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Via Electronic Mail

September 2, 2025

Members of the Planning and Zoning Commission
c/o Dr. Michael Klemens, Chairman
Town of Salisbury
27 Main Street
Salisbury, CT 06068

Re: Special Permit Application No. 2025-0287
Wake Robbin LLC & Ms. Serena Granbery (ARADEV LLC)
104 & 106 Sharon Road & 53 Wells Hill Road

Dear Chairman Klemens and Members of the Commission:

Our firm represents Aradev, LLC ("Applicant") together with Mackey Butts & Whalen LLP regarding the subject special permit application ("Application") to redevelop and operate the Wake Robbin Inn at 104 & 106 Sharon Road and 53 Wells Hill Road (collectively, the "Property"). We understand that there has been much opposition to the Application. We further understand that much, if not the vast majority, of this opposition has taken the form of speculation and general concerns, both from members of the public and consultants who have been hired to oppose the project. This Memorandum is submitted to assist the Commission in its evaluation of the evidence before it when deciding whether to approve the Application.

As shown below, the speculative concerns of the public and consultants they have hired do not constitute "substantial evidence" and cannot support a decision by the Commission.

I. Substantial Evidence

"In reviewing a decision of a zoning board, a reviewing court is bound by the substantial evidence rule, according to which, [c]onclusions reached by [the board] must be upheld by the trial court if they are reasonably supported by the record…. If a trial court finds that there is substantial evidence to support a zoning board's findings, it cannot substitute its judgment for

that of the board...."[1] "Substantial ... evidence is that which carries conviction. It is such evidence as a reasonable mind might accept as adequate to support a conclusion. It means something more than a mere scintilla and *must do more than create a suspicion of the existence of the fact to be established*."[2]

II. Speculation and General Concerns are *Not* Substantial Evidence

"A mere worry is not substantial evidence."[3] "Evidence of general environmental impacts, mere speculation, or general concerns do not qualify as substantial evidence."[4] Indeed, the mere possibility of an adverse outcome, without more, does not constitute substantial evidence.[5] Connecticut Courts have routinely held that public testimony is not to be considered substantial evidence when "it is not supported by anything other than speculation and conjecture on the part of those objecting to the [applicant's] proposed activities."[6] Further, the mere possibility that something may happen – that, for example, sound may be excessive – without expert testimony based on actual calculations and analysis showing that it will happen – is mere speculation and cannot be grounds for denial of a special permit application.[7] Unless and until such event occurs, it would improper to deny an application on such mere speculation.[8]

Expert witnesses are also held to the same standard. Mere speculation and general concerns do not constitute substantial evidence even when testified to by an expert.[9] Expert

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[1] (Internal quotation marks omitted.) *Vine v. Zoning Bd. of Appeals*, 281 Conn. 553, 559–60, *on remand*, 102 Conn. App. 863 (2007).
[2] (Internal quotation marks omitted, emphasis added.) *Raczkowski v. Zoning Comm'n*, 53 Conn. App. 636, 641, *cert. denied*, 250 Conn. 921 (1999).
[3] *Lord Family of Windsor, LLC v. Inland & Wetlands & Watercourses Comm'n*, 103 Conn. App. 354, 365 (2007)
[4] (Internal quotation marks omitted.) *AvalonBay Communities, Inc. v. Inland Wetlands & Watercourses Agency*, 130 Conn. App. 69, 75, *cert. denied*, 303 Conn. 908 (2011).
[5] (Citation omitted.) *Am. Inst. for Neuro-Integrative Dev., Inc. v. Town Plan & Zoning Comm'n of Town of Fairfield*, 189 Conn. App. 332, 350 (2019).
[6] (Citation omitted.) *Martland v. Zoning Comm'n*, 114 Conn. App. 655, 665–66 (2009).
[7] See *Cambodian Buddhist Soc. of Connecticut, Inc. v. Plan. & Zoning Comm'n of Town of Newtown*, 285 Conn. 381, 441 (2008) ("the mere possibility that the temple would be used for an impermissible purpose would not be a legitimate ground for denying the application"); *Irwin v. Planning & Zoning Comm'n*, 244 Conn. 619, 628 (1998) ("[a] zoning commission does not have discretion to deny a special permit when the proposal meets the [applicable] standards").
[8] *Am. Inst. for Neuro-Integrative Dev.,* 189 Conn. App. at 353.
[9] (Citation omitted; quotation marks omitted.) *McLoughlin v. Plan. & Zoning Comm'n of Town of Bethel*, 342 Conn. 737, 758 (2022).

analysis must be property-specific and must show analysis of the proposed project's likely impact on other properties.[10] Generalized concerns – such as criticizing the reports of sound experts but providing no property-specific analysis of potential sound – is speculation that must be rejected as failing to satisfy the substantial evidence test. Regardless, whether the speculation comes from the public or experts, "the commission cannot base its conclusion on general concerns, speculation, and mere worry."[11]

III. Role of Experts

Expert testimony is required when issues are raised that go "beyond the field of the ordinary knowledge and expertise" of agency members.[12] Although expert testimony may be admissible in many instances, "it is required only when the question involved goes beyond the field of the ordinary knowledge and experience of the trier of fact...."[13]

In a planning and zoning hearing, the land use agency, in this case, the Commission, acts as the fact-finder.[14] While an agency is not required to believe an expert witness, "[t]he agency cannot disbelieve experts unless there is evidence in the record which undermines either the experts' credibility or their final conclusions."[15] In other words, if an expert provides evidence on an issue – that amounts to more than mere speculation and general concerns – a commission cannot ignore such testimony unless it is contradicted by another expert or there are reasons to discredit the expert.[16] An administrative body may not disregard competent expert testimony and rely, without more, on their own knowledge of "technically sophisticated and complex" issues on which they "have not been shown to possess expertise...."[17] Nonetheless, as noted above, such expert testimony must be rooted in a property-specific analysis and may not consist

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[10] See *St. Joseph's High School, Inc. v. Planning & Zoning Comm'n*, 176 Conn. App. 570 (2017) (holding that denial of special permit application requires specific evidence that relates directly to the site under consideration); *McLoughlin*, supra, 342 Conn. at 749 (upholding same standard).
[11] *McLoughlin*, supra, 342 Conn. at 760.
[12] *Jaff v. Dept. of Health*, 135 Conn. 339, 349-50 (1949).
[13] *Allison v. Manetta,* 284 Conn. 389, 405 (2007).
[14] *Quarry Knoll II Corp. v. Plan. & Zoning Comm'n of Town of Greenwich*, 256 Conn. 674, 720 (2001).
[15] *Tanner v. Conservation Comm'n of City of Norwalk*, 15 Conn. App. 336, 341 (1988).
[16] See *Lord Family of Windsor,* 103 Conn. App. at 363-64 (holding that, in the absence of expert evidence to the contrary, the Commission was required to accept expert opinion on technically complex issues).
[17] *Feinson v. Conservation Comm'n*, 180 Conn. 421, 427 (1980). Here, Commission Chairman, Dr. Michael Klemens has properly disclosed into the record his expert qualifications on certain technical and sophisticated issues.

solely of generalized concerns or speculation.[18] A generalized criticism of an opposing expert, without any site-specific analysis or indication that the expert has acted beyond industry standards,[19] is not substantial evidence.

IV. Town Obligation to Enforce Regulations

While a number of neighbors have expressed concerns about security and enforcement of the Zoning Regulations, this is not among the special permit criteria to evaluate a special permit application. It is generally understood that a commission cannot deny an application for special permit based on a municipality's inability to enforce its own regulations. The town, via the zoning enforcement officer, is charged with enforcing zoning regulations. Indeed, General Statutes § 8-12 "empowers [zoning enforcement] officers … to take overt action in order to compel compliance with the zoning laws."[20] The purpose "of § 8-12 is to provide a means *to enforce the zoning regulations* and to prevent an unlawful use" of property."[21] A town's failure to enforce its own regulations cannot be the reason for denial of a special permit.[22]

Further, to the extent there may be enforcement issues at some time in the future, there is a mechanism under the Salisbury Zoning Regulations to revoke a zoning permit issued for a special permit in the event the Applicant does not comply with the approval. The Zoning Regulations empower the Zoning Enforcement Officer to revoke a zoning permit if the conditions of approval are disregarded by the Applicant. Section 901.2 states that "[a] Zoning Permit may be revoked if the conditions of the Planning & Zoning Commission approval … have not been met or have been violated."

Fear and speculation that an applicant may not abide by the terms of a permit is precisely the type of general and speculative concern that cannot constitute substantial evidence and should not be considered by a land use agency. That a harm "may" happen is not a reason to

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[18] See *St. Joseph's High School* ,supra, 176 Conn. App. at 570 (holding that denial of special permit application requires specific evidence that relates directly to the site under consideration); *McLoughlin*, supra, 342 Conn. at 749 (upholding same standard).

[19] See *Baywing, LLC v. Wilton Water Pollution Control Auth*., Superior Court, judicial district of Hartford, Land Use Docket, Docket No. LND-CV-23-6167031-S (May 24, 2024, *O'Hanlan, J.*) (2024 WL 2717495, at *15) (critiquing alleged expert testimony due to failure to reference any industry standards).

[20] Internal quotation marks omitted.) *Labulis v. Kopylec*, 128 Conn. App. 571, 578 n.11 (2011).

[21] (Emphasis added.) *Stamford v. Stephenson*, 78 Conn. App. 818, 826, *cert. denied*, 266 Conn. 915 (2003).

[22] See *Bethlehem Christian Fellowship, Inc. v. Planning and Zoning Comm'n of Town of Morris* 73 Conn. App. 442, 471 (2002).

deny an application; instead, if a harm or violation does occur, the Zoning Enforcement Officer and other town staff can deal with the harm at that point.

V. Conditions of Approval

General Statutes § 8-2(a) permits a zoning commission to issue special permits subject "to conditions necessary to protect the public health, safety, convenience and property values." However, any such conditions must be "reasonable" and must have a relationship to protecting public health, safety, convenience and property values.[23] Reasonable conditions are "those conditions that are in general harmony with the purposes and intent of the zoning regulations."[24]

Further, the conditions must be related to the application.[25] "If the condition bears no relationship to the action sought from the zoning authority and is not an essential or integral part of [the action]," it is void.[26] A condition, for example, requiring work on a property unrelated to the property at issue before the commission, is unreasonable, "beyond the authority of the [commission] and, thus, *void ab initio*."[27] When a condition imposed by a land use agency is unreasonable, "it may be revoked, set aside and declared to be void and of no force."[28]

While a land use agency may not *require* conditions of approval that it cannot unilaterally impose, a land use applicant is free to offer such conditions of approval on its own. That is what the Applicant has done here.

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[23] See *Vaszauskas v. Zoning Bd. of Appeals of Town of Southbury*, 215 Conn. 58, 63–64 (1990) ("the operative portion of our holding in those cases is that any conditions imposed by the zoning authority must be reasonable"); see also *St. Joseph's High School,* supra, 176 Conn. App. at 576 ("in granting a special permit, the commission has the authority to place *reasonable* restrictions on the proposed use") (emphasis added).
[24] *Gay v. Zoning Bd. of Appeals*, 59 Conn. App. 380, 385 (2000) (citing *Burlington v. Jencik,* 168 Conn. 506, 509 (1975).
[25] See *Upjohn Co. v. Zoning Bd. of Appeals*, 224 Conn. 96, 104-05 (1992) ("there may be exceptional cases in which a previously *105 unchallenged condition was so far outside what could have been regarded as a valid exercise of zoning power that there could not have been any justified reliance on it…"); see also *Farmington v. Viacom Broadcasting, Inc.,* 10 Conn. App. 190, *cert. denied*, 203 Conn. 808 (1987) (condition of tearing down existing radio tower related to application to construct new radio tower).
[26] *Gay*, supra, 59 Conn. App. at 386 (citing to *Beckish v. Planning & Zoning Comm'n*, 162 Conn. 11, 18-19 (1971)).
[27] *Gay*, supra, 59 Conn. App. at 387.
[28] (Internal quotation marks omitted.) *Vaszauskas,,* supra, 215 Conn. at 66.

VI. Combined Hearing

Further concerns have been raised about a combined hearing on the lot merger and the special permit. While a special permit is a zoning concern and the merger of lots is a planning concern, the Connecticut Supreme Court has expressly blessed combined hearings for related zoning and permitting matters.[29] Indeed, it is relatively common to hold combined hearings when the matters are related to a single application or development.[30]

VII. Conclusion

In summary, if a special permit application meets all of the applicable criteria, the commission cannot deny the application.[31] The record for this proceeding contains more than substantial evidence, indeed overwhelming evidence, that the Applicant meets the special permit criteria, and the opponents have not submitted any substantial evidence to counter that of Applicant. We hope that the preceding summary of relevant law is helpful to the Commission as it makes its final determination in this proceeding. Please do not hesitate to contact us with any questions.

Respectfully submitted,

Evan J. Seeman, Esq.
Robinson & Cole LLP

[29] *Norris v. Planning & Zoning Comm'n,* 156 Conn. 592, 596-97 (1968); see also *Zimnoch v. Plan. & Zoning Comm'n of Town of Monroe*, 302 Conn. 535, 552 (2011) (confirming same).
[30] See, e.g., *51 Main St., LLC v. Town of New Canaan Plan. & Zoning Comm'n*, Superior Court, judicial district of Hartford, Land Use Docket, Docket No. LND-HHD-CV-23-6168629-S (Feb. 18, 2025, *O'Hanlan, J.*) (2025 WL 602338, at *3 fn. 4) (combined hearings not issue).
[31] *Irwin*, supra, 244 Conn. at 626–27.