



INSTITUTE FOR JUSTICE
FLORIDA

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Via Email and USPS

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Re: 87 Rucum Road, Roxbury, Connecticut 06783

Selectmembers Roy, Dirienzo, Tester; Zoning Commissioners Haggerty, Curley, Horrigan, Rosen, Valeri, Conway, and Masi; Land Use Department Administrator Keith Rosenfeld and Land Use Department Zoning & Wetlands Enforcement Officer John Cody:

We are attorneys at the Institute for Justice (“IJ”) and we are contacting you in connection with the property located at 87 Rucum Road in Roxbury.¹ Our understanding is that the property’s owners, Charles and Elizabeth Copley (“the Copleys”), have been instructed, without proper explanation, that they may not put their property to a modest productive use. This is worrisome because, under our reading of Roxbury’s codes, the Copleys’ use is permissible. And yet Roxbury has advised the Copleys—without referencing any law, ordinance, or rule clearly prohibiting the act—that they may not, for nominal compensation, allow others onto their 50-acre property to hike or walk a dog. This letter advises you of our serious legal concerns about Roxbury’s treatment of the Copleys and their property and our hope that they can be addressed without the need for costly and lengthy legal proceedings.

To that end, we ask that by September 30, 2026, Roxbury: (1) provide the basis for its belief that the Copleys may not use their property for hiking or dog walking; and (2) advise whether you are willing to find a solution that will allow the Copleys to use their property for these purposes. In the absence of such notification, the Copleys will resume their prior use on October 1, 2026.

As it now stands, Roxbury’s apparent position does not respect the Copleys’ rights as property owners. After all, property ownership carries with it a bundle of rights. One is the right to invite others onto your property. Another is the right to put your property to peaceful and productive economic use. The Copleys would like to do both, and they *should* be able to. As the adage goes, property ownership confers the right to use and enjoy one’s property so long as it does not impair another property owner’s right to use or enjoy theirs.² And the Copleys’ desired use harms no one. Nor does it prevent or impair anyone from enjoying or doing anything.

Roxbury’s ordinances evidently forget this axiom—an error that is legally troubling. As explained in greater detail in the body of this correspondence, that is true for at least two separate reasons. First, despite more than a year of back and forth in which the Copleys practically begged for an explanation, Roxbury still has not advised the Copleys precisely what law or ordinance prohibits their desired use. Presumably, that is because there is no such law or ordinance that does so. In fact, a fair reading of Roxbury’s ordinances demonstrates that private hiking and similar behaviors are affirmatively *allowed*. Even if the ordinances are ambiguous, Connecticut courts have been clear that ambiguities must be interpreted in favor of property rights.

¹ We are formally submitting this correspondence in coordination with Evan J. Seeman, Brian R. Smith, and Ryan D. Hoyler, Connecticut-barred attorneys with Robinson & Cole, LLP in Hartford. In accordance with Connecticut’s rules on the practice of law, our petitions for admission *pro hac vice* have been submitted in the Litchfield Judicial District Courthouse at Torrington.

² Connecticut, like most states, has long recognized this maxim. See *Sev. Realty Corp. v. Planning & Zoning Bd. of Appeals of Greenwich*, 109 A.2d 256, 258 (Conn. 1954) (explaining that zoning must balance the government’s interest in promoting “the health, safety, morals and general welfare of the community,” against “the common-law right of a man to use his land as he pleases, as long as that use does not create a nuisance” (citing *Monument Garage Corp. v. Levy*, 194 N.E. 848 (N.Y. 1935))).

Second, ambiguities aside, not allowing the Copleys' use would also be unconstitutional, violating the Copleys' rights to equal protection, due course of law, and due process. As a general principle of constitutional law, the zoning power simply does not authorize the government to prohibit utterly harmless behaviors or to treat a property owner differently from other, similarly situated property owners. At least one Roxbury official has even acknowledged as much.

This letter lays out our concerns, as well as our willingness to collaborate with you to reach a reasonable outcome. If Roxbury acknowledges these issues and reforms its codes accordingly, or otherwise agrees to allow the Copleys to resume their use, it can avoid costly and lengthy legal proceedings.

About the Institute for Justice

The Institute for Justice is a national nonprofit law firm that fights against laws and government actions that irrationally burden property rights and economic liberty. Together, these rights encompass the right of property owners like the Copleys to use their property for economic gain. One of our areas of expertise is zoning laws, including those that pertain to residential property and the operation of businesses thereon. We recently concluded successful lawsuits against Nashville, Tennessee, for its unreasonable regulation of a home-based recording studio and Lakeway, Texas, for its irrational prohibition of home daycares. And we are currently litigating against Columbia, South Carolina, and North Whitehall Township, Pennsylvania, due to their unreasonable restrictions on harmless economic activity on residential property.³

But IJ does not reflexively litigate or take an antagonistic approach. We frequently work *with* municipalities to help them reform or better understand their zoning codes. We recently released a study on how zoning laws are impeding home businesses, called “~~Work~~ Entrepreneur from Home.”⁴ The survey shows that home-based enterprises provide flexibility and opportunity for their owners and are an overall benefit to communities. Reforming Roxbury's laws to accommodate the Copleys' desired use (which is not even a “business” at all) would accomplish these beneficial goals, and we would be happy to help. After all, the Copleys' desired use involves people paying a small fee to walk peacefully in the woods. Roxbury should adopt an ordinance expressing that such a use—and other uses like it—are permissible.

IJ has been retained by the Copleys in this matter because of this expertise with both litigation and legislative advocacy. In that capacity, IJ would welcome the opportunity to work with Roxbury to craft an ordinance that makes the existing permissiveness of the Copleys' desired use more explicitly clear. Failing that, IJ and the Copleys will take additional action as needed to vindicate their rights, including, if necessary, litigation.

³ You can read more about these cases on our website here: <https://ij.org/case/columbia-south-carolina-home-swim-lessons/> and <https://ij.org/case/pennsylvania-home-auto-shop/>.

⁴ The link for this report is available here: <https://ij.org/report/entrepreneur-from-home-how-home-based-businesses-provide-flexibility-and-opportunity-and-how-cities-can-get-out-of-their-way/>.

Factual Background

Charles and Elizabeth Copley bought the property at 87 Rucum Road in June 2022. It consists of two parcels—a forty-acre tract and an adjoining ten-acre tract. Married with two kids (and a third on the way), they sought a property that offered greater access to the outdoors for themselves and their children and could accommodate their growing family. Rucum Forest Farm, as they came to call it, was the perfect place. The property is vast. One of the largest properties (public or private) in Roxbury, its 50 acres is roughly the size of 38 football fields. And in addition to the wide-open space, there was a 900-square-foot cottage on the ten-acre parcel that, with some work, could be an ideal family home. Together, the land and the cottage would be an idyllic upgrade from their Woodbury condo.

Unfortunately, the forest property had been declining for decades by the time the Copleys bought it. Decades-old structures, like hunting cabins, had been left to rot; trash was piled up; and the forest was beset (and being consumed) by invasive species like Japanese barberry, honeysuckle, multiflora rose, and autumn olive. *See* Andrew J. Bosse Forestry Service Forestry Management Plan, dated March 6, 2025 (“FMP”) at 4. As the Copleys quickly discovered, their forest—although seemingly green and verdant to the untrained eye—was dying.

To address the issues, the Copleys turned to a forest management plan. The plan was crafted in conjunction with Andrew J. Bosse, a licensed Connecticut forester and natural resources manager. Completed on March 6, 2024, the FMP was designed to “improv[e] the health and quality of timber and wildlife habitat on the property, [and] ... access into and throughout the property for forestry, habitat and recreation.” *See* FMP at 2. The FMP also noted at least two relevant concerns—“invasive plants [were] present” and there was “[l]imited trail access throughout the property.” *Id.* at 2, 4. In sum, the FMP made clear to the Copleys that reclaiming and saving the forest would be a challenge, especially if they ever wanted it to become a healthy, productive farm.

The Copleys first had to figure out a way to make the forest navigable—so they could both enjoy it and access it to revive it. Indeed, an explicit goal of the plan is to “[i]mprove [the] trail system for forest and wildlife management, property maintenance, and recreational use.” FMP at 8. In this way, a well-maintained trail system on the Copleys’ property would prove to be critical for more than just hiking. It promotes “forest and wildlife management” and “property maintenance.” *Id.* So, to help maintain the property and promote the health of the forest, the Copleys knew they had to develop better trails (and then get out and hike them).

Beginning in 2024, Charles tackled the 50-acre woodland. Without clearing any trees, he cut a miles-long network of trails through the entire fifty acres, crisscrossing at times over the two adjoining parcels. And with additional background from a course in Connecticut woodland management, Charles estimated that he would complete the trails contemplated by the FMP over the next few years. But creating a trail network is an immense task. And maintaining the trails can be just as difficult. Low-growing invasives can quickly creep in. For the Copleys, because they could only hike so much, the newly cut trails needed regular traffic to keep the overgrowth at bay. What they needed, the Copleys realized, were more feet on the paths.

Consistent with Roxbury’s codes, the Copleys got creative, deciding to open the trail for hourly rental to invitees on an app called Sniffspot—a platform that enables hikers and dog owners to locate properties for walks and other types of canine leisure. The primary benefit of Sniffspot was that it enabled the Copleys to vet users and manage their visits. The platform facilitated scheduling and communication, which is critical for connecting with users to explain trail conditions, forest rules, or even to shut down usage for things like high fire-risk. The Copleys also could, and did, set parameters and rules. Any dogs were required to be leashed, vaccinated, and well-behaved, and owners had to clean up any droppings. But at \$10 per hour, the operation was no cash cow. Rather, it was simply meant to help defray the cost of property maintenance (and discourage no-shows). The “operation” went well. The Copleys offered the property on Sniffspot without incident or complaint from the neighbors (or anyone else) for months.

Roxbury, for its part, was aware of the forest management plan. In fact, after an on-site inspection, it ultimately endorsed it: On March 25, 2025, the Roxbury Inland Wetlands Commission concluded that a commission member, Russell Dirienzo, had visited the property and met with Charles.⁵ (By then, the Copleys had been on Sniffspot for a while.) Mr. Dirienzo concluded that it was “a true forestry project” and “ha[d] no concerns with the plan.” *Roxbury Inland Wetlands Comm’n*, Minutes of Mar. 25, 2025 meeting at 1. And as Mr. Dirienzo noted separately, he was “not even sure it’s constitutional to tell somebody they can[’t] let people hike on the land with a dog.” *E-mail from Russ Dirienzo* (Apr. 21, 2025, 18:04 ET).

Despite the commission’s signoff, and Mr. Dirienzo’s constitutional concerns that he expressed to Charles the day before, the Copleys soon received correspondence from Roxbury regarding the use of their trails. In a letter dated April 22, 2025, John Cody with Roxbury’s Land Use Department sent the Copleys a “Possible Notice,” which attached the Copleys’ listing on Sniffspot. And it stated simply that Mr. Cody had “received notice that [the Copleys] [we]re operating a ‘dog park.’” *Id.* at 1. And then, with no additional explanation whatsoever, the Possible Notice included a copied-and-pasted excerpt of Roxbury’s then-existing home enterprise regulations. *Id.* at 1–2. It concluded by “asking that this business cease operation unless the home enterprise requirements are met.” *Id.* at 2. Excluding the language referring to or quoting the home-enterprise laws, the letter is two sentences long.

To this day, the two-sentence Possible Notice is the closest thing to an explanation the Copleys have received. And it has been the genesis of a year-plus-long back-and-forth that has proven extremely frustrating for the Copleys and their ability to use their property. First, surmising from the Possible Notice that they might be eligible for a home-enterprise permit, the Copleys applied for one in May 2025.⁶ After extensive communication, both verbal and written, Mr. Cody responded to Charles via email, acknowledged the request was unprecedented and explained that he “reached out to the town attorney” and was told that “[t]o get this permit, it

⁵ Before the inspection, in an email, Mr. Dirienzo asked if he could bring his dog. Charles agreed. *See E-mail exchange between Charles Copley and Russ Dirienzo* (Mar. 21, 2025, 22:20 ET; 22:28 ET).

⁶ The Copleys have been repeatedly reassured, separately, that Roxbury’s hourly short-term rental provisions did not apply to their use. *See E-mail from First Selectman Patrick Roy* (June 3, 2025, 08:43 ET); *E-mail from Keith Rosenfeld* (Mar. 6, 2026, 12:25 ET).

needs a class III home enterprise” classification. *E-mail from John Cody* (May 20, 2025, 08:52 ET). Under today’s codes, that would involve “use of a portion of the dwelling” or be limited to the property on which the dwelling sits. Roxbury, Conn., Zoning Regulations (“Roxbury Code”) §7.D (2026). But the Copleys’ use does not involve the dwelling; nor has it ever. And again, as the Copleys were also separately advised, a general prerequisite for qualifying as a home-based business is that the “business” be on the same property as the home. *Id.* (defining a “home-based business” as “[a]n accessory use” that is “*clearly incidental and subordinate to the dwelling use*”). Because the Copleys’ trails traverse both the forty-acre parcel (with no home) and the ten-acre parcel (with home), they were informed before their hearing that they were ineligible. So they withdrew the permit. *See Roxbury Zoning Comm’n*, Minutes of Oct. 9, 2025 meeting at 1; *E-mail from Charles Copley* (Dec. 2, 2025, 21:05 ET).⁷

The Copleys pivoted. In December 2025, the Copleys initiated the process of seeking an ordinance change (coupled with a reapplication for the special permit on behalf of *both* properties), something John Cody explained was the Copleys’ “best opportunity” to find a way through the bureaucracy. *E-mail from John Cody* (Dec. 3, 2025, 16:35 ET). Although promptly filed, Keith Rosenfeld, a land use administrator hired by Roxbury the preceding August, advised Charles that “The ZC Agenda has been finalized for Thursday night. This item will be placed on the agenda next month. Have a great holiday season and we’ll discuss this after the new year.” *E-mail from Keith Rosenfeld* (Dec. 9, 2025, 10:22 ET).

No discussion or hearing was ever had. Early in 2026, Mr. Rosenfeld told Charles that a zoning overhaul was on the horizon and asked Charles to wait until spring to have his applications heard. *See E-mail from Keith Rosenfeld* (Dec. 9, 2025, 14:47 ET). And in response to Charles’ question about whether the Copleys could allow hikers in the meantime, Mr. Rosenfeld provided the quintessential bureaucratic response—he told Charles that he needed to get a different authorization, from a different department. The (quintessential bureaucratic) kicker: The authorization Charles supposedly needed was for the *same* wetlands exemption that Charles had *already received*, nearly a year earlier, when the commission signed off on the Copleys’ FMP. Growing increasingly frustrated with the process, and not wanting to allow the town to drag it out further, the Copleys withdrew their proposed amendment.

With the permit and zoning change no longer options, the Copleys reevaluated. They began to ask more directly, beginning in January 2026, what the town’s basis was for denying the use. *E-mails from Charles Copley* (Jan. 29, 2026, 08:19 ET; Feb. 10, 2026, 12:48 ET). Mr. Rosenfeld did not initially respond to those emails, instead passing them off to Zoning Commission Chair Chris Haggerty. *E-mail from Keith Rosenfeld* (Feb. 10, 2026, 12:51 ET) (“I forwarded your letter to ... Chris Haggerty. You should write to him for his response.”). After the buck was seemingly passed back, Mr. Rosenfeld did respond nearly two weeks later; but he did

⁷ Officials also verbally suggested that the Copleys could simply merge the parcels to alleviate this problem. While the Copleys briefly considered it, doing so presented other concerns. As Charles explained, the process itself would be prohibitively expensive. *See E-mail from Charles Copley* (Dec. 2, 2025, 21:05 ET). And there would be no guarantee that the permit would be granted post-consolidation. Even if it was, the merging of two parcels into one would eliminate the Copleys’ ability to build a home on the larger parcel in the future because Roxbury permits only one residential dwelling per lot. *Id.* (“Consolidation would also create a future problem, since I plan to build on the second parcel.”)

not address Charles’s questions. Instead, he invited Charles in “to meet to discuss [the] property and proposals.” *E-mail from Keith Rosenfeld* (Feb. 12, 2026, 13:15 ET). Charles expressed a desire to meet but asked for basic clarity on the town’s ordinances before such a meeting could take place—namely on the town’s short-term rental interpretation and the Copleys’ purported eligibility for a home-based business permit. *See E-mail from Charles Copley* (Feb. 19, 2026, 11:43 ET). Once again, Mr. Rosenfeld did not respond to those questions, instead seeking a verbal discussion. *E-mail from Keith Rosenfeld* (Feb. 20, 2026, 11:10 ET). But Charles asked, once again, for answers. Mr. Rosenfeld replied only that he would “look into that and get back to you shortly after.” *E-mail exchange between Charles Copley and Keith Rosenfeld*, Feb. 23, 2026 (09:07 ET; 09:50 ET).

Two weeks went by. This time, some information. *E-mail from Keith Rosenfeld* (Mar. 6, 2026, 11:21 ET). Mr. Rosenfeld confirmed once more that the town’s STR laws would not apply to the Copleys’ use and that a home-enterprise permit would be impossible given the nature of the activity. *Id.* But on the primary question of precisely what provision prohibited the Copleys’ desired use, still nothing. Mr. Rosenfeld simply explained that what the Copleys were proposing was “a NEW land use and ALL land uses are regulated.” *Id.* In a thoughtful response, Charles once again expressed his view that his use was *already* permitted, by right, given Roxbury’s ordinances pertaining to agricultural uses and accessories to agricultural uses. *E-mail from Charles Copley* (Mar. 13, 2026, 08:34 ET). The email ended with two very direct questions, which Roxbury officials had left begging for nearly a year:

- (1) Could you please clarify why the Town does not consider these activities to fall within agricultural use under the current zoning regulations given that I use these activities to operate, manage, conserve, improve and maintain my forest?; and
- (2) Could you please clarify why the Town does not consider these activities to fall within agricultural accessory use under the current zoning regulations, given that recreational trail use is well established as a customary and subordinate use of forest land?

Id. Mr. Rosenfeld’s response was short: “Charles. All good questions. I will start working on this next Tuesday when I am next at Town Hall.” *E-mail from Keith Rosenfeld* (Mar. 13, 2026, 09:11 ET).

A month went by. Once more, no answers. Just another invitation to “meet in person to discuss your proposed plans.” *E-mail from Keith Rosenfeld* (Apr. 14, 2026, 11:26 ET). And an offhanded comment that the Copleys’ request—though it has remained unchanged for over a year—constituted a proposal for a “new Use” that would require a “new application” that would be “reviewed on its own merits.” *Id.* But once again, there was no explanation as to how or why this application—which effectively would have been the Copleys’ *fourth*—would fare any better than the previous three.⁸

⁸ To recap, the Copleys sought two different types of home-based business permits and proposed a text amendment that would have more explicitly authorized their desired use. None were addressed on their merits.

Connecticut Law Obligates Roxbury to Interpret its Codes to Allow the Copleys' Desired Use of their Property for Private Hiking

The Copleys' use is allowed under Roxbury's existing codes. As a basic matter of interpretation, Roxbury's apparent prohibition is improper in at least two respects. First, Roxbury's apparent stance rests on prohibitory language that *does not exist*—a clear nonstarter under Connecticut law. And second, even if there is some ambiguity in the ordinances, Connecticut law is unequivocal—the ambiguity must be resolved in favor of the Copleys.

Look first to the Roxbury code. All agricultural uses—and all attendant “accessory uses”—are permitted by-right in every zone in Roxbury. Roxbury Code §§ 1.B.1, 1.C.1. And under the umbrella of that by-right use, Roxbury's ordinances identify “forestry” and the “operation, management, conservation [and] improvement” of a farm as permissible activities. *Id.* § 7.D. None of those terms are defined in the Roxbury code, but they are referenced repeatedly in the Copleys' Forest Management Plan—which Roxbury has signed off on as reflecting “a true forestry project.” *Roxbury Inland Wetlands Comm'n*, Minutes of Mar. 25, 2025 meeting at 1. That plan, adopted in accordance with the U.S. Government's Natural Resources Conservation Service's Conservation Practice Standards, identifies recreational uses like hunting, hiking, wildlife watching, snowshoeing, and cross-country skiing as consistent with the broader goals of “[e]xpand[ing] and improv[ing] the trail system for forest fire suppression, forest management, wildlife habitat projects, recreational use, and property maintenance.” *See* FMP at 2, 7, 12. So a fair read of Roxbury's ordinances (and other resources it has ratified, like the FMP) would suggest that hiking, skiing, and the like are activities consistent with forestry, conservation, and management—which are, in turn, permitted as by-right agricultural uses. Or at least as accessory to an agricultural use. Roxbury Code § 1.C.1. That should end the inquiry.

Roxbury has signaled that the Copleys' desired use, however, is somehow prohibited. In its Possible Notice of Violation, Roxbury bizarrely suggested the Copleys' allowance of people walking their dogs made the use a “dog park” that could potentially be permitted as a home-based business. *See* Possible Notice of Violation, Apr. 22, 2025 (“Possible Notice”). That is curious because Roxbury's codes do not define “dog park,” and its home-based business codes seemingly would not allow one anyway. *See* Roxbury Code § 7.D (defining a home-based business as one that uses “a portion of a dwelling by a resident occupant”). Nor is the Copleys' desired use even comparable to a dog park.⁹ It is a network of for-rent hiking trails on which dogs are permitted. In this way, the Copleys' desired use is a hybrid of already permissible activities. After all, home-based businesses are allowed. *Id.* And traditional parks are allowed. *Id.* § 1.B.5.a. This is an utterly sensible combination of the two.

⁹ Whereas the American Kennel Club describes a dog park as a “typically fenced” area where “their owners can enjoy a park-like setting and the chance to socialize with other canines and their owners,” the Copleys' property is precisely the opposite. It is an open space, with no other dogs, where private renters secure specific times during which they can be assured they will share the space with no one. *Compare* <https://images.akc.org/pdf/GLEG01.pdf>, *with* <https://www.sniffspot.com/listings/roxbury-ct/rucum-forest-farm-private-50-acre-haven-208139> (describing the forest as a “Private 50-Acre Haven” but noting “[t]his spot is taking a break”).

At best, there is a tension between the Copleys' interpretation—that hourly hiking is a permissible variation of forestry, conservation, and management—and Roxbury's presumed stance that anything not expressly permitted is prohibited. Any such tension must be resolved, under Connecticut law, in favor of the Copleys. For decades, in fact, Connecticut courts have held that zoning laws are in derogation of common-law property rights and cannot be construed beyond the fair import of their language or to include or exclude by implication that which is not clearly within their express terms. *See, e.g., Fisher v. Bd. of Zoning Appeals of Monroe*, 122 A.2d 729, 730 (Conn. 1956); *Melody v. Zoning Bd. of Appeals of Glastonbury*, 264 A.2d 572, 575 (Conn. 1969); *J & M Realty Co. v. Bd. of Zoning Appeals of Norwalk*, 286 A.2d 317, 319 (Conn. 1971); *Schwartz v. Plan. & Zoning Comm'n of Hamden*, 543 A.2d 1339, 1344 (Conn. 1988) (“We begin by noting that zoning regulations and ordinances, being in derogation of common law, must be strictly construed and not extended by implication.”). So when any ambiguities arise, they must be resolved in favor of the property owner. *Wihbey v. Zoning Bd. of Appeals of Pine Orchard Ass'n*, 323 A.3d 324 (Conn. 2024) (“[Z]oning regulations are in derogation of common law property rights,” and thus “‘doubtful language will be construed *against rather than in favor of a restriction.*’”); *see also Upjohn Co. v. Zoning Bd. of Appeals of N. Haven*, 616 A.2d 793, 795 (Conn. 1992) (“[I]n order to determine whether [a zoning] regulation was within the authority of the commission to enact, we do not search for a statutory prohibition against such an enactment; rather, we must search for statutory authority *for the enactment.*”); *Kobyluck Bros., LLC v. Plan. & Zoning Comm'n of Waterford*, 142 A.3d 1236, 1242 (Conn. App. Ct. 2016) (citing *Fillion v. Hannon*, 943 A.2d 528 (Conn. App. Ct. 2008)). In other words, Roxbury's informal (and in any case, incorrect) designation of the Copleys' use as a dog park was improper. The town may not invent categories that do not exist to prohibit a permissible use.

That Roxbury's ordinances are “permissive”—i.e., that they purport to prohibit anything not expressly allowed—does not help Roxbury. In *Wihbey*, the Connecticut Supreme Court rejected the argument that a town's permissive ordinances necessarily prohibited a use (short-term rentals) where there was no separate authorization for them under the town's codes. *Wihbey*, 323 A.3d at 331. In upholding the appeals court, the Connecticut Supreme Court agreed, explaining that where a given use is consistent with one that's already allowed, such that a prohibition would “deprive land-owners of [a] right,” the use must be allowed “in the absence of clear language imposing some restriction.” *Id.* (citation omitted) (finding short-term residential rentals were allowed in a zone authorizing residential traditional rentals of undefined duration).

So too here. The Copleys have a general right to invite others onto their property. And like the property owners in *Wihbey*, the Copleys have a right to use their property, including, of course, for hiking and walking dogs. Like the property owners in *Wihbey*, who had short-term rental aspirations, the Copleys want to invite others onto the property—effectively using an “Airbnb” for hikers and dog-walkers—to enjoy that right. And like the property owners in *Wihbey*, it shouldn't matter that there's not a discrete and separate use category for “private hiking.” The act of hiking is an inherent right of owning rural property. “Absent clear language” establishing its prohibition, the Copleys' use must be allowed.

**Ambiguities Aside, the Copleys Have a Constitutional Right to Invite Others onto Their Property
and to Put Their Property to an Economically Beneficial Use.**

The right to invite people onto your property is a quintessential right in the bundle of sticks. Indeed, Connecticut courts have long acknowledged at common law a bundle of “disparate” property rights: “the right to possess, the right to use, the right to exclude, the right to transfer.” *Gangemi v. Zoning Bd. of Appeals of Fairfield*, 763 A.2d 1011, 1015 (Conn. 2001) (citations omitted); see also *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 150 (2021) (“[W]e have stated that the right to exclude is universally held to be a fundamental element of the property right, and is one of the most essential sticks in the bundle of rights that are commonly characterized as property.” (cleaned up)).

The corollary of the “right to exclude” is the right to include. See, e.g., *Minnesota v. Carter*, 525 U.S. 83, 106 (1998) (Ginsburg, J., dissenting) (“The power to exclude implies the power to include.”); Mary I. Coombs, *Shared Privacy and the Fourth Amendment, or the Rights of Relationships*, 75 Cal. L. Rev. 1593, 1618 (1987) (“One reason we protect the legal right to exclude others is to empower the owner to choose to share his home or other property with his intimates.”); Thomas W. Merrill, *Property and the Right to Exclude*, 77 Neb. L. Rev. 730, 742–43 (1998) (“[T]he right to exclude must encompass ... the owner’s right to include others.”); Henry E. Smith, *Property as the Law of Things*, 125 Harv. L. Rev. 1691, 1710 (2012) (“The right to exclude does not require an owner ... to actually exclude others; the gatekeeper can decide to include.”); Daniel B. Kelly, *The Right to Include*, 63 Emory L.J. 857, 923 (2014) (“[M]any owners decide to use their property not only as a ‘wall’ to exclude others but also as a ‘gate’ to include their neighbors, friends and family, colleagues and customers, and even strangers who need help. If so, property is capable of promoting human sociability, not merely atomistic individualism.” (footnote omitted)). Thus, consistent with the Connecticut Supreme Court’s ruling in *Gangemi*, the rights to exclude, include, and lease have been recognized as essential rights of property ownership since the Founding. See *Nekrilov v. City of Jersey City*, 45 F.4th 662, 683–84 (3d Cir. 2022) (Bibas, J., concurring).

The same is true for the right to use property for an economically beneficial use. As the Connecticut Supreme Court explained, owners of residential property must be able to exercise “their bundle of economically productive rights constituting ownership.” *Gangemi*, 763 A.2d at 1016. To deny that right would be impermissible, as it would “serve[] no valid purpose, and violate[] the strong and deeply rooted public policy in favor of the free and unrestricted alienability of property.” *Id.* at 1018. To be sure, the Connecticut Supreme Court in *Gangemi* dealt with a rental ban. But the Court’s holding is clear—property owners have a *right* to monetize their property in a manner consistent with their zoning designation. That is all the Copleys wish to do here. And as explained below, Roxbury’s infringement on that right is unconstitutional.

If Roxbury's Codes Prohibit the Copleys' Use of their Property for Private Hiking, Such Prohibition Violates Equal Protection.

The Copleys' ability to use their property peacefully and productively is protected by the state and federal constitutions' equal protection clauses. As both the state and federal equal protection clauses require, the government must treat similarly situated individuals the same, absent a rational basis to treat them differently. Thus, state and federal courts routinely recognize that disparate treatment of businesses and professionals can result in an equal protection violation.¹⁰ And state and federal courts have also repeatedly struck down zoning laws for this reason.¹¹ That is especially true in Connecticut, where the state supreme court has indicated that it will apply greater scrutiny to certain state constitutional claims as compared to the federal courts. *State v. Geisler*, 610 A.2d 1225, 1231 (Conn. 1992), *overruled on other grounds by State v. Brocuglio*, 826 A.2d 145 (Conn. 2003); *City Recycling v. State*, 778 A.2d 77, 87 (Conn. 2001) (acknowledging that the so-called “*Geisler* analysis” is appropriate if trying to establish that “the state equal protection provision” has “an independent meaning from the equal protection provision in the federal constitution” (citations omitted)).

To the extent that Roxbury's codes actually prohibit private hiking and dog walking, such ordinances draw an irrational distinction that would violate equal protection under any standard, state or federal. It is arbitrary and irrational, for example, to authorize people to park at a private residence on agricultural land to shop from a farmstand, but to prohibit them from walking alone into a 50-acre woodland for an hour of contemplation or to walk a pet. And it is similarly nonsensical for the codes to allow both public parks and numerous land trusts in the same zone, where much of the same activity can take place, while disallowing it on the Copleys' property. *See*

¹⁰ *See, e.g., Merrifield v. Lockyer*, 547 F.3d 978, 990–92 (9th Cir. 2008) (holding that requiring license for some pest controllers but not others was irrational and violated equal protection); *Jackson v. Raffensperger*, 843 S.E.2d 576, 581 (Ga. 2020) (holding plaintiffs stated a plausible equal protection claim based on disparate treatment of some health professionals); *cf. Ladd v. Real Est. Comm'n*, 230 A.3d 1096, 1115 (Pa. 2020) (holding plaintiff “asserts a colorable argument that it is unreasonable, unduly oppressive and patently beyond the necessities of the case ... to exempt professions so closely analogous to her own”).

¹¹ Both federal and state courts across the country held that zoning laws violate equal protection when they arbitrarily treat similarly situated uses differently. *See, e.g., City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985) (holding zoning ordinance that prevented adult care facility in residential area violated equal protection as applied); *Gas 'N Shop, Inc. v. City of Kearney*, 539 N.W.2d 423 (Neb. 1995) (holding that zoning ordinance distinguishing on and off-sale liquor businesses and requiring separate and distinct premises for off-sale liquor was violative of the Equal Protection clause); *Bailey Inv. Co. v. Augusta-Richmond Cnty. Bd. of Zoning Appeals*, 345 S.E.2d 596 (Ga. 1986) (holding that a retroactivity provision that unfairly discriminated against certain properties and their ability to take advantage of a reduced setback requirement violated equal protection); *Hale v. City & Cnty. of Denver*, 411 P.2d 332 (Colo. 1966) (striking down zoning ordinance requiring every use to be operated within an enclosed structure, but exempting some specified businesses, as denying equal protection to operators of other businesses that displayed merchandise outside); *see also Andrews v. City of Mentor*, 11 F.4th 462, 478 (6th Cir. 2021) (finding plaintiffs stated an equal protection claim based on irrational disparate treatment: “While it is true that ... the City need not ‘produce evidence to sustain the rationality’ of its decision, ... it does not follow that the City can obtain judgment in its favor without so much as identifying a single rational explanation for its disparate treatment of similarly situated properties.”).

E-mail from Russ Dirienzo (Apr. 21, 2025, 18:04 ET) (noting that Roxbury’s apparent interpretation, that people cannot “hike on the land with a dog,” would mean that “the land trust would be banned right[?]”). Thus, whatever Roxbury’s aim in prohibiting the Copleys’ use while allowing similar ones, it “is so attenuated as to render the distinction arbitrary or irrational.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446–47 (1985).

In addition to what’s explicitly authorized, Roxbury also openly allows quite a few very similar uses to operate. Among other uses allowed by Roxbury—seemingly under the accessory use of “agritourism”—are farm shows, wildlife tracking classes, and various types of fruit picking. Either Roxbury has concluded that these uses are permissible under the codes (despite their similarity to the Copleys’ desired use) or it believes these uses are impermissible and yet has declined to apply its codes even-handedly and order them to stop. If the former, the ordinances draw an irrational distinction. If the latter, such intentional selectiveness in enforcement indicates an equal protection violation. *See Fillion v. Hannon*, 943 A.2d 528, 536 (Conn. 2008) (explaining that evidence of ignoring known violations of others while pursuing enforcement against a property owner is evidence of an equal protection violation); *Thomas v. City of West Haven*, 734 A.2d 535, 540–41 (Conn. 1999) (explaining an equal protection violation arises where a party is selectively treated with an “intent to inhibit or punish” the exercise of constitutional rights). In other words, Roxbury cannot single out the Copleys, or the Copleys’ use, by prohibiting them from allowing hikers while it simultaneously allows other property owners to do things that are similar but, in the eyes of the town, more desirable.

If Roxbury’s Codes Prohibit the Copleys’ Use of their Property for Private Hiking, Such Prohibition Violates the Connecticut Constitution’s Guarantee of Due Course of Law and the U.S. Constitution’s Guarantee of Substantive Due Process.

Roxbury’s stance regarding the Copleys’ use violates the Due Course of Law protections of the Connecticut Constitution. That is because the Connecticut Supreme Court has “consistently interpreted article first, § 10, to prohibit the legislature from abolishing a right that existed at common law prior to 1818.” *Boulanger v. Town of Old Lyme*, 16 A.3d 889, 905 (Conn. 2010) (citing *Kelley Prop. Dev., Inc. v. Town of Lebanon*, 627 A.2d 909, 918 (Conn. 1993)). As explained above, the right to include and to peacefully monetize one’s property is a historically rooted property right in the Copleys’ bundle of sticks. By impeding its exercise, Roxbury has “violated a quasi-constitutional right that existed at common law,” *id.* at 906, and therefore has violated the Copleys’ right to due course of law under the Connecticut Constitution. Roxbury’s disruption of the Copleys’ ability to exercise their established and historically rooted rights, moreover, further violates due course of law because prohibiting property owners from authorizing others to hike or walk a dog on their sprawling property does not promote a legitimate government interest—a black-letter substantive due process violation.¹²

¹² Both federal and state courts across the country have struck down zoning laws as unconstitutional when the evidence shows they lack a substantial—or even rational—relationship to a legitimate government interest. *See, e.g., Wheeler v. City of Pleasant Grove*, 664 F.2d 99, 100 (5th Cir. Unit B Dec. 1981) (finding application of ordinance invalidating permit unconstitutional because “[a] developer has its right to be free of arbitrary or irrational zoning standards”); *Doctor John’s, Inc. v. City of Sioux City*, 438 F. Supp. 2d 1005, 1052–53 (Iowa 2006) (holding

The analysis under the federal constitution is different, but it would end the same way. As the federal courts have recognized, “[i]n zoning dispute cases, the principle of substantive due process assures property owners of the right to be free from arbitrary or irrational zoning actions.” *Brady v. Town of Colchester*, 863 F.2d 205, 215 (2d Cir. 1988) (citing cases). Accordingly, “‘when a landowner’s constitutional rights are infringed by local zoning actions, [the courts’] duty to protect the constitutional interest is clear.” *Id.* (citation omitted). Where a regulator has “no authority under [local] law to” deny a desired use, “there [is] no ‘rational basis’ for [such] actions, and ... as a result, the denial violates an owner’s ‘rights to substantive due process.’” *Id.* (citing *Shelton v. City of College Station*, 780 F.2d 475, 484 (5th Cir. 1986) (en banc)). As discussed extensively above, there is no local-law authority supporting Roxbury’s stance. Surely if one existed, Roxbury would have no doubt revealed it by now. And even if such authority did exist, its exercise would not further any legitimate health or safety interest—the baseline requirement for satisfying rational basis scrutiny. Again, if such an interest existed, Roxbury would have identified it by now. Thus, Roxbury has violated the Copleys’ right to substantive due process, under any understanding of the right itself.¹³

Conclusion

A fair reading of Roxbury’s ordinances demonstrates that the Copleys’ intended use of their property for paid hiking and dog walking is permitted. And even if there is ambiguity, ordinances must be interpreted in favor of the Copleys’ property rights. Otherwise, Roxbury’s prohibition of the Copleys’ use of their property violates equal protection, due course of law, and due process.

moratorium on new adult entertainment businesses was unconstitutional because it was not rationally related to legitimate government interest); *Burstyn v. City of Miami Beach*, 663 F. Supp. 528, 537 (S.D. Fla. 1987) (holding zoning ordinances regulating “adult congregate living facilities” unconstitutional because they were not rationally related to stated goals); *Bailey Inv. Co. v. Augusta-Richmond Cnty. Bd. of Zoning Appeals*, 345 S.E.2d 596, 597 (Ga. 1986) (finding classification in zoning ordinance to be unconstitutionally “arbitrary”); *Metro. Bd. of Zoning Appeals v. Gateway Corp.*, 268 N.E.2d 736, 742 (Ind. 1971) (upholding lower court’s conclusion that zoning ordinance that prevented owner from using his land for any reasonable purpose was unconstitutional).

¹³ Even under a doctrinal framework that is arguably less favorable for property owners, the Copleys will still win. For example, because the right implicated by the Copleys’ use is historically recognized and they would otherwise exercise it, any requisite claim of “entitlement” is present. *See Carr v. Town of Bridgewater*, 616 A.2d 257, 261 (Conn. 1992). Nor is there any discretionary mechanism, like a permit or conditional use application, that Roxbury can identify to suggest a lack of such entitlement. *Id.* at 261; *see also Walz v. Town of Smithtown*, 46 F.3d 162, 168 (2d Cir. 1995). As such, the Copleys can satisfy the Second Circuit’s apparent threshold inquiry, making Roxbury’s silent prohibition subject to substantive due process scrutiny. That is, if that threshold showing is even necessary. *See RRI Realty Corp. v. Inc. Vill. of Southampton*, 870 F.2d 911, 917–18 (2d Cir. 1989) (noting that it “is not readily apparent” why the Second Circuit has borrowed a *procedural* due process framework to adjudge substantive due process claims, but applying that analysis because earlier cases have “committed th[e] Circuit to” it); *Red Maple Props. v. Zoning Comm’n of Brookfield*, 610 A.2d 1233, 1241–42 & nn.6–7 (Conn. 1992) (noting the “disparate analytical treatment of the issue” in the federal circuits and questioning “whether it is appropriate to adhere to” the Second Circuit’s side of the split); *Walz*, 46 F.3d at 169.

Consistent with this view, the Copleys intend to resume their previous lawful use—once again offering their property for hiking and dog walking—on October 1, 2026.

As we see it, Roxbury has three options.

First, if Roxbury disagrees with the Copleys' interpretation of the law and insists on continuing to prohibit the Copleys from using their property, we ask that you advise us accordingly **no later than September 30, 2026**. Such correspondence should be via letter or email, and should clearly identify *all* of the legal bases on which the town's position rests. As you've probably deduced, selecting this option will likely lead to litigation, including, if necessary, appellate review to the Connecticut or U.S. Supreme Court.

Second, if Roxbury disagrees with the Copleys' interpretation but, in the spirit of avoiding needless litigation, would like to reach a collaborative resolution, the town can amend its zoning codes to more explicitly allow harmless uses like private hiking and dog walking. Again, IJ has vast experience in assisting localities with crafting zoning ordinances that strike the right balance between property rights and government's legitimate role in protecting health and safety. We would be happy to work with Roxbury toward a similar end here.

Third, Roxbury can simply do nothing and allow the Copleys to use their property. Such a path would resolve the issue without the town having to mount an expensive (and very public) defense against a popular and utterly harmless endeavor or amend its zoning codes.

IJ is prepared to take whatever steps are necessary to defend and ultimately vindicate the Copleys' property rights. Please feel free to contact us at your convenience, by phone at 703-682-9320 or by email, to discuss the matter further.

Sincerely,



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* Applications for admission *pro hac vice* pending.
See *Bargil, Ari v. In Re: Pro Hac Vice Application*, judicial district of Litchfield,
Docket No. LLI- CV-26-6046208S; *Korevec, John C. v. In Re: Pro Hac Vice Application*, judicial
district of Litchfield, Docket No. LLI-CV-26-6046207S.



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