Riley
Mr. Mark Newman
Town Hall
66 Sandisfield Road
PO Box 90
Sandisfield, MA 01255

Re: Special Permit Application of SAMA Productions, LLC

Dear Chairman and Members:

I represent Mr. Henry G. Holt of Town Hill Road, Sandisfield relative to the above-captioned Special Permit Application. Mr. Holt owns Lot 1 in the Form A subdivision of which the proposed commercial cannabis facility site (referred to herein as the "proposed SAMA site") is a part. His Lot 1 directly abuts the Proposed SAMA site (which is Lot 8) along a lengthy common boundary of approximately 1542 feet.

Mr. Holt is not a stranger to Sandisfield; since 1989, he has owned land which is partially directly south of his more recently purchased Lot 1, and partially across Town Hill Road from it. He raised his children there, and they attended local schools for several years.

Although Mr. Holt believes that the project should be rejected for many reasons¹, he is especially concerned about SAMA's planned violation of a deed restriction. The restriction, which prohibits the use of the land for other than a single family house, is present in the deed for the land that SAMA will be using. Because it is part of a scheme intended to affect all the nearby parcels, the restriction is also in Mr. Holt's own deed and the deeds of all the other abutters.

¹There is an extensive list of problems in oral and written communications you have received from a number of citizens and from Attorney Jesse Belcher-Timme.

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The language of the restriction, in relevant part (from the SAMA deed) is:

“Subject to the restrictions that the land may be used for single family home-sites only . . .”

This Restriction will be referred to herein as the “Single Family Restriction”.

There is no question that SAMA's planned use would violate the Single-Family Restriction. As a direct abutter, Mr. Holt would have the right to enforce the restriction in court by seeking an injunction shutting down the use, and pertinent damages. (This would be separate and apart from any appeal of this Board's grant of a special permit).

Further, the Cannabis Control Commission is very firm about “title” and “right to use the premises” as a Marijuana Establishment. It is clear from the language of the Single Family Restriction that SAMA has no such right.

But the fact that the Single-Family Restriction can be privately enforced (or enforced by the CCC) does not mean that this Board should not consider it. Surprisingly, the Board has made statements indicating its belief to the contrary. For instance, in a recent written communication to a citizen, Chairman O'Rourke stated that

“a deed restriction is there to protect the seller and has no impact on a Select Board hearing a SP application pertaining to a zoning by-law”.

This statement is simply inaccurate. First, when a deed restriction is imposed by a developer on a number of adjacent lots together (as here), it is usually for the mutual benefit of the buyers, who are thereby assured of the kind of neighborhood that will be developing. The Seller's interest, if any, disappears once the lots are sold; the interest of the buyers remains for a very long time. That is why Mr. Holt, and others who abut Lot 8, have the right to enforce the restriction in Court.

Second, in reality, this Board is not only allowed to consider the Single Family Restriction, but is required to. As you well know, the Special Permit Granting Authority is involved in the process to make sure that the interests of the public are represented. The protection of neighborhoods is vitally important among those interests. And most specifically, your special permit bylaw requires you to find, prior to issuing a special permit that the proposed use:

. . . 3. Will not be detrimental to adjacent uses or to the established or future character of the neighborhood; . . .

It is impossible for the Board to approach this finding without considering detriment to both the “adjacent uses” and the “established or future character of the neighborhood.”

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Adjacency – Mr. Holt has an adjacent use, and knows that the SAMA facility would be detrimental to him. He was assured by the developer prior to the sale that this would be single-family neighborhood. And this assurance was confirmed by the presence of the Single-Family Restriction in all the deeds out of the developer for that subdivision². If what he has justifiably relied on does not happen, both his experience at his home and his property value are at risk.

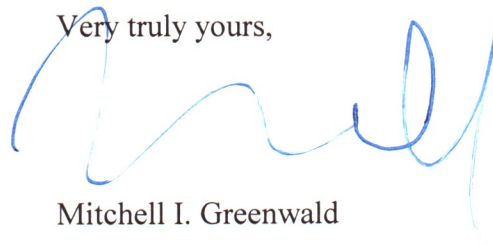
Character of the neighborhood – the character of the immediate neighborhood, both present and future, including the SAMA parcel, was determined by the Single Family Restriction in the deeds to Abbey Road Land LLC (the owner of the land where the SAMA facility would go), to Mr. Holt, and to the other several owners. In this way, as in many subdivisions, the developer establishes the nature of the neighborhood. This particular neighborhood was set up as single-family homes. The proposed Cannabis facility is inconsistent with this character, and is detrimental to it.

In summary, both the public interest and the law require the Board to consider adjacency and character. We urge you to then find that the proposed use would be detrimental on both counts, and thus decline to make Finding No. 3, and thus deny the Special Permit. Because the applicant cannot legally use the land for the stated purpose, the grant of a Special Permit would be pointless if not spurious.

It should be noted that if you choose to grant the Special Permit, notwithstanding the Single Family Restriction, the dispute about that restriction would move to other forums. This would entail a delay, probably lengthy, and would be in the interest of no one.

Thank you for your consideration of our views.

Very truly yours,



Mitchell I. Greenwald

cc: Mr. Henry G. Holt
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²The term “subdivision” is used in its non-technical sense; a Form A plan of land is not formally a subdivision under Massachusetts subdivision law. The distinction is of no importance relative to the Single Family Restriction.