

Ryan J. Walsh

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March 2, 2020

**VIA EMAIL TO COUNSEL**  
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Zoning Commission  
Town of Somers  
600 Main Street  
Somers, CT 06071

Re: *Hillsdale College Zoning Matters*

Dear Attorneys Landolina and Seeman:

On January 31, 2020, I transmitted a litigation-hold letter addressed to the members of the Town of Somers Zoning Commission via email to you and via hard copies delivered to the Commission on the following day. In various places, the letter identified non-exhaustive lists of possible defendants and custodians of relevant documents and materials, to whom the obligations to preserve evidence applied.

Those lists did not include First Selectman C.G. “Bud” Knorr Jr., who, the College has since learned, is an ex-officio member of the Zoning Commission by virtue of his office. Somers Code Ch. IV, § 4-2(d). The College therefore amends its letter of January 31, 2020, to include the First Selectman. All obligations identified in that letter apply with equal force to Mr. Knorr.

Please forward a copy of this letter to Mr. Knorr. For his convenience, the January 31, 2020, letter is enclosed.

Sincerely.

[s] Ryan J. Walsh  
Ryan J. Walsh, Esq.

cc: Daniel Dalton, Esq. (counsel to the College)  
Dwight Merriam, Esq. (counsel to the College)  
John Parks, Esq. (counsel to the College)  
George Schober, Esq. (counsel to the College)  
Jennifer Roy, Zoning Enforcement Officer

Enclosure

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January 31, 2020

**VIA EMAIL TO COUNSEL**  
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Zoning Commission  
Town of Somers  
600 Main Street  
Somers, CT 06071

Re: *Hillsdale College Zoning Matters*

Dear Members of the Town of Somers Zoning Commission:

This law firm and attorneys copied on this letter represent Hillsdale College (“the College”) in connection with two separate proceedings before the Zoning Commission of the Town of Somers (“Commission”): (1) proceedings related to the College’s pending applications seeking special-use permits to operate a religious institution and/or a place of worship on 700, 708, 732 and 740 Hall Hill Road (“the properties”) and (2) proceedings concerning draft zoning regulations presently under consideration by the Commission (collectively, “Proceedings”), which, if adopted, would ban “religious institution” uses from the town. ***In light of the possibility that the Commission will issue decisions adverse to the College in either or both of the Proceedings, the College is preparing for one or more state- and/or federal-court lawsuits (“prospective Actions” or “Actions”) to be filed against one or more of the following parties: the Zoning Commission of the Town of Somers and, in their official capacities, Jill Conklin, Daniel A. Fraro, Paige Rasid, W. Karl Walton, and Lucas Cherry.***

The Actions would likely raise claims under several state and federal statutes, including 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act, as well as under the Constitutions of the State of Connecticut and the United States of America.

The Actions would concern, among other issues, the Commission’s and the individual Commissioners’ consideration of the proposed zoning regulation amendments and the College’s special-use applications regarding the properties. The issues raised in the Actions would include but not be limited to questions regarding the states of mind, any motives, or any interests of the Commission and

Commissioners as well as those of the Commission's or Commissioners' agents or representatives. The Actions would additionally raise questions relating to past and current practices of the Commission in other proceedings, including its treatment of other prospective or current land users (religious or otherwise) in the Town of Somers who have had matters or who have otherwise appeared before the Commission. Materials and testimony bearing on these issues and other topics would likely be discoverable, through subpoenas, interrogatories, depositions, and other means.

***The College wishes to stress that it is hopeful and, indeed, reasonably confident that there will be no need for litigation as to either Proceeding.*** Recently, however, the College has perceived indications of increasing antagonism on the part of the Commission and/or its counsel directed at the College—from raising obviously hostile and interruptive questions during public hearings, *see, e.g.*, Second Public Hr'g at 55:40 (Jan. 6, 2020) (counsel for Commission attempting to cut off as “[ir]relevant” a short presentation by Robert Norton, General Counsel of Hillsdale College, meant to address the circumstances of and motivations behind the Blakes' donation of the Blake Center properties); *id.* at 1:28:40–29:26 (counsel for the Commission repeatedly interrupting a College-retained real estate valuation specialist to ask hostile, irrelevant legal questions seemingly designed to extract concessions, including: “The Blakes could have decided, for instance, to put their property in a conservation easement so that [a 30-lot subdivision] wouldn't happen, isn't that correct?”); directing the College to produce documents, as if by subpoena, that have no bearing on the special-use applications, *see* Commission's Revised Hillsdale Comments and Requirements (Jan. 21, 2020), Q. 42 (“Provide any materials or plans regarding the previously proposed operation of the “The Prestley and Helen Blake Center for Business, Ethics, and Entrepreneurship.”); and even seeking to introduce into the record a transcript of an irrelevant video from a non-party's Facebook page depicting a discussion between College staff and members of the public that occurred nearly *six months* before the opening of the special-use Proceeding—a Proceeding in which the only question properly before the Commission is whether the College's proposed Blake Center for Faith and Freedom project satisfies the zoning regulations. *See* Letter of Ryan J. Walsh to Carl Landolina (Jan. 31, 2020). In light of these and other recent developments, the College has little choice but preserve its rights by making the following demands.

This letter is to notify you and your agents of your obligations under federal and state law to take reasonable steps to preserve and retain all documents, materials, and other tangible evidence (photographs, posters, banners, yard signs, etc.), including any electronically stored information (“ESI”), possibly relevant to the Proceedings and the prospective Actions.

The definition of “document,” as used in this letter including the materials set forth in the Practice Book § 13-1, *et seq.*, *see Rizzuto v. Davidson Ladders, Inc.*, 280

Conn. 225 (2006), as well as under federal law. The term document includes ESI, which is defined as information that is stored in an electronic medium and is retrievable in perceivable form. *See* Practice Book § 13-1(a); Fed. R. Civ. P. 3. Examples of such documents include, but are not limited to, the following:

- a) Paper and/or “hard” copy documents including files, records, handwritten notes, letters, telegrams, contracts, memoranda, intra- or inter-office memoranda, papers, minutes, reports, studies, calendar and diary entries, maps, sketches, drawings, reproductions, photographs, advertisements, pamphlets, periodicals, books, graphs, charts, tabulations, analyses, working papers, indices, statistical or information accumulations, data sheets, computer printouts, notes or recollections of interviews, notes or recollections of conferences, notes or recollections of telephone calls, notes or recollections of meetings, notes or recollections of another type of communication, drafts or preliminary revisions of all of the above;
- b) Electronic mail (email) in any relevant user’s persona, professional, or official inbox, outbox, deleted folder, subject or file folders, calendar entries and contacts (including printed emails and those on email servers or on personal or home computers);
- c) Corporate or office documents (*e.g.*, word processing documents, memoranda, Excel spreadsheets) on computer file servers, or on personal or home computers;
- d) Electronically-stored information which can be saved on personal and/or home computers or hard drives, workstations, desktops, laptops, cell phones, cloud storage services;
- e) Audio recordings or audio tapes;
- f) Video tapes or video recordings;
- g) Back-up tapes for any of the above-listed documents or data;
- h) Other possible media (DVDs, CDs, floppy discs, external drives).

You should preserve documents regardless of their form; originals, drafts, and all non-identical copies (*i.e.*, different from originals by reason of notations made on or attached to such copies) should be preserved.

With respect to ESI, potentially relevant ESI include:

- a) Active, archived, and deleted copies of ESI, such as emails, voicemails, text messages, instant messages, ephemeral messages, calendars, diaries, word processing files, spreadsheets, PDFs, JPEGs, Power Point presentations, database files, temporary internet files, cookies, .ZIP files, Internet of Things generated data, stored correspondence from workplace collaboration tools, among others; and
- b) The ESI's metadata, including the date it was created, the date it was last modified, and the name of the individual who created it; whether stored online, offline, in a cloud-based server or in other electronic storage, or on any computers, handheld devices, tablets, cell phones, or other devices over which you have possession, custody, or control.

To fulfill your preservation obligation, you must take reasonable steps to preserve all documents relevant to these Actions, including, but not limited to:

- a) Suspending your data and backup tape recycling policies.
- b) Retaining software, hardware, or other information required to access or view the ESI, such as
  - i. Identification codes; destruction
  - ii. Passwords;
  - iii. Decryption applications;
  - iv. Decompression software
  - v. Reconstruction software
  - vi. Network access codes;
  - vii. Manuals; and
  - viii. User instructions
- c) Taking special action for
  - i. Archived or deleted ESI;
  - ii. ESI stored in a database;
  - iii. Computer logs;

- iv. Metadata, including the date ESI was created, the date ESI was last modified, and the name of the individual who created the ESI.
- d) Taking any other reasonable steps necessary to prevent the destruction, loss, override, or modification of relevant data or documents either intentionally or inadvertently such as through modification of your document retention policy and systems.

This above list is not exhaustive. You must preserve all information that is potentially relevant to the Proceedings and prospective Actions.

We believe that at least the following individuals possess, authored, or received relevant ESI, hard-copy documents or materials, or other tangible evidence:

Jennifer Roy

Jill Conklin

Daniel A. Fraro

Paige Rasid

W. Karl Walton

Lucas Cherry

Glenn Chalder

The foregoing list is not exhaustive. You must preserve all information relevant to this Action.

As with documents in your possession or custody, all documents in a nonparty's possession or custody must be preserved intact and without modification.

This letter is not intended to set forth or to define the scope of the College's claims or defenses. As our investigation continues, the College's claims or defenses may be modified or enlarged, meaning that any document or other form of information that relates to the College is covered by this request.

The duty to preserve potentially discoverable documents does not arise from this letter. Nor are your duties in any way limited or constrained by the demands made herein. The duty to preserve evidence, electronic or otherwise, is governed by federal law and Practice Book § 13-1, *et seq.*, and arises once a party reasonably anticipates litigation, and it applies to all sources of potentially relevant information. *Rizzuto*, 280 Conn. At 234, 250–51; *see also* F.R.C.P. 37(e). Failure to comply fully

with the duty to preserve evidence, either through intentional or negligent destruction, may subject a party and their counsel to sanctions, adverse inference jury instructions, and liability for spoliation of evidence.

We trust that you will preserve for the duration of these matters all relevant tangible evidence, documents, and ESI. In the event of a dispute arising out of your failure to preserve documents we will rely on this letter in court as evidence of our request and notice of your preservation obligations.

Thank you in advance for your cooperation.

Sincerely,

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Ryan J. Walsh, Esq.

cc: Dwight Merriam, 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)  
Jennifer Roy, Zoning Enforcement Officer