



INSTITUTE FOR JUSTICE
FLORIDA

September 15, 2026

**ZONING BOARD OF APPEALS
ROXBURY, CT**

CHARLES COPLEY AND)
ELIZABETH GRANT)
)
RE:)
)
SEPTEMBER 1, 2026)
LAND USE DECISION OF THE)
TOWN OF ROXBURY,)
CONNECTICUT)

Re: 87 Rucum Road, Roxbury, Connecticut 06783 – Appeal

Charles Copley and Elizabeth Grant’s Appeal from September 1, 2026 Land Use Decision

For more than a year, Charles Copley and Elizabeth Grant found themselves stuck in frustrating and unproductive talks with the Town of Roxbury when trying to open their 50-acre property’s trails to hikers and dog walkers on a limited basis. On multiple occasions, the Copleys reached out to the Town for guidance as to whether they needed approval to open their trails and, if so, how they could obtain that approval. Only after local news organizations got wind of the Copleys’ plight, however, did the Town finally give a clear, definitive answer: Roxbury’s Zoning Code prohibits paid private hiking. In an official letter, the Town, via its First Selectman, made clear that if the Copleys ever wanted to open their trails to hikers and dog walkers, they would need to convince Town officials to change the Zoning Code.

Roxbury’s decision to prohibit the Copleys from allowing hikers and dog walkers onto their property’s hiking trails on a limited basis fails in several respects. First and foremost, Roxbury’s Zoning Code *allows* the Copleys to welcome hikers and dog walkers onto their trails. More specifically, agricultural and agricultural accessory uses are permitted in every zone as of right, and the Code defines “agriculture” to include forestry and conservation activities like those proposed here. Further, even if Roxbury’s Zoning Code were ambiguous as to whether the Copleys could allow paid private hiking on their property, Connecticut courts require such ambiguity to be read in favor of property owners like the Copleys anyway.

Second, if Roxbury’s Zoning Code does prohibit the Copleys’ desired land use—and it does not—such prohibition as applied to the Copleys would unlawfully impair key property rights. One is the right to put your property to peaceful and productive economic use. Another is the right to invite others onto your property. Connecticut courts have long demanded zoning officials carefully balance key property rights with the need to promote health and safety and avoid genuine nuisances. Roxbury’s decision fails to achieve that balance.

Third, Roxbury’s decision to prohibit the Copleys from opening their trails to limited, low impact, private hiking violates the Copleys’ constitutional rights to equal protection. As a general principle of constitutional law, the zoning power simply does not authorize the government to treat a property owner differently from other, similarly situated property owners. Roxbury allows virtually *identical* activities throughout the Town—at both park and Land-Trust properties. Likewise, Roxbury allows other low impact, agricultural, or “agritourism” activities throughout the Town as well—including apple and berry picking, wildlife tracking, and animal demonstrations, among others. There is no rational basis for the Town to treat the Copleys differently from these similarly situated landowners.

Fourth, Roxbury’s decision violates the Copleys’ right to due course of law and due process. Connecticut courts have consistently found that article first, § 10 of the Connecticut Constitution prohibits the abolition of common law rights that existed before 1818, and the right to welcome others onto one’s property and peacefully monetize one’s property is historically rooted and thus protected. Likewise, substantive due process principles prevent local officials from conducting arbitrary or irrational zoning actions, enforcing rules that have no authority under local law, or banning completely harmless land uses, like those proposed here.

Roxbury’s September 1, 2026, determination that the Copleys may not open their forest trails to hikers and dog walkers on a limited basis misinterpreted the Town’s Zoning Code and violated the Copleys’ constitutional rights. The Copleys respectfully ask this Zoning Board of Appeals to overturn Roxbury’s unlawful decision and permit the Copleys to reopen their land to hikers and dog walkers.

Factual Background

Charles and Elizabeth Copley bought the property at 87 Rucum Road in 2022. Affidavit of Charles Copley (“Copley Aff.”) ¶ 2. It consists of two parcels—a forty-acre tract and an adjoining ten-acre tract. *Id.* 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. *Id.* Rucum Forest Farm, as they came to call it, was the perfect place. *Id.* The property is vast. *Id.* ¶ 3. One of the largest properties (public or private) in Roxbury, its 50 acres are roughly the size of 38 football fields. *Id.* And in addition to the wide-open space, there was a 900-square-foot fixer-upper cottage on the ten-acre parcel. *Id.* The Copleys had hoped the property, over time, would provide an idyllic upgrade from their Woodbury condo. *Id.*

Unfortunately, the forest property had been declining for decades by the time the Copleys bought it. *Id.* ¶ 4. 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, bittersweet, honeysuckle, multi-flora rose, and autumn olive. *See id.*; *see also* Andrew J. Bosse Forestry Service Forestry Management Plan, dated March 6, 2024 (“FMP”), Copley Aff., Ex. 1 at 4. As the Copleys quickly discovered, their forest—although seemingly green and verdant to the untrained eye—was in significant distress. *See* Copley Aff. ¶ 5.

To address the issues, the Copleys turned to a forest management plan. *Id.* The plan was crafted in conjunction with Andrew J. Bosse, a licensed Connecticut forester and natural resources manager. *Id.* ¶ 5; Ex. 1. 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 id.* at Ex. 1 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.* 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. *Id.* ¶ 6.

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. *See id.* ¶ 7. Indeed, an explicit goal of the FMP is to “[i]mprove [the] trail system for forest and wildlife management, property maintenance, and recreational use.” *Id.* at Ex. 1 at 8. In this way, a well-maintained trail system on the Copleys’ property would prove to be critical for more than just hiking. *Id.* ¶ 7. It promotes “forest and wildlife management” and “property maintenance.” *Id.* ¶ 7; Ex. 1 at 8. 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). *Id.* ¶ 7.

Beginning in 2024, Charles tackled the 50-acre woodland. *Id.* ¶ 8. 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. *Id.* 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. *Id.* But creating a trail network is an immense task. *Id.* And maintaining the trails can be just as difficult. *Id.* Low-growing invasives can quickly creep in. *Id.* For the Copleys, because they could only hike so much, the newly cut trails needed regular traffic to keep the overgrowth at bay. *Id.* What they needed, the Copleys realized, were more feet on the paths. *Id.*

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. *Id.* ¶ 9. The idea was not so out of the ordinary; there are, in fact, several other similar operations in Roxbury where invitees enter a farm for a fee—like apple picking. *See, e.g.,* Affidavit of Ari Bargil (“Bargil Aff.”) ¶¶ 5–10; Exs. 4–12. The primary benefit of using Sniffspot was that it enabled the Copleys to vet users and manage their visits. Copley Aff. ¶ 10. 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. *Id.* The Copleys also could, and did, set parameters and rules. *Id.* Any dogs were required to be leashed when entering or leaving the property, had to be vaccinated and well-behaved, and owners had to clean up any droppings.

See id. But at \$10 per hour, the operation was no cash cow. *See id.* Rather, it was simply meant to help defray the cost of property maintenance while facilitating foot traffic (and to discourage no-shows). *Id.* The “operation” went well. *Id.* The Copleys offered the property on Sniffspot without incident or complaint from the neighbors (or anyone else) for months. *Id.* That did not come as a surprise—again, Roxbury residents are accustomed to similar agricultural, or “agritourism,” uses. *See Bargil Aff.* ¶¶ 5–10; Exs. 4–12.

Roxbury, for its part, was aware of the forest management plan. Copley Aff. ¶ 11. In fact, after an on-site inspection, it ultimately endorsed it: On March 25, 2025, the Roxbury Inland Wetlands Commission concluded that the Copleys’ FMP was a true forestry project and endorsed the Copleys’ efforts after commission Chair Russell Dirienzo visited the property and met with Charles.¹ *Id.* (By then, the Copleys had been on Sniffspot for a while.) *Id.* 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, Copley Aff., Ex. 3 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), Copley Aff., Ex. 4 at 1.

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. *Letter from John Cody* (Apr. 22, 2025) (“Possible Notice”), Copley Aff., Ex. 5. 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. *Id.* at 1–2.

Unfortunately for the Copleys, the two-sentence Possible Notice began a year-plus-long back-and-forth that has proven extremely frustrating for the Copleys and their ability to use their property. *See id.* ¶ 13. First, surmising from the Possible Notice that they might be eligible for a home-enterprise permit, the Copleys applied for one in May 2025.² *Id.* ¶ 14. 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 needs a class III home enterprise” classification. *E-mail from John Cody* (May 20, 2025, 08:52 ET), *Id.*, Ex. 6 at 1. Under today’s codes, the comparable designation would involve “use of a portion of a dwelling” or be limited

¹ 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), Copley Aff., Ex. 2 at 1–2.

² 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), Copley Aff., Ex. 7 at 1; *E-mail from Keith Rosenfeld* (Mar. 6, 2026, 11:21 ET), *Id.*, Ex. 13 at 2; *Letter from Patrick Roy* (Sept. 1, 2026), Bargil Aff., Ex. 2 at 3, 5.

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. *Id.* ¶ 15. 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.* ¶ 16; *see also* Roxbury Code §7.D (2026) (defining a “home-based business” as “[a]n accessory use” that is “*clearly incidental and subordinate to the dwelling use*” (emphasis added)). 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.³ *Id.* ¶ 16. So they withdrew the permit application. *Id.* ¶ 18; *see also* *Roxbury Zoning Comm’n*, Minutes of Oct. 9, 2025 meeting, *id.*, Ex. 8 at 1.⁴

Then the Copleys tried something else. 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. *Id.* ¶ 19; *see also* Ex. 9 at 1. Although the applications were promptly filed, Keith Rosenfeld, a land use administrator hired by Roxbury the preceding August, advised Charles that “[t]he 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), *id.*, Ex. 10 at 3.

No discussion or hearing was ever had. *Id.* ¶ 20. Near the end of 2025, 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 id.*, Ex. 10 at 2. And in response to Charles’s 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. *See id.* at 1–2. 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. Charles explained as much, but Mr. Rosenfeld did not respond. *See id.* at 1. Growing increasingly frustrated with the process, and not wanting to allow the Town to drag it out further, the Copleys withdrew their proposed amendment. *Id.* ¶ 20.

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), *Id.*, Ex. 11 at 1. Mr. Rosenfeld did not initially respond to those emails, instead passing them off to

³ The Copleys learned of the issue concerning the fact their property spans two parcels when zoning officials flagged that any future application would need to notify abutters of both parcels (not just the parcel where their cottage is located). The Copleys had tried to determine the abutters by asking Keith Rosenfeld, a land use administrator in Roxbury, for a list of names—but only received the abutters to their ten-acre lot in response. Copley Aff. ¶ 16.

⁴ Officials also verbally suggested that the Copleys could simply merge the parcels to alleviate this problem. Copley Aff. ¶ 17. While the Copleys briefly considered it, doing so presented other concerns. *Id.* As Charles explained, the process itself would be prohibitively expensive. *Id.*; *see also* *E-mail from Charles Copley* (Dec. 2, 2025, 21:05 ET), *id.*, Ex. 9 at 2. And there would be no guarantee that the permit would be granted post-consolidation. *Id.* ¶ 17. 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.*, Ex. 9 at 2 (“Consolidation would also create a future problem, since I plan to build on the second parcel.”).

Zoning Commission Chair Chris Haggerty. *Id.* (“I forwarded your letter to . . . Chris Haggerty to obtain his advice. You should write to him for his response.”). After the buck was seemingly passed back, Mr. Rosenfeld responded; but he did not address Charles’s questions. *See E-mail from Keith Rosenfeld* (Feb. 12, 2026, 13:15 ET), *id.*, Ex. 12 at 2. Instead, he invited Charles in “to meet to discuss [the] property and proposals.” *Id.* 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 id.* at 1–2. Once again, Mr. Rosenfeld did not respond to those questions, instead seeking a verbal discussion. *Id.* at 1. But Charles asked, once again, for answers. *Id.* Mr. Rosenfeld replied only that he would “look into that and get back to you shortly after.” *Id.*

Two weeks went by. This time, some information. *E-mail from Keith Rosenfeld* (Mar. 6, 2026, 11:21 ET), *id.*, Ex. 13 at 2–3. Mr. Rosenfeld confirmed once more that the Town’s short-term-rental laws would not apply to the Copleys’ use and that a home-enterprise permit would be impossible given the nature of the activity. *Id.* at 2. 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. *Id.* at 1–2. The email ended with two very direct questions, which Roxbury officials had left unanswered 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?
- (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? (Cleaned up.)

Id. at 2. 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.” *Id.* at 1.

A month went by. Once more, no answers. Just another invitation to “meet in person to discuss your proposed plans.” *Id.* at 1. The email also included an offhanded comment that the Copleys’ request—though it has remained unchanged for over a year—now 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 stand a better chance of success than the previous three.⁵

Not hearing any additional response, the Copleys, through legal counsel, sent a detailed letter to the Town of Roxbury on August 27, 2026. *See Letter from Ari Bargil* (Aug. 27, 2026),

⁵ 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.

Bargil Aff., Ex. 1. In the letter, the Copleys described their frustrating history of unproductive and inconclusive communication with the Town. *Id.* They outlined why they believed Roxbury's Zoning Code permitted them to allow low impact paid private hiking on their forest trails. *Id.* Specifically, the Copleys explained how Roxbury's Zoning Code allowed agricultural and forestry activities as of right, that low impact hiking and dog walking were fairly included as agricultural and agricultural accessory uses under the Code, and that even if the application of the Code to the Copleys' use was ambiguous—it was not—controlling Connecticut law required interpreting the Code in the Copleys' favor. *Id.* The letter further explained that even had Roxbury's Code not permitted the Copleys' land use, such prohibition, as applied to the Copleys, violated their constitutional rights to equal protection, due course of law, and due process. *Id.*

On September 1, 2026, First Selectman Patrick Roy responded to the Copleys' August 27, 2026 letter. *Id.*, Ex. 2. In that letter, First Selectman Roy provided the first formal statement by a town official in which Roxbury clearly took a legal position on the Copleys' use. First Selectman Roy, for the first time ever, stated definitively and unequivocally that the Copleys were not permitted to allow paid private hiking under *any* provision of Roxbury's Zoning Code.⁶ *Id.* at 1–2. He also explicitly determined, again for the first time ever, that paid private hiking could not be considered an agricultural or agricultural accessory use either. *Id.* at 2. He claimed, again for the first time ever, that because Roxbury's Zoning Code relies on permissive language and does not explicitly and directly reference paid private hiking, the Copleys could not proceed with the use. *Id.* at 1. And in conclusion, First Selectman Roy stated, again for the first time ever, the Town's legal position—that the only path forward for the Copleys was to try to seek a legislative change to Roxbury's Zoning Code to explicitly allow paid private hiking and dog walking. *Id.* At 5. And he summarily rejected all of the Copleys' legal arguments and constitutional concerns. *Id.* at 4–5.

On September 3, 2026, the Copleys, through counsel, responded to First Selectman Roy by email noting that they were in receipt of First Selectman Roy's September 1, 2026 letter. *E-mail from Ari Bargil* (Sept. 3, 2026, 14:49 ET), *id.*, Ex. 3 at 1. The Copleys' counsel acknowledged that First Selectman Roy was, obviously, Roxbury's First Selectman. *Id.* They acknowledged that the Board of Selectmen hires Roxbury's Zoning Enforcement Officer and that First Selectman Roy cc'd the Zoning Enforcement Officer, John Cody, to his email transmitting the Town's September 1, 2026 decision letter. *Id.* They noted that they interpreted First Selectman Roy's September 1, 2026 decision letter as reflecting the formal position of the Town of Roxbury and Roxbury's Land Use Department and land use officials. *Id.* They asked First Selectman Roy and Mr. Cody (cc'd) to state by no later than close of business on September 8, 2026, whether First Selectman Roy's letter in any way did *not* reflect Roxbury and Mr. Cody's official position with respect to the Copleys and their property. *Id.* Neither First Selectman Roy nor Mr. Cody disclaimed their position taken in First Selectman Roy's letter. This appeal followed.

⁶ In that letter, he also declared that Roxbury's home-based business permitting process and short-term rental regulations could not provide an avenue for the Copleys to welcome hikers and dog walkers onto their property. To be clear, however, in the Copleys' August 27, 2026 letter, they did not rely on Roxbury's home-based business or short-term rental regulations as the basis for their view that they are permitted to allow paid private hiking on their property. *See Bargil Aff.*, Ex. 1.

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

The Copleys maintain that Roxbury's Zoning Code permits them to open their trails to limited, paid, private hiking. Roxbury's September 1, 2026 determination to the contrary is improper in at least two respects. First, Roxbury's 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 “[a]ccessory 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.” Copley Aff., Ex. 3 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 id.*, Ex. 1 at 1, 2, 7, 13. So a fair reading of Roxbury's ordinances (and other resources it has ratified, like the FMP) suggests 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. *See* Roxbury Code § 1.C.1. That should end the inquiry.

But in his September 1, 2026 letter, First Selectman Roy attempts to diminish his colleagues' prior endorsement of the Copleys' Forest Management Plan. Bargil Aff., Ex. 2 at 1–2. Of particular note, First Selectman Roy advises the Copleys of the Town's general (and unremarkable) stance that the Plan does not override Roxbury's zoning regulations. *Id.* at 2. Further, he argues that the absence of an explicit discussion of “commercial dog-walking and trail-access business[es]” in Roxbury's Zoning Code necessarily bans the Copleys from inviting others onto their property to hike or walk dogs for a nominal fee. *Id.* at 1. First Selectman Roy's letter misstates the Copleys' arguments and controlling law.

As a preliminary matter, the Copleys do not suggest that forest management plans nullify local zoning rules. Rather, because Roxbury's Zoning Code permits agricultural uses and agricultural accessory uses as a matter of right (*see* Roxbury Code §§ 1.B.1, 1.C.1), and because Roxbury's Zoning Code includes forestry and conservation within the definition of permissible agricultural activities (*see* Roxbury Code § 7.D), the Copleys' *Town-approved* FMP's inclusion of low impact recreation and trail maintenance in its forestry conservation directives is instructive as to the scope of permissible (but otherwise undefined) forestry conservation activities in the code. *See* Copley Aff., Ex. 1 at 2, 7, 13. And because these activities are consistent with those allowed on similarly situated land managed by the local Land Trust (*see infra* at 12–14), strong evidence exists supporting the Copleys' view that low impact hiking and

dog walking remain consistent with Roxbury's Zoning Code and longstanding local land use practices.

At best, there is a tension between the Copleys' and the Town's respective interpretations of the Code. But 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."); *see also Serv. Realty Corp. v. Plan. & 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" (citations omitted)). 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, 327 (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*." (alteration omitted) (emphasis added)); *Graff v. Zoning Bd. of Appeals of Killingworth*, 894 A.2d 285, 293–94 (Conn. 2006) (explaining that even when a permissive zoning code "lack[s] . . . explicit language" concerning a contested land use, "[w]hen more than one construction is possible, [the Court] adopt[s] the one that renders the enactment effective and workable and reject[s] any that might lead to unreasonable or bizarre results" (citation omitted)); *see also Kobyluck Bros., LLC v. Plan. & Zoning Comm'n of Waterford*, 142 A.3d 1236, 1242 (Conn. App. Ct. 2016) ("Critical to our resolution of this case, 'doubtful language will be construed against rather than in favor of a restriction.'") (quoting *Fillion v. Hannon*, 943 A.2d 528 (Conn. App. Ct. 2008)). Connecticut courts, in other words, do not permit local municipalities to invent categories of prohibited land uses not specified in their zoning regulations after the fact.

First Selectman Roy's September 1, 2026 decision letter fundamentally misunderstands the relevant law when it asserts that because Roxbury's zoning regulations "operate on a permissive basis[.]" any "[u]ses that are not expressly permitted in a particular zone are prohibited." Bargil Aff., Ex. 2 at 1. While the Connecticut Supreme Court has not prohibited towns from enacting permissive zoning regimes, it has declined to apply them in the manner Roxbury seeks here. For example, 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. 323 A.3d at 331. In upholding the appeals court, the Connecticut Supreme Court accepted its reasoning 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 evincing such an intent." *Id.* (citation omitted) (finding short-term residential rentals were allowed in a zone authorizing traditional residential rentals of undefined duration).

And *Wihbey* is not an outlier. In *Graff*, the Connecticut Supreme Court refused to read an absence of language concerning the permissibility of dogs being kept on private property in a zoning code as a prohibition. 894 A.2d at 293–94. The Court noted that a literal reading of the town’s permissive regulations would have produced the absurd result of prohibiting people from having dogs as pets. *Id.* at 294 (explaining that reading such an unstated prohibition into the regulations conflicted with “the rich tradition in the town, and the state as a whole, of citizens keeping dogs as pets”). Thus, while the Court agreed that the town could enforce reasonable restrictions on the keeping of dogs consistent with customary practice in that town (which the Court found to be a restriction on keeping more than four dogs on a given property at a time), it rejected a strict reading of permissive land use regulations that would have banned the normal, historically rooted practice of having dogs on private property. *Id.* Thus, contrary to Roxbury’s apparent position stated in its September 1, 2026 decision letter, permissive zoning regimes do not provide a categorical reprieve for Town leadership from its duty to analyze the applicability of zoning rules to new uses.

That logic governs here. The Copleys have a general right to invite others onto their property or to use it for nominal financial gain. Thus, 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* (and consistent with the Connecticut Supreme Court’s reasoning in *Graff*), 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. Indeed, were a Court to accept Roxbury’s argument that any land use not explicitly permitted in its code is necessarily banned, it would lead to the absurd result of banning hiking and dog walking *anywhere* in town—whether for pay or not—including on public land and Land-Trust properties. Compare Roxbury Code (not discussing hiking or dog walking), with *Graff*, 894 A.2d at 293–94 (rejecting a strict reading of a permissive zoning code “that might lead to unreasonable or bizarre results” (citations omitted)); *see also* Copley Aff., Ex. 4 at 1 (acknowledging that Roxbury’s apparent interpretation, that people cannot “hike on the land with a dog,” would mean that “[t]he land trust would be banned right[?]”). In sum, absent clear language establishing its prohibition, the Copleys’ use must be allowed.

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

Courts are clear—property owners like the Copleys both have the right to enjoy economic benefits from their land and to invite guests onto their property. First Selectman Roy’s September 1, 2026 letter, however, contends that the Town may prohibit low impact private hiking on the Copleys’ forest trails because the Copleys charge the hikers a nominal fee. The letter claims that the prohibition “is not about preventing property owners from enjoying their land or hosting private guests. Rather, it concerns whether a commercial, fee-based business offering public access for dog walking and hiking is permitted under the Town’s zoning regulations in a residential district.” Bargil Aff., Ex. 2 at 4. Roxbury’s position articulated in First Selectman Roy’s letter, however, conflicts with controlling law.

Connecticut courts have consistently upheld the right to use property for an economically beneficial use. Indeed, as the Connecticut Supreme Court has explained, owners of residential property must be able to exercise “their bundle of economically productive rights constituting ownership.” *See Gangemi v. Zoning Bd. of Appeals of Fairfield*, 763 A.2d 1011, 1016 (Conn. 2001). 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.

The same is true with respect to the right to invite people onto your property—a quintessential right in the bundle of sticks that encompass property ownership. 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*, 763 A.2d at 1015 (citation omitted). And the corollary of the “right to exclude” is the right to include. *See, e.g., Minnesota v. Carter*, 525 U.S. 83, 107 (1998) (Ginsburg, J., dissenting) (“The power to exclude implies the power to include.”); 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”) (footnote omitted). Thus, consistent with the Connecticut Supreme Court’s ruling in *Gangemi*, the Copleys have a right to invite others onto their land. As such, the Town of Roxbury’s September 1, 2026 decision letter, prohibiting the Copleys from inviting hikers and dog walkers onto their forest trails on a limited basis and for a nominal fee, violates the Copleys’ constitutional rights.

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 both the state and federal constitutions’ equal protection clauses. But in Roxbury’s September 1, 2026 decision letter, First Selectman Roy rejects the Copleys’ equal protection arguments. Bargil Aff., Ex. 2 at 4–5. First Selectman Roy contends that Connecticut law allows Roxbury to enforce its unwritten private hiking ban on the Copleys because its Zoning Code was created through the legislative process and because other permitted uses are materially different from the Copleys’ desired land use. *Id.* Roxbury’s September 1, 2026 decision letter misstates both the law and the Copleys’ equal protection arguments.

As both the state and federal equal protection clauses require (and the Copleys present separate arguments under each), 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.⁷ And state and federal courts have also repeatedly struck down zoning laws for this reason.⁸ That is especially true in Connecticut, where the state Supreme Court has indicated that it will apply greater scrutiny to certain state constitutional claims, under the Connecticut Constitution, as compared to the federal courts interpreting analogous federal claims. *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 Inc., v. State*, 778 A.2d 77, 87 (Conn. 2001) (acknowledging that the so-called “*Geisler* analysis” may require that “the state equal protection provision” have “an independent meaning from the equal protection provision in the federal constitution” (citations omitted)).

In the Town’s September 1, 2026 decision letter, First Selectman Roy contends that Roxbury’s Codes prohibit private hiking and dog walking. Bargil Aff., Ex. 2. To the extent First Selectman Roy’s interpretation is correct, however, such ordinances draw an irrational distinction that would violate equal protection under either standard, state or federal. It is nonsensical for the Codes to allow both public parks and numerous Land-Trust properties in the same zone, where much of the same activity can take place, while disallowing it on the Copleys’ property. *See Copley Aff.*, Ex. 4 at 1 (noting that Roxbury’s apparent interpretation, that people cannot “hike on the land with a dog,” would mean that “[t]he land trust would be banned right[?]”).

Indeed, vast stretches of land in Roxbury—including in residential zones—openly permit hiking and dog walking. Publicly available information indicates that over 17 percent of land in Roxbury is covered by publicly accessible, Land-Trust property that includes hiking trails. Affidavit of Seungmin Yoo (“Yoo Aff.”) ¶ 8(a). These Land-Trust properties can be found throughout town, including in Residential Zone C—the same zone where the Copleys’ property is located. *Id.* ¶ 9. Many Land-Trust properties are near or immediately abut traditional residential properties. *Id.* ¶ 10. In fact, one of these Land-Trust properties is just over a half-mile walk from the Copleys’ 87 Rucum Road cottage. *Id.* ¶ 11. Notably, Roxbury’s Land Trust actively promotes the hiking available on that specific neighboring property. *Natalie White Preserve*, Roxbury Land Trust, <https://roxburylandtrust.org/preserve/natalie-white-preserve/>

⁷ *See, e.g., Merrifield v. Lockyer*, 547 F.3d 978, 990–92 (9th Cir. 2008) (holding under federal constitution 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 under Georgia Constitution that plaintiffs stated a plausible equal protection claim based on disparate treatment of some health professionals).

⁸ Both federal and state courts across the country have 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 Cty. 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 & Cty. 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.” (citation omitted)).

(accessed Sept. 9, 2026). And of course, dog walkers are welcome to bring their canine companions on Land-Trust properties too. *Policies*, Roxbury Land Trust, <https://roxburylandtrust.org/policies/> (accessed Sept. 9, 2026).

Further, if people want to host guests or have an event on Land-Trust properties and charge a fee—just like the Copleys—the Land Trust has a process for allowing such paid uses as well. *Request Use*, Roxbury Land Trust, <https://roxburylandtrust.org/request-use/> (accessed Sept. 9, 2026). Thus, the only thing stopping the Copleys from allowing paid hiking on *their* property, it appears, is not Roxbury’s Zoning Code, but the fact the Copleys have not yet donated their land to the Land Trust or agreed to a conservation easement. Whatever Roxbury’s aim in prohibiting the Copleys’ use while allowing identical ones on Land-Trust properties, it “is so attenuated as to render the distinction arbitrary or irrational.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446 (1985).

Finally, 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. For just a few recent examples, Roxbury has allowed:

- Winter wildlife tracking classes at Twilight Dreams Farm, located just over a 6-mile drive from the Copleys’ property. The program included guided walks through the woods—albeit for twice the price of reserving the Copleys’ hiking trails through Sniffspot. *See Bargil Aff.*, Ex. 4.
- Self-service berry and apple picking at Maple Bank Farm, located less than 3.5 miles from the Copleys’ property. *Id.*, Exs. 5–8.
- Owl demonstrations at Land-Trust property, Mine Hill Preserve, located less than 6 miles from the Copleys’ property. Like the Copleys’ Sniffspot program, the owl demonstrations cost \$10. *Id.*, Ex. 9.⁹

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. It is arbitrary and irrational, for example, to authorize people to park at a private residence on agricultural land to shop from a farmstand or go on a guided wildlife tracking hike through the woods, but to prohibit them from walking alone into a 50-acre woodland for an hour of contemplation or to walk a pet. If the latter, such intentional selectiveness in enforcement indicates an equal protection violation. *See Fillion v. Hannon*, 943 A.2d 528, 536 (Conn. App. 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

⁹ Roxbury also has permitted a large-scale farm crawl and farm shows to proceed without issue. *See Bargil Aff.*, Exs. 10–12.

Copleys, or the Copleys' use, by prohibiting them from allowing hikers onto their property while it simultaneously allows other property owners to do things that are similar.

In his September 1, 2026 decision letter, First Selectman Roy ignores Roxbury's many public park and Land-Trust properties, as well as similar privately owned properties, when rejecting the Copleys' equal protection arguments. Bargil Aff., Ex. 2 at 4–5. Instead, he focuses on perceived differences between private hiking on the one hand and other uses, like short-term rentals, on the other. *Id.* at 4–5. First Selectman Roy claims that the Copleys' equal protection arguments therefore “compar[e] apples and oranges.” *Id.* at 5. But the Copleys are not comparing apples to oranges. They are comparing hiking and dog walking on *their* land to hiking and dog walking on *other* land in Roxbury—much of which is publicly owned or otherwise open to the public. The Town seems to believe that hiking and dog walking on the Copleys' property is prohibited, while hiking and dog walking on *other* properties, including their own, is not.¹⁰ Because the Town has been unable to identify any rational basis for the distinction, however, its selective enforcement of the unwritten ban on hiking and dog walking on the Copleys' property violates the Copleys' rights to equal protection under the law. And while the Copleys do point out other agritourism activities allowed in Roxbury (like apple picking and farm shows), the purpose of the comparison is to outline how these other similar uses create the same or higher impact on the surrounding land and yet are still permitted—further highlighting the lack of rational basis in the enforcement of paid private hiking restrictions on the Copleys. Because there remains no rational basis for restricting the Copleys from allowing paid private hiking on their property while allowing similar activities on neighboring properties, Roxbury's ban cannot stand.

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

As stated in the Copleys' August 27, 2026 letter to Roxbury, a ban on paid private hiking as applied to the Copleys' proposed use would violate the Connecticut Constitution's guarantee of due course of law and the U.S. Constitution's guarantee of substantive due process. *See* Bargil Aff., Ex. 1. After formally declaring the Copleys' use impermissible under Roxbury's Zoning Code, however, First Selectman Roy summarily rejected the Copleys' constitutional concerns—emphasizing that Roxbury's Zoning Code was created through an open legislative process. Bargil Aff., Ex. 2 at 4–5. But Connecticut courts have emphasized that historically protected rights cannot be abolished through legislation. And however enacted, zoning officials may not enforce arbitrary and irrational zoning rules, cannot enforce zoning rules that do not exist, and cannot impose restrictions on land uses that are utterly harmless.

First, Roxbury's refusal to allow the Copleys to welcome hikers onto their trails violates the Due Course of Law protections of the Connecticut Constitution. 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. Supp. Ct. 2010) (quoting *Kelley Prop. Dev., Inc. v. Town of Lebanon*, 627 A.2d 909,

¹⁰ Indeed, if the Copleys transferred their property to the local Land Trust, hiking and dog walking would seemingly be permitted.

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.¹¹

Second, the analysis under the federal constitution, while different, 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. 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. Thus, Roxbury has violated the Copleys' right to substantive due process, under any understanding of the right itself.¹²

¹¹ 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 (N.D. Iowa 2006) (holding 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 Cty. 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).

¹² Even under a federal doctrinal framework that is arguably less favorable for property owners, the Copleys still win. For example, because the Copleys' use is permitted under a fair interpretation of the codes 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) (applying federal law). Nor is there any discretionary mechanism, like a permit or conditional use application, that Roxbury can identify to suggest a lack of such entitlement. *See id.*; *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 1238, 1241–42 & nn.6–7 (Conn. 1992) (applying federal law but noting the "disparate analytical treatment of the issue" in the federal circuits and questions over "whether it is appropriate to adhere to" the Second Circuit's side of the split); *Walz*, 46 F.3d at 169.

Finally, and what is lost in First Selectman Roy’s letter—and indeed in Roxbury’s more than a year back-and-forth with the Copleys—is that the Copleys’ desired use is utterly harmless. *See* Bargil Aff., Ex. 2 (failing to make *any* mention of *any* harm purportedly caused by allowing private hiking and dog walking on the Copleys’ forest trails). Whether the Copleys allow an individual or family to hike on their trails, or whether the Copleys do so themselves, there is *no* negative impact on the surrounding community. If hikers choose to bring their dog, the dog must be up-to-date on its shots, owners must pick up any droppings, and the dogs must be leashed when they enter and exit the property. *See* Copley Aff. ¶ 10. The trails that hikers walk are far away from the Copleys’ neighbors’ homes. Multiple people have spoken out in support of the Copleys’ efforts to open their forest trails. *See Letters of Support*, Copley Aff., Exs. 14–16. And had there been any complaints, certainly First Selectman Roy would have mentioned them in his September 1, 2026 letter. Rather, First Selectman Roy’s September 1, 2026 decision letter fails to explain *any* “legal and useful purpose” in banning private hiking and dog walking on the Copleys’ property. *Compare* Bargil Aff., Ex. 2, *with* *Peiter v. Degenring*, 71 A.2d 87, 90 (Conn. 1949) (“It is the policy of the law not to uphold restrictions upon the free and unrestricted alienation of property unless they serve a legal and useful purpose.”). Without any rational basis for enforcing its unstated ban on paid private hiking, the ban violates the Copleys’ due process rights.

The Zoning Board of Appeals Has Jurisdiction to Review the Town of Roxbury’s September 1, 2026 Determination that Roxbury’s Zoning Code Prohibits the Copleys from Offering Paid Private Hiking on their Property

In Roxbury’s September 1, 2026 decision letter, First Selectman Roy mentioned that the Copleys had not previously appealed the April 22, 2025 “Possible Notice” or a separate March 6, 2026 email from Mr. Rosenfeld. Bargil Aff., Ex. 2 at 2, 4. Under Connecticut law, however, the Copleys *could not* have appealed to Roxbury’s ZBA concerning either of these communications. Neither communication provided definitive determinations as to the Copleys’ legal rights concerning their land. That did not happen until First Selectman Roy’s letter, which is what the Copleys now appeal.

1. Zoning Boards of Appeal Only Have Jurisdiction to Hear Final Land Use Determinations.

The Copleys could not appeal prior to September 1, 2026, because, under governing Connecticut law, letters and correspondence lacking definitive or final guidance cannot be appealed. *See, e.g., Holt v. Zoning Bd. of Appeals of Stonington*, 968 A.2d 946, 952–53 (Conn. App. 2009); *Piquet v. Town of Chester*, 49 A.3d 977, 984–985 (Conn. 2012).¹³ Under *Holt*, a letter is not appealable if it left the recipient “to speculate what legal effect or consequence, if any,” the letter threatened. 968 A.2d at 951. That is especially true where (like here) a final determination remained subject to subsequent events. *Id.* at 951–52. On the other hand, a landowner *must* appeal, as *Piquet* explains, upon receiving a communication that (unlike here) unequivocally tells the landowner that her present and ongoing land use violates the local zoning

¹³ *Holt* and *Piquet* supply the governing standards. Although *Holt* was not a Connecticut Supreme Court ruling, the Court endorsed its reasoning and framework in *Piquet* when distinguishing *Holt*’s facts from the facts before it in *Piquet*. *See Piquet*, 49 A.3d at 983–85 n.13.

regulations. *Piquet*, 49 A.3d at 982–85. Between *Piquet* and *Holt*, the courts have identified several factors to determine which side of the line—must-appeal or can’t-appeal—that a communication falls on. *Piquet*, 49 A.3d at 987 n.15. Each *Piquet/Holt* factor, mapped onto the facts here, shows that the Town’s “Possible Notice” was not appealable:

Factual Comparison to <i>Holt</i>, 968 A.2d at 952–55 and <i>Piquet</i>, 49 A.3d 977, 979 n.2¹⁴	Present in the “Possible Notice” of April 22, 2025
Did the letter imply a legal effect or consequence?	No
Was the government’s stance not dependent on any future events?	No
Was the zoning official’s involvement in the matter over?	No
Was there a definitive determination of violation?	No
Was there a timeline/deadline to comply with a directive?	No
Did the letter advise of a right to appeal the determination?	No

Indeed, as explained further with respect to each letter below, the Copleys were never properly advised of the legal status of their desired use such that there could have been anything for them to appeal.

2. The Copleys Could not Appeal the April 22, 2025 “Possible Notice of Violation” Because it Failed to Provide a Final and Definitive Determination.

Under Connecticut law, the Copleys could not have appealed the April 22, 2025 “Possible Notice.” Unlike in *Piquet*, where the letter from the zoning official definitively stated that the landowner was in violation of zoning rules, here the aptly titled “Possible Notice” did not make a determination one way or the other concerning whether the Copleys ran afoul of the Code. It seemingly told the Copleys to try to get a permit—suggesting the use might be legal. *Compare Piquet*, 49 A.3d at 988, with *Copley Aff.*, Ex. 5 at 2 (“We are asking that this business cease operation unless the home enterprise requirements are met.”). And the “Possible Notice” provided even *less* definitive guidance than the letter in *Holt*, which suggested future permissibility if additional requirements were met. *Holt*, 968 A.2d at 948. Here, the “Possible Notice” merely “ask[ed]” that the Copleys not operate a “dog park” (which they were not operating anyway) unless the nonexistent dog park complied with home enterprise rules. *Copley Aff.*, Ex. 5 at 1–2.

No reasonable person would confuse a consequence-free “ask” with a demand to cease and desist, on pain of punishment, as identified in *Piquet*. *See generally* 49 A.3d at 979 n.2 (describing a letter that explicitly described an activity as barred and provided a deadline to comply or appeal). Far from firmly laying down a prohibition, if the “Possible Notice” supplied any useful or actionable information at all, it was an implication that the Copleys should seek a permit—precisely what *Holt* relied on to find lack of appealability. And finally, unlike in *Piquet*, the two-sentence “Possible Notice” did not advise of any right (or need) to appeal. *Compare id.*,

¹⁴ Although the cease-and-desist letter described by the *Piquet* Court was subsequently withdrawn, and the substance of the withdrawal letter was the subject of the appeal, the earlier cease-and-desist order’s determination of impermissibility was largely incorporated into the withdrawal letter on appeal. *See generally Piquet*, 49 A.3d at 980 n.3, 982, 985–88.

with Copley Aff., Ex. 5 at 1–2 (listing categories of home businesses with no additional explanation or advisement of a right to appeal). Thus, the “Possible Notice” failed to satisfy *any* of the factors identified in *Piquet/Holt* for determining whether a communication may be a final, appealable order.

3. The Copleys Could Not Appeal Mr. Rosenfeld’s March 6, 2026, Email Because it Failed to Provide a Final Determination Concerning Whether the Copleys Could Open their Trails to Hikers and Dog Walkers.

Connecticut law also prohibited the Copleys from appealing anything in Mr. Rosenfeld’s email of March 6, 2026, or any subsequent emails. Mr. Rosenfeld’s email did not make any determination as to whether paid private hiking might be permissible under any aspects of Roxbury’s Zoning Code. Copley Aff., Ex. 13 at 2–3. In fact, not even Mr. Rosenfeld apparently believed his March 6, 2026 email provided a definitive, appealable “decision.” In his email on April 14, 2026, Mr. Rosenfeld effectively reiterated the unhelpful stance taken in the “Possible Notice,” explaining that the Copleys’ proposed land use “would require a new application, one which would be reviewed on its own merits.” Copley Aff., Ex. 13 at 1. Because Mr. Rosenfeld’s email neither made a “final determination of a particular issue” nor signaled that his involvement in the matter was over, the Copleys could not have appealed his preliminary guidance, which indicated only that a formal application might be needed. *Compare Holt*, 968 A.2d at 954, with Copley Aff., Ex. 13 at 1.

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. The Copleys respectfully request the Zoning Board of Appeals reverse Roxbury’s determination that the Copleys may not open their property to limited, low impact, paid private hiking and dog walking.

Sincerely,



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