

Town of Salisbury
Planning and Zoning Commission
Attn: Dr. Michael Klemens
27 Main Street
Salisbury, CT 06068

9 December 2024
PJ024-1440-L04

Subject: Wake Robin Inn – Brooks Acoustics Corp (BAC) Response to SLR Acoustics Letter (dated Dec. 5, 2024)

Reference 1: #2024-0257 / Wake Robin LLC & Ms. Serena Granbery
(ARADEV LLC) / 104 & 106 Sharon Road & 53 Wells Hill Road /
Special Permit for Hotel (Section 213.5) / Map 47 / Lot 2 & 2-1 / DOR: 08/05/2024

Reference 2: Letter dated December 5, 2024 sent by Damien Bell and Nicholas A. Block of SLR to the Commission
("SLR Letter") regarding the Reference Special Permit Application

Dear Chairman Klemens:

This Letter is a **Response** by BAC to the Letter dated December 5, 2024 sent by Damien Bell and Nicholas A. Block of SLR to the Commission (Reference 2) regarding the Reference 1 Special Permit Application. The SLR Letter contains serious errors and omissions with respect to this Special Permit Application.

The critical distinction to consider here is that this is an application for a Special Exception land use and not a use-by-right. In addition to standard zoning and code compliance requirements, the application must meet the more restrictive requirements of a Special Permit. This Special Permit Application must be compared to the current use and the existing conditions in the neighborhood to meet the Special Permit requirements. In the opinion of Brooks Acoustics Corporation, with respect to noise impacts on the neighbors, the Aradev application does not meet those Special Permit Requirements.

CT General Statutes

The second paragraph of Page 1 of the SLR Letter, states the following:

"It should be noted at the outset that the Town of Salisbury does not have its own noise ordinance. Therefore, any discussion of noise must defer to the standards set forth in RCSA 22a-69. Any suggestion in the report or testimony to have a higher standard would be inappropriate and contrary to the Connecticut General Statutes."

While it is true that the Town of Salisbury has not enacted a noise ordinance, the second part of the statement by SLR is *in error*, please note Connecticut General Statutes (CGS Sec. 22a-73) which states in Para. (a):

"...it is the public policy of the state to encourage municipal participation by means of regulation of activities causing noise pollution within the territorial limits of the various municipalities."

And in Para. (c):

"Any such municipal noise control ordinance shall be at least as stringent as any state noise control plan, including ambient noise standards ... Notwithstanding the provisions of this subsection, any municipality may adopt more stringent noise standards than those adopted by the commissioner."

(highlighting added)

Please see the full language of CGS Sec. 22a-73, attached.

Clearly, **SLR is in error** in its assertion that "...a higher standard is inappropriate and contrary to the CGSs".

Also, **SLR is in error** that, "...any discussion of noise must defer to the standards set forth in RCSA 22a-69."

SLR asserts that it must merely follow the restrictions set forth in the Regulations of Connecticut State Agencies (RCSA) Title 22a-69, when designing the Aradev project, and that this design may be submitted to the Commission in regard to a Building Permit Application. This is wrong.

SLR has failed to address the fact that Aradev / Reference 1 is a **Special Permit Application**.

Special Permit Requirements

The requirements imposed on a Special Permit Application are to demonstrate to the Commission that the provisions of a Special Permit are met for the Special Exception Use under consideration.

Article VIII, Section 800.3 of your Zoning Regulations is specific in stating the need for the Applicant to submit plans that “shall include such additional information required by the Commission when necessary to determine conformity with these Regulations”.

Our Letter (BAC PJ2024-1440-L01) dated November 27, 2024 discussed in great detail the requirements of the Special Permit process with regard to noise emitted by the proposed facility. We need not repeat all of that here.

We can summarize the Special Permit requirements as follows:

Summary of Zoning Code Special Permit requirements

The Town of Salisbury Special Permit requirements are clearly stated. These requirements include the need to properly plan and design the proposed land use to relate harmoniously with the existing neighbors and to protect the neighbors from adverse impacts, including noise.

Without a doubt, this Applicant and their consultants have **omitted** the Special Permit requirements for noise in their Application documents, including plans, designs and surveys of the existing conditions in the neighborhood.

This **omission** of the applicable requirements is clearly demonstrated in their latest offering (SLR Letter 12/05/2024) with regard to noise issues in the Application.

Several examples of this omission of the Special Permit requirements from the SLR Letter are given below:

SLR Letter - Page 1:

1. Transient Sounds

“Mobile sound sources (cars in motion, etc.) are excluded from the Connecticut noise regulations.”

BAC Response – Transient Sounds Point 1:

While it is true that moving vehicles are excluded from the RCSA 22a-69 regulations, they are governed by CT state law CGS Sec 14-80a, as BAC noted in detail in our letter (BAC PJ2024-1440-L02) dated December 5, 2024 in response to questions from the Commission.

In that letter, in addition to the CT maximum allowed automobile noise levels (from CSG Sec. 14-80a) we also used the US FHWA “average” noise levels, which are somewhat lower (~6 dBA). Our analysis shows that the lower “average” car noise levels still *greatly exceed* the standards set forth in the CT RCSA Title 22a-69 Noise Regulations at the neighboring residents, both with and without a noise barrier wall in place.

While CT State law does not limit the vehicle noise which may be emitted into a neighbor property, the Salisbury Special Permit requirements do.

For the purpose of assessing whether or not the Application meets the Special Permit Requirements, the CT Noise Regulations (22a-69) are cited here with regard to motor vehicles as guidance on what the State deems to be “excessive noise levels” in residential areas.

The CT Noise Regulations (RCSA Sec. 22a-69) also clearly state:

Sec. 22a-69-1.5. Compliance with regulations no defense to nuisance claim

Nothing in any portion of these Regulations shall in any manner be construed as authorizing or legalizing the creation or maintenance of a nuisance, and compliance of a source with these Regulations is not a bar to a claim of nuisance by any person. A violation of any portion of these Regulations shall not be deemed to create a nuisance per se.
(Effective June 15, 1978)

As stated in the above regulation, even if a facility complies with the RCSA 22a-69 standard a nuisance could be created by its operation.

As the Special Permit requirements clearly state that the special use **may not create a nuisance** for the neighbors, logic requires that this more strict standard be applied to the application, its plans and designs.

Therefore, to *not* apply the nuisance standard to the noise emissions generated by ANY source created by the special use is a **serious omission** and would be to **invite failure** of the land use to meet its requirements.

Moreover, it is incumbent upon the Applicant to demonstrate that every feature of the proposed special use is planned to comply with the strict standards of the Zoning Regulations. **The Commission must review the Application and decide whether or not the Application meets the Special Permit requirements.**

SLR also states in **1. Transient Sounds:**

"If requested by the Commission and prior to construction, a more detailed analysis could be performed using reference measurements of vehicle activity from a similar facility, along with three-dimensional noise modeling calculation software."

BAC Response– Transient Sounds Point 2:

"If requested"? "Prior to construction"? This analysis should have been done at the outset and submitted to the Commission for scrutiny and presentation in a Public Hearing. Why was this analysis not done and submitted as part of the Application? The Applicant suggests that it would be submitted after the close of the Public Hearing with no opportunity to examine or rebut. How is this in conformance with the Special Permit Application process?

SLR also states in **1. Transient Sounds :**

"Additionally, because all parking will be handled using a valet service..."

BAC Response– Transient Sounds Point 3:

Valets will still enter and exit cars, and start and accelerate cars, thereby creating noise which our analysis shows will cause a *detriment and nuisance*. The Applicant has offered no analysis of this, or any mitigation measures, again only general speculation. If guests choose to bypass the valet service, then they will be in the parking area causing this nuisance.

SLR states in **2. Event Barn:**

"The Wake Robin Inn has hosted weddings and similar events for many years using temporary tents and in an outdoor setting where there were no controls of sound emanating from the event."

BAC Response – Event Barn Point 1:

What the Applicant is proposing are events with hundreds of people on a regular basis as part of their business plan. Based on reports from neighbors, this proposed activity is materially greater than anything done currently or in the past. SLR has not addressed these issues in the Special Permit Application.

SLR also states in **2. Event Barn:**

“Prior to seeking a building permit, SLR will work with the Applicant’s architect and mechanical design engineers to develop a high-performance noise control design for the event barn, as needed to achieve compliance with the State of Connecticut noise limit. This will include, but will not be limited to, a thorough engineering design review of the building envelope and outdoor mechanical equipment.”

BAC Response – Event Barn Point 2:

Is “prior to seeking a building permit” the correct process for the Special Permit? Why was this design not developed and submitted as part of the Special Permit Application? If submitted after the close of the Public Hearing, who will judge the design? Also, the Public would not have an opportunity to review and rebut the submittal.

This action as suggested by **SLR ignores the Special Permit process.**

BAC Response – Event Barn Point 3:

As documented above, “compliance with the State of Connecticut noise limit” is not a valid design criterion for acceptability of this project with respect to the Special Permit requirements.

Again, this suggestion by **SLR ignores the Special Permit process.**

SLR also states in **2. Event Barn:**

“The design will consider and likely include:” Followed by a list of design items, such as large access vestibules, high performance assemblies, etc.

BAC Response – Event Barn Point 4 (“design will consider”):

This is a wish list – not a developed design. There is no evidence presented by the Applicant that these design items would be successful in meeting the Special Permit requirements.

SLR states in **3. Sound Propagation Modeling:**

“Sound from the entire facility (event barn and hotel) can then be modeled using an outdoor sound propagation model (Cadna/A), to calculate interior-to-exterior sound “breakout” from walls, doors, and windows, as well as ventilation openings or outdoor mechanical equipment. The modeling would consider sound directivity, ground absorption, topography, and other sound propagation effects. Any additional noise mitigation measures needed to achieve compliance with the State limits would be identified through the modeling and then incorporated into the overall facility final design. We are prepared to share that information with the Commission.”

BAC Response:

These Sound Propagation Modeling items are not a valid response to the Intervention. This is an engineering work scope proposal from SLR for what should have been done in the first place, and then submitted as part of the Special Permit application. If that had been the case, then we would have something of substance to discuss.

This non-response is useless at this late date and invalidates the Special Permit Application.

SLR states in **4. Community Complaint Resolution Protocol:**

“A community complaint resolution protocol/system will be put in place by the applicant in the event of a noise-related nuisance complaint. Such a system would give residents direct access to facility management in the event of a noise issue.”

BAC Response:

To what end would such a system operate? What is the proposed resolution? How are violations to be monitored, enforced and punished?

SLR states in **4. Baseline Sound Survey:**

As noted above, the Town of Salisbury does not have a “quantitative” (numerical limit) noise ordinance. The most stringent State of Connecticut limit is 45 dBA at the closest residential property boundaries (during nighttime hours), and this level will be the acoustic design target for the facility.

If requested by the Commission for informational purposes, the applicant can perform multi-day, continuous sound measurements around the Project site, to document area baseline sound levels. Measurements would include weekend overnight periods. As peak utilization of the event barn will be during warmer months, scheduling of such a survey would likely have to be delayed until Spring 2025.

BAC Response – Baseline Sound Survey Point 1 (“45 dBA”):

Using 45 dBA as the design target for noise levels at the closest residential property line is **in error**. Clearly, SLR does not address Special Permit requirements, as described above. Rather than absolute sound level limits such as 45 dBA, there must be relative sound level limits based on the currently existing baseline sound levels.

The only valid design goal for a Special Permit Application is to prevent a disturbance or nuisance to the residential neighbors. As a practical matter, this means that the noise emitted by the proposed development must not be noticeable. Relative limits which could achieve compliance with these requirements with a margin of design safety are 5 dBA BELOW the existing baseline at each residence location, not absolute limits like the CT State regs.

For example, if the baseline sound level at a residence property line is 35 dBA, then a target design sound level for the proposed facility, with an engineering margin of safety, would be 30 dBA at that location.

BAC Response – Baseline Sound Survey Point 2 (“informational purposes”):

Again, SLR demonstrates that they do not address the Special Permit requirements.

The Baseline Sound Survey is not “informational”. It is necessary. The measured baseline level is not to be exceeded by the proposed project, as a bare minimum requirement for the Special Permit. The stated requirement is to not cause a detriment to the existing environment (materially alter).

To gain approval for the Application it should be demonstrated, with a safety margin, that the sound of the proposed facility seeking a Special Permit will not be noticed (audible).

The sound survey was not done, and measured ambient data are not part of the Special Permit Application. Therefore, the baseline levels and the potential audibility of the project at the residential neighbors are not known. This invalidates the Application.

Summary

It is the opinion of Brooks Acoustics Corp (BAC) that the SLR Response Letter for Noise Impacts demonstrates serious errors and omissions with respect to this Special Permit Application.

Moreover, the SLR Response Letter has been found to have made numerous incorrect statements and misleading assertions, as SLR does not address the more restrictive requirements of a Special Permit.

As the Special Permit requirements clearly state that the special use **may not create a nuisance** for the neighbors, this strict standard shall be applied to the application, its plans and designs.

Therefore, to *not* apply the nuisance standard to the noise emissions generated by ANY source created by the proposed special use is a **serious omission** and would be to **invite failure** of the proposed land use to meet its requirements.

Further, it is incumbent upon the Applicant to demonstrate that every feature of the proposed special use is planned to comply with the strict standards of the Zoning Regulations.

It is clear that SLR Application for the Wake Robin Inn with respect to Acoustics does not address the requirements of the Town of Salisbury Special Use Permit.

Therefore, with regard to acoustics and noise impacts on the residential neighborhood, it is the opinion of BAC that the Aradev Application (Reference 1) is an invalid application.

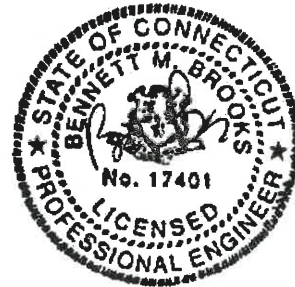
Thank you for your careful consideration of this matter.

Please contact me if you have any questions concerning these findings.

Very truly yours,
BROOKS ACOUSTICS CORPORATION



Bennett M. Brooks, PE, FASA, INCE
President



Connecticut General Statutes (CGS)

Sec. 22a-73. Municipal noise regulation programs; ordinances subject to commissioner's approval. (a) To carry out and effectuate the purposes and policies of this chapter it is the public policy of the state to encourage municipal participation by means of regulation of activities causing noise pollution within the territorial limits of the various municipalities. To that end, any municipality may develop and establish a comprehensive program of noise regulation. Such program may include a study of the noise problems resulting from uses and activities within its jurisdiction and its development and adoption of a noise control ordinance.

(b) Any municipality may adopt, amend and enforce a noise control ordinance which may include the following: (1) Noise levels which will not be exceeded in specified zones or other designated areas; (2) designation of a noise control officer and the designation of an existing board or commission, or the establishment of a new board or commission to direct such program; (3) implementation procedures of such program and the relation of such program to other plans within the jurisdiction of the municipality; (4) procedures for assuring compliance with state and federal noise regulations; (5) noise level restrictions applicable to construction activities, including limitation on on-site hours of operation.

(c) Any such municipal noise control ordinance shall be at least as stringent as any state noise control plan, including ambient noise standards, adopted pursuant to section 22a-69 or any standards or regulations adopted by the administrator of the United States Environmental Protection Agency pursuant to the Noise Control Act of 1972 (P.L. 92-574) or any amendment thereto. Notwithstanding the provisions of this subsection, any municipality may adopt more stringent noise standards than those adopted by the commissioner.

(P.A. 74-328, S. 7, 12; P.A. 22-143, S. 3.)

History: P.A. 22-143 amended Subsec. (c) to delete provision re commissioner approve such ordinance and add provision re such ordinance be as stringent as any state noise control plan, effective May 31, 2022.

Town zoning regulation that differentiates between distinct land uses that produce different noise levels for purposes of determining whether a specific use is appropriate for a property does not, ipso facto, specify "noise levels which will not be exceeded in specified zones or other designated areas" under Subsec. (b)(1) and therefore does not constitute a municipal noise control ordinance for purposes of Noise Pollution Control Act. 335 C 606.

(highlighting added)