

STATE OF NEW YORK: ADIRONDACK PARK AGENCY

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In the Matter of the Application to  
construct the Adirondack Club  
and Resort by:

Rulings on Applicant's Request for an  
Adjournment, and a Request by the Association for  
the Protection of the Adirondacks for an additional  
Legislative Hearing outside the Adirondack Park

Preserve Associates, LLC  
Applicant

APA Project No. 2005-100

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Proceedings

As provided by a Notice dated April 2, 2007, I convened a pre-hearing conference to consider an application filed by Preserve Associates, LLC (Applicant) to construct the proposed Adirondack Club and Resort (the project or proposal). At the pre-hearing conference, I requested a status report from Applicant's counsel.

Subsequently, in a letter dated June 4, 2007, Applicant's counsel, Thomas A. Ulasewicz, provided a status report as requested. Applicant's counsel distributed the June 4, 2007 status report to everyone on the preliminary service list, revised May 24, 2007.

Status Report

The June 4, 2007 status report is divided into three parts. In the first part, Mr. Ulasewicz referred to his letter dated March 27, 2007, and confirmed which elements from the original proposal that have been either eliminated or modified as mitigation. Specifically, Mr. Ulasewicz stated that the East Ridge subdivision has been eliminated from the proposal. In addition, the second on-site sewage treatment plant has been eliminated, and the waste water that would have been treated at it will be directed to the existing plant that serves District 23. Finally, the Orvis Shooting school will be moved "off-site;" the location of which is yet to be determined. According to the status report, Applicant may develop the Orvis Shooting school one or more years after obtaining the regulatory approvals for the remaining elements of the project.

With respect to the second part of the June 4, 2007 status report, Mr. Ulasewicz said that Applicant's consultants met with Staff from the Department of Environmental Conservation (DEC Staff) on May 16, 2007. Mr. Ulasewicz stated that his client's consultants need to provide additional information to DEC Staff. Mr. Ulasewicz estimated that it will take three to five months to provide this information.

With respect to the third part of the June 4, 2007 status report, Mr. Ulasewicz stated that his client will be providing Adirondack Park Agency Staff (APA Staff) with new site drawings that reflect the mitigation outlined in his March 27, 2007 letter.

Mr. Ulasewicz requested that further proceedings be adjourned for three to five months while Applicant's consultants provide additional information to APA Staff and DEC Staff. Mr. Ulasewicz suggested that he provide an additional status report by August 1, 2007. As explained

further below, Applicant's request for the adjournment is granted, and Applicant shall file a status report by August 1, 2007.

Response by APA Staff

In a letter dated June 8, 2007, Mitchell Goroski, counsel for APA Staff, responded to Applicant's June 4, 2007 status report. In general, APA Staff does not object to Applicant's request to adjourn the proceedings pending the receipt of additional information. Mr. Goroski provided additional comments, which are summarized below.

Mr. Goroski noted that the topic of a joint public hearing between the APA and DEC was discussed at the pre-hearing conference, and noted further that Mr. Ulasewicz withdrew Applicant's request for a joint public hearing in the June 4, 2007 status report. Although Applicant has withdrawn the request for a joint hearing, Mr. Goroski stated that questions about whether to hold a joint public hearing cannot be resolved now for the following reasons. First, various permit applications and approvals pending before DEC are incomplete. Second, the application pending before APA has yet to be revised to reflect the proposed mitigation. Third, the issues for adjudication in the APA hearing have not been finalized. Mr. Goroski argued that issues related to a joint public hearing may have to be revisited in the future.

In APA Staff's response to the June 4, 2007 status report, Mr. Goroski requested that the August 1, 2007 status report include information about the following topics. First, APA Staff would like information about the status of settlement negotiations between Applicant and the prospective parties.

I agree with APA Staff that it would be helpful to know whether negotiations are continuing. In addition, it would be helpful to know whether any final agreements have been reached, and what the terms and conditions of those final agreements are. Such agreements relate directly to who will be participating in the adjudicatory hearing, the scope of their participation, and the issues that will be adjudicated. Accordingly, Applicant's August 1, 2007 status report shall include information about the status of any ongoing negotiations and whether any final agreements have been reached. To the extent that any final agreements have been reached, the status report shall identify the effect that these agreements will have on any of the issues set for adjudication as identified in the Adirondack Park Agency's February 15, 2007 Order.

Second, APA Staff requested that the August 1, 2007 status report include information about the status of any required approvals pending before the New York State Department of Health (DOH). According to Mr. Goroski, Applicant would need to obtain approvals from DOH concerning water supply and subdivision approval, among others.

To date, DOH has not appeared in the proceedings concerning the captioned APA application. There was no discussion at the April 26, 2007 pre-hearing conference about what approvals, if any, are pending before DOH. Therefore, with the August 1, 2007 status report, Applicant shall identify what approvals it is seeking from DOH, and the status of those approvals.

Third, Mr. Goroski recommended that Applicant confer with APA Staff, and develop a “punch list” of the application materials that need to be modified, updated, or revised. This list would include, among other things, maps, plans, drawings, engineering reports, as well as economic and fiscal analyses. Mr. Goroski noted further that settlement agreements may require application materials to be modified or revised.

Based on the discussion at the pre-hearing conference, the application materials include a large number of plans and drawing, as well as lengthy reports that address a variety of topics. A punch list of modified, updated, or revised materials would help to organize the application materials and identify with precision those materials that agency staff and prospective parties will need to review when Applicant submits them. I encourage Applicant to consider APA Staff’s recommendation.

Fourth, APA Staff noted that postponing the development of the Orvis Shooting school until after Applicant obtains all required approvals for the other elements of Applicant’s proposal may raise an issue of segmentation. Applicant may respond to APA Staff’s concern in the August 1, 2007 status report. In addition, the participants to the pre-hearing conference will have an opportunity to respond to Applicant’s proposal concerning the Orvis Shooting school when the pre-hearing conference reconvenes.

Citing 9 NYCRR 580.12(c), APA Staff noted that proceedings must be adjourned to a date certain. Mr. Goroski recommended that further proceedings be adjourned to September 21, 2007, which is three months from the current control date of June 22, 2007.

Given the regulatory requirement at 9 NYCRR 580.12(c), I will adopt APA Staff’s recommendation and, accordingly, adjourn the proceedings from June 22, 2007 to September 21, 2007.

Finally, APA Staff requested an opportunity to respond to any motions made by Applicant that challenges requests for party status. APA Staff’s request is reasonable. All participants to the pre-hearing conference will have ample time to respond to motions made by Applicant as well as by any other participant.

Additional Legislative Hearings outside the Adirondack Park

At the April 18, 2007 legislative hearing, representatives from the Association for the Protection of the Adirondacks (the Association) requested that additional legislative hearing sessions be scheduled at a location outside the Adirondack Park to provide an additional opportunity to receive public comment about Applicant's proposal. At the April 26, 2007 pre-hearing conference, David H. Gibson, Executive Director of the Association, renewed this request. Those groups and individuals, who attended the April 26, 2007 pre-hearing conference were given the opportunity to comment about the Association's request.

As the basis for its request, the Association argued that the scope of the project is large and that the project is of statewide interest. To demonstrate the level of interest, Mr. Gibson stated that APA Staff received thousands of letters during the written comment period. Mr. Gibson recommended that additional legislative hearings should be held in Albany.

Mr. Goroski and members of the APA Staff explained at the pre-hearing conference that during the public comment period, APA Staff received more than 6,000 letters via fax concerning the project. At the pre-hearing conference, Mr. Goroski stated that APA Staff has filled three boxes with comment letters. At my request, APA Staff subsequently provided me with a copy of a letter dated March 13, 2007 from Charles M. Clusen, Senior Policy Analyst from the Natural Resources Defense Council (NRDC), as well as a few copies of the form letter sent via fax to APA by members of NRDC.

In general, the form letter, dated February 2007, from NRDC members expressed concern about the potential adverse impacts associated with the project. The letter requested that the APA require an adjudicatory hearing about the project before making any final determinations about it. Issues that must be addressed at the hearing should include the scale of the project, its potential effects to water quality, and the potential cumulative impacts to adjacent state forest preserve resources and local communities. According to the letter, the immense scale of the project would be inconsistent with the APA's mission. The letter concluded by stating that the APA should only promote sustainable and properly scaled projects in locations that preserve the Adirondack Park's natural character and resources.

In addition, APA Staff provided me with a copy of a letter dated April 2, 2007 from Mr. Gibson to Ross S. Whaley, Chair of the Adirondack Park Agency. In this letter, Mr. Gibson noted that the APA had decided to schedule additional public hearings, and that these hearings would be held in the Town of Tupper Lake. Mr. Gibson inquired whether the APA considered holding public hearings outside the Adirondack Park to provide an opportunity for members of the public to comment about the project.

NRDC supports the request for a legislative hearing outside the Adirondack Park. Daniel Plumley, who is the Director of Park Protection for the Association, and who appeared on behalf of NRDC at the April 26, 2007 pre-hearing conference, stated that NRDC has several thousand members in New York State, and that a number of them either own property in the Tupper Lake region or recreate in the region. Based on information that NRDC circulated to its membership, Mr. Plumley said that the membership reacted by sending copies of the letter described above to the APA during the public comment period. According to Mr. Plumley, most NRDC members could not attend the legislative hearings concerning the captioned matter because the hearings were held in Tupper Lake.

APA Staff neither supports nor opposes the Association's request. DEC Staff did not comment about the Association's request.

The Honorable Paul A. Maroun is a member of the Franklin County Legislature and represents the 6<sup>th</sup> District. Mr. Maroun appeared on behalf of the Franklin County Legislature, which opposes the Association's request for additional hearings outside the Adirondack Park. Mr. Maroun said that those who come to Tupper Lake for recreational purposes also had the opportunity to come to Tupper Lake to speak at the public hearings. Mr. Maroun argued that the potential effects on water, sewer, electricity and other topics would impact local taxpayers, who include residents of the Town and Village of Tupper Lake and Franklin County. Mr. Maroun argued that he visits other parts of the state and the country, but does not get involved in local issues when he visits these other locations. Mr. Maroun stated further that Staff from the participating State agencies are providing the necessary oversight for non-residents.

Don Dew, Jr. is the President of the Tupper Lake Chamber of Commerce, and appeared at the pre-hearing conference on behalf of the Chamber of Commerce. The Chamber of Commerce opposes the Association's request. Mr. Dew stated there have been several public hearings concerning the project, which have provided many opportunities for members of the public to voice their respective opinions. Given the number of public hearings, Mr. Dew argued that people had several opportunities to decide whether to come to Tupper Lake and speak at the public hearings concerning the project.

Frederick Monroe is the Executive Director of the Adirondack Park Local Government Review Board, and appeared at the pre-hearing conference on behalf of the Review Board. The Review Board opposes the Association's request.

Marc Gerstman appeared at the April 26, 2007 pre-hearing conference on behalf of the Adirondack Council and Little Simon Properties, Inc. The latter corporation is an adjacent property owner. On behalf of his clients, Mr. Gerstman argued that as many people as possible should have the opportunity to participate in these proceedings given the nature and location of the project. Mr. Gerstman observed that Applicant's proposal is the largest project ever proposed in the Adirondack Park, which is a resource of statewide concern. Mr. Gerstman argued that the

project goes to the heart of why the Adirondack Park and related forest preserve were established in the first instance.

The following adjacent, or nearby, property owners commented about the Association's request. Daniel McClelland opposes the request. According to Mr. McClelland, local residents would be affected by the project, and the hearings concerning the project should be held in Tupper Lake.

Phyllis Thompson supports the Association's request. Dr. Thompson stated that it is very important to examine all issues that may affect Tupper Lake thoroughly. Some issues relate to daily life such as sewer, water treatment and taxes. Dr. Thompson stated further that the residents of Tupper Lake have an obligation to protect the area given its special qualities, and that the project would have many ramifications across the Adirondack Park and would establish many precedents. Dr. Thompson noted that the extensive review of the application materials by a variety of people will assure a well-examined, and ultimately a better project.

Carol Richer stated that she agreed with Dr. Thompson's remarks. Ms. Richer said that the project could change the whole character of the area. Ms. Richer observed that Tupper Lake and the area around it are uncluttered, and people come to Tupper Lake because they appreciate that quality. Ms. Richer stated that, as currently proposed, the project would result in the current viewscapes becoming cluttered up with houses.

Applicant opposes the Association's request, and argued that members of the public have already had numerous opportunities to comment about the proposal.

Upon review of the arguments made at the April 26, 2007 pre-hearing conference, I deny the Association's request to convene additional legislative hearings outside the Adirondack Park. In January 2007, Richard Lefebvre, the former Executive Director of the Adirondack Park Agency, presided over legislative hearings. Subsequently, additional legislative hearings were held on April 18, 2007. The notices which scheduled these legislative hearings also provided an opportunity for members of the public to file written comments. The record reflects that several thousand people took advantage of the opportunity to file written comments. Because oral statements made at legislative hearing sessions are weighed equally with written comments, additional legislative hearings, whether held inside or outside the Adirondack Park, are not necessary.

I note, however, that Applicant is in the process of providing supplemental information in response to inquiries made by Staff from state agencies, and that Applicant will be filing revised and updated application materials, which reflect proposed mitigation. At the pre-hearing conference, Mr. Sengenberger from APA Staff explained that he and other APA Staff members would be reviewing the forthcoming information and would need to determine whether this information would result in a material change to the project. If there is a material change in the

project, Mr. Sengenberger said that APA Staff may need to reconsider the original completeness determination. (Conference Transcript pp. 107-109.) If APA Staff reconsiders the completeness determination, it may be appropriate to schedule additional legislative hearings to provide members of the public with the opportunity to comment about the material change, or changes, to the project. If these circumstances should present themselves, the Association may renew its request.

### E-mail Addresses

On June 11, 2007, Dr. Thompson telephoned me and offered to collect e-mail addresses from individuals who own property adjacent to the proposal or within 500 feet of the proposal (*see* 9 NYCRR 580.5[b], which refers to 580.4[b][3]). The purpose of collecting the e-mail addresses is to facilitate the exchange of information related to this matter.

During our telephone conversation, I encouraged Dr. Thompson in this effort. I explained, however, that for reasons of personal privacy, some individuals may hesitate to provide an e-mail address because this information would be on the preliminary service list and become available to everyone on the preliminary service list.

If the participants who have requested party status would like to provide me with an e-mail address, I will add it to the preliminary service list, and will circulate information among the pre-hearing conference participants via e-mail. In addition, I will continue to distribute all materials via regular mail to assure that all participants receive written materials.

### Summary of Rulings

The following is a summary of the rulings made in this memorandum. The first two relate to Applicant's status report. The third relates to the request by the Association for the Protection of the Adirondacks for additional legislative hearings outside the Adirondack Park.

1. Applicant's request for an adjournment of the pre-hearing conference is granted. Consistent with the requirement at 9 NYCRR 580.12(c), the control date will be adjourned from June 22, 2007 to September 21, 2007. The pre-hearing conference will **NOT** re-convene on June 22, 2007.
2. Applicant will file a status report by August 1, 2007. The August 1, 2007 status report shall include the following:
  - A. An update about the permit applications and other potential approvals pending before the New York State Department of Environmental Conservation;

- B. An update about the permit applications and other potential approvals pending before the New York State Department of Health;
- C. An update about the application materials that need to be modified, updated, or revised related to the proposed mitigation described in the June 4, 2007 status report, and an estimate of when Applicant will provide these materials to the reviewing governmental agencies; and
- D. An update about any ongoing negotiations between Applicant and the prospective parties, and whether any final agreements have been reached. To the extent that any final agreements have been reached, the status report shall identify the effect that these agreements would have on any of the issues set for adjudication as identified in the Adirondack Park Agency's February 15, 2007 Order.

The status report is due by close of business on August 1, 2007. Applicant shall distribute copies of the status report to everyone on the preliminary service list.

3. For the reasons provided above, the request by the Association for the Protection of the Adirondacks for additional legislative hearings outside the Adirondack Park is denied.

\_\_\_\_\_/s/\_\_\_\_\_  
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Dated: Albany, New York  
June 14, 2007

To: Preliminary Service List, revised May 24, 2007

**NOTE:** Because the preliminary service list has not been revised since May 24, 2007, it is not included with this document. Copies of this ruling have been sent by regular mail to everyone listed on the preliminary service list, revised May 24, 2007. In addition, I have faxed and e-mailed a copy of this ruling to those who have provided me with that contact information.