

STATE OF NEW YORK: ADIRONDACK PARK AGENCY

In the matter of the alleged violation
of 9 NYCRR Part 578 by:

ANSWER

LEROY DOUGLAS and
THE DOUGLAS CORPORATION OF SILVER LAKE

Agency File: E2007-047

Respondents.

Respondents Leroy Douglas and The Douglas Corporation of Silver Lake, by their attorneys, Young Sommer, LLC, for their Answer to the Complaint, dated August 13, 2007 (the "Complaint"), allege:

1. Deny the allegations set forth in paragraph 1 of the Complaint.
2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of the Complaint, and deny that the Agency is entitled to the relief it is seeking in this Complaint.
3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the Complaint.
4. Deny the allegations set forth in paragraph 4 of the Complaint, but admit ownership of the property known as Tax Map Parcel 308-2-11 in the Town of Black Brook, County of Clinton, State of New York (the "Property").
5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of the Complaint, and respectfully refers to the statute and legislative history regarding the policies underlying the Wetlands Act.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the Complaint, and respectfully refers all questions of law to a court.

7. Admit, upon information and belief, that the Property is the subject of this Complaint and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 15 of the Complaint.

8. Deny the allegations set forth in paragraphs 16 and 17 of the Complaint.

9. Admit, upon information and belief, that Respondent Douglas Corporation of Silver Lake entered into a Settlement Agreement E 2005-200 regarding alleged wetland violation activities at the Property, but deny that the agreement represents an admission of “wetland filling” by Respondents and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 18 of the Complaint.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 19 of the Complaint, and respectfully refers to the document entitled Settlement Agreement for its complete terms and provisions.

11. Deny the allegations set forth in paragraph 20 of the Complaint.

12. Deny the allegations set forth in paragraph 21 of the Complaint, and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations regarding the APA staff's alleged findings and investigation.

13. Deny the allegations set forth in paragraphs 22 and 23 of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

14. Upon information and belief, the APA resolved all alleged wetland violations at the Property in the Settlement Agreement, and any alleged filling of wetlands that predate the November

9, 2006 Settlement Agreement were incorporated into the terms of the Settlement Agreement, or were waived by the APA.

15. The APA is precluded by the doctrines of waiver, estoppels, accord and satisfaction, and release from seeking to impose fines or penalties associated with conditions or activities that predated the November 9, 2006 Settlement Agreement.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

16. Upon information and belief, the alleged “filling activities” complained of after the November 9, 2006 Settlement Agreement, if any, were directly related to, or the collateral result of, Respondents implementation of the remedies set forth in the Settlement Agreement.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

17. Upon information and belief, the proposed subdivision on the Property occurred after the Respondent sought and obtained from the APA a non-jurisdiction letter. By issuing a letter declining jurisdiction with respect to the proposed development activities on the Property, the APA waived its right, if any, to claim that the project proposal was located in a wetland subject to APA jurisdiction and Respondents may rely upon that determination pursuant to 9 NYCRR § 571.5 and/or common law doctrines of waiver and estoppel.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

18. The Complaint is facially invalid and incomplete as it fails to reference or include any documentary evidence of the alleged violation as required by 9 NYCRR Sec. 581-4.3(b).

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

19. Upon information and belief, any alleged filling activity associated with the road does not meet the definition of a regulated activity under 9 NYCRR Part 578 and/or did not, upon information and belief, occur in a jurisdictional wetland.

20. Upon information and belief, all the activities on the road constituted repair and maintenance of an existing road and are exempt from regulation under the Freshwater Wetlands Act.

AS AND FOR A SIXTH CAUSE AFFIRMATIVE DEFENSE

21. Upon information and belief, the alleged wetland does not appear on a duly promulgated and filed Freshwater Wetlands Map for Clinton County and therefore is not subject to jurisdiction of the Agency.

WHEREFORE, the Complaint should be dismissed.

Dated: September 10, 2007

BY:


YOUNG SOMMER, LLC

J. Michael Naughton, Esq.
Attorneys for Respondents
Executive Woods
Five Palisades Drive
Albany, New York 12205
(518) 438-9907