

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

---

ARTHUR and MARGARET SPIEGEL,

Plaintiffs,

- against -

Case No. 06-CIV-0203  
TJM-DRH

ADIRONDACK PARK AGENCY;  
MARK SENGENBERGER, in his official  
capacity as Acting Executive Director of the  
Adirondack Park Agency; RICHARD LEFEBVRE,  
in his official capacity as Executive Director of the  
Adirondack Park Agency; and PAUL VAN COTT,  
in his official capacity as Enforcement Officer for the  
Adirondack Park Agency,

**ANSWER**

Defendants.

---

Defendants, by their attorney, Eliot Spitzer, Attorney General for the State of New York,  
answer the amended complaint as follows:

1. Deny the allegations contained in ¶ 1 and deny that any defendant violated plaintiffs' common law, statutory or constitutional rights.
2. Refer to the amended complaint as the best evidence of its contents and deny the truth of the remaining allegations in ¶ 2.
3. Deny the truth of the allegations in ¶ 3.
4. Deny the truth of the allegations in ¶ 4 except that defendants admit that plaintiffs seek permanent injunctive relief and further admit that the action was referred to the Office of the Attorney General, which commenced a civil enforcement action in New York State Supreme Court on April 19, 2006, to enforce the Final Enforcement Order and the terms of Permit No. 87-28 against plaintiffs.

Answer of State Defendants

5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 5.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 6.

7. Admit the truth of the allegations in ¶ 7.

8. As to the truth of the allegations in ¶ 8, admit that Mark Sengenberger is Deputy Director of the Agency and further admit that he assumes the delegated responsibilities of the Executive Director in the event of his or her incapacity or absence. Admit that Mr. Sengenberger assumed the duties of the Executive Director with respect to the enforcement of Permit No. 87-28 against the Spiegels when then-Executive Director Daniel Pitts recused himself as the result of a personal relationship with the Spiegels. Deny that Mr. Sengenberger "is responsible for setting policy for the APA." Whether Mr. Sengenberger acted under color of state law is a question of law for the Court to determine and is, accordingly, denied.

9. With respect to the truth of the allegations in ¶ 9, admit that Mr. Lefebvre is currently the Executive Director of the Agency and that he is one of the people who determines Agency policy on various issues. Deny that he directed the conduct complained of in the complaint. Whether Mr. Lefebvre acted under color of state law is a question of law for the Court to determine and is, accordingly, denied.

10. With respect to the truth of the allegations in ¶ 10, admit that Mr. Van Cott has been an Associate Attorney for the Adirondack Park Agency since on or about January 26, 2005. From 2000 until his promotion, Mr. Van Cott was a Senior Attorney dedicated to enforcement of the Agency's laws and regulations. Deny that Mr. Van Cott is, or was at any relevant time,

responsible for setting enforcement policy for the Agency. Whether Mr. Van Cott acted under color of state law is a question of law for the Court to determine and is, accordingly, denied.

11. Admit that plaintiffs purport to allege claims pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983, 28 U.S.C. §§ 2201-02 and 28 U.S.C. § 1367, as alleged in ¶ 11.

12. Admit that defendants are located within this district. Deny the existence of claims, as alleged in ¶ 12.

13. As to the truth of the allegations contained in ¶ 13, deny knowledge or information sufficient to form a belief as to whether Mr. Spiegel is well known or whether his political affiliations are well-known. Deny knowledge or information sufficient to form a belief with respect to Mr. Spiegel's alleged activities and appointments.

14. Admit that Mr. Van Cott is a registered Democrat who, from sometime in 2003 until the time he became an Associate Attorney, served on the New York State Democratic Committee. Admit that he has, at times, raised funds for Democratic candidates for public office. Deny any remaining allegations in ¶ 14.

15. Admit that sometime in 2004, Mr. Van Cott endorsed the candidacy of Eliot Spitzer for Governor and otherwise deny the allegations contained in ¶ 15.

16. Deny the allegations made in ¶ 16.

17. Admit the allegations made in ¶ 17.

18. Admit the allegations made in ¶ 18, except deny that the Homeowners' Association is the sole governing entity of the Subdivision.

19. As to the truth of the allegations made in ¶ 19, deny knowledge or information

sufficient to form a belief.

20. Admit, as alleged in ¶ 20, that Permit No. 87-28 authorized a Class B regional project and otherwise deny the allegations.

21. Admit the allegations set forth in ¶ 21

22. Refer to the Executive Law as the best evidence of the text of § 805.3, set forth in ¶ 22.

23. The allegations made in ¶ 23 contain a legal conclusion as to which no response is necessary.

24. As to the truth of the allegations made in ¶ 24, refer to Permit No. 87-28, attached as Exhibit 1 to the amended complaint, as the best evidence of the text of the Permit.

25. As to the truth of the allegation in ¶ 25, refer to Permit No. 87-28 as the best evidence of its terms.

26. As to the truth of the allegation in ¶ 26, refer to Permit No. 87-28 as the best evidence of its terms.

27. As to the truth of the allegation in ¶ 27, refer to Permit No. 87-28 as the best evidence of its terms.

28. Deny knowledge or information sufficient to form a belief as to the truth of the allegation contained in ¶ 28.

29. As to the truth of the allegation in ¶ 29, refer to Permit No. 87-28 as the best evidence of its terms.

30. As to the truth of the allegation in ¶ 30, refer to Permit No. 87-28 as the best evidence of its terms.

31. As to the truth of the allegation in ¶ 31, refer to Permit No. 87-28 as the best evidence of its terms.

32. As to the truth of the allegation in ¶ 32, refer to Permit No. 87-28 as the best evidence of its terms.

33. Deny knowledge or information sufficient to form a belief as to the truth of the allegation contained in ¶ 33.

34. Admit the allegation contained in ¶ 34.

35. As to the truth of the allegations in ¶ 35, refer to the Spiegels' deed, attached as Exhibit B to the amended complaint, as the best evidence of its terms.

36. Admit the allegations contained in ¶ 36.

37. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 37 and deny specifically that defendants lacked knowledge of Permit No. 87-28.

38. Deny the allegations contained in ¶ 38 except admit that Lot 39 is in the Town of North Elba.

39. The allegations contained in ¶ 39 are legal conclusions as to which no response is necessary but defendants affirmatively state that the Town of North Elba has no approved Local Land Use Program and is not the exclusive permitting entity with respect to the lot at issue and state further that the Agency does exercise jurisdiction over the lot at issue.

40. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 40.

41. Deny knowledge or information sufficient to form a belief as to the truth of the

allegations contained in ¶ 41.

42. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 42.

43. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 43.

44. Refer to the text of the letter written by Mr. Zdrahal to Mr. Spiegel as the best evidence of its contents.

45. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 45.

46. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 46.

47. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 47 regarding whether plaintiffs constructed their home in reliance upon permits and approvals granted by the Town and the Homeowners' Association. Admit that plaintiffs were not required to obtain additional permits from the Agency or notify or consult with the Agency, so long as they built in conformity with the terms of Permit No. 87-28, which they did not.

48. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 48.

49. Admit, with respect to the allegations contained in ¶ 49, that Dr. Eugene Byrne complained to the Agency in late September 2004 about the proposed height of the Spiegel house.

50. Admit the allegations contained in ¶ 50 of the Complaint, except deny knowledge or information sufficient to form a belief as to whether Dr. Byrne had previously complained.

51. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 51.

52. Admit that the Spiegels' house is clearly visible from Route 86 and that some of their construction activities would be visible to travelers along that route, as alleged in ¶ 52.

53. As to the truth of the allegations contained in ¶ 53, admit that Dr. Byrne complained through counsel by letter dated February 3, 2005 and admit that counsel said "I [understand] further the Agency has not inspected the premises and viewed the situation [as] "minor" relative to other pending issues."

54. As to the truth of the allegations contained in ¶ 54, admit that Mr. Van Cott called Mr. Spiegel by phone on February 4, 2005 and advised him that a complaint had been lodged. Admit that the telephone call was the first notice by the Agency to the Spiegels that a complaint had been lodged.

55. Admit that, at that time, plaintiffs agreed to halt construction but deny that they abided by that agreement. Deny the remaining allegations contained in ¶ 55 and state affirmatively that on February 4, 2005, the Agency had not yet inspected the house.

56. Deny knowledge or information sufficient to form a belief as to the truth of the state of the house on February 4, 2005 or the costs associated with it, as described in ¶ 56.

57. Admit that the Agency inspected the house on or about February 8, 2005 and deny knowledge or information sufficient to form a belief as to the truth of the percentage of the house that was complete or the cost in such construction. With respect to the allegation

contained in ¶ 57 that the Agency did not inspect the house until 8 months after it received a complaint, the Agency reiterates that it lacks knowledge or information sufficient to form a belief as to whether complaints were made about the house before September 24, 2005 and points out that in June, July, August and most of September, there was nothing to inspect.

58. As to the truth of the allegation contained in ¶ 58, admit that Agency staff noted possible violations of the 30-foot height restriction in other Fawn Ridge houses.

59. Admit, as alleged in ¶ 59, that plaintiffs sought permission to secure the house from the elements and that, on or about March 11, 2005, the Agency agreed to certain protective measures.

60. Deny, as alleged in ¶ 60, that plaintiffs authorized the construction of a porch overlooking Lake Placid.

61. Deny knowledge or information sufficient to form a belief as to the truth of the allegation contained in ¶ 61.

62. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 62.

63. Deny the allegation in ¶ 63 that there was no enforcement action against plaintiffs and state affirmatively that such action was commenced, plaintiffs participated through counsel, plaintiffs did not request a hearing, and plaintiffs waived a hearing.

64. Admit the allegations contained in ¶ 64 but deny that the Agency has not allowed the Spiegels to secure the structure against the elements. Affirmatively state that plaintiffs had the opportunity for a hearing and did not request one, as required by regulation. In addition, plaintiffs affirmatively waived their right to a hearing.



65. Admit the allegations contained in ¶ 65 except deny that defendant Van Cott issued or caused to be issued the Notice of Intent.

66. As to the truth of the allegations contained in ¶ 66, refer to the Notice of Intent as the best evidence of its terms and deny knowledge or information sufficient to form a belief as to whether plaintiffs possessed duly acquired permits and approvals and deny the relevance of permits and approvals other than Permit No. 87-28 to the enforcement action.

67. Admit the allegations contained in ¶ 67 and specifically aver that the document to which plaintiffs refer in ¶ 67 is a Response to Notice of Intent within the meaning of 9 NYCRR § 381-3.3.

68. As to the truth of the allegations contained in ¶ 68, refer to the Response to Notice of Intent filed with the Agency on or about June 27, 2005, as the best evidence of its terms and meaning.

69. Admit the allegation contained in ¶ 69.

70. Deny knowledge or information sufficient to form a belief as to whether any home built in Fawn Ridge during the pendency of the enforcement action violates the height limit and deny that the Agency has not initiated enforcement against other potential violations of Permit No. 87-28.

71. Deny the allegations contained in ¶ 71.

72. Deny the allegations contained in ¶ 72.

73. Refer to the submissions referred to in ¶ 73 as the best evidence of their content.

74. Deny that the Agency acted arbitrarily and capriciously and deny that the Agency categorically rejected anything less than strict compliance, as alleged in ¶ 74. Admit that the

Agency had not received a complaint about violations of Permit No. 87-28 until the events referred to in ¶¶ 49-50 and therefore had not sought to enforce its terms before it filed the Notice of Intent referred to in ¶¶ 65-66.

75. Admit, as alleged in ¶ 75, that plaintiffs solicited letters of support. Refer to the Politi letter as the best evidence of its contents and deny the relevance of any understanding the original owners allegedly had regarding the presence of visible "large, single family homes" along the ridge line.

76. Deny the allegation contained in ¶ 76.

77. Admit the allegation contained in ¶ 77.

78. Admit, as alleged in ¶ 78, that plaintiffs repeatedly made settlement offers that would have constituted modifications of Permit No. 87-28, as alleged in ¶¶ 67, 78 and refer to those offers as the best evidence of their meaning and terms.

79. Admit, as alleged in ¶ 79, that on or about October 11, 2005, plaintiffs sought permission to secure the structure from the elements. Deny any remaining allegations.

80. Deny that the Agency acted irrationally or maliciously as alleged in ¶ 80 and refer to the contents of the Agency's October 14, 2005 letter as the best evidence of its contents.

81. Admit, as alleged in ¶ 81, that plaintiffs repeatedly made settlement offers that constituted modifications of Permit No. 87-28, as alleged in ¶¶ 67, 78 and 81, and refer to those offers as the best evidence of their meaning and terms. Deny knowledge or information sufficient to form a belief as to whether plaintiffs again sought to modify the terms of Permit No. 87-28 on or about November 1, 2005.

82. Deny knowledge or information sufficient to form a belief as to whether the

Agency responded to the alleged November 1 request to modify Permit No. 87-28 and admit that on or about December 7, 2005 the Agency referred the matter to the Office of the Attorney General for enforcement of the Agency's Final Enforcement Order, issued September 7, 2005, as alleged in ¶ 82.

83. No allegation is made in ¶ 83 thus no response is necessary.

84. Admit the allegations contained in ¶ 84.

85. Deny knowledge or information sufficient to form a belief as to the truth of the allegation contained in ¶ 85.

86. With respect to the allegations contained in ¶ 86, admit that no permit or approval from the Agency other than Permit No. 87-28 was necessary to authorize the construction of a house on any Fawn Ridge lot.

87. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 87.

88. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 88.

89. The allegation contained in ¶ 89 is a legal conclusion as to which no response is necessary and, in any event, on May 8, 2006, the Court held that such legal conclusion has no basis in law.

90. Admit, as alleged in ¶ 90, that the enforcement action against the Spiegels was the first to enforce compliance with the terms of Permit No. 87-28. Deny that the Agency generally "monitor[s] compliance" with any Agency permit, in the absence of a complaint.

91. Deny knowledge or information sufficient to form a belief as to the truth of the

allegation that the Agency “failed to assure that the Fawn Ridge sponsors complied with the notice and deed restrictions provisions of APA Permit No. 87-28,” as alleged in ¶ 91, and admit that the Agency has taken no enforcement action against any sponsor of the Fawn Ridge subdivision.

92. Deny the allegations contained in ¶ 92.

93. Deny the allegations contained in ¶ 93.

94. Deny the allegations contained in ¶ 94 and aver that, on May 8, 2006, the Court found that plaintiffs have no vested property rights in any permits or approvals granted by the Town of North Elba or the Architectural Review Committee of the Fawn Ridge Homeowners’ Association.

95. Deny the allegations contained in ¶ 95.

96. Deny the allegations contained in ¶ 96 and state that, on May 8, 2006, the Court determined that plaintiffs have no vested rights in any permits or approvals granted by the Town of North Elba or the Architectural Review Committee of the Fawn Ridge Homeowners’ Association.

97. Deny that plaintiffs’ settlement offers were reasonable, deny that the Agency acted irrationally, arbitrarily, capriciously or contrary to Agency precedent, and deny that the Agency was motivated by malice, bad faith or an intent to injure plaintiffs, as alleged in ¶ 97.

98. Deny the allegations contained in ¶ 98.

99. Deny that, as alleged in ¶ 99, the defendants have acted with malice or in an intentional effort to treat plaintiffs differently, deny that other similarly situated Fawn Ridge residents exist, and deny that there is no rational basis for the Agency’s treatment of the

Spiegels.

100. Deny the allegations contained in ¶ 100 and state that on May 8, 2006 the Court found that the plaintiffs have no vested property rights and affirmatively state that the plaintiffs have violated at least three material provisions of Permit No. 87-28.

101. Deny that plaintiffs were deprived of a hearing or adjudication to which they were entitled and state that the remaining allegations in ¶ 101 constitute conclusions of law as to which no response is required.

102. Deny the allegations contained in ¶ 102.

103. State that the allegations made in ¶¶ 103-128 require no response because the Court dismissed, on May 8, 2006, the plaintiffs' due process claims on the ground that (a) plaintiffs had no vested property interest in the permits and approvals granted by the Town of North Elba, (b) the plaintiffs failed to state a claim, and (c) if plaintiffs had stated a claim, the claims were meritless.

104. No factual allegations are made in ¶ 129 and no response is required.

105. The allegation contained in ¶ 130 purports to quote the New York State Constitution and defendants refer to the Constitution as the best evidence of its contents.

106. Deny the allegations contained in ¶ 131.

107. Deny the allegations contained in ¶ 132.

108. Deny the allegations contained in ¶ 133.

109. Deny the allegations contained in ¶ 134.

110. State that the allegations made in ¶¶ 135-144 require no response because on May 8, 2006 the Court dismissed the plaintiffs' due process claims on the ground that (a) plaintiffs

had no vested property interest in the permits and approvals granted by the Town of North Elba, (b) the plaintiffs failed to state a claim, and (c) if plaintiffs had stated a claim, the claims were meritless.

111. No allegation is made in ¶ 145 thus no response is necessary.

112. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 146.

113. Deny the allegations contained in ¶ 147.

114. Deny the allegations contained in ¶ 148.

115. Deny the allegations contained in ¶ 149.

116. Deny the allegations contained in ¶ 150.

117. Deny the allegations contained in ¶ 151 and state that whether the Agency is estopped from any act is a conclusion of law and no response is required.

118. Deny the allegations contained in ¶ 152.

119. State that whether the defendants are estopped from any acts is a conclusion of law and no response is required.

120. With respect to plaintiffs' Prayer for Relief, any assertions and allegations contained therein are prayers of relief to which no response is required and, to the extent a response is required, deny and oppose each and every requested form of relief.

121. Every allegation of fact not specifically denied or addressed in one of the preceding paragraphs is denied.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

122. The claims are barred by the Eleventh Amendment.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

123. The Court lacks subject matter jurisdiction to hear the claims for relief.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

124. The claims are barred by the *Rooker-Feldman* doctrine.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

125. The Court should abstain.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

126. Defendants are immune.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

127. Plaintiffs have not stated federal claims because an adequate remedy is available in the New York state courts.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

128. Plaintiffs' remaining causes of action fail to state a claim as to which relief may be granted.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

129. Plaintiffs' claims are barred by collateral estoppel.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

130. Plaintiffs' claims are barred by res judicata.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

131. To the extent plaintiffs claim that the Agency has not entered a Final Enforcement

Order, their remaining claim is not ripe.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

132. Plaintiffs' claims are barred by the statute of limitations.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

133. Plaintiffs have unclean hands.

**WHEREFORE**, defendants respectfully request an order dismissing plaintiffs' amended complaint and, further, that defendants have such other and further relief as may be just and proper.

Dated: May 16, 2006  
Albany, New York

ELIOT SPITZER  
Attorney General of the  
State of New York  
Attorney for Defendants  
New York State Department of Law

By: \_\_\_\_\_ /s/  
SUSAN L. TAYLOR  
Assistant Attorney General  
The Capitol  
Albany, NY 12224  
518-474-2432  
[Susan.Taylor@oag.state.ny.us](mailto:Susan.Taylor@oag.state.ny.us)  
Bar Roll No. 508318