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August 8, 2024

Sandwich Board of Appeals  
c/o James J. Killion, Chairman  
100 Route 6A  
Sandwich , MA 02563

Re: Village Green, Sandwich  
G.L.c. 40B Comprehensive Permit  
Applicant: NSG Village Green-1, LLC

Dear Chairman Killion:

Reference is made to the Project Eligibility letter dated August 19, 2022 from the MassHousing Finance Agency to NSG Village Green-1, LLC, as the Applicant for a Comprehensive Permit pursuant to G.L.c. 40B for the development of 144 units of rental housing in Sandwich, Massachusetts (the "Project"), and the Comprehensive Permit Application filed by NSG Village Green-1, LLC with the Sandwich Board of Appeals.

Reference is also made to the Project Eligibility requirements of 760 CMR 56.04(1), requiring the applicant to be an existing entity (a "Limited Dividend Organization") and that the applicant control the site of the Project. 760 CMR 56.04(1)(a) and (c). These Project Eligibility requirements are mandatory.

For the reasons set forth herein, the Sandwich Board of Appeals does not have the authority to act on the Comprehensive Permit Application filed by NSG Village Green-1, LLC and the Application must be denied without prejudice to being re-filed.

The Applicant to the MassHousing Finance Agency and the Sandwich Board of Appeals, "NSG Village Green-1 LLC", is a non-existent company. This is readily verifiable from the website of the Massachusetts Secretary of the Commonwealth Office, Corporation Division, which confirms that "NSG Village Green-1 LLC" is not a legal entity nor is it registered in the Commonwealth of Massachusetts to lawfully engage in any business in the Commonwealth of

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Massachusetts. In other words, a fictitious or non-existent entity applied to the MassHousing Finance Agency for determination of project eligibility, the Agency issued its Project Eligibility determination to an entity that does not exist, and the Comprehensive Permit Application before the Sandwich Board of Appeals was filed by an entity which is legally non-existent.

An application brought before the MassHousing Finance Agency and the Sandwich Board of Appeals in the name and on behalf of an entity which is legally non-existent is an absolute nullity from its inception. It is a matter of common sense that when an applicant is not a legal entity, it does not have any legal capacity to apply for a 40B Comprehensive Permit, the Sandwich Board of Appeals does not have any authority or power to act on the application, and any decision by the Sandwich Board of Appeals on the application would be void *ab initio*.

For this reason alone, the Board of Appeals must deny the Village Green Comprehensive Permit Application filed by the non-existent entity “NSG Village Green-1, LLC”.

As a fictitious or non-existent entity, “NSG Village Green-1 LLC” cannot satisfy the additional mandatory Project Eligibility requirement that it control the site of the Project. 760 CMR 56.04(1)(c). An entity that does not exist cannot take title to real property and it does not have the legal capacity to control the site.

Moreover, the Project site was deeded to Route 130 Land Development, LLC. (Deed recorded on August 11, 2015, at the Barnstable County Registry of Deeds, Bk 29066, Page 208) Thus, it alone owns and controls the Project site.

For each of the foregoing reasons, the Sandwich Board of Appeals must deny the Village Green Comprehensive Permit Application without prejudice to it being refiled in compliance with the Project Eligibility requirements.

The Project Eligibility requirements of 760 CMR 56.04(1) are not discretionary, but mandatory and non-waivable. Absent such compliance, “NSG Village Green-1 LLC” does not have any lawful right or legal standing to apply for a 40B Comprehensive Permit and the

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Sandwich Board of Appeals does not have any authority or power to act on its Comprehensive Permit Application.

Respectfully,



Mark C. O'Connor

cc: Amy E. Kwesell, Esq., Counsel for Town of Sandwich  
Jonathan D. Fitch, Esq., Counsel for the Applicant