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VIA EMAIL TO COUNSEL
(carl@faheyland.com)

Carl Landolina
Counsel to Zoning Commission
Town of Somers
600 Main Street
Somers, CT 06071

Re: *Hillsdale College Special-Use Applications for Blake Center for Faith
and Freedom*

Dear Attorney Landolina:

This firm and other attorneys copied on this letter represent Hillsdale College ("the College") in connection with proceedings before the Zoning Commission of the Town of Somers ("Commission") relating to the College's pending applications seeking special-use permits to operate a religious institution and/or a place of worship, namely, the Blake Center for Faith and Freedom, on 700, 708, 732 and 740 Hall Hill Road ("the properties").

On January 24, 2020, you spoke by phone with John Parks, one of the College's local attorneys, to notify him that a member of the Commission had watched a video on the internet depicting a town-hall-style event at Joanna's Restaurant, held in March of 2019, in which Michael Harner, Hillsdale College's chief of staff, spoke with members of the public about the College and about ideas that had been suggested regarding how the College might use the properties—ideas that, as you know, differ from how the College has proposed to use the properties in this special-use proceeding, which opened almost a half year later, in September of 2019. You also stated on the call that you would be ordering a transcript of the video, which you later confirmed was posted on a non-party's personal Facebook page, so that it could be introduced into the record at the February 3, 2020, public hearing. On January 31, you followed up by email to state that the transcript had been ordered and received and that "[i]n fairness to the applicant it should now be made part of the record."

For several reasons, the College urges you and the Commission to reconsider making this transcript a part of the record.

First, the video is clearly irrelevant. As we have pointed out, “[w]hen considering an application for a special exception, a zoning authority[’s] . . . function is to determine whether the *proposed use* is expressly permitted under the regulations, and whether the standards set forth in the regulations and statutes are satisfied.” *Daughters of St. Paul, Inc. v. Zoning Board of Appeals*, 17 Conn. App. 53, 56 (1988) (emphasis added). The Commission is powerless to deny special-use applications on the basis of mere “fears, speculation and concern” about the applicant’s rumored former or undisclosed present intentions. It must instead approve or deny the applications solely on the basis on a proper application of law to the “*specific facts relating to [these] particular application[s].*” *Bethlehem Christian Fellowship*, 73 Conn. App. at 464 (emphasis added) (reversing a zoning board decision because there was “no substantial evidence to support the fears, speculation and concern voiced by opponents of the special exception”), *disapproved of on other grounds by Cambodian Buddhist Soc. of Connecticut*, 285 Conn. 381; see also, e.g., *Am. Inst. for Neuro-Integrative Dev., Inc. v. Town Plan & Zoning Comm’n of Town of Fairfield*, 189 Conn. App. 332, 353 (2019) (“ . . . [I]n the absence of evidence that the proposed use would not be a permitted use, the commission denied the application on the basis of a concern that a for-profit entity might operate in the building. *Unless and until such event occurs, the commission’s denial improperly was based on mere speculation.*” (emphasis added)).

Second, to the extent that the Commission is introducing into the record this transcript at the behest of a Commissioner so that a Commissioner or some third party might affirmatively use it against the College (presumably to show that the College’s planned use is something other than what the College has set forth in these proceedings or, worse, to cast aspersions on the College’s sincerely held religious beliefs), the Commission will be acting inconsistently with its well-established duty “to assume that a landowner who seeks . . . approval [for a permitted use] *will use the . . . property for the permitted purpose*” and not a prohibited purpose. *Lord Family Windsor, LLC v. Planning & Zoning Comm’n of Town of Windsor*, 288 Conn. 730, 737, (2008) (emphasis added); see also, e.g., *Abel v. New Canaan Planning & Zoning Comm’n*, No. FST-CV-084013132S, 2012 WL 386379, at *31 (Conn. Super. Ct. Jan. 6, 2012) (“[I]t [is] the commission’s duty to assume that a land owner who seeks approval for a special permit use will use the property for the permitted purpose, not a prohibited purpose.”). Likewise, as Attorney Seeman has recognized, evidence about prior ideas for the properties’ use, to the extent it is offered to undermine the College’s current proposal, might constitute an effort to question the College’s sincerely held religious beliefs, which would be inappropriate. See First Public Hr’g at 1:30:40 (Dec. 12, 2019) (Attorney Seeman warning members of the public that it would be inappropriate to question the sincerity of the College’s religious beliefs, in response to comments from a resident drawing attention to earlier ideas for the College’s use of the properties).

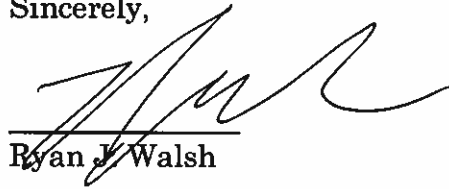
Third, and relatedly, the unknown nature of and the circumstances surrounding the relevant Commissioner's interest in this video could possibly implicate a new set of issues—issues whose importance would only escalate if the Commission were to introduce this video into the record and make it a focus of the proceedings, whether on its own motion or a motion of a non-party acting in the wake of the Commissioner's expressed interest in the video. For instance, this development raises the possibility (however remote) of some kind of bias or lack of neutrality on the part of the relevant Commissioner, who for all the College knows is actively searching for information to “run across” (no matter how irrelevant) so that it may be used to prejudice the College. *The College hastens to add that it has no reason to think such improper conduct has occurred* (although, either way, it has a right to know)—it means only to observe that introducing a transcript of the irrelevant video, because a Commissioner independently “ran across” it and watched it, would serve only to underscore questions that would be relevant in any later court proceedings, given that issues of bias or lack of neutrality generally implicate the Religious Land Use and Institutionalized Persons Act (RLUIPA), the Constitution, and other laws. *See, e.g., Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 350 (2d Cir. 2007) (RLUIPA); *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 138 S. Ct. 1719, 1729–31 (2018) (First Amendment).

Fourth, while this unfortunate development seems to build on other efforts by the Commission, an individual Commissioner, or the Commission's counsel to learn more about ideas for the properties suggested well before the College opened this proceeding—including a recent demand, as if by subpoena, that the College turn over “any materials or plans” regarding “The Prestley and Helen Blake Center for Business, Ethics, and Entrepreneurship,” Zoning Commission, Revised Hillsdale Comments and Requirements 2 (Jan. 21, 2020)—the Commission has yet to cite by what authority it may make such demands or seek such information, notwithstanding the College's previous objections. *See, e.g., Hillsdale College Supp. Mem.* 11–12 (Dec. 23, 2019). Presumably that is because no such authority exists. Under the regulations, the Commission may require the applicant to submit additional information *only* if “such information is necessary or would be helpful in determining whether the proposed buildings, structures or uses conform[] to these regulations,” but the video could not possibly be either “necessary” or “helpful” to the Commission's evaluation of the College's applications. Somers Zoning Regs. § 214-102(D). Nor of course does the video have any relevance to any of the “[c]riteria for evaluation” in Section 214-102(E).

Finally, the College reiterates that this new line of inquiry into various ideas suggested for the properties before this proceeding opened is fruitless. When the prospective gift of these properties was presented to the College, ideas of possible uses were merely that—*ideas*. Gifts of this nature always come with a preliminary “thinking through” period, as both the prospective benefactor and recipient deliberate over the terms of the gift to determine what arrangement would suit both. While this

process works itself out, all ideas relating to the terms of the project are inherently preliminary and tentative. (Ironically, this is precisely the point that Robert Norton, General Counsel of Hillsdale College, was attempting to explain at the January 6 hearing, before counsel for the Commission interrupted and urged him to skip ahead to the “relevant” portion of his presentation. *See* Second Public Hr’g at 55:30 (Jan. 6, 2020).) The uses proposed *in this proceeding*, by contrast—the only proposed uses that matter—are the uses that the Blakes have concluded are most in keeping with their vision and that the College has concluded are a best fit with its Christian purposes. It is on the basis of these uses that the Commission must make its decision.

Sincerely,



Ryan J. Walsh

cc: Evan Seeman, Esq. (counsel to the Commission)
Dwight Merriam, Esq. (counsel to the College)
John Parks, Esq. (counsel to the College)
George Schober, Esq. (counsel to the College)
Daniel Dalton, Esq. (counsel to the College; admitted in the State of Michigan;
pro hac vice application in Connecticut in progress)
Joseph Williams, Esq. (counsel to non-party Danuta Toklowicz-Vuerich)
Jennifer Roy, Zoning Enforcement Officer