

Via Electronic Submission

September 9, 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”). This letter responds to the last-second submissions of Attorney Grimes and Brooks Acoustics.

I. Nuisance Law and *Pestey v. Cushman*

The analysis of *Pestey v. Cushman* and related caselaw provided by attorney Grimes is misplaced, misrepresents the issues in the analyzed cases, and provides support for your approval of the Application, not the other way around. First, and most importantly, *Pestey v. Cushman*, 259 Conn. 345 (2002), is *not* a case involving a zoning application for special permit before a zoning commission. It is instead a private nuisance claim – brought by one neighbor against another – and not involving a zoning application at all. *Id.*, at 347. While the case does lay out a test for determining whether an activity constitutes a nuisance, there is no evidence before the Commission that the special permit approval will result in such a nuisance. Instead, the Applicant has provided extensive expert testimony regarding noise levels and other issues which has been peer reviewed by the Town. By contrast, the opposition has provided absolutely

Town of Salisbury Planning and Zoning Commission

September 9, 2025

Page 2

nothing but speculation. Indeed, attorney Grimes' letter is *rife* with speculation, including that there will be "loud music," "loud, intoxicated individuals" involved, and "car doors slamming." There is no evidence in the record indicating that any of this *will* occur. The assertions should be rejected.

Instead, *Pestey v. Cushman* provides all the more reason for the Commission to approve this Application. As noted, there is nothing but speculation in the record regarding alleged nuisances. However, if a nuisance were to occur as a result of activity at the Inn, *Pestey v. Cushman* provides a separate remedy for the neighbors to utilize – a private right of action against the Inn.

Finally, Attorney Grimes' letter is equally rife with misrepresentation. For example, it states that the Applicant has proposed outdoor, tented events "without enumerating the number, programs, times and frequency of the events." Indeed, the Applicant specifically proposes a limit on the number of large, outdoor events. There are not an unenumerated number of such events. The letter also wrongly suggests that the Applicant has failed to identify the location of parking spaces so there will be a nuisance. Not only is this wrong as a matter of fact but it is also speculation upon speculation.

As noted, the *Pestey* case and the other nuisance cases cited have absolutely no bearing on this Application before the Commission. There is no non-speculative evidence before this Commission that the proposed Application will result in nuisance conditions. Attorney Grimes' last-minute misapplication of the law in a desperate attempt to stop this project from obtaining special permit approval for a *permitted use* is not a reason to deny this Application. As stated in our earlier memorandum, general, speculative concerns asserted by the opposition does not constitute substantial evidence and must not be credited.

II. Brooks Acoustic Sound Analysis

Similar to the letter from Attorney Grimes, the letters from Brooks Acoustic are rife with speculation. Among other items of pure speculation lifted from their analysis include:

- "It should also be noted that these community response criteria were developed for outdoor music venues which host *occasional* concerts, not frequently occurring events, such as weekly weddings."

Town of Salisbury Planning and Zoning Commission

September 9, 2025

Page 3

- “Doors and windows will open leaking noise out, ventilation systems will not be properly treated so they will leak noise, and sound-block features will not be correctly installed.”
- “Much of the vehicle moving is to be done by valet employees, who will be in a hurry to satisfy event guests after the event closes and they wish to leave at around 11 pm to 12 midnight.”

As noted above, there are not “frequently occurring” large, music events proposed under the Application. Instead, the Applicant has proposed to limit the number of such events. The second and third comments above are the literal definition of speculation, should be entirely disregarded by this Commission as not being based on any substantial evidence, and discredit Mr. Brooks’ remaining analysis.

Further, the letters from Brooks Acoustic fail to provide a site-specific analysis showing that approval of the Application will result in a nuisance. Instead, they consist almost entirely of criticism of the expert report provided by Applicant and supported by the Town’s own peer reviewer. In short, much of Brooks Acoustic’s analysis consists of complaints about how the Applicant’s expert could have done things differently. This is not substantial evidence. As noted in our prior letter, 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.¹ It would improper to deny the Application on such mere speculation.²

It also appears that Brooks Acoustics argues that potential construction noise arising from the development will always constitute a nuisance and mandate denial of a project. This cannot be accurate. Indeed, *Pestey* and the other cases cited by Attorney Grimes above clearly hold that for a noise to rise to the level of nuisance the noise must be “unreasonable.”³ If any construction is done using reasonable means, during reasonable hours and with reasonable noise mitigation measures, it is unclear how such construction would be “unreasonable” on its face.

¹ 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”).

² *Am. Inst. for Neuro-Integrative Dev.*, 189 Conn. App. at 353.

³ *Pestey*, 259 Conn. at 352.

Town of Salisbury Planning and Zoning Commission
September 9, 2025
Page 4

III. Substantial Evidence

To reiterate the points from our prior letter, “[s]ubstantial ... 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.*”⁴ Merely raising the possibility that a harm may occur is not enough. “A mere worry is not substantial evidence.”⁵

Further, expert analysis must be property-specific and must show analysis of the proposed project’s likely impact on other properties.⁶ 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.

IV. Conclusion

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. These last-second submissions from Attorney Grimes and Brooks Acoustic do not change anything. They are rife with speculation and misrepresentation and should be disregarded entirely by this Commission.

Respectfully submitted,



Evan J. Seeman, Esq.
Robinson & Cole LLP

⁴ (Internal quotation marks omitted, emphasis added.) *Raczkowski v. Zoning Comm’n*, 53 Conn. App. 636, 641, *cert. denied*, 250 Conn. 921 (1999).

⁵ *Lord Family of Windsor, LLC v. Inland & Wetlands & Watercourses Comm’n*, 103 Conn. App. 354, 365 (2007)

⁶ 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).