



Approved by Enforcement  
Committee on  
April 10, 2008

MINUTES OF THE ENFORCEMENT  
COMMITTEE MEETING HELD ON  
March 13, 2008

Meeting convened at 3:10 pm

Enforcement Committee Members Present: Cecil Wray (Chair), Richard Booth, Arthur Lussi, Frank Mezzano, William Thomas, James Townsend

Other Members or Designees Present: Elizabeth Lowe (DEC), Lani Ulrich, Richard Hoffman (DOS), Curtis Stiles (Agency Chairman), Chris Walsh (DED)

Agency Staff Present: Mark Sengenberger (Interim Executive Director), John Banta (Agency Counsel), Paul Van Cott (Associate Attorney)

Others Present: Frederick Monroe (Executive Director, Local Government Review Board)

Enforcement Program Report: Paul Van Cott discussed the addition of the old details of the monthly enforcement program report, which are used for internal management purposes.

Mr. Van Cott then discussed the monitoring of new subdivision violations within the park. During the months of January and February, fewer than five new subdivision violations were identified out of the 30 or 40 subdivisions that actually occurred within the Adirondack Park.

In March, Mr. Van Cott met with the Essex County Bar Association, where he presented on and discussed the Proactive Subdivision Enforcement Initiative of the Enforcement Division.

Lands of Sawyer: Enforcement Case E2005-011; Lands of Sawyer in the town of Ticonderoga, Essex County. Mr. Wray questioned Mr. Van Cott about the status of this case. Mr. Van Cott confirmed that the case started with a Notice of Apparent Violation, and that there was no response by the respondent to the NAV. Van Cott added that the settlement negotiations that had been

added that he spoke to Chris LaCombe (DEC), who confirmed that the respondents in fact do not have a DEC permit.

Mr. Wray concluded by asking Mr. Van Cott what he felt the Enforcement Committee should do, given the very complex and complicated factors surrounding the matter. Mr. Van Cott responded that there are other competitors in the area who have complied with APA and DEC regulations, and the only fair thing to do is close the Sawyer mining pit operation until they get APA and DEC permits.

Mr. Wray stated that the Committee would consider the facts during Executive Session later in the day.

Lewis Family Farm, Inc.: Enforcement case E2007-041; The matter of Lewis Family Farm, Inc.; In the town of Essex, Essex County. This matter was referred to the Enforcement Committee by Agency staff pursuant to § 581-2.6D of the Agency enforcement regulations.

Mr. Wray stated that both parties are represented by counsel (Paul Van Cott for the APA, and John Privitera for the Lewis Family Farm). Mr. Wray noted that there has been court litigation on this matter, when the respondent brought an action related to jurisdiction against the APA. That matter was resolved by the New York State Supreme Court.

The case involves the construction of three single family dwellings on the respondent's farm in a resource management land use area. The dispute has to do with the requirement as put forth by Agency staff that the respondent should have obtained an Agency permit before constructing the dwellings.

Mr. Van Cott proceeded with his power point presentation depicting photographs and exhibits contained in Memorandum of Law previously provided to the Agency members and Designees. Mr. Van Cott cited section 809 of the APA Act, which requires permits for land use and development on resource management lands, including subdivisions and single family dwellings. Under the implementing for regulations, the Rivers Act, 9 NYCRR Part 577, permits are required for rivers projects, including subdivisions and single family dwellings.

In December of 2005, senior agency staff told Mr. Lewis that a permit was needed for single family dwellings on his resource management lands even if the dwellings were intended to be used for farmworker housing.

agricultural lands. He then stated that there is no permit requirement for agricultural use structures, because they are not listed as Class B projects.

Mr. Privitera asked for the February 21<sup>st</sup> letter from the Farm Bureau to be acknowledged, and for the proceeding to be dismissed. He also asked that a March 5<sup>th</sup> letter from Fred Monroe to the governor also be included in the record of the proceeding.

Mr. Van Cott then addressed the question previously posed by Commissioner Lussi, regarding density requirements, and stated that density is only one of the factors that the Agency considers before it can issue a permit. He further stated that the Agency has jurisdiction over the single family dwellings because the law provides that permits are required for single family dwellings built on resource management lands.

Mr. Mezzano asked Mr. Privitera to address Justice Ryan's opinion. Mr. Privitera stated that it is in their brief, and that Justice Ryan's opinion did not apply to this proceeding because Justice Ryan had said that the matter wasn't ripe for review, so he sent the case back to this Agency to make a final determination.

Referring to section 802 (50) of the APA Act, Mr. Booth asked Mr. Van Cott whether principal buildings are counted only where the Agency exerts jurisdiction. Mr. Van Cott responded that that is correct.

Mr. Lussi asked whether the case at hand is considered Class A or Class B. Mr. Van Cott stated that it could be considered both.

Mr. Monroe commented on the previous discussion of civil penalty guidelines, and stated that, in his opinion, where there is a good faith dispute as to jurisdiction, he felt discussion on behalf of the review board leaned toward no imposition of a civil penalty.

Mr. Wray adjourned the Committee at approximately 4:45.



*As approved  
5/8/08  
SSB*

MINUTES OF THE ENFORCEMENT  
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A D D E N D U M

May 2, 2008

Report of Executive Session: The Enforcement Committee came to a determination regarding Lands of Sawyer. The determination is attached hereto as Attachment 1.

Report of Executive Session: The Enforcement Committee came to a determination regarding Lewis Family Farm, Inc. The determination is attached hereto as Attachment 2.

Complete transcripts of both public Enforcement Committee sessions are part of the Agency record for these matters.