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GEORGE C. SCHOBBER

March 11, 2021

Joan S. Formeister
Chairman
Somers Conservation Commission
Town of Somers
600 Main Street
Somers, Connecticut 06071

Re: Application #740, 50 Hangdog Lane

Dear Chairman Formeister and Members of the Commission:

With the first session of the public hearing now behind us, and substantial testimony received by the Commission, there are certain legal issues that need to be addressed. Given the continuation of the hearing, this is an opportune time to consider those legal issues. We respectfully request that you request a review by the Town Attorney of the issues which have arisen. The Town Attorney's opinion on these issues will be helpful to the Commission, to the Applicant, to the Intervenor, and to the general public.

1. Is there a failure of notice?

The name of the Applicant is the Roulier Family Partnership. There is no such entity in the state of Connecticut. Among the exhibits now in the record is a report from the Connecticut Secretary of the State indicating that there is a similarly named entity the Roulier Family Limited Partnership. The correct name appears on the agenda and advertisement, but the original application and even the application substantially amended before the commencement of the hearing still carries the wrong name.

The Intervenor has not been prejudiced by this incorrect name, but the general public may have been. We do not know who may have decided not to participate in the proceeding based on their review of the application as submitted, as compared with the name of the party in the agenda and in the legal notice.

2. Can the Applicant proceed under the direction of Daniel R. Roulier, when there is nothing in the record as to his association with, and authorization by, the Applicant?

We understand from the statement of Jay Ussery, the surveyor representing the Applicant, that the information will be forthcoming about the authority of Daniel R. Roulier to act on behalf of the Applicant. Without that information, or if it is insufficient to authorize Daniel R. Roulier to act on behalf of the Applicant, the application should be denied without prejudice so that the Applicant can reapply, identifying a proper representative.

3. Must the application be denied as a matter of law because it is incomplete?

During the first part of the hearing, Jay Ussery acknowledged that there was a storm water drainage pipe coming from the Hangdog Lane LLC property into and physically across a portion of the Applicant's property. He also testified that while it appeared that the water that came from the pipe was from basement drains, he testified that there are other potential sources of that water. He also did not testify as to the volume, velocity, water quality, and periodicity of the discharges into the site – all essential information for determining the impact on the wetlands.

Moreover, and critical as a matter of law, is the fact that as the record indicates, this pipe has been in the ground since the time that Daniel R. Roulier more than 15 years ago installed that pipe servicing the house and lot now owned by the Intervenor. By action of law Hangdog Lane LLC has a prescriptive easement or easement by estoppel. Those easement rights must be acknowledged in the application if it is to proceed. The Applicant has no authority without permission of the easement holder to alter the easement by relocating the pipe, by burying it below ground, and by connecting it to any further pipe, which it proposes to do.

In addition, the application shows a drainage pipe of uncertain size and location which is an essential part of the application. Because the information about that pipe is not included in the application, the application is also incomplete and cannot be approved, but must be denied.

Hangdog Lane LLC has rights in the pipe and in maintaining the discharge. The Applicant has no right to do anything involving that pipe without permission of the easement holder and the failure to include recognition of that easement in the application makes the application incomplete such that it must be denied.

4. Must the Conservation Commission deny the application because it violates the Somers driveway code?

The Town of Somers has a driveway code which provides that the maximum grade of a driveway that is paved cannot exceed 15%. The uncontroverted evidence in the record by a registered land surveyor is that a portion of the paved existing driveway proposed to be used by the Applicant in connection with the driveway improvement which is the subject matter of this application cannot be used, because it violates the town code. While a question is raised as to whether the Conservation Commission is unable to approve the application because of the driveway code precluding additional use of the driveway given its steep grade, it would still be

highly beneficial to the Conservation Commission (and the zoning enforcement officer and building official, who ultimately may be requested to issue a permit for the use of the driveway) to have a legal opinion as to whether the additional use of that driveway can be permitted under the code when the parcel is not landlocked and has direct frontage and hangdog Lane, a public street.

5. Must the Conservation Commission consider the public hazard and safety issues inherent in using the existing driveway?

Much documentary and oral testimony was presented during the hearing as to how the use of the existing driveway presented a hazard to public safety. You as Chairman stated that the driveway code and the safety issues in using the existing driveway were not relevant considerations for the Conservation Commission. The Intervenor contends that the Conservation Commission as a town agency has an obligation to consider public safety issues associated with its application review and permitting responsibilities. As to what is in the interest of public safety, the standard in the subdivision regulations at Sec. 213-39 is that no cul-de-sac may exceed 1,200 feet in length, and this driveway exceeds 1,200 feet. It would be beneficial for all concerned to have an opinion of the Town Attorney on the issue of whether the Conservation Commission is required to consider public safety.

As noted at the outset, an opinion from the Town Attorney on these issues would be of great benefit to the Conservation Commission, to the Applicant, to the Intervenor, and to the public at large. We respectfully request that you request such opinions before the continuation of the public hearing.

The Intervenor thanks you in advance for your consideration.

Sincerely yours,



George Schober

Copy to:

Jay Ussery, representing the Applicant
Joanna Shapiro, Inland Wetlands/Erosion Control Agent