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LAW OFFICE  
OF  
WILLIAM V. GRICKIS

March 18, 2021

VIA ELECTRONIC MAIL

Salisbury Planning and Zoning Commission  
27 Main Street  
Salisbury, Ct 06068  
Att. Abby Conroy, Land Use Administrator; aconroy@salisburyct.us

**ORIGINAL**

Re: Application for Special Permit Approval 11 Holley Street, Lakeville, CT, Assessor's Map 45, Lot 2, Salisbury Housing Committee, Inc. ("Applicant")

Dear Commissioners:

I am writing to request that the Commission and/or Applicant provide responsive answers to the issues and questions presented in my letter to the Commission dated March 2, 2021 in connection with the above captioned Application. Specifically, I ask that the following be addressed:

ACTIONS OF THE BOARD OF SELECTMEN

I have reviewed the letter to the Commission from Selectman Rand purporting to address issues concerning the Board of Selectmen raised in my March 2 letter. My response is as follows (*numbers below correspond to numbers in my March 2 letter*):

1. I am satisfied with Selectman Rand's response to this concern and agree with it.
2. I am not satisfied with Selectman Rand's response to this issue, because neither the Board nor its legal counsel has provided any authority for actions that the Board took in extending the Option Agreement without reconvening a Town meeting could be countenanced by reliance on Governor Lamont's Executive Order 7JJ. Selectman Rand does **not** cite advice of counsel in asserting his opinion, which is, at the end of the day, merely his opinion which can surely be tested in another forum.
3. I am satisfied with Selectman Rand's response to issue #3 and agree with his conclusion.
4. I disagree strongly with Selectman Rand's contention that taxpayers are not entitled to review legal opinions provided to the Board of Selectmen **at taxpayer expense**, when those opinions do not involve personnel matters or contract negotiations. I suspect that Selectman Rand's contention that such legal opinions need not be obtained or produced is a *de facto* admission

that counsel simply could not comfortably provide them, even if Selectman Rand would have us believe the contrary. The Commission might simply ask Selectman Rand if he is being entirely candid with the public.

### **POSSIBLE BIAS OF THE PLANNING AND ZONING COMMISSION**

While Chairman Klemens was undoubtedly advised by legal counsel to conduct the rhetorical exercise of presenting a canned list of questions to each Commissioner and Alternate to demonstrate impartiality, I continue to maintain that perception is everything and that simple common sense would demand that Commissioner Cockerline recuse himself, and possibly Commissioner Riva as well, given latter's niece's role and the former's service as a director on the Board of Falls Village Housing Trust, Inc. The Commission should also note that neither Attorney Andres nor I have been able to provide the other with a Connecticut case directly on point; however, to avoid the very real possibility that judicial review of the facts and circumstances unique to this Application may well result in a finding that the Commission failed to meet its burden of conducting an impartial review, free from any palpable indication of bias, consistent with the opponents' right to due process and equal protection under the law, the Commission should certainly require Commissioner Cockerline to recuse himself, and, to be prudent, Commissioner Riva as well.

### **PARKING**

1. Neither the Commission nor the Applicant have addressed the issues presented in Attorney Capacelatro's letter dated November 20, 2020 and resubmitted to the Commission on March 2, 2021. To the extent that the Commission's decision to grant a Special Permit to the Applicant would result in any of the properties mentioned in his letter becoming non-conforming uses due to the reduction of satellite parking, such decision would contravene the Regulations the Commission is tasked to enforce and certainly be challenged on appeal to Superior Court. The Commission must address these issues in the continuation of the public hearing on March 22.
2. At the March 8<sup>th</sup> public hearing Chairman Klemens requested that my client re-submit the Site Plan he submitted to obtain a zoning permit for Firehouse Place, LLC, which was approved unanimously, without conditions, at the Commission's meeting held on June 26, 2017. On March 11, I submitted the entire Site Plan to the Land Use Administrator. The Commission will note that Exhibit A to my letter of March 2 is included with this submission, contrary to comments of one or more Commissioners at the March 8 public hearing. The Commission will also note that Holley Block is clearly indicated as a satellite parking resource for Firehouse Place (*studio lakeville*). Firehouse Place has only nine available parking spaces. (Exhibit A to my March letter depicts additional parking immediately to the North of the building. This additional parking was never utilized, because the CT DOT would not allow it.) My client's presentation at the Commission meeting of June 26, 2017 clearly contemplated and articulated the availability of Holley Block for satellite parking. The Commission had

requested submission of the parking plan to confirm the availability of satellite parking based on the anticipated uses at Firehouse Place. The loss of this parking resource will very likely adversely affect the owner, tenants and users of the businesses operating in that building. The Commission cannot simply give with one hand and take away with another. The sufficiency of available parking after completion on the Applicant's project must be thoroughly vetted before the Commission can approve the required Special Permit.

To the best of my client's knowledge, all other parking spaces depicted on Exhibit A to my March 2 letter are "public" spaces. The Commission needs to include in its decision-making calculus the possible impact of commercial use of the Knife Building, now reportedly under contract, and the former train depot, if now available satellite parking in Bi-Centennial Park is significantly reduced.

#### **AQUIFER PROTECTION OVERLAY DISTRICT ("APOD")**

1. I acknowledge that the Applicant has provided the required notice to the Commissioner of Public Health and to Aquarion, but not to my knowledge "in a format prescribed by said Commissioner," thereby making the notice defective. [C.G.S. §8-3i(b)] Before the Commission can act on the Application, both the Commissioner of Public Health and Aquarion will have to conclude that implementation of the Project will not adversely affect the aquifer.
2. The Applicant must also address Sections 403.6a and especially 403.6c of the Regulations and satisfactorily demonstrate that the virtually 100% of impervious surface following completion of the project, and resulting storm water run-off, will not harm the aquifer.

#### **NATIONAL REGISTER OF HISTORIC PLACES -LAKEVILLE HISTORIC DISTRICT**

I expect that the Intervenor will provide a more comprehensive explanation of concerns previously raised about the project's compatibility with pre-existing historic designations for Bi-Centennial Park and whether the Applicant will be legally able to undo such designations. Before granting the Application for a Special Permit, the Commission needs to know exactly what federal or state agencies may have a say in the dissolution of Bicentennial Park as a national historic place and be satisfied that any such agencies have approved such dissolution.

#### **SAFETY**

Safety remains a paramount concern for this Application. Regrettably, rather than providing additional data or information to respond to the many concerns expressed both by the Commission and the public in connection with the withdrawn Application, the Applicant's traffic consultant has once again elected to tout his resume as the final word to assure the community that traffic and safety issues are inconsequential. The Commission is therefore left to determine whether simply to accept the rhetorical pabulum of Mr. Balskus or to engage its own independent traffic consultant to review the Applicant's contentions in this slow glide from the COVID pandemic or even conduct a new traffic study.

## FIRE LANES

I refer the Commission to the letter from the Fire Marshal to Elizabeth Slotnick Architect, dated March 5, 2021, and copied to the Land Use Administrator, which states in pertinent part:

"My only concern is the Fire Department access on the west and south sides of the building. These areas will need to be kept clear of any obstructions that *could interfere with Fire Department access. Fire lanes would need to be established, posted and enforced.*" [Italics and emphasis added.]

Slide 10 of the Applicant's submission depicts parking below and above ground. The Fire Marshal has stated that there will need to be a fire lane on the south side of the building that must be kept clear of obstructions such as parked cars. The Commission need to ask Applicant how it will reconcile its 22 space parking plan with the Fire Marshal's requirement of an unobstructed fire lane. I suspect it will be challenging enough to make sure that the fire lane on the west side of the building remains unobstructed. Indeed, the superimposition of a fire lane on the entire easement will unlawfully impair the deeded rights of use of third parties. Finally, my client firmly believes that only a civil engineer, not the project architect, is qualified to determine whether the above and below ground parking lay out, as presented, leaving aside the fire lane conundrum, is actually feasible. That is to ask, will occupants and others parking cars actually be able to navigate the turn angles safely? Can a firetruck make the turn into the easement lane, and, once in the easement lane, could it make the swing into the south fire lane to exit?

## CONCLUSIONS

For the reasons and issues expressed and identified in this letter, it bears repeating that SHC has simply chosen the wrong parcel to spearhead its affordable housing campaign. The Commission cannot approve this Application over the serious obstacles that have been identified.

Very truly yours,



William V. Grickis, Esq.