

3/2/2021 Public Hearing  
(Atty Smith)

**Jennifer Roy**

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**From:** Christopher Smith <csmith@alterpearson.com>  
**Sent:** Friday, February 26, 2021 7:18 AM  
**To:** John Parks; Famiglietti, Dory; Carl Landolina  
**Cc:** Jennifer Roy  
**Subject:** Somers ZBA: #20-008 - appeal of Angela Koehler, et al.

Counsel,

I respectfully suggest the following for the next hearing date:

1. A clarification of the nonconforming use issues associated with this matter relative to your, and your clients', respective positions. In particular, what nonconforming uses are at issue from your perspective, and whether there are claims of impermissible expansions or permitted intensifications of these nonconforming uses? Also, please submit or advise of any legal precedent for your respective positions.
2. A clarification on the issue of estoppel relative to the factors associated for establishing estoppel, and any relevant legal precedent for your respective positions.

The above-referenced issues constitute two of the essential issues raised with this matter. Any clarification of these issues, and references to the Record, will assist the Board with processing the subject appeal. Of course, any other information or claims that you determine relevant to this matter are welcomed.

*Jennifer, would it be possible to add this correspondence to the file as posted on the Town's website?*

Thank you for your assistance and cooperation concerning this matter.

Best regards,  
Chris

Christopher J. Smith  
Attorney at Law  
Alter & Pearson, LLC  
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## Jennifer Roy

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**From:** Christopher Smith <csmith@alterpearson.com>  
**Sent:** Friday, February 26, 2021 3:48 PM  
**To:** John Parks; Famiglietti, Dory; Carl Landolina  
**Cc:** Jennifer Roy  
**Subject:** FW: Somers ZBA: #20-008 - appeal of Angela Koehler, et al.

Attorneys Parks, Famiglietti and Landolina,

Please see below for questions from some Members of the ZBA for the hearing next Tuesday. These questions will be made part of the Record. I will forward one more email with a few more questions from another Member of the ZBA shortly. Please note that I deleted the Board Members' email addresses.

The initial correspondence below explains the purpose of providing you with these questions in advance of the hearing next Tuesday.

*Ms. Roy, would it be possible to post this correspondence in the file on the Town's website for the Record?*

Enjoy your weekends and stay safe.

Thank you.

Best,  
Chris

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**Subject:** Re: Somers ZBA: #20-008 - appeal of Angela Koehler, et al.

Dear Chris (if I may):

One further point of elucidation would be helpful. Many references have been made to the ZBA's quasi-judicial role. But when it comes to whether to uphold the ZEO's cease-and-desist order, aren't we more in the role of an umpire calling a runner safe or out?

I was under the impression that the question of attaching conditions to a property's use — for example, as regards noise — is very much the Zoning Commission's province rather than the ZBA's.

I'd think our writ in weighing the ZEO's order would be limited to two concerns:

- a) Is the property's ongoing use "grandfathered" as a pre-existing nonconforming use?
- b) Has that use changed so much in the meantime as to bring it under the purview of the town's current regulations?

I apologize for raising points in correspondence that might have been better discussed during the board's deliberations. But since our chairman encouraged us to raise any legal questions now, I thought they were germane.

Sincerely,  
Ralph Williams (ZBA alternate)

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**Subject:** [EXTERNAL] RE: Somers ZBA: #20-008 - appeal of Angela Koehler, et al.

**CAUTION:** This Email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Hi Chris:

I meant to get this to you yesterday, but got caught up in with other issues. My apologies.

A lot of emphasis was put on to the noise levels of certain events. Have those levels actually been measured by a certified source?

Attorney Parks stated that uses have to be in (quote) "complete" harmony with the neighborhood. Is this in fact true?

Thanks,

Dean Hills

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**To Members of the ZBA – emails deleted**

Chairman Hills and Members of the Board,

Chairman Hills requests that if Members are aware of questions that they have for any of the parties concerning the above-referenced matter pending before the Board, that you forward the questions to me as soon as possible – preferably by noon this Thursday, February 25, 2021. In turn, I will forward the questions to the parties involved in the matter, and request that they be added to the Record and posted on the Town’s website.

Please be advised that any correspondence concerning this matter is public and will be posted on the Town’s website. If you respond to this request with questions, please “reply to all” so that all Board Members will see the questions. Of course, you can certainly raise any questions that you have during the public hearing proceeding. Please limit any response to specific questions for the parties and/or public. Please do not provide comment or have a discussion of the issues during this exchange. The sole purpose of this request is to see if there are outstanding questions that can be forwarded to the parties and posted for the public to allow for the parties and public to perform whatever research may be required to expedite the hearing process for the parties and public, if possible.

Thank you for your cooperation and assistance concerning this matter.

As always, best regards,

Chris

**Christopher J. Smith**  
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## Jennifer Roy

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**From:** Christopher Smith <csmith@alterpearson.com>  
**Sent:** Friday, February 26, 2021 3:56 PM  
**To:** John Parks; Famiglietti, Dory; Carl Landolina  
**Cc:** Jennifer Roy  
**Subject:** FW: Somers ZBA: #20-008 - appeal of Angela Koehler, et al.

Attorneys Parks, Famiglietti and Landolina,

Per my prior email correspondence, please see questions from Board Member Marinaccio for next Tuesday's continued hearing.

*Ms. Roy, can you please post this correspondence in the file on the Town's website for the Record?*

Thank you, enjoy your weekends and stay safe.

Best,  
Chris

Christopher J. Smith  
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**Subject:** Re: Somers ZBA: #20-008 - appeal of Angela Koehler, et al.

Hi Chris,

As requested, here are a few questions I had coming out of the last ZBA meeting held on 2/18 regarding the appeal of [56 Egypt Road/Union Agricultural Society](#). I think the questions are more geared towards you and your counsel for the board. They are as follows:

Do we have clarity on estoppel yet in this case?

Are you aware of any case law precedent that could be applied here?

If we do not uphold this appeal and the Union Agricultural Society (UAS) were to sell this land ([56 Egypt Rd](#)) to a developer for future development, etc. what happens then? For example, does the nonconformance end with the UAS or would those new potential properties not be subject to town zoning regulations?

Thank you in advance on any clarity you may be able to provide.

Best,

Joe Marinaccio

**Sent to Members of the ZBA**

On Feb 23, 2021, at 9:50 AM, Christopher Smith <[csmith@alterpearson.com](mailto:csmith@alterpearson.com)> wrote:

Chairman Hills and Members of the Board,

Chairman Hills requests that if Members are aware of questions that they have for any of the parties concerning the above-referenced matter pending before the Board, that you forward the questions to me as soon as possible – preferably by noon this Thursday, February 25, 2021. In turn, I will forward the questions to the parties involved in the matter, and request that they be added to the Record and posted on the Town’s website.

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Chris

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