



Adirondack Park Agency

ANDREW M. CUOMO
Governor

TERRY MARTINO
Executive Director

NOTE: The attachments referred to herein are on file at the Agency and are on the Agency's website. Copies are also available for inspection on request.

Draft Minutes, Full Agency, 3/11/20

February 13-14, 2020

ADIRONDACK PARK AGENCY MEETING

Thursday, February 13, 2020

AGENCY MEMBERS, DESIGNEES, AND EXECUTIVE STAFF PRESENT

Lynne Mahoney, Presiding Member, Designee, NYS Dept. of State
John Ernst, Member
Arthur Lussi, Member
William Thomas, Member
Dan Wilt, Member
Rebecca Miller, Designee, NYS Dept. of Economic Development
Robert Stegemann, Designee, NYS Dept. of Environmental Conservation
Christopher Cooper, Counsel
Terry Martino, Executive Director

ABSENT AND EXCUSED

Chad Dawson, Member
Brad Austin, Designee, NYS Dept. of Economic Services

LOCAL GOVERNMENT REVIEW BOARD PRESENT

Jerry Delaney, Executive Director

AGENCY STAFF PRESENT

Keith McKeever, Public Information Officer
Robert Lore, Deputy Director, Regulatory Programs
Virginia Yamrick, Environmental Program Specialist 1
Kathy Regan, Supervisor Natural Resource Analysis
Beth Phillips, Senior Attorney
Devan Korn, Environmental Program Specialist 2
Colleen Parker, Environmental Program Specialist 3
Sue Streiff, Secretary to the Executive Director

Video and MP3 audio recordings of the proceedings, including public comment, are available in their entirety via webcast at

http://nysapa.granicus.com/ViewPublisher.php?view_id=2

Presiding Member Lynne Mahoney called the meeting to order at 1:00 p.m.

1. Public Comment

None

2. Approval of December 12 Agency Minutes

On motion of Mr. Wilt, seconded by Mr. Thomas, the Agency unanimously adopted the Draft Agency Meeting Minutes of December 12, 2020. A copy of the official minutes as adopted by the Agency is on file at the Agency.

3. Recusals

None

4. Motion for Executive Session

Mr. Cooper reported he would be requesting an Executive Session in the afternoon following the Enforcement proceeding.

5. Executive Director's Report

Executive Director Martino thanked Ms. Mahoney for acting as presiding member and Rebecca Miller for representing Empire State Development in Brad Austin's absence. Ms. Martino noted that Keith McKeever is working on the Annual Report for a March distribution.

Ms. Martino commented on the Governor's State of the State address. She said some of the Governor's priorities are climate change, small cell wireless, public lands planning, funding for the Environmental Protection Fund, and Adirondack Diversity.

She said staff continue to work with OGS, DOB, and architects to develop plans to retrofit the Agency headquarters for energy efficiency.

She commended Dan Kelleher on bringing the idea of nanocellulose research to the area by working with Clarkson University and Empire State Development.

Ms. Martino announced the 40th anniversary of the 1980 Olympics and the many events being celebrated in its honor. Mr. Lussi shared his memories of that time.

6. Motion to Adjourn into Committees

On motion of Mr. Thomas, seconded by Mr. Lussi, the Agency unanimously adjourned into committees at 1:30 p.m.

Presiding Member Ms. Mahoney reconvened the Full Agency meeting at 3:15 p.m.

3:15 PM

RECONVENE FULL AGENCY

7. Enforcement

The Agency, sitting as the Enforcement Committee, heard the enforcement proceeding for E2017-26, the Brampton.

Jennifer Hubbard began the Agency staff presentation by citing the alleged violations. She said the Brampton is operating in violation of §809 of the APA Act and 9 NYCRR Part 577 implementing the Rivers Act by constructing more than the allowed principal buildings and establishment of a tourist accommodation without a permit.

She established a detailed timeline of interactions between Agency staff and the respondents, John McDonald and Jeff Lee. She documented the ongoing violations and additions of tourist accommodations despite being repeatedly warned, in writing, against further expansion. The Agency received no communication from the respondents to any of the many letters, settlement agreement offers, or remediation suggestions offered to them.

The Notice of Apparent Violation documents were sent to the respondents in December 2019. The NAV and Agency staff Memorandum of Law with exhibits outlined the Civil Penalty information, Potential Harm and Actual Damage, Culpability and Cooperation, Economic Benefit from Non-Compliance, Economic Benefit from Non-Compliance and Culpability, and Importance to the Regulatory Scheme.

The respondents, Mr. McDonald and Mr. Lee, responded that they believed their engineer was corresponding with the Agency and they were not actively ignoring or opposing the APA. They felt they were being misrepresented. They said they had been badly advised by others. Mr. McDonald apologized and said they had made mistakes because they did not understand the process.

Mr. Lee said he had hired an engineer to try to work with staff from day one. He said many of the accommodations were not used for guests. He said he was working to remove some structures and would continue to work to comply.

Mr. McDonald said clients rent the property and he and Mr. Lee do not advise what to charge. He said price was determined on a group by group basis.

Mr. Lee said they want to be in compliance and were always willing to work with staff. He reiterated they thought the engineer was in communication with staff.

Mr. Lussi announced the Board would ask questions.

Mr. Thomas asked for clarification that there was no permit issued for the 1995 structure. Ms. Hubbard said the prior owner had no Agency permit and no building permit from Warren County.

Ms. Mahoney asked what the minimal and maximum penalty would be. Ms. Hubbard replied the penalty staff was seeking was the maximum of \$1,548,000. That is \$1500/day starting from April 2017 when the respondents were notified of the violations. Ms. Hubbard stated there is no minimum in the APA Act, and the minimum in the Rivers Act is \$100/day.

Mr. Ernst asked if the penalty was purely under law. Ms. Hubbard said it was.

Ms. Mahoney asked Mr. Lee if he ever saw a response to the NAV from his engineer. He responded that he had not.

Ms. Miller asked for clarification that the leach field and tree removal plans were never approved but the work went forward regardless. Ms. Hubbard confirmed this and added that the Agency staff informed the respondents that the plans could not be approved without a settlement agreement.

Mr. Ernst asked if the leach field was ever installed. Mr. Lee responded it was not and claimed Agency staff would not approve it without new plans.

Mr. Ernst stated that they never received approval, declined to respond, and yet kept adding piecemeal to the property. He said it did not look good as far as their claims of wishing to obtain compliance.

Ms. Mahoney asked Ms. Hubbard if the APA or DOH visited the site to discuss the pitch of the leach field. Ms. Hubbard replied both had. She said staff received no new plan from respondents. She stated staff engineer, Shaun Lalonde, had spoken to their engineer to tell him that no new site plan would be considered until the Agency received a signed settlement agreement from Mr. McDonald and Mr. Lee. She said staffs' response letter was sent directly to Mr. McDonald and Mr. Lee, not to the engineer.

Mr. Thomas asked Mr. Lee how many structures he would be removing. Mr. Lee replied the outhouse was no longer connected to water or electricity, and that the two cabins and tiny house were not tourist accommodations and only used for personal use.

Mr. Lussi asked which of the cabins Mr. Lee lived in. Mr. Lee responded he lived in the

one with water.

Mr. Ernst questioned why they were still advertising the Brampton. Mr. Lee responded they were no longer advertising the Brampton on their Facebook page.

Mr. Ernst asked if the respondents were aware of violations on the property and yet continued to add more accommodations. Mr. Lee said the tent platform and stairs were already on the property. Mr. McDonald corrected that by saying the structures were not present from day one but prior to being notified they were in violation. He said he was told the tiny house on wheels was not jurisdictional. He was asked if any of the trailers were registered with the DMV. He responded the campers and tiny house were not.

Ms. Mahoney asked if the respondents were aware that the tiny house on wheels would have to be registered to be considered non-jurisdictional. Mr. Lee claimed he was never told that.

Ms. Miller asked what the respondents had done to learn about their responsibilities while they have known for several years their facility was in a protected area. She asked if they had officially contracted with the engineer. Mr. Lee said they did not. He said he had talked to many people to help educate himself about the APA regulations. He said he spoke to DOH officials who told him they did not have jurisdiction if there were 24 people or under sleeping in the lodge.

Mr. Lussi asked if the respondents were familiar with the Rules and Regulations of the Park. Mr. McDonald said he was willing to learn more.

Mr. Stegemann asked if the non-compliant units had been rented in the last three years. Mr. Lee replied yes, the airstream camper and others. Ms. Hubbard said that in a 2017 letter to the respondents, staff stated that once the tiny house was rented, it became jurisdictional regardless of the wheels. Mr. Stegemann asked if the tiny house was used as a rental. Mr. Lee said absolutely not, and he did not know how the Agency could prove it was.

Mr. Stegemann asked if the facility hosted groups over 100. Mr. Lee replied yes. Mr. Stegemann asked if the events were approved by the DEC for wastewater. Mr. Lee stated he was not aware he had to contact the DEC. Ms. Hubbard responded that in a 2018 letter, the respondents were advised to contact DEC. She said these staff responses are all in writing, in the record.

Ms. Mahoney asked what wastewater system they have now. Mr. Lee replied they had a 1000-gallon septic tank.

The proceeding closed at 4:30 p.m.

Mr. Cooper said the Board would adjourn into Executive Session and was expected to take no action following the Board presentations.

On motion of Mr. Wilt, seconded by Mr. Ernst, the Agency unanimously entered executive session for deliberation of the E2017-26 enforcement matter.

Friday, February 14, 2020

AGENCY MEMBERS, DESIGNEES, AND EXECUTIVE STAFF PRESENT

Lynne Mahoney, Presiding Member, Designee, NYS Dept. of State
John Ernst, Member
Arthur Lussi, Member
William Thomas, Member
Dan Wilt, Member
Rebecca Miller, Designee, NYS Dept. of Economic Development
Robert Stegemann, Designee, NYS Dept. of Environmental Conservation
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Jerry Delaney, Executive Director

AGENCY STAFF PRESENT

Keith McKeever, Public Information Officer
Robert Lore, Deputy Director, Regulatory Programs
Chris Blue, Environmental Programs Specialist 1
Robyn Burgess, AP Local Planning Assistance Specialist
Amy Hall, Calculations Clerk 2
Sue Streiff, Secretary to the Executive Director

8. Executive Session Enforcement Continued (Full Agency)

RESUME AGENCY MEETING IN COMMITTEE

Presiding member Mahoney reconvened the Full Agency at 11:15 a.m.

1) Committee Reports

a) Regulatory Programs Committee

On motion by Mr. Wilt, seconded by Mr. Thomas, the Board unanimously approved P2019-164, Mark Rushton, expansion of a pre-existing single-family dwelling entirely within the shoreline setback of Third Lake resulting in an increase in overall height of the structure by 5-feet 6-inches and no increase in overall width in the Town of Webb, Herkimer County.

On motion by Mr. Stegemann, seconded by Mr. Lussi, the Board unanimously approved P2018-211, Vertical Bridge Holdings, LLC; New Cingular Wireless PCS, LLC; T-Mobile Northeast, LLC, the installation of two self-supporting monopole towers, one concealed as an 85-foot and the other as a 90-foot-tall simulated tree, with each tower supporting one single array of cellular panel antennas at an 83-foot and an 88-foot centerline height in the Town of Long Lake, Hamilton County.

b) Enforcement Committee

Mr. Lussi reported that the Full Agency heard the enforcement proceedings in E2017-26, The Brampton, and met in Executive Session to deliberate. He said the Board had completed its deliberations and Mr. Cooper would prepare the determination and the respondents would be served.

c) Economic Affairs Committee

Mr. Lussi reported on the presentation by Dan Kelleher which provided an overview of the Agency's activities related to economic development and community planning.

2) Interim Reports

a) Local Government Services Committee

On motion by Mr. Stegemann, seconded by Mr. Thomas, the committee adopted the Draft minutes of its December meeting.

b) Park Policy and Planning Committee

On motion by Ms. Mahoney, seconded by Mr. Ernst, the committee adopted the Draft minutes of its December meeting.

c) Public Awareness and Communication Committee

On motion by Mr. Wilt, seconded by Ms. Mahoney, the committee adopted the Draft minutes of its December meeting.

The Administration, Legal Affairs, Park Ecology, and State Land did not meet this month. Mr. Wilt reported that the Local Government Day Conference committee met, and planning continues for the 2020 conference.

7) Old Business

None

8) New Business

None

9) Public Comment

Rocci Aguirre, Adirondack Council, commented on the Forest Preserve Advisory Committee meeting and comments made by Rob Davies, DEC regarding downward trends in forests and climate change. On behalf of The Council, he congratulated Mr. Stegemann on his pending retirement and said he was a valued partner in conservation. His complete comments can be viewed on the website above.

10) Local Government Review Board Comment

Mr. Delaney said the issue of private structures for tourist accommodations will need to be addressed if it keeps trending upward. He said there are forest product businesses in the Park such as maple producers and instrument makers.

11) Member Comment

Mr. Stegemann thanked Mr. Kelleher for his outstanding work in the Park. He said he felt there were growing opportunities in the Park such as nanocellulose projects. He announced that this weekend was Santanoni Weekend. He commented on the Winter Carnivals around the Park and what a unique entertainment they are for the North Country.

Mr. Thomas congratulated Ms. Mahoney on successfully presiding over the Board meeting.

Mr. Ernst said the State has issued its forestry plan. He looked forward to future presentations on forestry and climate change.

Ms. Miller thanked the Board for her opportunity to serve in Mr. Austin's absence. She said the members' commitment to protecting the Park energized her and she would be happy to serve in the future.

Mr. Wilt said he was pleased with the ongoing work on cell towers throughout the Park. He thanked staff for moving forward with these projects. He reminded the Board the Local Government Day Conference would be held April 29-30.

Mr. Lussi complimented Enforcement and Legal staff for an excellent job on the enforcement proceeding this month.

Ms. Mahoney reminded all of the 40th anniversary of the 1980 Winter Olympics. She encouraged participation in some of the many events taking place. She said the Enforcement proceeding highlighted the protection of the environment vs. development within the Park. She thanked the staff and Board.

Mr. Cooper thanked enforcement and legal staff for their work on the Enforcement proceeding.

Ms. Martino thanked Ms. Mahoney for presiding and Ms. Miller for filling in for Mr. Austin. She thanked staff for their work. She thanked Mr. Kelleher.

By unanimous consent, the meeting adjourned at 11:50 a.m.

Lynne Mahoney, Presiding Member

Attachments:

P2019-164
P2018-211