

STATE OF NEW YORK SUPREME COURT  
ESSEX COUNTY

Served  
May 1, 2006  
Overnight to JF

ADIRONDACK PARK AGENCY and  
THE STATE OF NEW YORK,

Plaintiffs,

v.

ARTHUR SPIEGEL AND MARGARET SPIEGEL,

Defendants.

SUMMONS

Index No.  
RJI No.

000302-06

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the verified complaint in this action and to serve a copy of your answer on the plaintiffs' attorney within 20 days after the service of this summons and verified complaint, exclusive of the day of service (or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York). In the case of your failure to appear and answer, judgment will be taken against you by default for the relief demanded in the verified complaint.

Venue is proper in Essex County because it is where the property that is the subject of this action is located, *see* CPLR § 507, and because all of defendants' acts and omissions giving rise to this complaint occurred or are occurring there.

DATED: April 17, 2006  
Albany, New York

ELIOT SPITZER  
Attorney General of the  
State of New York  
Attorney for the Adirondack Park Agency  
New York State Department  
of Law

By: Susan Taylor  
Susan Taylor  
Assistant Attorney General

ESSEX COUNTY CLERK  
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**STATE OF NEW YORK SUPREME COURT  
ESSEX COUNTY**

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**ADIRONDACK PARK AGENCY and THE  
STATE OF NEW YORK,**

**Plaintiffs,**

**VERIFIED  
COMPLAINT**

**v.**

**ARTHUR SPIEGEL and MARGARET SPIEGEL,**

**Index No.**

**Defendants.**

-----X

Plaintiffs, Adirondack Park Agency (Agency) and the State of New York (State), allege as follows:

**PRELIMINARY STATEMENT**

1. This action arises from the violation of Adirondack Park Agency Permit No. 87-28 (the Permit or Permit No. 87-28) and Executive Law §§ 809(2)(a), 809(7)(b), 810(2)(a), and 813. This action also arises from the violation of restrictive covenants in a recorded deed, as to which the Adirondack Park Agency is a third-party beneficiary under New York common law.
2. Defendant homeowners have begun construction of a house that violates key terms in the Permit, which are also memorialized in the deed to the real property at issue. The house is substantially taller than permitted by the Permit and also is perched on a steep slope from which it is supposed to be set back at least 20 feet. In addition, the defendants have removed tree vegetation in violation of the Permit.
3. Plaintiffs seek an order requiring that the Spiegels ensure that any home they build protects the area's scenic vistas and land formations and conforms with the terms of the Permit, including Conditions 15(g), (i) and (j). Plaintiffs also seek an order declaring that the defendants

are in violation of the Executive Law as well as the Permit, requiring them to abide by the terms of the Permit, and requiring them to pay a civil penalty. Finally, plaintiffs seek a declaration that the Spiegels have violated provisions of the Spiegels' deed.

#### JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to Executive Law § 813 and the common law, which grants third-party beneficiaries of restrictive covenants the right to enforce them.

5. Venue is proper in Essex County because the real property at issue is located there, *see* CPLR § 507, and all of the unlawful activities and omissions described in this Verified Complaint occurred and continue to occur there.

#### PARTIES

6. The Adirondack Park Agency is a duly constituted State agency within the Executive Department of the State of New York, with its headquarters in Essex County, New York. The Agency is empowered to implement and enforce the Adirondack Park Agency Act (Executive Law § 801 *et seq.*) and is specifically entrusted with protecting and preserving the resources of the Adirondack Park through the exercise of permitting authority.

7. Plaintiff State of New York, as a body politic and sovereign entity, brings this action on its own behalf, as *parens patriae* on behalf of its citizens and residents, and pursuant to its responsibility to protect the natural resources of the State, including the natural resources of the Adirondack Park.

8. Arthur and Margaret Spiegel are the owners of Lot 39 in the Fawn Ridge Subdivision, North Elba, New York (Lot 39), and the owners of the partially constructed house that is the subject of this action.

#### STATUTORY FRAMEWORK

9. The Adirondack Park Agency Act (Act), codified at Article 27 of the Executive Law, vests the Agency with land use planning authority for both private and public land within New York's Adirondack Park (Park). See Exec. Law §§ 800, 801. The Act recognizes the obligation of the State of New York to ensure that "contemporary and projected future pressures on the park resources are provided for within a land use control framework which recognizes not only matters of local concern but also those of regional and state concern." Exec. Law § 801.

10. Through the Act, the Legislature sought to combat the "unrelenting pressures for development being brought to bear on the area" in recognition of the difficulty encountered by local governments in exercising "their discretionary powers to create an effective land use and development control framework." Exec. Law § 801. The Agency is charged with administering the Act, drafting necessary rules and regulations and carrying out the purposes of the Act. *Id.* § 803.

11. The 1973 Land Use and Development Plan (Plan), set forth in Executive Law § 805, guides land use planning and development in the Park. One of the Act's purposes is implementation of the Plan.

12. The Plan classifies private lands in the Adirondack Park as within one of the following land use categories: hamlet, moderate intensity use, low intensity use, rural use, resource management, and industrial use. See Exec. Law § 805(3)(c) (hamlet), (d) (moderate),

(e) (low intensity), (f) (rural), (g) resource management, and (h) (industrial). For each land use category, the Plan sets forth guidelines for overall intensity of development and also identifies compatible primary and secondary uses.

13. The Act confers jurisdiction on the Agency to review and approve all "Class A regional projects" and "Class B regional projects." Exec. Law § 809(1); 9 NYCRR § 572.1(a). Class A and Class B regional projects are identified in Executive Law § 810.

14. Subdivisions of land located in moderate intensity use lands, involving 15 to 74 lots, and all related land uses and development, are Class B regional projects within the meaning of the Executive Law. Exec. Law § 810(2)(a).

15. Executive Law § 802(63) defines "subdivision of land" or "subdivision" as meaning, in pertinent part:

[A]ny division of land into two or more lots, parcels or sites, whether adjoining or not, for the purpose of sale, lease, license or any form of separate ownership or occupancy (including any grading, road construction, installation of utilities or other improvements or any other land use and development preparatory or incidental to any such division) by any person. . . .

16. "Land use or development" is any construction or other activity that materially changes the use or appearance of land or a structure, or the intensity of the use of a land or a structure. *Id.* § 802(28).

17. Executive Law § 809(2)(a) and (c) provide in pertinent part that any person proposing to undertake a Class B regional project in an area not governed by an approved and effective local land use plan must obtain an Agency permit before beginning the project.

18. Executive Law § 809(13) authorizes the Agency to condition any permit on compliance with such requirements or restrictions as would be compatible with "the proper exercise of the police power."

19. The Executive Law provides that a properly recorded Agency permit "shall operate and be construed as *actual notice* of the right to undertake the project and *of the terms and conditions imposed by such permit.*" Exec. Law § 809(7)(b) (emphasis added).

20. The terms and conditions of a properly recorded Agency permit bind all subsequent grantees of property subject to the permit. *Id.*; see also 9 NYCRR § 572.21(b).

21. Executive Law § 813 states in part:

1. Any person who violates any provision of this article or any rule or regulation promulgated by the agency, or the terms or conditions of any order or permit issued by the agency pursuant to this article shall be liable to a civil penalty of not more than five hundred dollars for each day or part thereof during which such violation continues. The civil penalties provided by this subdivision shall be recoverable in an action instituted in the name of the agency by the attorney general on his own initiative or at the request of the agency.

2. Alternatively or in addition to an action to recover the civil penalties provided by subdivision one of this section, the attorney general may institute in the name of the agency any appropriate action or proceeding to prevent, restrain, enjoin, correct or abate any violation of, or to enforce, any provision of this article or any rule or regulation promulgated by the agency, or the terms or conditions of any order or permit issued by the agency pursuant to this article.

22. The Agency's regulations set forth enforcement procedures. See 9 NYCRR Part 581. The Agency is authorized to issue cease-and-desist orders, *id.* § 581-2.4, resolve violations administratively, *id.* § 581-2.5, and refer alleged violations of statutes, regulation, permits, or orders to the Attorney General, *id.* § 581-2.8.

23. Three or more members of the Agency appointed by the Agency chairperson constitute the Agency's Enforcement Committee. One aspect of the role of the Enforcement Committee is to provide guidance to the Executive Director with respect to alleged violations. *Id.* § 581-2.1(b). Like the Agency itself, *id.* § 581-2.2(b), the Enforcement Committee may also "determine whether a violation has occurred and decide on an appropriate disposition of any enforcement action it considers." *Id.* § 581-2.1(d).

24. The Agency may also "propose to modify, suspend or revoke an Agency permit" on grounds set forth in the regulation. *Id.* § 581-3.1. Grounds include activities exceeding the scope of a permitted project or noncompliance with the terms and conditions of an Agency permit or order. *Id.*

25. Proceedings to suspend, modify or revoke a permit are commenced through service of a notice of intent (NOI). Among other things, a NOI must advise a permit holder of the opportunity to seek a hearing. *Id.* § 581-3.2(b)(3).

26. A "permit holder" is "any person . . . [who] has been issued an Agency permit or variance pursuant to the [Adirondack Park Agency] Act . . . or any person . . . [who] has assumed the benefits and obligations of an Agency permit or variance pursuant to law, regulation, permit condition or property ownership." *Id.* § 581-1.2(i).

27. After receiving an NOI, a permit holder may serve a written response (RNOI), which must include a request for a hearing, if one is sought. *Id.* § 581-3.3. Absent a request for a hearing, the Agency's Enforcement Committee "shall consider the notice of intent and any written response from the permit holder and shall make a recommendation to the Agency for consideration." *Id.* § 581-3.4(b). In response to the recommendation of the Enforcement

Committee, the Agency either rescinds the NOI or issues a final determination and order. *Id.*

§ 581-3.4(c).

### ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

#### *Permit No. 87-28*

28. On or about February 11, 1987, Lakewood Properties, Inc. (Lakewood) applied to the Agency for permission to construct 54 single family dwellings on 54 lots within a 264.4-acre parcel located between New York State Route 86 (Saranac Avenue) and Old Military Road, in the Town of North Elba (Subdivision).

29. Robert Politi and Ivan Zdrahal, P.E., submitted the Application as Lakewood's representatives.

30. Upon information and belief, Politi is a Lake Placid real estate agent who sold lots in the Subdivision.

31. Upon information and belief, Ivan Zdrahal, P.E., was at the time a principal in Ivan Zdrahal Associates, PLLC (IZA), an engineering and land use planning firm. IZA drafted the master plan for the Subdivision.

32. The Subdivision became known as Fawn Ridge.

33. The ridge on which the Subdivision is located overlooks Route 86, Lake Placid, and its environs, and can be seen from many locations in the valley below.

34. The 1987 application (Application) sought regulatory permission under the Act because, as a subdivision on moderate intensity use lands with more than 14 and fewer than 75 lots, Fawn Ridge was a Class B regional project.

35. Further, the area in which the Subdivision was to be located was not governed by



a valid Agency-approved local land use plan at the time the permit was issued. Indeed, the Town of North Elba still has no approved local land use plan pursuant to Executive Law § 807.

Accordingly, the Agency had jurisdiction over the project at the time of the Application.

36. Lakewood submitted a topographic map dated June 28, 1987 (Topographic Map) to the Agency as part of the Application, a true and accurate copy of which is attached as Exhibit

1. The topographic map depicts a steep slope along the northeast side of the Subdivision.

37. Upon information and belief, Lakewood also described in the Application "all legal instruments such as homeowners' association charters and agreements, proposed declarations of covenants, deeds and other documents and instruments of conveyance," as required by 9 NYCRR § 572.6(c)(2)(xiii).

38. By November 1987, IZA had planned the Fawn Ridge subdivision, laying out the roads, utilities, lots, and common open space parcels.

39. On or about April 22, 1988, the Agency issued Permit No. 87-28 to Lakewood. A true and accurate copy of Permit No. 87-28 is attached as Ex. 2.

40. Pursuant to Executive Law § 809(7)(a) and Permit Condition 21, on or about May 4, 1988, the Permit was properly recorded with the Essex County Clerk. See Essex County Book 21, page 333, of Adirondack Park Agency Permits.

41. Permit No. 87-28 provides that "[f]ailure to comply with either the findings of fact or conditions voids the permit." See Permit Condition 2.

42. The Permit authorizes 54 single-family homes of less than 30 feet in height, as measured from the lower of either the lowest existing or the final grade to the highest structural peak, excluding chimneys. Permit Condition 15(g); see also Permit Condition 7(a) (describing

measurement method).

43. The Permit makes a factual finding that several lots, including Lot 39, contain slopes with grades of 15 to 25% but notes that "all lots have suitable sites with slopes less than 15% for a homesite and driveway." Permit Finding of Fact 14.

44. The Permit describes Lots 39 and 40 as "principally or entirely open field" and states that Lots 10-15 and 39-41 will "likely be readily visible from [among other places] Route 86," which runs through the valley below. Permit Finding of Fact 17.

45. Accordingly, the Permit notes the need to rely on "[t]opography, restriction of building height to a maximum of 30 ft., use of warm earth colors on structures, control of clearance of vegetation, retention of front, side and backyard vegetation, and eventual higher growth of existing trees" to aid in reducing the visibility of the Subdivision. *Id.*

46. Along with the other ridge line lots in the Subdivision, Lot 39 is subject to a special setback requirement of "at least 20 ft. . . . from the abrupt change in slope at the top of the hill." Permit Condition No. 15(j). This requirement exists to help minimize the visibility from Lake Placid or the surrounding valleys of any structure constructed on Lot 39 and other ridge line lots.

47. The "abrupt change in slope at the top of the hill" is represented by contour line 1946 on the Topographic Map, Ex. 1, which is, or was, situated toward the rear of Lot 39. Northeast of contour line 1946, the slopes range from 21% to 29%.

48. Permit No. 87-28 also requires that each lot owner allow "[s]uccessional tree growth" except to the extent the growth infringes on existing trails in certain identified areas. Permit Condition 15(i).

49. The Permit required Lakewood to impose deed restrictions on property owners that expressly reference the Permit and that require subsequent owners to "abide by [the Permit]."

50. The required deed restrictions were to include a 30-foot building height limitation, "measured from the highest point of the structure (excluding fireplace chimney) and [sic] the lowest point of either existing or finished grade adjacent to the structure." Permit Condition 7(a).

#### *History of Fawn Ridge*

51. The Fawn Ridge Homeowners Association of Lake Placid, Inc. (Homeowners Association) was incorporated on or about July 18, 1988. It owns "approximately 12 acres of vacant 'open space' lands" in the Subdivision and, according to its 1988 Certificate of Incorporation, also "control[s] the . . . architectural design and use of the residential lots."

52. Four years after the Agency issued Permit No. 87-28, on or about April 10, 1992, the then-officers and directors of Lakewood signed a Certificate of Dissolution. The New York State Commissioner of Taxation and Finance consented to the dissolution on or about May 21, 1996. Upon information and belief, Lakewood was dissolved effective May 23, 1996.

#### *Lot 39*

53. The Spiegels own Fawn Ridge Lot 39, Tax Map Parcel 42.10-1-45, in the Town of North Elba, Essex County. The Spiegels' deed, dated August 2, 1994, was recorded on or about August 9, 1994. Essex County Clerk's Office, Book of Deeds 1067, page 234.

54. Lot 39 is a ridge line parcel comprised of approximately .86 acres on lands classified "Moderate Intensity" on the Adirondack Park Land Use and Development Plan Map. The front of Lot 39 abuts Algonquin Drive. The rear of the Lot contains a steep slope and

overlooks Route 86 and Lake Placid and its environs.

55. The steep slope at the rear of Lot 39 adjoins the common lands owned by the Homeowners Association.

56. At one time, Lot 39 was part of a local ski trail known as the Fawn Ridge Ski Slope.

57. The Spiegels own, or have owned, two other parcels in the Subdivision, as evidenced by deeds recorded at Book 1395 at page 280 and Book 1063 at page 94 in the Essex County Clerk's office.

58. Although the deed by which Lot 39 was transferred to the Spiegels does not contain the 30-foot height restriction required by the Permit (the deed contains a 35-foot height restriction), the deed does, as required, specifically refer to -- and incorporate -- the Permit:

In addition to the restrictions contained herein, [Arthur S. Spiegel and Margaret C. Spiegel] shall be subject to and abide by the terms and conditions in the Adirondack Park Agency Permit No. 87-28, . . . which Permit was recorded in the Essex County Clerk's Office on May 4, 1988 in Liber 21 APA at Page 333.

Page 236 of Book 1067, recorded Aug. 4, 1994 (Deed) ¶ 20.

59. The Spiegels' deed allows tree cutting only within the Development Area indicated on the Development Control Plan issued on July 27, 1992 by IZA and only with the consent of the ARC. Deed ¶¶ 8-9.

60. Deed ¶ 10 requires that all buildings be constructed within the setback area indicated on Subdivision map no. 3877, filed in the Essex County Clerk's Office on August 25, 1988. Paragraph 10 makes no specific provision for variances by any authority, including the ARC. Paragraph 19 conditions waivers and variances of deed ¶¶ 1-18 on the written consent of two-thirds of Fawn Ridge homeowners.

61. Deed ¶ 20 points out that the Spiegels are subject to, and requires that they abide by, the terms of the Permit.

62. The Agency is a third-party beneficiary of deed ¶¶ 10 and 20.

63. The Spiegels are "permit holders" within the meaning of 9 NYCRR § 581-1.2(i).

***Vegetation at Lot 39***

64. As set forth earlier, Lot 39 was principally open field in 1987 when the Agency issued the Permit. The 1987 Topographic Map describes Lot 39 as "sparsely wooded."

65. By 1994, as evidenced by aerial photographs of the Subdivision taken on or about May 14, 1994, the rear of Lot 39 shows significant successional tree growth.

66. Aerial photographs of the Subdivision taken in or about May 2003, however, show Lot 39 essentially bare of tree or shrub growth. The photographs show heavily wooded neighboring lots except for the areas immediately adjacent to existing homes. A copy of an aerial photograph taken in or about May 2003 is attached as Ex. 3.

67. In or about March 2005, Agency staff documented successional tree growth on neighboring lots and estimated tree cover in adjoining areas at approximately 80%. In other words, tree canopies covered about 80% of the land. The trees on neighboring lots include scotch pine, birch and maple, and average 20 feet in height.

***Construction at Lot 39***

68. On or about June 3, 2004, Robert M. Marvin, a New York State licensed surveyor, laid out the foundation for the Spiegel residence, which was to be constructed on Lot 39. Marvin has acknowledged that he had a copy of the Permit. Affidavit of Robert M. Marvin, Jr., ¶ 6, sworn to June 27, 2005, and submitted in support of the Spiegels' Response to Notice of

Intent.

69. Marvin stated that the house was being placed at the rear of Lot 39, on the steep slope that overlooks Lake Placid, to minimize ridge line impact, despite the requirement that the house be located "at least twenty feet (20') back from the abrupt change in slope at the top of the hill." Marvin Aff. ¶¶ 11-12. Marvin further opined that the setback requirement had proven "not to be necessary." *Id.* ¶ 12.

*Enforcement by the Agency*

70. On or about September 24, 2004, Dr. Eugene Byrne complained to the Agency that the house across the street from his house, for which site work had begun, would violate the height restriction of the Permit if built as planned. Byrne lives at 215 Algonquin Drive in Fawn Ridge, across the street from the Spiegels' house.

71. By letter dated February 4, 2005 and addressed to the Agency, Byrne renewed his complaint, through counsel.

72. In response to Byrne's complaints about the Spiegel house, the Agency conducted a site visit on or about February 8, 2005. As a result of that visit, the Agency determined that the partially constructed house exceeded the Permit's 30-foot restriction on height.

73. In response to a request conveyed by the Agency by telephone, the Spiegels agreed to halt construction.

74. On or about March 9, 2005, the Spiegels, through counsel, wrote to the Agency seeking permission to protect the house from exposure to weather. By letter dated March 11, 2005, the Agency agreed.

75. A site visit by Agency staff on or about March 30, 2005 revealed that, rather than

protecting the house from the elements, the Spiegels were building a deck overlooking Lake Placid, and a roof for the deck.

76. Consequently, the Agency issued a cease-and-desist order on or about March 30, 2005.

77. The cease-and-desist order was amended by letter dated April 7, 2005 to allow the Spiegels to cover the dwelling with plywood and tar paper to protect the framework from the elements.

78. Meanwhile, by letter dated March 18, 2005, the attorney for Byrne had written a letter to the attorney for the Spiegels and advised them that, if the Agency failed to enforce the Permit, Byrne and his wife would do so themselves. According to the March 18<sup>th</sup> letter, the Byrnes intended to put the Spiegels "on notice . . . that they proceed with construction at their own risk."

79. On or about April 15, 2005, Agency staff filed a Notice of Intent (NOI). The NOI sought Agency suspension of the Permit and advised the Spiegels of their right to request a hearing.

80. The Spiegels did not request a hearing pursuant to 9 NYCRR § 581-3.3. On or about June 27, 2005, the Spiegels submitted a Response to Notice of Intent (RNOI) in which they waived their right to an adjudicatory hearing. The RNOI proposed modifications to the Permit, rather than steps aimed at compliance.

81. The Joint Review Board of the Town of North Elba/Village of Lake Placid sent a letter urging the Agency to "bring the structure and site into compliance with the intent of the deed restrictions" because such an effort would "support The Review Board's position of limited

visibility of ridge development for future construction and subdivision." Letter dated July 20, 2005, signed by Bill Billerman, Vice-Chairman, Joint Review Board of the Town of North Elba/Village of Lake Placid.

82. On or about July 8, 2005, as recommended by the Enforcement Committee, the Agency determined that the factual allegations of the NOI were supported by the record. Accordingly, the Agency determined that the Spiegels were in violation of the Permit including, specifically, Conditions 15(g) (height), 15(i) (successional tree growth), and 15(j) (setback).

83. The Agency simultaneously suspended the Permit and invited the Spiegels to "submit measures to bring the structure into compliance with the height, screening and building profiles achieved by the building height, vegetative screening, cutting and structure setback conditions" set forth in the Permit. Enforcement Order No. E2004-252 (July 8, 2005).

84. The Spiegels proposed measures to modify and screen the structure, which the Agency determined would not bring the house into compliance with the Permit. Accordingly, at an Agency meeting held on or about August 12, 2005, the Agency resolved to issue a Final Enforcement Order.

85. In Final Enforcement Order No. 2004-252, issued on or about September 7, 2005, the Agency found that the record did not support modification of the Permit and the Agency therefore suspended the Permit until the Spiegels complied with the Permit's terms. The Agency referred the matter to the Enforcement Committee for action pursuant to 9 NYCRR Part 581.

#### *Current Status of the Site*

86. The Spiegels are building a structure that will measure approximately 95 feet long by 38 feet wide and will contain roughly 10,550 square feet of living space. Photographs of the



structure taken in December 2005 are attached as Ex. 4.

87. If constructed to its full height, the house will measure 51.7 feet in height from existing grade adjacent to the structure to the highest structural peak, excluding chimneys. The 51.7 feet is the sum of 43.7 feet (the height of the house, measured from the highest non-chimney point of the structure to the current finished grade) and 8 feet (the height of a retaining wall built on top of fill brought to the location at the request of the Spiegels, measured from current finished grade to original existing grade at the southeast corner of the wall).

88. The foundation is located fewer than 20 feet from contour line 1946, the steep slope referenced in the Permit and depicted on the Topographical Map. In fact, the foundation is located below and on top of contour line 1946, rather than 20 feet back from it. Photographs of the rear of the house are attached as Ex. 5.

89. The foundation and retaining walls have been placed in a location that has a grade steeper than 15% even though flatter and preferable building sites are available on Lot 39 closer to Algonquin Drive.

90. The house's exterior is partially framed and the roof is incomplete. During the week of March 20, 2006, the Spiegels sought permission to secure the structure from the elements. Through counsel, the Agency authorized such activities. Until the week of March 27, 2006, the structure stood open to the elements and was not wrapped in any protective fabric.

91. Upon information and belief, the Spiegels or their agents cut down significant amounts of tree vegetation on Lot 39 in violation of the Permit after acquiring title but prior to beginning work on the house. Upon information and belief, the unauthorized cutting occurred sometime between 2000 and 2003.

92. Upon information and belief, the Spiegels or their agents have not permitted the successional tree growth required by the Permit and have cut down trees that otherwise would screen the dwelling.

93. Because the house is not set back from the steep slope, because it is higher than 30 feet, and because successional vegetation has not been allowed, the house is more visible from Route 86 and Lake Placid than other ridge line houses in the Subdivision.

***The Spiegels Refuse to Comply with Permit No. 87-28***

94. The Agency and the Spiegels have attempted to settle their differences, but have been unable to reach agreement.

95. Accordingly, on December 7, 2005, Executive Director Richard Lefebvre, at the direction of the Enforcement Committee, referred this matter to the Attorney General pursuant to Executive Law § 813 to: enforce Permit No. 87-28 and Executive Law §§ 809(2)(a), 809(7)(b); remediate the violations of Permit No. 87-28; and seek financial penalties for the violations.

96. On or about February 15, 2006, the Spiegels filed a complaint against the Adirondack Park Agency, its Executive Director and two of its staff members, in the United States District Court for the Northern District of New York. The action alleges violations of 42 U.S.C. § 1983, sounding in equal protection and due process. The action also alleges pendent violations of state law.

**FIRST CAUSE OF ACTION**  
***(violation of Permit Condition 15(j))***

97. The Spiegels have commenced construction on a house located less than 20 feet from the abrupt change in slope at the top of the hill in violation of Permit Condition 15(j).

Indeed, far from constructing their home above the abrupt change in slope, the Spiegels have constructed portions of their home at and below this change in slope. They have sited the house on a slope steeper than 15% even though another suitable location for the house existed.

98. Upon information and belief, as Fawn Ridge property owners, the Spiegels had actual notice of Permit Condition 15(j). They also had notice by operation of law. See Exec. Law § 809(7)(b).

99. As a result of their violation of Permit Condition 15(j), the Spiegels have violated and are violating Executive Law §§ 809, 813.

**SECOND CAUSE OF ACTION**  
*(violation of Permit Condition 15(g))*

100. The Spiegels are undertaking the construction of a single family dwelling on the Site which, upon completion, would be approximately 51.7 feet in height, far in excess of 30 feet in height as measured from the highest point of the structure, excluding the fireplace chimney, to the lowest point of either existing or finished grade adjacent to the structure, in violation of permit Conditions 7(a) and 15(g).

101. Upon information and belief, as Fawn Ridge property owners, the Spiegels had actual notice of Permit Conditions 7(a) and 15(g). They also had notice by operation of law. See Exec. Law § 809(7)(b).

102. As a result of their violation of Permit Conditions 7(a) and 15(g), the Spiegels have violated and are violating Executive Law §§ 809, 813.

**THIRD CAUSE OF ACTION**  
*(violation by the Spiegels of Permit Condition 15(i))*

103. The Spiegels have interfered with successional tree growth by cutting vegetation

in violation of Permit Condition 15(i).

104. Upon information and belief, as Fawn Ridge property owners, the Spiegels had actual notice of Permit Condition 15(i). They also had notice by operation of law. *See* Exec. Law § 809(7)(b).

105. As a result of their violation of Permit Condition 15(i), the Spiegels have violated and are violating Executive Law §§ 809, 813.

**FOURTH CAUSE OF ACTION**  
*(violation of restrictive covenants in deed)*

106. The Spiegels have violated or are violating restrictive covenants in the deed by which Fawn Ridge Lot 39, Tax Map Parcel 42.10-1-45, in the Town of North Elba, Essex County, was transferred to them.

107. The Spiegels have violated ¶ 10 of their deed by pouring a foundation and beginning the framing on a house located outside the Fawn Ridge setback area.

108. Upon information and belief, the Spiegels did not have the required written approval of two-thirds of the subdivision's homeowners.

109. By violating Permit Conditions 15(g), (i) and (j), and Finding of Fact 14, the Spiegels have also violated deed ¶ 20.

**PRAYER FOR RELIEF**

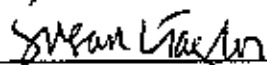
**WHEREFORE**, plaintiffs respectfully ask the Court to enter judgment as follows:

- (1) Declaring that the Spiegels have violated the Executive Law, the Permit, and their deed;
- (2) Requiring the Spiegels to comply with Permit No. 87-28 by, including, but not limited to: (a) reducing the height of the structure on the subject property to no more than 30 feet, (b) moving the foundation to a location at least 20 feet back from the original steep slope as calculated by the Agency, and (c) drafting a revegetation plan to be approved by the Agency and implemented and warranted by the Spiegels;
- (3) Requiring the Spiegels to pay a civil penalty pursuant to Executive Law § 813(1) in the amount of \$500 a day for each day since September 30, 2004 for each of the violations alleged against them in this Complaint;
- (4) Enjoining the Spiegels from further violations of the Executive Law, the Permit and the deed; and
- (5) Such other and further relief as this Court may deem just and proper.

Dated: April 17, 2006  
Albany, New York

Eliot Spitzer  
Attorney General of the State of New York  
Attorney for the Plaintiffs Adirondack  
Park Agency and State of New York  
New York State Department of Law

By:

  
Susan L. Taylor  
Assistant Attorney General  
Office of the Attorney General  
The Capitol  
Albany, New York 12224  
Phone: 518-474-2432

Peter H. Lehner  
Chief, Environmental Protection Bureau

John J. Sipos  
Assistant Attorney General

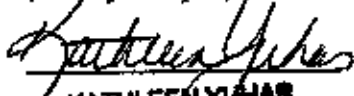
STATE OF NEW YORK)  
                                  ) SS.:  
COUNTY OF ALBANY )

SUSAN L. TAYLOR, being duly sworn, states as follows:

I am an Assistant Attorney General in the Environmental Protection Bureau of the New York State Department of Law, attorney for the plaintiffs. I have read the annexed verified complaint and know the contents thereof to be true based upon personal knowledge and/or my review and knowledge of the contents of files maintained by the State of New York, except as to those matters alleged upon information and belief, and as to those matters I believe them to be true.

  
\_\_\_\_\_  
SUSAN L. TAYLOR

Sworn to before me this  
17<sup>th</sup> day of April, 2006.

  
\_\_\_\_\_  
KATHLEEN YONAS  
Notary Public, State of New York  
No. 4713999  
Qualified in Putnam County  
Commission Expires May 31, 2006

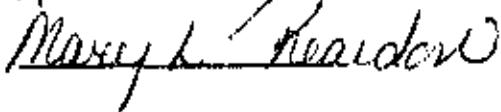
STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF ESSEX )

PAUL VAN COTT, being duly sworn, states as follows:

I am the Enforcement Attorney for the Adirondack Park Agency, a plaintiff in this action. I have read the annexed verified complaint and know the contents thereof to be true based upon personal knowledge and/or my review and knowledge of the contents of files maintained by the Agency, except as to those matters alleged upon information and belief, and as to those matters I believe them to be true.



Sworn to before me this  
17<sup>th</sup> day of April, 2006



MARY L. REARDON  
Notary Public - State of New York  
Qualified in Essex County  
No. 01RE6114798  
Commission Expires Aug. 23, 2008 