CRAMER & ANDERSON LLP
Attorneys at Law

30 Main Street
Suite 204
Danbury, CT 06810

(203) 744-1234
Fax (203) 730-2500

14 Old Barn Road
Kent, CT 06757

46 West Street
Litchfield, CT 06759

51 Main Street
New Milford, CT 06776

38C Grove Street, 1st Floor
Ridgefield, CT 06877

6 Bee Brook Road
Washington Depot, CT 06794

Daniel E. Casagrande, Esq.
*Also Admitted in New York
dcasagrande@crameranderson.com

April 13, 2021

VIA EMAIL: candres@barclaydamon.com

Charles R. Andres, Esq.
Barclay Damon LLP
545 Long Wharf Drive, 9th Floor
New Haven, CT 06511

Re: Special Permit #2021-0123 for a 12-Unit Multi-family Housing in PKSQ and APA – Salisbury Housing Committee – 11 Holley Street

Dear Chuck:

I write in response to Chris Smith's April 8, 2021 letter to the Commission. Specifically, I would like to address his argument that the Commission is limited in its consideration of feasible and prudent off-site alternatives to reviewing only alternatives on property adjacent to the subject property. In sole support of this contention, Attorney Smith cites the U.S. Supreme Court's decision in Koontz v. St. Johns River Water Management Dist., 570 U.S. 595 (2013), for the proposition that a commission's denial of an application pursuant to C.G.S. § 22a-19 because the applicant owns other property in the town that would constitute a feasible and prudent alternative for its project would deprive the owner of the right to use its property, thus constituting a taking in violation of the fifth amendment to the United States constitution.

Attorney Smith's reliance on Koontz is misplaced. There the Supreme Court found that a local district's actions constituted unconstitutional exactions of property and money under the takings clause when it refused to approve the petitioner's application for a wetlands permit to develop 3.7 acres of his 14.9 acre vacant property. The relevant statute required applicants wishing to build on wetlands to offset the resulting environmental damage by creating, enhancing or preserving wetlands elsewhere. Id. at 601. The agency denied the permit because the applicant refused to agree either 1) to develop only one acre of the site and deed to the district a conservation easement on the remaining 13.9 acres, or 2) to pay money to make improvements to district-owned property several miles away. The Supreme Court held that the denial of the permit would constitute a "constitutionally extortionate demand" if there was no nexus or "rough proportionality" between the demand for either the on-site easement or payment of money and the environmental damage to be caused by the development, and remanded the case back to the state courts for findings on that issue. Id. at 619.

Koontz is readily distinguishable for several reasons. First, the fifth amendment's takings clause forbids a government from taking private property without just compensation, and does not apply to public property.

Second, unlike a developer of private property, the Town of Salisbury has no reasonable expectation to be able to destroy a historic property it owns that is held in the "public trust." See C.G.S. § 22a-19. Denial of this special permit application would not deprive the town of the right to use this property; it would simply mean that Bicentennial Park must continue to be used as a historic park and public parking area--the use to which it has been devoted for decades.

Third, the Intervenors are not asking the Commission to force the town to give up rights to develop other town-owned land or pay money. The Intervenors request only that the Commission require the town to pursue development of alternative town-owned sites for the proposed apartment building--properties which the town's Affordable Housing Plan has identified as appropriate for such development.

Last, nothing in Koontz suggests that a land use commission may never consider relevant non-adjacent off-site alternatives available to an applicant. Attorney Smith cites no such authority under Connecticut law that stands for such a blanket limitation on a commission's obligations to consider feasible and prudent alternatives under § 22a-19.

Thank you for the opportunity to address this issue. We look forward to discussing the matter further at the April 14 hearing session.

Very truly yours,

CRAMER & ANDERSON, LLP

By _____
Daniel E. Casagrande, Esq., Partner

DEC/smc
cc: Christopher Smith, Esq.
Salisbury Planning & Zoning Commission