

STATE OF NEW YORK: ADIRONDACK PARK AGENCY

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

Memorandum

Preserve Associates, LLC
Applicant.

APA Project No. 2005-100

December 5, 2007

I. Comments Received

I have received comments concerning the November 6, 2007 summary of the conference held on October 24, 2007 from the following groups and individuals.

Applicant's Counsel, Thomas A. Ulasewicz, Esq. - Memorandum dated November 28, 2007.

Adirondack Park Agency Staff, Mitchell Goroski, Esq. - Letter dated November 28, 2007.

Department of Environmental Conservation Staff, Christopher A. Lacombe, Esq. - Letter dated November 28, 2007.

Adirondack Park Local Government Review Board, Frederick H. Monroe - E-mail message dated November 26, 2007 concerning availability for the January 2008 conference.

Adirondack Council and Little Simon Properties, Inc., Marc S. Gerstman, Esq. - E-mail message dated November 8, 2007 concerning availability for January 2008 conference and letter dated November 27, 2007.

The Association for the Protection of the Adirondacks, John W. Caffry, Esq. - Cover letter dated November 28, 2007 with attached comments.

Natural Resources Defense Council, Charles M. Clusen - Letter dated November 28, 2007.

Residents' Committee to Protect the Adirondacks, John Collins - E-mail messages dated November 13 and 27, 2007 concerning availability for January 2008 conference and comments, respectively.

J. Kyle Ackerman - E-mail message dated November 28, 2007 with attached letter dated November 28, 2007.

B. G. Read - Letter received on November 28, 2007.

John Delehanty - Cover letter dated November 28, 2007 and attachments concerning Charlcie Delehanty's request for party status.

Alex Haddad - Letter dated November 28, 2007.

Jerrier and Carol Haddad - E-mail message dated November 28, 2007.

Joyce Boden Hundley - Letter dated November 21, 2007 concerning Ms. Hundley's request for party status. With an e-mail dated December 3, 2007, Ms. Hundley attached a copy of her letter dated April 18, 2007.

Kevin E. Jones, Esq. - E-mail message dated November 8, 2007 concerning availability for January 2008 conference.

M. Dan McClelland - Letter dated November 15, 2007 concerning his request for party status.

Phyllis B. Thompson - E-mail message dated November 12, 2007 concerning availability for January 2008 conference, and memorandum dated November 26, 2007.

II. Participants

During the October 24, 2007 conference, the attendees discussed how to determine the participants to the mediation. I asked Applicant and APA Staff to review the requests for party status. I explained that those groups and individual who requested party status are named on the preliminary service list. Applicant's counsel responded to the request with a memorandum dated November 7, 2007. APA Staff responded to my request in the November 28, 2007 letter.

A. Applicant's November 7, 2007 Memorandum

In its November 7, 2007 memorandum, Applicant acknowledges that the following are parties-of-right pursuant to 9 NYCRR 580.4(b)(3 and 4): (1) Staff from the New York State Department of Environmental Conservation; (2) Village of Tupper Lake; (3) Town of Tupper Lake; (4) Town of Tupper Lake Planning Board; (5) Adirondack Park Local Government Review Board; (6) Richard Abell;

(7) J. Kyle Ackerman; (8) John D. And Susan M. Delehanty; (9) Don Dew Enterprises, LLC; (10) Jerrier A. and Carol J. Haddad; (11) Vincent E. Jay; (12) Robert and Fortunata Plumley; and (13) Phyllis B. Thompson.

In addition, Applicant does not object to the intervention of the following groups and individuals based on their respective petitions: (1) the Tupper Lake Chamber of Commerce; (2) the Adirondack Council; (3) the Association for the Protection of the Adirondacks; (4) the Natural Resources Defense Council; and (5) the Residents' Committee to Protect the Adirondacks.¹

In its November 7, 2007 memorandum, Applicant requests clarification and, in some cases, verification that the following individuals are either adjoining landowners or landowners within 500 feet of any border of the property: (1) Little Simon Properties, Inc.; (2) Scott and Mary Chartier; (3) Mary H. DeGarmo; (4) Charlcie A. Delehanty; (5) John and Patricia Gillis; (6) Alex Haddad; (7) Joyce Boden Hundley; (8) Kevin E. Jones; (9) Lawrence F. Orton; (10) Patrick and Gloria Orton; (11) Susan H. Potterton; and (12) Verne N. and Madeline Rockcastle.

Applicant asserts that the following individuals are not parties-of-right and have not filed an adequate petition to intervene. They are: (1) Bob and Leslie Harrison; (2) Carol I. Richer; and (3) Dennis I. and Brenda S. Zicha.

Applicant did not receive a petition from Members of the Franklin County Legislature Paul A. Maroun and Timothy Burpoe.

Finally, Applicant states that it has not received a petition or other document from the following individuals, which either states that the person is a party-of-right, or requests party status. They are: (1) William Crouse; (2) Vincent Giuseffi; (3) Peter Littlefield and Elaine M. Yabroudy; (4) James R. and Judy McCartney; (5) M. Dan McClelland; (6) Marilyn Oestreich; (7) B.G. Read; (8) Robert Ringrose; and (9) Paul Vidich.

B. APA Staff's November 28, 2007 Letter

In the November 28, 2007 letter, APA staff notes that the April 2, 2007 notice of public hearing stated that parties-of-

¹ Applicant requests clarification of who will represent the Residents' Committee.

right could either send in a letter of intention to become a party, or appear at the pre-hearing conference and state their intention. APA staff notes further that some statutory parties appeared at the pre-hearing conference on April 26, 2007 to state their intention to become parties without submitting a letter.

APA staff does not object to the Town of Tupper Lake as a statutory party. Staff inquires, however, whether the Town could identify a single spokesperson for the Town and the Planning Board.

In addition, Staff requests clarification that the following individuals are either adjoining landowners or landowner within 500 feet of any border of the property: (1) William Crouse; (2) Scott and Mary Chartier; (3) Mary H. DeGarmo; (4) Charlcie A. Delehanty; (5) Alex Haddad; (6) Jerrier A. and Carol J. Haddad; (7) Joyce Boden Hundley; (8) Kevin E. Jones; (9) Lawrence F. Orton; (10) Patrick and Gloria Orton; (11) Marilyn Oestreich; (12) Susan H. Potterton; (12) B.G. Read; (13) Carol Richer; (14) Verne N. and Madeline Rockcastle; (15) Paul Vidich; and (16) Dennis and Brenda Zicha.

Upon review of its records, APA staff does not have any correspondence from the following individuals: (1) Vincent Giuseffi; (2) James R. and Judy McCartney; and (3) Robert Ringrose. APA staff requests a copy of Mr. Harrison's April 18, 2007 letter. According to staff, it appears that Mr. Harrison is neither an adjoining property owner nor a landowner within 500 feet of the of any border of the property. If Mr. Harrison is not a part-of-right, then APA staff recommends that Mr. Harrison file a petition.

C. Discussion

As noted above, Applicant has no objection to many of the groups and individuals identified on preliminary service list.

Applicant and APA Staff have requested clarification from generally the same group of individuals who have stated that they are parties-of-right because they are either adjoining landowners or landowners within 500 feet of any border of the property. I recommend that the landowners identified in Applicant's November 7, 2007 memorandum and APA staff's November 28, 2007 provide copies of the clarifying information to counsel for Applicant and APA staff, as well as a copy to me for the hearing file. This information should be sent as soon as possible, but no later than December 21, 2007. I note that information sent by B.G. Read;

John Delehanty on behalf of his mother, Charlcie Delehanty; Mr. Haddad; Ms. Hundley; and Mr. McClelland may be responsive to the requests for clarification and verification made by Applicant and APA staff.

Upon review of the transcript (pp. 14-19), the following individuals appeared at the April 27, 2007 pre-hearing conference, consistent with the April 2, 2007 hearing notice, and identified themselves as parties-of-right because they are either adjoining landowners or landowners within 500 feet of any border of the property: (1) Elaine Yabroudy and Peter Littlefield [adjacent]; (2) William Crouse [within 500 feet]; (3) Todd Friend of behalf of the Birchery Camp [adjacent]; and (4) Robert W. Ringrose [within 500 feet]. It would be helpful for those who have not already done so to provide information about their lot number(s) as soon as possible, but no later than December 21, 2007.

Enclosed are copies of the correspondence from those requesting party status that I received, but either Applicant or APA staff did not. Copies of correspondence from the following are enclosed: (1) Guy H. Smith, Chairman, Franklin County Legislature - letter dated April 25, 2007; (2) Vincent Giuseffi - letter dated April 17, 2007; (3) Bob and Leslie Harrison - undated letter faxed on April 18, 2007; (4) Marilyn Oestreich - letter dated July 17, 2007; (5) B.G. Read - letters dated April 23, 2007 and October 19, 2007; (6) Paul Vidich - letter dated July 16, 2007; and (7) Elaine Yabroudy - letter dated April 18, 2007.

I have no correspondence from: (1) James R. and Judy McCartney and (2) Vincent E. Jay. With respect to the McCartneys, James McCartney's name and address appear on the list of landowners within 500 feet of the proposal. APA staff provided me with a copy of this list, and the page from the list is enclosed. Mr. McCartney's name and address appear in the third column from the left, and the fifth name down from the top. Although the transcript from the April 26, 2007 pre-hearing conference does not reflect this, I marked his name on the list provided by APA staff for inclusion on the preliminary service list. I request that the McCartneys provide information about their lot number(s) as soon as possible, but no later than December 21, 2007.

Mr. Jay's name appears on the list of adjacent property owners provided to me by APA staff. I have added Mr. Jay's name

and address to the enclosed Preliminary Service List, revised December 5, 2007.

Finally, enclosed is a copy of a letter dated November 19, 2007 from Susan Allen requesting party status. According to her letter, Ms. Allen publishes the Adirondack Park Agency Reporter.

Before the attendees comment about Ms. Allen's request for party status, I need the following clarification from her. It appears that Ms. Allen would like to advise her subscribers about the negotiations, which would compromise the confidentiality of the mediation process. In addition, Ms. Allen states that the APA Board does not have authority to enter into mediation.

With respect to the mediation process, Ms. Allen shall advise how confidentiality of the negotiations would be preserved if Ms. Allen participates in the mediation. Ms. Allen shall also identify, with specific reference to applicable statutes, regulations, case law, and administrative decisional precedent, the basis for her statement that the APA Board lacks authority to enter into mediation. This clarification shall be due by **December 21, 2007**, and a copy must be sent to everyone on the enclosed preliminary service list. Conference attendees may comment about Ms. Allen's request for party status by the revised date (*i.e.*, January 7, 2007) for submitting the second round of comments.

III. Review and Comments

As provided for in the November 6, 2007 summary, the conference attendees will have the opportunity to review and comment about the first round of comments and recommendations filed on November 28, 2007. Because I am seeking clarification from Ms. Allen about her request for party status, I will extend the date for filing the second round of comments from December 19, 2007 to **January 7, 2008**.

IV. Schedule

December 21, 2007	Clarification from adjoining landowners and landowners within 500 feet from the project. Clarification from Ms. Allen.
January 7, 2008	Second round of comments are due. Conference attendees may respond to the comments and any new recommendations filed on November 28, 2007.

January 25, 2008

Conference in Tupper Lake. Based on the responses that I received, I will schedule a conference in Tupper Lake on January 25, 2008 to discuss whether to proceed with the mediation.

I request that APA Staff inquire about the availability of the Goff-Nelson Library on January 25, 2008, and advise me by December 21, 2007.

In addition to sending the January 7, 2008 comments to me, the conference attendees **must** also send a copy of their respective comments to everyone on the service list. Given the expense associated with mailing, I will accept submissions via e-mail.

Daniel P. O'Connell
Administrative Law Judge
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Dated: Albany, New York
December 5, 2007

To: Enclosed Preliminary Service List, revised December 5, 2007

Enclosures