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March 2, 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:

As you know, I represent Hangdog Lane, LLC, the owner of the property at 54 Hangdog Lane, where Jacqueline and George the Sarkis reside, along with their children. They are opposed to extending their private driveway for many reasons which I will summarize in this letter. There is already a voluminous record posted online. My objective in writing is to assist you in focusing on the most critical issues before you. Those issues are both technical and legal and present some difficult questions, as well as some easy questions with readily apparent answers.

**The Commission Must Deny the Application
Because of The Failure of Notice.**

This is what some might describe as the most narrow and technical issue that there can be, so I will address it and quickly turn to the merits. However, it is still legally important.

The name of the applicant is the Roulier Family Partnership. There is no such entity in the state of Connecticut. Among the exhibits already provided is a report from the Connecticut Secretary of the State indicating that there is a similarly named entity the Roulier Family Limited Partnership. Joanna Shapiro did pick up on that and used the correct name of the agenda and advertisement, but the original application and even the application substantially amended last week still carries the wrong name. I respectfully submit that the application ought to be withdrawn and reapplied for in the proper name.

There is also nothing in the record, so far as I can see, as to what authority Daniel R. Roulier has to speak on behalf of the applicant. That should have been a part of the record before the public notice was first made.

**The Commission Must Deny the Application
Because It Is Incomplete.**

Now, we go to the very heart of what must be addressed. As you will see from the expert witness report of George Logan, the last wetland delineation was more than a quarter of a century ago by a man who died long ago. That delineation was done before substantial changes were made in the landscape by cutting into the Rattlesnake Mountain, leveling the lot for the Sarkis residence, built originally by Daniel Roulier, and constructing the driveway, all of which dramatically changed the upgradient topography and vastly increased the impervious surface.

If you look at the numerous photographs also in the record showing the sheet flow of water off that hill, it is patently obvious that there are large areas of the hillside which are periodically inundated with water and are so poorly drained that the water puddles even on the slope. The water is obviously of some different temperature than the ground because there are large areas where the snow has melted and been carried away by the flow of water from above.

As George Logan, the wetland scientist, appropriately speculates, it is highly likely that there is a much larger area of regulated wetlands.

I think if you look at the original wetland delineation which is in the record as well, you will be as find it is remarkable as the rest of us have in how crudely it was done, not even to scale and hand drawn. Yes, flags were apparently placed and surveyed way back when, but it would be irresponsible for the Conservation Commission to make any judgment on this application without a recent wetlands delineation given the long time from the one in the record and the obvious changes in the area.

The application is also incomplete because the plan failed to show an easement running in favor of Hangdog Lane LLC as owner of 54 Hangdog Lane for the pipe coming from the Sarkis residence that we believe Daniel Roulier himself had laid when he built the house. No one knows where the water comes from that goes into that pipe, though at least some of it comes from cellar drains. We know nothing about the volume or the velocity or the quality of the water. And, as noted, we know nothing about how all that water coming out of that pipe for a couple of decades or so may have radically changed the soil regime in that area of the 50 Hangdog Lane lot.

More importantly, from the point of view of the failure of the application, the plans do not show the easement area. That easement is not one created by a conveyance by some deed, but is by what is called prescription – an easement like adverse possession that comes after 15 years or more of open, notorious, continuous, conspicuous occupation. The pipe from 54 Hangdog Lane goes into 50 Hangdog Lane before it surfaces. The owners of 54 Hangdog Lane have rights in the pipe and in maintaining the discharge.

In addition to an easement by prescription, my clients have an easement by implication and an easement by estoppel. Rather than discuss the legal theories which provide such easements for my clients, what is important is that the applicant has no right to do anything involving that pipe without permission of the easement holders and that the failure to include recognition of that easement in the application is a failure to the application itself.

**The Commission Must Deny the Application
Because It Violates the Somers Code.**

The town of Somers has a driveway code. A copy is now part of the record. That code says that the maximum grade of a driveway that is paved cannot exceed 15%. After looking at the GIS maps and the as-built survey, it was apparent to us that the grade was quite steep. Actually, no one really needed to look at any map or plans to figure that out because we already had first-hand reports from Jacqueline and George Sarkis as to how difficult the driveway is to safely use. The consultants and I experienced it ourselves in our site visits.

We engaged a land surveyor, Richard Meehan. He surveyed it and that survey is in the record. It evidences the slope of over 20% along a curve in the driveway.

The driveway should not have been approved in the first instance and should not be approved today.

I urge you to look at the photographs already in the record and those showing the driveway after a snowstorm, the driveway in several photographs with ice all across it from stormwater sheet flows coming off the mountain and then freezing, and the remarkable movies of plowing out that driveway.

And when you read the letter from George Sarkis describing the problems he has encountered, you will better understand why any additional use of this driveway is totally unacceptable.

**The Commission Must Deny the Application
Because It Would Create A Public Safety Hazard.**

Out of concern for the safety aspects of large pickup trucks hauling horse trailers or livestock trailers on the driveway, or even a second home using the same driveway, we engaged the state's leading safety expert, Joseph Versteeg, for an analysis of the potential for harm to people and damage to property. His report is now part of the record. The driveway raises serious safety problems and should not have any additional traffic on it beyond the single-family, private residential use that it has for the Sarkis family alone.

The Conservation Commission is tasked with protecting the public health, safety, and general welfare and as such, we respectfully submit, it is duty-bound to reject the application for reasons of public safety alone.

**The Conservation Commission Should Reject the Application
Because There Is A Feasible and Prudent Alternative.**

This brings us to the very heart of the matter before you. Why even propose to use this steep and potentially dangerous driveway when there is an obvious alternative, already in use – direct access from Hangdog Lane at the bottom of the lot. There are photographs in the record and written reports to the effect that trucks and even regular two-wheel-drive cars routinely drive in and out of that lot directly from Hangdog Lane.

We engaged a professional engineer and asked him to design a driveway in from Hangdog Lane that would comply with the town's driveway code and can be used either to access the lot for bringing in a horse trailer and livestock trailer or even later perhaps to develop a home on it. The letter from our engineer, Ozzie Torres, speaks for itself as does his plan. It makes sense. It works, as he says. It is the way this lot should be accessed. It is not only a feasible and prudent alternative, but it is also the only feasible and prudent point of access for this lot.

I hope this summary, perhaps longer than I intended but necessary to cover the key issues, has been helpful to you as we begin the hearing and discuss these issues together.

Finally, although I imagine we will have more questions once we hear the presentation by the applicant, the ones in the enclosed addendum come first to mind.

Sincerely yours,



George Schober

Addendum

These are questions I intend to ask, among others during the proceeding:

What authority does Daniel Roulier have to speak for the applicant?

Where does the water come from that flows into the pipe that comes from the Sarkis residence on into the Roulier property?

What study has been done of the watershed and sub-watersheds as to the changes since the construction activity up gradient from the site?

Why is there no current wetlands delineation?

Why do the applicant's plans not show the easement in favor of Hangdog Lane LLC, the owner of 54 Hangdog Lane?

The plans show a pipe, maybe 8 inches in diameter, several hundred feet long from the pond to Hangdog Lane, but it is indicated that the location is only based on information from the owner. Has its location been surveyed? What we know about that pipe? Has an inspection been made to make sure that it is open and clear? Does it have the capacity to handle the volume, velocity, and periodicity of the water coming from the 54 Hangdog Lane easement?

Have the designers of the proposed driveway extension recently designed and had approved by the town of Somers a driveway with a 20% slope?