

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

ARTHUR and MARGARET SPIEGEL,

Plaintiffs,

-against-

No. 8:06-CV-203
(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,

Defendants.

AMENDED COMPLAINT

ARTHUR and MARGARET SPIEGEL, by and through their undersigned
counsel, allege and state as follows as and for their Complaint:

NATURE OF ACTION

1. This action concerns a government agency, which through its officials and employees, has selectively and unconstitutionally enforced against Plaintiffs Arthur and Margaret Spiegel the terms and conditions of Adirondack Park Agency Permit No. 87-28, which the Agency issued to a third-party developer in 1988. The Adirondack Park Agency enforcement action against Plaintiffs, which Defendants knowingly and maliciously delayed commencing until after the Spiegels' proposed residence was approximately 70% completed, seeks to compel the Spiegels, without a meaningful

opportunity to be heard, to dismantle their proposed residence, lower its height, and move the entire structure and its foundation to another area on the Spiegels' property, yet over the past two decades the Agency has neither monitored compliance with nor enforced the conditions of Permit No. 87-28 as against any other person or entity, notwithstanding its acknowledgement of chronic violations thereof by persons and entities similarly situated to Plaintiffs.

2. This is an action for declaratory and injunctive relief by Plaintiffs against the Adirondack Park Agency; Mark Sengenberger, in his official capacity as Acting Executive Director; Richard Lefebvre, in his capacity as Executive Director; and Paul Van Cott, in his official capacity as the APA's Enforcement Officer, seeking a declaration that the APA is not permitted under the Fifth and Fourteenth Amendments to the United States Constitution, Article I, Section 11 and Article I, Section 6 of the New York State Constitution, to single out Plaintiffs for allegedly violating the seventeen year-old permit, when the Agency has failed to monitor permit compliance over the last two decades and then failed to initiate an enforcement action against anyone other than Plaintiffs, notwithstanding its express notice of similar alleged violations throughout the subdivision in which the Spiegels own their property. With full knowledge of the allegations against Plaintiffs and of Plaintiffs ongoing construction activities, Defendants essentially laid in wait for at least six months, thus allowing Plaintiffs essentially to build their home at a cost of over \$300,000.00, before providing Plaintiffs with notice of any potential permit violations.

3. Except for the implementation of certain interim protective measures grudgingly authorized by the Agency, the Spiegels' investment in construction -

reasonably made in reliance on the permits granted and approvals obtained from the Town of North Elba and the Fawn Ridge Homeowner's Association Architectural Review Committee - has laid dormant since entry of a Cease and Desist Order by the agency on or about April 12, 2005.

4. The Agency has irrationally refused to consider the Spiegels' request to modify the anachronistic Permit No. 87-28, and has rejected at least four (4) offers in that regard, which, if implemented, would result in a significant reduction of the structure's height and substantial vegetative screening. Instead, and without an adjudicatory hearing, On July 8, 2005 the Agency entered a final Enforcement Order demanding strict permit compliance, which would require Plaintiffs to de-construct and rebuild the home that they constructed in accordance with all required land use and zoning permits. The matter is now pending with the New York Attorney General, who is poised to commence a civil action against Plaintiffs to compel compliance with the Permit. Plaintiffs seek permanent injunctive relief prohibiting Defendants from further pursuing the unconstitutional enforcement action against them, in any forum.

PARTIES

5. Arthur Spiegel is an individual who at all times relevant to this action did reside at 50 Spitfire Drive, City of Plattsburgh, County of Clinton, State of New York.

6. Margaret Spiegel is an individual who at all times relevant to this action did reside at 50 Spitfire Drive, City of Plattsburgh, County of Clinton, State of New York. (Arthur Spiegel and Margaret Spiegel being collectively referred to herein as "Plaintiffs")

7. The Adirondack Park Agency (hereafter "APA") is a duly constituted agency of the State of New York, formed and existing pursuant to Article 27 of the New York Executive Law, with an office and principal place of business at P.O. Box 99, Route 86, Ray Brook, Essex County, State of New York.

8. Mark Sengenberger was at all times relevant to this action the Acting Executive Director of the APA, and, on information and belief, is responsible for setting policy for the APA and has been and is directly involved in directing the conduct complained of herein. In all instances involved in this Complaint, Mark Sengenberger acted under color of state law.

9. Richard Lefebvre is currently the Executive Director of the APA, and, on information and belief, is responsible for setting policy for the APA and has been and is directly involved in directing the conduct complained of herein. In all instances involved in this Complaint, Richard Lefebvre acted under color of state law.

10. Defendant Paul Van Cott (hereafter "Van Cott") is an Enforcement Officer of the APA, and, on information and belief, is responsible for setting enforcement policy for the APA and has been and is directly involved in directing the conduct complained of herein. In all instances involved in this Complaint, Van Cott acted under color of state law.

JURISDICTION AND VENUE

11. This action arises under: (a) The Fifth and Fourteenth Amendments to the United States Constitution; (b) 42 U.S.C. § 1983, which permits causes of action for deprivation of federal rights against officials acting under color of state law; (c) 28 U.S.C. §§ 2201-02, which permit a party to seek, and this Court to grant, "necessary or proper relief based on a declaratory judgment"; (d) 28 U.S.C. § 1331(a), which grants this Court original jurisdiction of all civil actions arising "under the Constitution, laws or treaties of the United States"; and, (e) 28 U.S.C. § 1367, which grants this Court "supplemental jurisdiction over all other claims that are so related to the claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution."

12. Venue in this District is proper pursuant to 28 U.S.C. § 1391(b) in that the named Defendants are located within this District and the Plaintiffs' claims arise in this District.

FACTUAL BACKGROUND

13. Arthur Spiegel is a well-known figure in the New York's North Country, having served on the Board of Directors of a variety of corporate, municipal and charitable organizations. Starting with the Rockefeller campaign, Mr. Spiegel has been active in the New York State Republican Party. He was appointed by Governor George E. Pataki to the Board of Directors of the Olympic Regional Development Authority, based in Lake Placid, New York. In 2005, Governor Pataki appointed Mr. Spiegel as a commissioner on the "Task Force for Health Care in the 21st Century." In 2004, the North Country Chamber of Commerce named Mr. Spiegel as "Irishman of the Year" – an honor which recognizes Mr. Spiegel's contribution to community, economic and

charitable causes, and to the overall good of the North County Community. Mr. Spiegel's political affiliations are well-known in the North Country.

14. Upon information and belief, Defendant Van Cott is an active participant in the New York State Democratic Party, and regularly advocates for and fund raises on behalf of Democratic candidates for public office.

15. Upon information and belief, during times relevant to this Complaint, Van Cott was actively lobbying the North Country community to elect Eliot Spitzer as the next Governor of the State of New York and to oppose any Republican candidates for that office.

16. Upon information and belief, this political tension created a political animus toward Plaintiffs which manifested itself in the unconstitutional enforcement action described herein.

History of Development at the Subject Property

17. On April 22, 1988, the APA issued Permit No. 87-28 to an entity named "Lakewood Properties, Inc." The Permit authorized the subdivision of a 264.4-acre former ski area and Olympic housing complex located in Village of Lake Placid, New York, into 54, single-family residential lots. *A true copy of APA Permit No. 87-28 is attached hereto as Exhibit A.*

18. Upon information and belief, Lakewood Properties, Inc., was the original sponsor of the subdivision in which Plaintiffs' property is located, which would become known as the "Fawn Ridge Subdivision." The Fawn Ridge Subdivision is governed by the Fawn Ridge Subdivision Homeowners' Association, which passes upon building and construction issues by and through its Architectural Review Committee (hereafter the

"ARC"). APA Permit No. 87-28 generally applied to all 54 residential lots in the Fawn Ridge Subdivision.

19. At all times relevant to this action, Ivan Zdrahal, P.E., was Chair of the ARC. Upon information and belief, Mr. Zdrahal was professionally involved in the development of the application for APA Permit No. 87-28, having prepared both the base map and Subdivision map.

20. As pertinent to the Spiegels' property, the Permit authorized a "Class B Regional Project," as defined under Section 810 of the N.Y. Executive Law. Upon information and belief, land use projects are classified as "Class B Regional Projects" when they occur in areas that have already seen significant development or are otherwise less likely to have the potential for adverse environmental impacts.

21. The Adirondack Park Land Use and Development Plan is incorporated in a map that classifies land within the Adirondack Park into six categories: hamlet, moderate intensity use, low intensity use, rural use, resource management and industrial use. The Spiegel's property is located in an area classified as moderate intensity use.

22. New York Executive Law § 805.3(d)(1) describes the character of moderate intensity use areas as:

. . . those areas where the capability of the natural resources and the anticipated need for future development indicate that *relatively intense development, primarily residential in character is possible, desirable and suitable*. (emphasis supplied)

These areas are primarily located near or adjacent to hamlets to provide for residential expansion. They are also located along highways or accessible shorelines where existing development has established the character of the area.

23. Upon information and belief, these designations mean that Plaintiff's property was located in an area of the Adirondack Park that had already been impacted by development, but that in context, such impacts did not prejudice the overall goal of protecting the Adirondack Park.

24. The "Findings of Fact" in APA Permit No. 87-28 describe the area in which Plaintiff's property is located as follows:

6. Land uses in the vicinity of the project include many residences and commercial uses associated with Route 86, a major development corridor/entrance into the Village of Lake Placid. Major developments include Lake Placid Center for the Arts, Cold Brook and Crestview Shopping Plazas and Howard Johnson's Restaurant and Motor Lodge.

* * *

17. The project site is located with 1000 feet of an intensely developed commercial strip on Route 86 to the north and 500 feet west of the Village of Lake Placid and its densely populated center area. It has been used in the past as a ski center and campground and the treed slopes of the hillside have been partially cut for a long period of time. Although the project site presently appears as an undeveloped hillside, the adjoining W. Alton Jones Cell Science Center and residential development of the Village of Lake Placid *have determined a developed character adjacent to and surrounding the project site. The project site is also in a moderate intensity use area adjacent to a hamlet area and therefore, designed as an area for growth by the Adirondack Park Land Use and Development Plan map.*

Lots 10-15 and 39-41 will likely be readily visible from Route 86, Hillcrest Avenue, commercial establishments north of Route 86, Mount Whitney and the east central portion of Lake Placid, all within two miles of the project site. Lots 39 and 40 are principally or entirely open field. Dwellings on other lots may also be visible from off-site if their height exceeds that of the tree canopy . . .

Topography, restriction of building height to a maximum of 30 feet, 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 will aide in screening the visibility of the project. (emphasis supplied)

25. APA Finding of Fact number 17, supra, establishes that at the time of permit issuance in 1988, "Lot 39," which Plaintiffs would acquire, was "principally or entirely open field" and would be "readily visible" from the surrounding areas.

26. Based upon the Findings of Fact in Permit No. 87-28, the APA rendered the following Conclusion of Law:

1. The project would be consistent with the Plan and compatible with the character description and purposes, policies and objectives of the land use area involved since single family dwellings are primary compatible land uses in a moderate intensity use area.

27. Based on the foregoing Findings of Fact and Conclusion of Law, the APA imposed the following conditions, among others, upon activities conducted under APA Permit No. 87-28:

* * *

5. The Project Sponsor shall notify all prospective lot purchasers of the conditions of this permit by providing them with copies of this permit, the sheets of the subdivision plans showing the appropriate lot and proposed deed restrictions. The Project Sponsor shall maintain records that it furnished copies of the permit and subdivision plans to all prospective lot purchasers. The sponsor shall also provide the permit and approved plans to the supervising engineer and contractors and insure compliance with the same.

* * *

7. Prior to commencement of construction, the sponsor shall provide the Agency with documentation of, and

receive its written agreement that the following are acceptable:

a. Final deed restrictions including express reference to this permit and provision that lot owners will abide by it. *Deed restrictions shall include a 30 foot building height limitation, measured from the highest point of the structure (excluding fireplace chimney) and the lowest point of either existing or finished grade adjacent to the structure.* (emphasis supplied)

28. Upon information and belief, the APA failed to review the proposed deed restrictions and therefore never issued its "written agreement" to the deed restrictions placed on conveyances of property in the Fawn Ridge Subdivision, including Plaintiffs.

29. As to clearing of property in the Fawn Ridge Subdivision, the Permit imposes the following conditions:

* * *

15. Development on individual residential plots shall comply with the following standards:

* * *

b. For all lots, not more than 5,000 square feet of existing tree vegetation shall be cleared for the authorized single-family dwelling and accessory structures. No cutting shall occur in the Town of North Elba setback areas except for driveway and utilities, and all cutting shall be in accord with (c) and (d) below.

c. For all lots, for a distance of 50 feet downslope from each dwelling or accessory use structure, for the entire width of the lot, no more than 50% of all trees 4 inches or more at breast height shall be cut. In no event shall a clearing for a view be greater than 20 feet wide.

d. In addition to the restrictions described in (b) and (c) above, no more than 50% of all trees 6 inches or more in diameter at breast height shall be cut on any lot.

30. Upon information and belief, these Permit conditions authorized the clearing, for homebuilding purposes, of as much as 5,000 square feet of vegetation, from areas outside of the Town of North Elba setback areas.

31. With respect to the height of structures, the Permit provides:

g. No structure shall exceed 30 feet in height.

h. Single family dwellings shall not be constructed on existing slopes greater than 25% (measured over a 50 foot horizontal distance) and shall comply with Town of North Elba set back requirements . . .

i. Successional tree growth shall be allowed to occur except that limited cutting may occur to maintain existing trails within the designated common or open space areas as indicated on the map referred to in findings of fact number 5(a).

j. *Dwellings and accessory structures for Lots 39-41 and 50-54 shall be located at least 20 feet back from the abrupt change in slope at the top of the hill.* (emphasis supplied)

32. The Permit also reserved the APA's right to APA to monitor the Project Sponsor's compliance with its terms:

19. The Adirondack Park Agency may conduct such onsite investigations, examinations, tests and evaluations from time to time as it deems necessary to ensure compliance with the terms and conditions hereof.

20. At the request of the Adirondack Park Agency, the project sponsor shall report in writing the status of the project including details of compliance with any terms and conditions of this permit.

33. Upon information and belief, except for the instant enforcement action against Plaintiffs, the APA never conducted "such onsite investigations, examinations, tests and evaluations . . . to ensure compliance with" APA Permit No. 87-28.

Acquisition of Plaintiffs' Property

34. The Spiegels acquired "Lot 39" in the Fawn Ridge Subdivision from Patricia Jones Edgerton, as Trustee of Nettie Marie Jones Trust, Charlottesville, Virginia, by deed dated August 2, 1994, recorded in the office of the Essex County Clerk on August 9, 2004, at Book 1067 of Deeds, Page 224. *A true copy of the Spiegels' deed is attached hereto as Exhibit B.*

35. As pertinent herein, the Spiegel's deed from the Nettie Marie Jones Trust contains the following standard covenants and restrictions:

* * *

8. Cutting of trees shall be permitted only upon the consent of the [ARC] and/or its agents, successors and assigns. Cutting of trees shall only be allowed for the purpose of providing a cleared area for construction in accordance with the provisions of these covenants, for the purpose of access and landscaping and for the limited purpose of providing views or scenic vistas from a residence.

9. Cutting of trees/clearing of vegetation shall only be permitted within the Development Area as indicated on the Development Control Plan issued on July 27, 1992 by Ivan Zdrahal Associates unless otherwise approved in writing by the ARC and/or its agents, successors or assigns.

10. All buildings must be erected within the setback requirements as indicated on the Subdivision Plan of Fawn Ridge filed in the Essex County Clerk's office on August 25, 1988, as Map No. 3877.

11. *No building or structure shall exceed 35 feet in height when measured from the highest point of the structure (excluding the fireplace chimney).*

36. The sole reference in Plaintiff's deed to APA Permit No. 87-28 was in covenant 20, "[I]n addition to the restrictions contained herein, the party(ies) of the second part shall be subject to and abide by the terms and conditions in the Adirondack

Park Agency Permit No. 87-28, issued to the party of the first part for the Fawn Ridge Subdivision which permit was recorded in the Essex County Clerk's office on May 4, 1988 in Liber 21 APA at Page 333."

37. Upon information and belief, Plaintiffs' predecessor in title did not provide Plaintiffs with a copy of APA Permit 87-28; did not provide Plaintiffs with sheets of the subdivision plans showing the appropriate lot and proposed deed restrictions; and did not provide a copy of APA Permit 87-28 and approved plans to Plaintiffs' supervising engineer and contractors, all in violation of Condition 5 of the Permit. Plaintiffs made the APA aware of these permit violations, and of Plaintiff's lack of actual notice of APA Permit No. 87-28, yet the Agency continued to press its enforcement case only as against Plaintiffs.

Development of Lot 39

38. Plaintiffs' property is located in the Town of North Elba, which, upon information and belief, has a local land use and zoning program that has been reviewed for consistency with the APA Act and approved by the APA pursuant to N.Y. Executive Law §§ 803 - 808.

39. In approved jurisdictions such as the Town of North Elba, the APA does not exercise project-specific permitting jurisdiction over projects such as Plaintiffs' residential construction. For all such projects, the Town of North Elba is the exclusive permitting entity, with full and complete authorization to issue building and zoning approvals.

40. In or about June 2004, Plaintiffs submitted plans and specifications for the construction of a single-family residence on Lot 39 to James Morganson, Building Inspector for the Town of North Elba.

41. After some negotiation and discussion, the Building Inspector established a maximum 34 foot height for the highest point of the proposed residence, consistent with local zoning and with Plaintiffs' 35-foot deed restriction.

42. Since the plans and specifications revealed that the proposed residence encroached upon the approved setback lines for the Fawn Ridge Subdivision, the Building Inspector required the Plaintiffs to obtain a variance from such setbacks from the Fawn Ridge ARC. The Building Inspector, charged with interpreting and enforcing the Town of North Elba's zoning and land use controls, did not require Plaintiffs to pursue a setback variance from the Town of North Elba.

43. At the time Plaintiffs made their request for a setback variance to the ARC, Ivan Zdrahal was its Chair.

44. Based upon his review of the "elevation plans and the foundation plan for the home that Art Spiegel is proposing to build on Fawn Ridge," Mr. Zdrahal concluded:

Further, I approve of Mr. Spiegel's request to build a porch that will exceed the approved setback Association line, as well as slightly exceed the Town of North Elba setback line on the south side. I approve this because the property is along a 75 foot right of way that is a utility easement. *Additionally, the closest house on that side is over 100 feet away and is across two heavy tree lines, so the home will not interfere with any future construction or view.* (emphasis supplied)

45. In or about June 2004, the Town of North Elba issued a building permit to pour the foundation of the Spiegel proposed residence based on the plans approved by its Building Inspector.

46. On or about July 2004, the Town of North Elba inspected the foundation that had been poured and found it to be consistent with the approved plans and specifications. Thereafter, the Town of North Elba issued a second building permit for the erection of the proposed residence and regularly monitored the progress of construction thereunder.

47. Plaintiffs proceeded to construct their proposed residence in reliance upon the permits and approvals granted by the Town of North Elba and the Fawn Ridge ARC. Plaintiffs were not required to obtain any permits from the APA to implement the approved construction plans. Plaintiffs were not required to notify or otherwise consult with the APA.

Complaints to the APA

48. In or about June 2004, Plaintiffs shared their building plans with Eugene Byrne, a neighboring Fawn Ridge resident.

49. Upon information and belief, Mr. Byrne immediately complained to the APA that the duly approved proposed residence would exceed Condition 15(g) of APA Permit No. 87-28, which established a 30-foot height limitation.

50. In or about September 2004, Plaintiffs began framing the proposed residence. At or about that time, Eugene Byrne again complained to the APA that the height of Plaintiffs' proposed residence exceeded Condition 15(g) of APA Permit No. 87-28, which established a 30-foot height limitation.

51. Without actual or constructive knowledge of the Byrne's complaint to the APA, Plaintiffs completed framing the proposed residence. Construction proceeded at all times in strict accordance with the plans approved by the Town of North Elba and the setback variance granted by the Fawn Ridge ARC.

52. Upon information and belief, Plaintiffs' construction activities were clearly visible to travelers along Route 86, including those traveling to and from the APA Headquarters, also on Route 86.

53. On or about February 3, 2005, Eugene Byrne, through counsel, again contacted the APA to reiterate his complaint that Plaintiff's proposed residence exceeded Condition 15(g) of APA Permit No. 87-28. The February 3, 2005 letter, expressed frustration with the APA's long inaction, including the Agency's failure to inspect the proposed residence at any time. The February 3, 2005, letter stated that the APA had characterized the Byrne's complaint as "minor."

54. It was not until February 4, 2005, that Defendant Van Cott contacted Arthur Spiegel by telephone and informed Mr. Spiegel of the Byrne's complaint regarding the height of the proposed residence. This was the first notification to Mr. Spiegel by the APA that a complaint had been lodged.

55. In the February 4, 2005, telephone conversation, Defendant Van Cott characterized the issues as "minor." At that time, Plaintiffs voluntarily and immediately halted construction.

56. As of February 4, 2005, the foundation of the proposed residence had been poured, the proposed residence had been framed, the exterior siding had been completely sheathed and 70% of the roof trusses had been installed and sheathed, all at a cost to

Plaintiffs of approximately \$300,000.00, not including the cost of the land itself and carrying costs associated therewith.

57. The APA did not inspect construction of the proposed residence until February 8, 2005 – eight months after receiving the first complaint – by which time Plaintiffs had completed the work described above, all in conformance with the Town of North Elba permits. At the time of the APA's site inspection, construction of the proposed residence was approximately 70% complete, at a cost of approximately \$300,000.00.

58. During the inspection, APA staff observed and expressly noted height violations among other properties in the Fawn Ridge Subdivision.

Attempts to Secure the Unfinished Structure

59. On or about March 9, 2005, Plaintiffs, through counsel, notified Defendant Van Cott about certain construction activities required to enclose the proposed residence against the elements. On or about March 11, 2005, the APA concurred with Plaintiffs' efforts to secure the structure against the elements.

60. In order to properly secure the structure, Plaintiffs authorized the extension of certain areas, including the porch, to support the plywood required to enclose the roof.

61. On or about March 18, 2005, Eugene Byrne, through counsel, complained to the APA that Plaintiffs' interim measures appeared to go beyond merely securing the structure against the elements.

62. Upon information and belief, the Byrne's March 18, 2005, letter confirmed an earlier telephone conversation with Defendant Van Cott in which Van Cott anticipated "a hearing on this matter that will likely take place no earlier than June."

63. As of March 18, 2005, there was no enforcement action against Plaintiffs and no hearing had yet been scheduled.

64. On or about March 30, 2005, the APA issued a Cease and Desist Order, halting all construction at the Spiegel property, including such construction as was necessary to secure the property – and the Spiegels' substantial investment – against the elements. The Cease and Desist Order remains in effect as of February 2006, yet Plaintiffs have never had a hearing thereupon. *A true copy of the March 30, 2005, Cease and Desist Order is attached hereto as Exhibit C.*

The APA Enforcement Proceeding

65. On or about April 15, 2005, the APA, by and through Defendant Van Cott, issued a Notice of Intent pursuant to 9 N.Y.C.R.R. Part 581, seeking to suspend the authorizations provided in APA Permit No. 87-28, but only with respect to Plaintiffs' property. *A true copy of the Notice of Intent is attached hereto as Exhibit D.*

66. Notwithstanding that Plaintiffs' construction had proceeded on the strength of duly acquired permits and approvals, the Notice of Intent sought a final order (a) suspending APA Permit No. 87-28, "[u]ntil such time as the Permit Holders have taken measures to bring their development of the subject property into compliance with the Permit"; (b) requiring strict compliance with the permit by (i) reducing the height of the proposed residence to no more than 30 feet; (ii) relocating the proposed residence to a location approved by Agency staff that is more than 20 feet back from an undefined

"abrupt change of slope"; and (iii) developing and implementing a tree planting and maintenance plan, for purpose of screening the proposed residence from views from NYS Route 86 and Lake Placid, when APA Permit No. 87-28 had already characterized Lot 39 as "readily visible."

67. In response to the Notice of Intent, Plaintiffs made a request, pursuant to 9 N.Y.C.R.R. § 581-3.1, et seq, to modify the terms of APA Permit No. 87-28, as applied to Plaintiffs' property.

68. In support of their request, Plaintiffs made six (6) principal arguments:

- Plaintiffs complied with all building and zoning requirements for the Town of North Elba, the sole permitting authority, and were granted two separate permits – one to pour the foundation and one to build their house, in addition to passing several inspections initiated by the Town of North Elba Building Department;
- Plaintiffs were not notified by the Town of North Elba, the Fawn Ridge Subdivision Homeowners Association Architectural Review Committee, their building contractors, or the APA that their building plans for which they sought approval may exceed the 30-foot height limitation set forth in APA Permit No. 87-28;
- The APA, with full knowledge that construction was ongoing, waited approximately eight (8) months before taking any action in response to the complaints. During this time, the Spiegels invested a substantial amount of time, effort and money in the construction of the residence, all in plain view of APA staff;

- APA Permit No. 87-28 specifically recognizes that Lot 39 had previously been denuded of tree cover, characterizing same as "principally or entirely open field," that would be "readily visible" from several locales. Therefore, the APA's conclusions regarding adverse visual impacts and allegations of illegal tree cutting were irrational;
- Plaintiffs reasonably relied on the 35-foot height restriction in their deed;
- The Spiegels' home is not the only home in the Fawn Ridge Subdivision that has not complied with the height restrictions of APA Permit No. 87-28. On that point, Mr. Spiegel informed the APA that at least 12 homes had already been built in the Fawn Ridge Subdivision that exceeded 30-feet in height. Mr. Spiegel went so far as to identify a new home, three properties from Plaintiffs' in the Fawn Ridge Subdivision that was under construction at the time, with a height of nearly 40 feet. The APA took no action relative to the other properties.

69. Paragraph 31 of the Notice of Intent states, "initial investigation by Agency staff indicates that there may be other homes that have been previously built in the subdivision exceeding the 30 foot height limit," which establishes the APA's contemporaneous knowledge of similar alleged violations among similarly situated homeowners in Fawn Ridge.

70. Upon information and belief, at least one other home was built in the subdivision exceeding the 30 foot height limit while matters were pending between the Spiegels and the APA, but the APA has not initiated enforcement against that property.

71. Upon information and belief, the APA has not commenced enforcement action against any "other homes that may have been previously built in the subdivision exceeding the 30 foot height limit," although those homes are located in the same subdivision and are of comparable size and scale to Plaintiffs' proposed residence.

72. Since several similarly situated homes in the Fawn Ridge Subdivision exceed the 30-foot limitation of Condition 15(g) of APA Permit No. 87-28, the overall purpose of the height limitation in mitigating visual impacts has been compromised, yet Defendants irrationally concluded that only Plaintiffs' proposed residence should be the subject of enforcement.

Plaintiffs' Offers at Compromise/Modification

73. In a submission made on May 4, 2005 and reiterated on June 27, 2005, Plaintiffs offered to resolve the enforcement action by reducing the height of their home and by planting additional vegetation on the property to screen the views of the structure. In so doing, Plaintiffs noted that theirs would be the lowest of all homes in Fawn Ridge.

74. In response to Plaintiffs' submission, Defendants irrationally and arbitrarily rejected anything less than strict compliance with the Agency's understanding of APA Permit No. 87-28, a Permit which the Agency had never before monitored compliance with and never before sought to enforce.

75. Plaintiffs' submissions in opposition to the Notice of Intent, included, but were not limited to, several letters of support from members of the North Country Community, including a letter from Merrill L. Thomas, Inc. (Robert T. Politi, MAI), the realtor who sold the residential lots in the Fawn Ridge Subdivision. The Politi letter stated, "when I sold the lots in Fawn Ridge, the original owners clearly understood that

the ridge line overlooking the hamlet would at some later date contain large, single family homes . . . [a]ll of the homes recently built on the crest of Fawn Ridge are visible from Route 86 or Hillcrest Avenue and its surroundings."

76. Upon information and belief, the APA refused to consider these letters as part of the enforcement proceeding.

77. On July 8, 2006, the APA entered an Enforcement Order, suspending APA Permit No. 87-28, but only as applied to Plaintiffs' property, and calling upon Plaintiffs to submit revised plans and drawings demonstrating compliance with the Agency's understanding of the terms of APA Permit No. 87-28.

78. On or about July 27, 2005, Plaintiffs made a third settlement offer, which further reduced the structure's profile and offered additional screening techniques.

79. On October 11, 2005, Plaintiffs contacted the APA for permission to implement certain interim measures to protect the structure against the oncoming North Country winter. As part of that proposal, Plaintiffs offered to lower the existing roofline to a height of 32 feet and then to secure the structure.

80. On or about October 14, 2005, the APA, which had already issued an order requiring Plaintiffs to reduce the structure's height, irrationally and maliciously responded "it should be noted that neither the April 7, 2005 letter, nor this letter, authorizes any reduction in the height of the structure. However, the Agency will allow your clients to protect the exterior walls and interior floors of the structure with a waterproof preservative. Beyond these protective measures authorized by the Agency, the Agency's order suspending work on your client's property until they comply with Agency Permit 87-28 remains in effect."

81. Thereafter, on or about November 1, 2005, Plaintiffs made yet another offer of settlement which would have reduced the height of the proposed residence to 32 feet and which contained screening proposals that went far beyond the Permit requirements.

82. Upon information and belief, in or about December 2005, and without responding to Plaintiffs' offer, the APA referred the underlying enforcement case to the New York State Attorney General's Office for purposes of commencing a civil action against Plaintiffs seeking, among other things, an Order requiring the Spiegels to demolish their home and rebuild same in strict compliance with the Agency's understanding of the terms of APA Permit No. 87-28.

AS AND FOR A FIRST CAUSE OF ACTION
Selective Enforcement

83. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 82 with the same force and effect as if set forth in full herein.

84. Plaintiffs' proposed residence is located in the Fawn Ridge Subdivision, development of which was authorized by, among other things, APA Permit No. 87-28. Each of the 54 residential lots in the Fawn Ridge Subdivision is subject to and must comply with the terms and conditions of APA Permit No. 87-28.

85. Plaintiffs duly obtained all required building and zoning permits from the Town of North Elba before commencing construction.

86. Plaintiffs were not required to obtain any permits or approvals from the APA to construct the proposed residence.

87. In reliance upon the Town of North Elba permits, and between June 2004 and February 2005, Plaintiffs invested over \$300,000.00 into construction, which

included, but was not limited to, the pouring of a permanent foundation, framing, exterior sheathing, and the installation of roof trusses, grading, landscaping and other work.

88. Upon information and belief, Plaintiffs' property, and the construction thereupon, was readily apparent to APA staff members who observed such construction while traveling to and from the APA headquarters in Ray Brook, New York.

89. Based upon such construction, Plaintiffs acquired a vested right in the Town of North Elba permits and approvals, which allowed them to construct their proposed residence.

90. Upon information and belief, the APA had never before monitored compliance with APA Permit No. 87-28 nor commenced an enforcement action against any person or entity for violations thereof.

91. Upon information and belief, the APA failed to assure that the Fawn Ridge sponsors complied with the notice and deed restrictions provisions of APA Permit No. 87-28, and has taken no enforcement action for the sponsor's failure to do so.

92. The APA has express knowledge regarding widespread building height violations among similarly situated properties within the Fawn Ridge Subdivision, but has enforced the Permit only as against Plaintiffs.

93. The APA has express knowledge that neither the Project Sponsor nor Plaintiffs' grantor provided the requisite notice of APA Permit No. 87-28, but has enforced the Permit only as against Plaintiffs.

94. Upon information and belief, such selective treatment was intended by the APA to inhibit or punish Plaintiffs for exercising the rights to construct that had vested under the Town of North Elba and Fawn Ridge permits and variances.

95. Upon information and belief, Defendant Van Cott's political affiliations and opposition to Mr. Spiegel's political viewpoint caused or contributed to such selective enforcement.

96. Upon information and belief, such selective treatment by the APA was intended to "make an example" of Plaintiffs, based solely on Mr. Spiegel's political point of view and to deprive Plaintiffs of rights vested under the Town of North Elba and Fawn Ridge ARC permits and approvals.

97. Upon information and belief, the APA enforcement action, and the APA's rejection of all of Plaintiffs' reasonable settlement offers, was completely irrational, contrary to APA precedent, arbitrary, capricious and resulted from malicious or bad faith intent to injure Plaintiffs.

98. Upon information and belief, compliance with APA Permit No. 87-28 would have little environmental benefit since: (a) the Permit acknowledges that Lot 39 will be "readily visible" and (b) the APA has allowed identical violations among similarly situated properties to go unremedied.

99. Upon information and belief, the Defendants have intentionally and with malice aforethought treated Plaintiffs differently from other similarly situated Fawn Ridge residents and there is no rational basis for the difference in treatment.

100. Defendants' action and threatened action in the Enforcement Proceeding will interfere with Plaintiffs' property rights by causing them to abandon their significant and justified investment in construction.

101. Defendants' action and threatened action to compel Plaintiffs to deconstruct and rebuild their proposed residence, without a hearing or any adjudication

that the proposed construction is environmentally harmful, constitutes a denial of equal protection under the law, in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

102. Defendants' conduct constitutes action taken under color of law, or state action, undertaken pursuant to an agency policy, practice or custom of deliberate indifference to Plaintiffs' rights and which has or will deprive, and is intended to deprive, Plaintiffs of their right to equal protection secured by the Constitution of the United States.

AS AND FOR A SECOND CAUSE OF ACTION
Substantive Due Process

103. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 102 with the same force and effect as if set forth in full herein.

104. Plaintiffs applied for and duly obtained all required land use and zoning permits for the Town of North Elba, the only entity with permitting jurisdiction.

105. The Town of North Elba did not require Plaintiffs to obtain an area variance from the Town's setback requirements, yet the APA irrationally claims that Plaintiffs obtained a variance from such setbacks.

106. Subsequent to Plaintiffs' acquisition of such permits, the Town of North Elba conducted a series of inspections in which it made no objection to any aspect of Plaintiffs' proposed residence.

107. At the request of the Town Building Inspector, Plaintiffs sought and duly obtained a variance from the Fawn Ridge Subdivision Homeowners' Association Architectural Review Committee, authorizing a departure from the Subdivision setback restrictions on the approved Subdivision map.

108. Plaintiffs obtained the Subdivision setback variance from Ivan Zdrahal, who, upon information and belief, was directly involved in negotiating the terms and conditions of APA Permit No. 87-28. In granting a variance from the Subdivision setback restrictions, Mr. Zdrahal raised no concern regarding compliance with APA Permit No. 87-28.

109. Plaintiffs acquired all relevant and appropriate permits and approvals, and in reasonable reliance thereupon, began constructing their proposed residence in June 2004.

110. Upon information and belief, the APA was made aware of Plaintiffs' alleged violations of APA Permit No. 87-28, in or about June 2004, and again in September 2004, yet took no action in response to those citizen complaints. Upon information and belief, the APA was aware that during that time Plaintiffs had significantly invested in and was constructing the proposed residence.

111. The July 8, 2005, Enforcement Order, which suspends APA Permit No. 87-28, but only as applied to Plaintiffs' property, arbitrarily and irrationally deprives Plaintiffs of their constitutionally protected property interest in developing their real property pursuant to the Town of North Elba permits.

112. Upon information and belief, the APA has irrationally and without basis concluded that Plaintiffs' property, which APA Permit No. 87-28 characterizes "principally or entirely open field" contained a successional growth forest.

113. In so concluding, the APA made no finding that Plaintiffs had cleared in excess of 5,000 sq. ft. of trees, or that Plaintiffs had cleared trees within the Fawn Ridge setback area.

114. Upon information and belief, the APA has arbitrarily and irrationally concluded that the proposed residence will create significant adverse visual impacts, when APA Permit No. 87-28 specifically acknowledges that visual impacts from construction on Lot 39 were unavoidable and in the context of the developed area were acceptable.

115. Upon information and belief, APA staff manufactured the alleged height violation by intentionally misconstruing the applicable methodology for measuring a building's height.

116. Upon information and belief, the phrase "abrupt change in slope" is vague, ambiguous and unenforceable, yet Defendants have defined that term to mean less than 15% slope by intentionally misconstruing the Permit's terms.

117. Upon information and belief, there is no legitimate reason for the APA's decision, which is in all respects arbitrary, irrational and contrary to lawful procedure.

118. Defendants' actions herein, by virtue of their irrationality, lack of factual or legal basis, and impermissible motivation to punish Plaintiff for his political views and for exercising rights under the Town of North Elba permits, constitutes a denial of Substantive Due Process, in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

119. Defendants' action and threatened action to compel Plaintiffs to deconstruct and rebuild their proposed residence, without a hearing or any adjudication that the proposed construction is environmentally harmful, constitutes a denial of Substantive Due Process, in violation of the Fifth and Fourteenth Amendment to the United States Constitution.

120. Defendants' conduct constitutes action taken under color of law, or state action, undertaken pursuant to an agency policy, practice or custom of deliberate indifference to Plaintiffs' rights and which has or will deprive, and is intended to deprive, Plaintiffs of their right to equal protection secured by the Constitution of the United States.

AS AND FOR A THIRD CAUSE OF ACTION
Procedural Due Process

121. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 120 with the same force and effect as if set forth in full herein.

122. As a result of their acquisition of all appropriate permits and approvals from the Town of North Elba, and the significant construction that occurred in reliance thereupon, Plaintiffs acquired a vested right to implement the approved plans and specifications.

123. Plaintiffs have a protectable property and liberty interest in being able to construct the proposed residence in the manner that has been approved and to reside therein.

124. Defendants' action and threatened action in the Enforcement Proceeding will interfere with Plaintiffs' vested rights and deprive them of their property by causing them to abandon their significant and justified investment in construction.

125. Defendants' action and threatened action in continuing the Cease and Desist Order indefinitely without proper notice and a meaningful opportunity to be heard, has and will continue to interfere with Plaintiffs' property rights by causing the continued deterioration of the structure, which is open to the elements.

126. Defendants' action and threatened action to compel Plaintiffs to deconstruct and rebuild their proposed residence, without proper notice or a meaningful opportunity to be heard, or any adjudication that the proposed construction is environmentally harmful, constitutes deprivation of property without due process of law, in violation of the Fifth and Fourteenth Amendment to the United States Constitution.

127. Defendants' conduct constitutes action taken under color of law, or state action, undertaken pursuant to an agency policy, practice or custom of deliberate indifference to Plaintiffs' rights and which has or will deprive, and is intended to deprive, Plaintiffs of their right to due process secured by the Constitution of the United States.

128. Defendants' unlawful conduct has inflicted, and threatens to continue to inflict, immediate, irreparable harm on Plaintiffs, to cause substantial economic injury to the Plaintiffs, and to deprive them of their rights under the Fifth and Fourteenth Amendments. Plaintiffs have no adequate remedy at law.

AS AND FOR A FIRST SUPPLEMENTAL CAUSE OF ACTION
Denial of Equal Protection by Selective Enforcement

129. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 128 as if set forth in full herein.

130. Article I, Section 11 of the New York State Constitution provides, in pertinent part, "No person shall be denied equal protection of the laws of this state or any subdivision thereof."

131. Plaintiffs, compared with other similarly situated homeowners, were subjected to selective enforcement by Defendants.

132. Defendants' selective enforcement against Plaintiffs was motivated by malicious and bad faith intent to injure Plaintiffs in their exercise of rights that had vested

under the Town of North Elba permits. Defendants' action and threatened action in singling out Plaintiffs for disparate, adverse treatment that has not been shown to similarly situated homeowners constitutes a denial of Plaintiffs' rights to equal protection under the New York State Constitution.

133. Defendants' conduct constitutes action taken under color of law, or state action, undertaken pursuant to an agency policy, practice or custom of deliberate indifference to Plaintiffs' rights and which has or will deprive, and is intended to deprive, Plaintiffs of their right to equal protection secured by the Constitution of the State of New York.

134. Defendants' unlawful conduct has inflicted, and threatens to continue to inflict immediate, irreparable harm on Plaintiffs, to cause substantial economic injury to the Plaintiffs, and to deprive them of their rights under Article I, Section 11. Plaintiffs have no adequate remedy at law.

AS AND FOR A SECOND SUPPLEMENTAL CAUSE OF ACTION
Procedural Due Process

135. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 134 as if set forth in full herein.

136. Article I, Section 6 of the New York State Constitution provides, in pertinent part, "No person shall be deprived of life, liberty or property without due process of law."

137. Upon information and belief, the requirements of procedural due process mandate that the APA provide Plaintiffs with notice of the claims against them, an opportunity to be heard at a meaningful time and in a meaningful manner, and a written disposition of the charges against them.

138. The APA has issued a final Enforcement Order, which seeks to compel Plaintiffs to abandon their \$300,000.00 investment in construction that occurred consistent with all applicable permits and approvals.

139. The APA has issued a Cease and Desist Order, which has been in place since April 2005, yet Plaintiffs have had no hearing thereupon.

140. At the meeting which constituted the only hearing in this matter, Plaintiffs were not entitled to discovery, could not cross examine witnesses, and no evidentiary or procedural safeguards were put in place.

141. Upon information and belief, the final Enforcement Order was impermissibly inconsistent with the recommendations of the APA's Enforcement Committee.

142. Defendants' action and threatened action to compel Plaintiffs to deconstruct and rebuild their home, without hearing or any adjudication, constitutes deprivation of property without due process of law, in violation of Article I, Section 6 of the New York State Constitution.

143. Defendants' conduct constitutes action taken under color of law, or state action, undertaken pursuant to an agency policy, practice or custom of deliberate indifference to Plaintiffs' rights and which has or will deprive, and is intended to deprive, Plaintiffs of their right to due process secured by the Constitution of the State of New York.

144. Defendants' unlawful conduct has inflicted, and threatens to continue to inflict, immediate, irreparable harm on Plaintiffs, to cause substantial economic injury to

the Plaintiffs and to deprive them of their rights under Article I, Section 6. Plaintiffs have no adequate remedy at law.

AS AND FOR A THIRD SUPPLEMENTAL CAUSE OF ACTION

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145. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 144 as if set forth in full herein.

146. Defendants were expressly made aware of Plaintiffs' building and construction plans in or about June 2004, when Plaintiffs' construction was at its nascent stage.

147. Defendants knowingly and intentionally failed to act upon complaints it received regarding the construction of the Spiegels' proposed residence from June 2004 until February 2005.

148. During the time period that Defendants were knowingly and intentionally ignoring the complaints against Plaintiffs, Defendants were aware that construction was ongoing.

149. Notwithstanding Defendants' possession of complaints specific to the height of Plaintiffs' proposed residence, and notwithstanding Defendants' actual knowledge that construction was ongoing, Defendants intentionally and maliciously took no action to enforce APA Permit No. 87-28, until February 4, 2005.

150. Plaintiffs reasonably relied upon their lack of knowledge of any such complaint and/or alleged violation of APA Permit No. 87-28 to continue constructing the proposed residence between June 2004 and February 2005.

151. Defendants' actions in intentionally delaying notification to Plaintiffs, where the Defendants had a duty to act, gives rise to an estoppel which bars the APA from asserting any right to enforce APA Permit No. 87-28.

152. Defendants have acquiesced in chronic violations of APA Permit 87-28 since its inception in 1988, and have taken no enforcement action thereupon against anyone other than Plaintiffs.

153. As a result of the foregoing, Defendants are estopped from enforcing APA Permit No. 87-28 against Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in favor of Plaintiffs and against Defendants, granting the following relief:

(a) A declaratory judgment that Defendants' action and threatened action to compel Plaintiffs to deconstruct and rebuild their home, without hearing or adjudication, is a deprivation of the Plaintiffs' property and liberty without due process of law, in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 11 of the New York State Constitution;

(b) A declaratory judgment that Defendants' action and threatened action to compel Plaintiffs to deconstruct and rebuild their home for alleged violations of APA Permit No. 87-28, when the Agency has acquiesced in similar alleged violations by similarly situated properties in the Fawn Ridge Subdivision is a deprivation of the Plaintiffs' right to equal protection under law, in violation of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 6 of the New York State Constitution;

(c) A permanent injunction prohibiting Defendants, and their agents, representatives, successors, and those acting in concert with them, from compelling or threatening to compel the Plaintiffs to deconstruct and rebuild their home;

(d) Reimbursement of reasonable attorney's fees from the APA, and such other costs as are recoverable pursuant to 42 U.S.C. §§ 1983 and 1988; and

(e) An award of such other relief as to the Court seems just and proper.

Dated: May 3, 2006
Albany, New York

MCNAMEE, LOCHNER, TITUS
& WILLIAMS, P.C.

By: _____ /s/
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exhibit C

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PAGE 233

STATE OF NEW YORK
ADIRONDACK PARK AGENCY
P.O. BOX 99
RAY BROOK, NEW YORK 12977
TELEPHONE (518) 891-4050

William J. ...
SPECIAL AGENT

In the Matter of the Application of
LAKEWOOD PROPERTIES, INC.

Project and Permit
No. 87-28

For a Permit pursuant to Section 809
of the Adirondack Park Agency Act and
Permit pursuant to 9 NYCRR Part 578

RECEIVED
APR 12 1988
ADIRONDACK PARK AGENCY

SUMMARY

Lakewood Properties, Inc. is granted approval of a Class B Regional Project involving the subdivision of 264.4 acres of land. The Class B project consists of the subdivision of 71.9 acres of property into 54 residential lots averaging 0.9 acres in size, 1.6 miles of roads occupying 12.22 acres, and 12.17 acres in common open space. The conveyance of Lots 1 and 2 which contain wetlands, constitutes a Class A Regional Project and is also approved.

The project is located between New York State Route 86 (Saranac Avenue) and Old Military Road in the Town of North Elba, Essex County, in areas designated Hamlet, Moderate Intensity Use and Rural Use on the Official Adirondack Park Land Use and Development Plan Map.

AUTHORIZATION

The project is approved as described in the findings of fact and upon the conditions herein. Failure to comply with either voids the permit.

BY *[Signature]*
AS *[Signature]*
MI *[Signature]*
RE *[Signature]*

FINDINGS OF FACT

1. The project site is owned by Lakewood Properties, Inc., a corporation incorporated under Section 402 of the Business Corporation Law on August 20, 1964.
2. The 264.4 acre project site is described in 11 deeds to Lakewood Properties, Inc. cited below.

<u>Deed Dated</u>	<u>Recorded</u>	<u>Liber/Page</u>
10/5/82	10/13/82	773 - 181
10/5/82	10/20/82	774 - 133
11/16/82	11/24/82	777 - 5
10/5/82	10/13/82	773 - 187
4/72	5/22/72	516 - 33
9/1/72	9/5/72	524 - 203
9/1/72	9/5/72	524 - 197
9/1/72	9/5/72	524 - 300
9/1/72	9/5/72	524 - 195
5/10/66	5/13/66	443 - 170
8/28/64	9/24/64	424 - 468

In addition, Lakewood Properties, Inc. and the Lake Placid Association for Music, Drama and Art, Inc. have entered into an Agreement dated October 30, 1987 to a relocation, increase of right-of-way width and conveyance of fee interest to the road which will provide the main ingress and egress for the project. The road is further described in finding of fact five.

3. The project site has been involved in five previous Agency projects:
 - a) Project 79-86: Permit P79-69, issued October 26, 1979, authorized two 1.5 acre lots and two single family dwellings (presently known as the Crabb and Carroll parcels) which are not part of this project site.
 - b) Project 79-289: Permit P79-287, issued October 26, 1979, and Permit P79-287A, issued June 25, 1980, authorized temporary use for Olympic housing and required restoration of the site.
 - c) Project 78-281, Permit 78-281R issued December 3, 1980 authorized a 45 lot subdivision with 43 single family dwelling lots. The other 2 parcels were retained by the sponsor. This project was never undertaken; however, the current project is very similar to it.

- d) Project and Permit 80-169 issued September 8, 1980 authorized a 3.6 acre lot, which was never sold. It is part of the current project site.
 - e) Project and Permit 81-40 issued May 6, 1981 authorized two single family dwelling lots which were never sold, and the land is part of this project site.
4. The 264.41 acre project site contains lands in three land use areas of the Official Adirondack Park Land Use and Development Plan Map as follows:

Land Use Area	Acres	Project Component
Roadlet	8.5	Primary Access Road
Moderate Intensity Use	207.7	54 Residential Lots
Rural Use	48.4	Secondary Access Road

5. The project is summarized as follows:
- a) The entire property, general lot and road layout, designated open space areas, 5 ft. contour topographic features and existing and proposed water, sewer and storm water utilities are shown on a map entitled "Base Map and General Development Map, Lands of Lakewood Properties, Inc.", by Ivan Zdrahal Associates, dated November 23, 1987 at a scale of 1"=200'.
 - b) The Subdivision Plan, Ingress and Egress Easement Plan, Utility Plan, Grading Plan, Electrical Plan and Construction Details are shown on 16 sheets entitled "Fawn Ridge, Lands of Lakewood Properties, Inc." dated November 19, 1987 by Ivan Zdrahal Associates, Map No. 87-72 at a scale of 1"=50' or as shown (hereafter called Map B).
 - c) One, one story 2,975 sq. ft. structure, formerly a ski lodge, exists on lot 4. There are also water, sewer and storm drainage structures formerly associated with the abandoned ski center and temporary Olympic housing uses on the property.
 - d) The project sponsor proposes 54 residential lots and one single family dwelling on each lot, which average 0.9 acres, ranging in size from 0.6 to 1.2 acres.
 - e) The subdivision is to be served by improvement and extension of the existing Village of Lake Placid and Town of North Elba water and sewage systems; details are shown

on the plans cited in 5(b) above. Extension of the sewer district has not been completed to date. Details are:

Sanitary Sewage System - 6,485 ft. of 8" diameter PVC pipe
35 manholes
460 ft. of D.I.P. force main
2 pumping stations

Water Supply - 6,155 ft. of 6" diameter D.I.P.
7 fire hydrants
12 gate valves

- f) The main access to the subdivision from New York State Route 86 will be provided by a newly constructed 7,000+ ft. road built to Town of North Elba standards as shown on sheets 6, 7 and 8 of the Map B. The road will have a 20 ft. wide driving surface and 2 ft. of curb/gutter area at the edge of each lane. A secondary/emergency access road (2,450 ft.) which the project sponsor states will be for emergency use only, will be constructed from the southwestern corner of the main subdivision access road to Old Military Road. It will have an 8 inch gravel base with a driving surface of 20 ft. in width, and will be paved to Town of North Elba standards within two years.

The 50 ft. wide right-of-way will also include the underground water, sanitary sewer and electric utilities and portions of the storm water system. The existing common entrance on Saranac Avenue is to be replaced by an improved entrance about 70 ft. to the west and the old entrance restored to lawn.

- g) The main access road is proposed to cross Cold Brook via an existing bridge which has a driving surface of 16 ft. in width with 2 ft. shoulders. The bridge has reinforced concrete abutments which appear to be sound structurally, although original as-built drawings have not been found, nor has testing occurred. These abutments support four steel beams 16' wide flange 50 (16 WF 50) each which support a 6 1/2 inch reinforced concrete slab for the driving surface. The width of the driving surface is restricted by the current post-type guide rail to a maximum of 20 ft. An independent engineer analysis of the primary road bridge across Cold Brook recommended the bridge load limit be posted at K15 or 15 tons. The project sponsor proposes to upgrade the bridge to a two way bridge with a driving surface 20 ft. wide and H20 or 20 ton load, but no detailed plans have been submitted. The guide railings and their support piers appear to be

structurally inadequate. Since most school buses and construction equipment weigh more than 15,000 pounds, the proposed bridge weight limit (H20) will restrict access to cars and small trucks.

- n) Stumps and uncalculated excess excavated material are to be disposed, covered and seeded in the abandoned gravel pit shown on Sheet 1 of Map B. No on-site extraction is proposed.
- l) No toxic chemicals or pesticides are proposed to be used.
- j) About 12.17± acres of common open space is proposed, consisting of old ski trails on the property. By letter dated March 1, 1988, the sponsor has requested a "no action" determination from the New York State Department of Law concerning the common lands.
- k) The storm drainage system will consist of 12, 15, and 18 inch diameter helically corrugated metal pipe, catch basins/manholes, and two storm water detention and siltation areas. Ultimate discharge of most of the storm water will be to stone aprons located in wooded areas immediately upgradient of wetlands and wooded uplands, as shown on Sheets 6-12 and 15 of Map B. There is one outlet to a drainage channel west of Lot 22. Temporary erosion control during construction will be by site-located haybale dikes as shown on the storm drainage plans. All disturbed soils are to be restored by grading, seeding and mulching.
- l) Site preparation and infrastructure construction is expected to take seven months beginning in April 1988. Construction of residences is expected to begin in 1989, with construction of 10 to 12 residences per year.
- m) The project sponsor projects that: a) the houses will be occupied by about 25% year-round residents and 75% second home; b) the year-round residents will total 60 people, including 30 school aged children; c) the seasonal residents will total 156 people and d) the total peak estimated occupancy of the subdivision is 216 people. Agency staff has not done an independent analysis. However, review of site infrastructure is predicated on full capacity on any given day.
- n) The public water supply will be provided by extension of the Town of North Elba Water District 1 which has a design capacity of 650 gpm or 936,000 gpd, and after construction

of the project, will have an excess capacity of 150 gpm. Details of construction are shown on Map B. The water supply will tap into an existing 8 inch diameter Town water main located near the southwestern corner of Lot 4. A new 6,155 ft. of 6 inch diameter water main will be looped to connect back into the existing water main via an easement to be secured across the W. Alton Jones Cell Science Center, Inc. property adjoining the site. There will be seven fire hydrants and 12 gate valves and curb stops installed at each lot.

- o) The public sewage system will be provided by expansion of the Town of North Elba Whiteface Inn Sewer District Extension which has a design capacity of 585,000 gallons per day and after construction of the project, will have an excess capacity of 564,480 gallons per day. Details of construction are shown on Map B. The 2.5 million gallons per day municipal sewage treatment plant for the sewer district is currently operating at about one-half of its capacity and is operated efficiently. The sanitary sewer system will convey sewage from Lots 18-29 32-37 42-44 46-47 by gravity through 6,458 ft. of 8 inch diameter sanitary sewer with 15 manholes to pump station 1 located between Lots 22 and 24. The pump station conveys the sewage through a 4 inch diameter force main to Manhole No. 0 located between Lots 16 & 17. The sewage will then flow by gravity to pump station 1 located about 200 ft. south of the Iroquois Lane cul-de-sac. The sewage from the remaining lots flows by gravity through an 8" diameter sewer directly to pump station 1. This pump station will connect to existing Town sewer district facilities.
- p) The project is reasonably expected to generate 28 tons of solid waste per year. Individual lot owners will be responsible for delivery to the North Elba landfill and/or a county transfer station.
- q) The project will be provided with up to 420 kv peak electric service by the Lake Placid Village Electric Department. A 1987 reconstruction of the primary service line on West Valley Road, including an additional 13.2 kv line, will provide adequate service. The electrical system will tap into the existing system at a pole located near pump station 1. The new electric distribution line will be underground. Cable, TV and telephone lines will be installed simultaneously with the underground electric conduit.
- r) The water, sewer, drainage, road and electric utility

systems are to be built by the developer and dedicated to the proper municipal authority for maintenance. Site preparation and construction costs, with a 10% contingency, is estimated by the project sponsor at \$996,600. Agency staff has not made independent assessment.

- s) The project sponsor expects a) lots to cost \$50,000 each with no tax abatement proposed; b) Infrastructure construction to provide jobs for an estimated 75 workers; c) home construction to provide 30 to 50 jobs and d) average home assessment of approximately \$3,000. Agency staff has not made independent assessment.
 - t) No plans have been made at this time to develop the balance of the property.
 - u) All infrastructure will be owned, operated and maintained by Lakewood Properties until dedicated to and accepted by the appropriate municipal authority after construction is completed.
 - v) The sponsor intends to impose 20 deed restrictions for the development on each lot including requiring residences at least 200 sq. ft. in size, prohibiting further subdivision, imposing limits on tree cutting, underground utilities and other provisions as stated in the document dated February 7, 1988 and received March 9, 1988 by the Agency.
6. Land uses in the vicinity of the project include many residences and commercial uses associated with Route 86, the major development corridor/entrance into the Village of Lake Placid. Major developments include Lake Placid Center for the Arts, Cold Brook and Crest View Shopping Plazas and Howard Johnsons Restaurant and Motor Lodge.
7. The sponsor consulted with various municipal officials concerning project design, adequacy of services, and ability of government to accept maintenance responsibilities. Letters of support were received from the Village of Lake Placid Water and Sewer Superintendent and Electric Department Superintendent, the Town of North Elba Highway Superintendent, the Lake Placid Fire Chief, the Lake Placid Central School Superintendent, the Placid Memorial Hospital President, and the New York State Police. Concerns were expressed as to the need to study traffic on Route 86 by the New York State Police, traffic on the bridge by the Town Highway Department.

and the need for final electric plan by the Lake Placid Electric Department.

8. In a letter dated January 26, 1988, the Department of Environmental Conservation advised that the sewage system plans are technically complete, but prior to approval, a resolution by the Town of North Elba Town Board approving the extension of the Whiteface Inn Sewer District is necessary. The New York State Department of Health is reviewing the water and subdivision plans, and has advised the Agency that preliminary review indicated acceptable plans. The sponsor must apply to the NYS Department of Transportation for a permit for the proposed new entrance road on NYS Route 88. The Town of North Elba Planning Board has granted preliminary approval.
9. Thirty-two adjoining property owners, local government officials and the Environmental Notice Bulletin were provided with notices of the project. One citizen visited the Agency to review plans and one citizen called with a question, but no concerns or objections have been stated to date. The Agency held a public hearing on a similar 45 lot subdivision (Project 79-168) on the same project site on July 31, 1980 and no public concerns were raised. Three letters were received at that time concerning the primary and secondary roads to serve the project; those concerns have been addressed in the new application.
10. The project site contains about 4,000 ft. of shoreline on Lake Placid Outlet, also called Cold Brook. This water body is navigable by canoe, inhabited by trout, contains wetlands and associated flood plains, is high in water quality and low in turbidity, receives drainage from the site and is presently undeveloped except for two preexisting bridges providing access to the site. Lots 1 and 2 will have frontage on Lake Placid Outlet. Building setbacks, control of site drainage, erosion control, adequately designed and maintained drainage structures and maintenance of existing vegetation along the shoreline are needed to protect the shoreline and water quality and associated wildlife, scenic, recreational and flood plain values.
11. There are four wetland areas on the property, but the boundaries are not completely shown on the subdivision plans. The wetlands are more completely portrayed on the map prepared by Mr. Daniel Spada. The large wetland complex associated with Cold Brook, composed of shrub and coniferous trees vegetation, has a value rating of "2" under 9 NYCRR 578; about 37 acres are located on the project site. Portions of Lots 1

and 2 include wetland. The main access road and drainage facilities are adjacent to the wetland. A coniferous wetland about 2.7 acres in size, generally located south of Lot 22 and the secondary access road has a value rating of "4" and will receive storm drainage from the project. A wet meadow and shrub wetland complex, having a value rating of "2" due to two structural vegetational groups is about two acres in size and located about 250 ft. north of Old Military Road and 170 ft. east of the secondary access road and is generally defined by the 1,875 contour line. A shrub wetland, having a value rating of 3 is about 1.5 acres in size and located east and adjacent to Carolyn Road. These wetland areas are important to drainage, water quality, fish and wildlife habitat, flood plain and open space. The project design has avoided direct impacts to the wetlands, but proper setbacks, existing drainage patterns and erosion control must be maintained. Storm drainage will be directed to the wetlands, but the stone aprons will protect the wetlands by slowing down the storm water, as shown on Sheet #15 of 16 (finding of fact 5b).

- 12. The project sponsor's engineer has estimated infrastructure construction costs to be \$998,600 (does not include upgrading existing bridge). The installation of all infrastructure must be well coordinated to avoid interference with or destruction of completed work. Portions of the infrastructure will traverse slopes exceeding 15%. For all of these reasons, the construction of the infrastructure must be strictly coordinated and in accordance with the plans and specifications and take place under the supervision of a NYS licensed professional engineer.
- 13. The soils on the site consists of Hurman and Berkshire well-drained, glacial tills. Glacial outwash sands and gravel are found beneath the glacial tills, usually at depths of 10 to 15 ft. from the original ground surface. Numerous boulders are evident on the ground surface and will be found within the soil profile. They will create some additional costs for grading and waste disposal areas. Generally the soils on the site are rated fair to good for community development, road construction and utility installation. The Hurman and Berkshire glacial tills are rated low to moderate potential for erosion. Development on slopes exceeding 15% could cause erosion if temporary and permanent erosion control measures are not promptly employed and maintained. All road side slopes should be graded to a maximum of 2 horizontal on 1 vertical, seeded and mulched. All other disturbed areas should be seeded and mulched.
- 14. Slopes on the project site vary from 0 to 65%, but are

predominantly 5 to 10% on the residential lots. A generalized slope map is shown on the Base Map and General Development Map. About 75 acres or 25% of the entire property contains slopes in excess of 15%. Portions of lots 1, 2, 3, 9, 11-13, 15, 18, 22-24, 39-42 and 50-54 contain slopes from 15 to 25%. However, all lots have suitable sites with slopes less than 15% for a homesite and driveway. Careful siting and construction should be required to avoid excess cut and fill, soil erosion and removal of existing vegetation on lots containing slopes exceeding 15%.

15. The site contains areas of field grasses associated with the previous ski center. Spruce-fir woodlands dominate the lower plateau and successional mixed woodlands of scotch pine, birch, and aspen dominate the slopes and upper plateau of the project site. The spruce-fir trees cover averages about 30 to 40 ft. in height. The successional mixed trees cover ranges from 8 to 30 ft. in height with an estimated average height of 20 ft. The existing vegetation is important in stabilizing the soil, preventing soil erosion, absorbing surface drainage and storm runoff, providing privacy between residences and screening development from view from public travel corridors such as Route 86 and the waters of Lake Placid. The project sponsor has proposed the following deed covenant restricting vegetation cutting on individual lots:

"Cutting of trees shall be permitted only upon permission of Lakewood Properties, Inc. and/or its successors and assigns or its agent and solely for the purpose of providing a cleared area for construction in accordance with the provisions of these covenants and for the purpose of access and landscaping and for the limited purpose of providing views or scenic vistas from a residence." The proposed covenant does not ensure that only limited cutting will occur, and therefore, conditions are required to ensure that the visual impacts of this project are minimized and that soils remain stabilized.

16. Revegetation is a vital phase of all projects to ensure long-term control of erosion. It is very important to establish temporary and/or permanent cover on all disturbed areas as soon after initial site disturbance as is possible. Much erosion can be eliminated by sequencing construction so that revegetation of disturbed areas can be done promptly. Unprotected construction sites can produce up to 10 Tons per acre eroded materials during the course of a year, whereas protected areas will only erode at a rate of 1 to 3 Tons per acre per year. On this project site, primary areas of concern during project development are the road development and sewer and water line installation. ~~Other areas of concern for~~

revegetation are individual home sites on slopes greater than 30% and the area and regrading involved. Also, temporary and permanent erosion control is necessary to minimize degradation of the wetlands.

- 17. The project site is located within 1000 ft. of an intensely developed commercial strip on Route 86 to the north and 500 ft. west of the Village of Lake Placid and its densely populated center area. It has been used in the past as a ski center and campground and the tread slopes of the hillside have been partially cut for a long period of time. Although the project site presently appears as an undeveloped hillside, the adjoining W. Aiton Jones Cell Science Center and residential development of the Village of Lake Placid have determined a developed character adjacent to and surrounding the project site. The project site is also in a Moderate Intensity Use area adjacent to a Habitat area and therefore designated as an area for growth by the Adirondack Park Land Use and Development Plan Map.

Lots 10-15 and 39-41 will likely be readily visible from Route 86, highest peaks visible from the site. Lots 39 and 40 are generally on the site. Dwellings on other lots may also be visible from the site if their height exceeds that of the tree canopy. The nearest major peaks partially visible from the site are Whiteface Mountain (seven miles away) the Sentinel Mountain Range (about six miles away) and the McIntyre Mountains (about 10 miles away).

Topography, 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 will aid in screening the visibility of the project.

- 18. A 1977 New York State Department of Transportation traffic survey indicated an estimated average annual daily total of 5,000 cars travel this section of Route 86, although with the subsequent construction of the nearby Cold Brook Plaza Shopping Center, the present count is likely much higher. The New York State Police searched 1987 accident reports in the vicinity of the site and found there were two accidents at Cold Brook Plaza, one at Howard Johnsons and one at Pawa Ridge Road. Consolidation of the entrance for the project and the Center for Music, Drama and Art should help control the additional traffic to be generated.

19. There is an existing "lower bridge" downstream of the primary access road which provided limited access to West Valley Road. It is in disrepair and its legal ownership is in question. The project sponsor will prevent use of the bridge until ownership and maintenance is clarified.
20. Depending on final elevation of house and the main sewer pipe, some lots may require household sewage pumping systems. The sewage plans do not indicate which lots will require them, nor do they indicate when sewage laterals will be constructed to each to avoid excavation of the new road for this purpose.
21. The existing gravel pit on the site is an integral part of the drainage plan for the project as the lower portions of the pit act as a detention and stilling basin. The upper portions of the pit are suitable for disposal of trees, stumps and excess soil generated by the infrastructure construction. The sponsor will retain the settling basin, waste the construction debris in the upper part only, and reclaim that portion of the pit to a maximum of 2 ft. horizontal to 1 ft. vertical final slope, and then seed and mulch.

CONCLUSIONS OF LAW

1. The project would be consistent with the Plan and compatible with the character description and purposes, policies and objectives of the land use area involved since single family dwellings are primary compatible land uses in a Moderate Intensity Use area.
2. The project would be consistent with the overall intensity guidelines for the land use area in which it is located since only 54 new principal buildings are proposed.
3. The project would comply with the applicable shoreline restrictions of Section 806 of the Adirondack Park Agency Act since all structures will comply with the required 50 ft. setback from Cold Brook, no vegetative cutting is proposed within 35 ft. of any streams, and sewage disposal is by municipal treatment plant.
4. The project would not have an undue adverse impact pursuant to Section 809(10)(e) of the Adirondack Park Agency Act provided that:
 - a. adequate provisions are made to control storm water and soil erosion,
 - b. the amount of cut and fill and removal of tree vegetation

for road construction, driveways and homesites is minimized,

- c. no undue financial burdens are incurred by the town of North Elba or the Village of Lake Placid in the construction, operation and maintenance of the new road, water, sewer, storm drainage and electrical facilities necessary to serve the new project site, and
 - d. community services for water and sewer are installed in accordance with the most recent New York State Department of Health and Department of Environmental Conservation regulations.
5. The project would result in the minimum possible degradation of the wetland and its associated values and is the only alternative which can reasonably accomplish the applicant's objectives considering the values of the relocated and improved grade on the primary access road.

CONDITIONS

1. The enclosed stamped and addressed post card is to be returned to the Agency upon recording this permit with the Essex County Clerk's Office and upon completing any conditions noted thereon.
2. This permit authorizes only 54 residential lots and 1 single family dwelling on each, construction of the public road, extension of the public water system, extension of the sewage system, storm drainage system, and underground utilities as described in the application and the findings of fact herein, subject to the following conditions. Failure to comply with either the findings of fact or conditions voids the permit.
3. No more than 106 additional principal buildings shall be allowed (subject to prior Agency approval) on the 207 acre area of the project site classified Moderate Intensity Use unless the Adirondack Park Land Use and Development Plan Map is amended, or, pursuant to the adoption of a local land use program, refined, so as to permit more than a total of 160 principal buildings. Due to the applicable development considerations of Section 805 of the Adirondack Park Agency Act, no assurance is made that the mathematical development potential of the property will be allowed in subsequent permits. Similarly no more than 6 principal buildings shall be considered the mathematical maximum potential on the 48.4 acre area of the project site classified Rural Use.

4. No further subdivision, construction, or land use beyond that specifically authorized by this permit may occur without approval by the Adirondack Park Agency.
5. The project sponsor shall notify all prospective lot purchasers of the conditions of this permit by providing them with copies of this permit, the sheets of the subdivision plans showing the appropriate lot and proposed deed restrictions. The project sponsor shall maintain records that it furnished copies of the permit and subdivision plans to all prospective lot purchasers. The sponsor shall also provide the permit and approved plans to the supervising engineer and contractors and ensure compliance with the same.
6. The project sponsor may enter into sales contracts for the subdivision lots, but shall not actually or constructively transfer fee title until it has satisfied either a or b and also c below and received written approval of the Agency thereof:
 - a. Completion of services to the lot in question including the primary subdivision road and Department of Health approved water system, Department of Environmental Conservation approved sewage system, storm water systems and the underground utilities; or
 - b. Provision of adequate performance guarantee according to the design specifications approved by the Department of Health, Department of Environmental Conservation and Town of North Elba approved plans and the Conditions of this permit. The performance guarantee shall be based on updated, detailed cost estimates of the approved road, sewage, stormwater, utility and water supply systems prepared by an engineer licensed to practice in New York State. The performance guarantee can be in the form of a performance bond, cash escrow account certification or irrevocable letter of credit. The performance guarantee shall be in the amount of the total of detail cost estimates plus a 20% contingency. Any surety instrument shall specify the Adirondack Park Agency as either primary beneficiary or obligee and the Town of North Elba as secondary obligee; and
 - c. In addition to a and b above, the sponsor shall either complete the road or provide performance guarantees assuring completion of the secondary or emergency access road within two and one-half years of the date of this permit.

7. Prior to commencement of construction, the sponsor shall provide the Agency with documentation of, and receive its written agreement that the following are acceptable:
 - a. Final deed restrictions including express reference to this permit and provision that lot owners will abide by it. Deed restrictions shall include a 30 ft. building height limitation, measured from the highest point of the structure (excluding fireplace chimney) and the lowest point of any existing or finished ground adjacent to the structure.
 - b. Copy of the New York State Department of Law determination or "no action letter" with respect to the creation of a homeowners association for the common open space. If a homeowners association is necessary, the draft offering plan which will be forwarded to the Department of Law for approval.
 - c. Copy of the recorded deed transfer of title for the primary access road a/k/a/ Algonquin Drive.
 - d. Copy of the completed water line easement procured from the W. Alton Jones Cell Science Center, Inc.
 - e. Copy of the final subdivision plat and all final drawings which shall incorporate requirements of this permit and all other governmental permits including but not limited to New York State Department of Environmental Conservation, New York State Department of Health, Lake Placid Municipal Electric Company, Town of North Elba and New York State Department of Transportation. The final plat plan shall include the Town of North Elba sideyard and rearward requirement and delineate lot areas containing slopes greater than 25%.
 - f. Copy of plans prepared by a New York State licensed engineer for upgrading the upper bridge to accommodate a minimum 20 or 20 ton load, two lanes of traffic, guardrails and any other requirements of the Town of North Elba. The bridge design shall minimize disturbance to Cold Brook and its associated wetlands. The plan shall also evaluate the need for guardrails to the road approaches to the bridge.
 - g. Town of North Elba approval of sewer district extension.
 - h. Copy of typical house sewer pipe connection with the

sanitary sewer main that includes a lateral saddle or corporation stop and typical house sewage pump station and list of lots that may require pumps, all prepared by a New York State licensed engineer. The sponsor shall provide the underground utility connections to each lot line.

- i. Final subdivision plans that include and extend the temporary erosion control straw bale dikes around and downslope of the storm drain pipe outlets and riprapped energy dissipaters.
 - j. A critical path method, timeline or other acceptable scheduling document depicting the infrastructure construction sequence/schedule. The schedule shall include provisions to minimize the extent of site disturbance at any one time so that sections of the construction site shall be brought to final grade, surfaced or closed up (service facilities) stabilized and revegetative measures applied prior to proceeding with succeeding sections.
8. Construction of all infrastructure referred to in finding of facts number five shall be in accordance with approved plans and under the supervision of a New York State licensed engineer who shall certify in writing within 30 days of construction completion that the infrastructure was installed in accordance with said plans and specifications. The engineer's inspections shall be at times and frequencies necessary to certify compliance with the approved plans and in any event shall be at least once weekly during the construction period, and he shall keep records of same. A reproducible copy of the "as-built" drawings for all infrastructure, certified by a New York State licensed engineer, shall be provided to the Agency within 30 days of completion of construction.
9. All erosion control measures including stormwater detention and siltation areas and straw bale dikes shall be constructed before any other site disturbance takes place. These facilities shall be routinely and carefully maintained throughout the duration of construction until the permanent measures referred to in finding of facts number five k are completed and all disturbed areas have been successfully revegetated or stabilized.
10. No later than September 15 of each construction year the project sponsor shall ensure that proper revegetation/protective measures as specified in finding

of facts five k and the plans referred to therein have been applied to a) areas disturbed by construction during that year, and b) areas in need of repair from previous years.

The sponsor shall use the following or comparable seed in disturbed soil areas like drainage ditches:

- 25 lbs/ac. Creeping Red Fescue
- 5 lbs/ac. Perennial Rye
- 5 lbs/ac. Canada Bluegrass

The existing topsoil shall be stripped and stockpiled from road construction and used for leaming during revegetation.

A soil acidity and fertility test shall be performed and the sponsor shall use the results to determine proper amounts of lime and fertilizer to be applied to ensure successful regeneration.

Temporary cover crop using a fast growing seed shall be applied after September 15 on all disturbed areas where permanent cover is not established or seeded.

Netting or sutch shall be used on all slopes 10% or greater.

No later than construction winter shutdown or November 30 of each construction year the project sponsor shall ensure that all disturbed areas, not at final grade or not having received full revegetative measures, have at least a protective layer of mulch applied, and erosion control measures cleaned and rehabilitated.

Final roads shall be as shown on the plans referred to in the findings of fact five. In no case shall centerline grades exceed 10% for any length. Clearing of rights-of-way for road and utilities installation shall be limited to such areas as actually necessary to effect construction and shall in no event exceed the 50 ft. right-of-way shown on the plans. All road side slopes shall be graded to a maximum two horizontal to one vertical, seeded and mulched.

- 11. Reclamation of the existing gravel pit shall be in accordance with the grading plan sheets 6/16 and specifications contained therein. The lower portion shall not be filled or disturbed. The sponsor shall complete closure of the pit within either:
 - a) two months after capacity is reached or b) two months after the infrastructure is complete, but if that occurs in winter, by May 30 of that year. Only trees, stumps and clean excess excavated soil from infrastructure construction only shall be

allowed in this disposal site; no chemical, sanitary, hazardous or other construction waste materials shall be permitted in the disposal area. Any excess solid waste shall be removed from the site and disposed of at the Town of North Elba landfill or at another approved waste disposal site.

12. The sponsor shall submit for Agency review and approval a detailed sign plan for any future sign in conformance with Agency Rules and Regulations Appendix Q-3, prior to installation of any sign.
13. The project sponsor shall maintain the existing and proposed drainage controls which prevent erosion and siltation into Cold Brook. If the decision is to repair and maintain the lower bridge, a plan shall be prepared by a NYS licensed engineer for Agency review and approval.

The lower bridge shall be of design and material to conform with the natural surroundings. Bridge construction shall avoid or minimize disturbance to bed and bank of Lake Placid Outlet. In any case, bridge design should take into account the need to maintain water levels immediately upstream of the bridge.

14. Until such time as roads, bridge(s), water, sanitary and storm sewer systems are dedicated to the Town of North Elba, the project sponsor shall be responsible for maintaining these improvements and structures. The bridge load limits shall be posted at all times. Construction vehicles in excess of the limit shall use the secondary access road when feasible.
15. Development on individual residential lots shall comply with the following standards:
 - a. Driveways shall not be located on existing grades in excess of 15%. Driveways to individual lots shall not exceed 10% grade. All disturbed soils shall be immediately stabilized by revegetation or stone to prevent erosion. The total width of vegetation clearing for driveways shall not exceed 25 ft.
 - b. For all lots, not more than 5,000 sq. ft. of existing tree vegetation shall be cleared for the authorized single family dwelling, and accessory use structures. No cutting shall occur in the Town of North Elba setback areas except for driveway and utilities, and all cutting shall be in accord with (c) and (d) below.
 - c. For all lots, for a distance of 50 ft. down slope from

each dwelling or accessory use structure for the entire lot. No more than 50% of all trees 6 inches or more in diameter at breast height shall be removed. A clearing for a view shall be greater than 20 ft. wide.

- d. In addition to the restrictions described in b and c above, no more than 50% of all trees 6 inches or more in diameter at breast height shall be cut on any lot.
 - e. All structures shall be of indigenous or subdued colors or materials.
 - f. None of the cutting standards imposed by this permit shall be deemed to prevent the removal of diseased vegetation or of rotten or damaged trees or of other vegetation that present safety or health hazards.
 - g. No structure shall exceed 30 ft. in height.
 - h. Single family dwelling shall not be constructed on a lot where the distance from the structure to the wetland boundary shall be greater than 25 ft. (measured over a 50 ft. horizontal distance) and shall comply with Town of North Elba setback requirements. On Lots 1 and 2 no structures, development or tree cutting shall be allowed within 55 ft. of the 180 ft. elevation line or the mean high water mark of Cold Brook and the boundaries of the wetland.
 - i. Successional tree growth shall be allowed to occur except that existing structures shall maintain existing trails within the wetland boundary or open areas as indicated on the map referred to in findings of fact.
 - j. Dwellings and accessory structures for lots 39-41 and 50-54 shall be located at least 20 ft. back from the abrupt change in slope at the top of the hill.
 - k. Cuts and fills for driveways and homesites shall not exceed four ft. in depth without mechanical structures such as retaining walls.
16. Except for the activities approved herein, no new land use or development or regulated activity as defined by 9 NYCRR Part 578 shall occur in or adjacent to the wetlands without prior Agency review and approval.
 17. Nothing contained in this permit shall be construed to satisfy any legal obligations of the sponsor to obtain governmental

approval or permit from any entity other than the Adirondack Park Agency, whether federal, state, regional or local.

18. If the project authorized hereby is not in existence within two years of the date of recordation hereof, the project may not thereafter be undertaken, or continued unless a new permit is granted by the Adirondack Park Agency.
19. The Adirondack Park Agency may conduct such on-site investigations, examinations, tests and evaluations from time-to-time as it deems necessary to ensure compliance with the terms and conditions hereof.
20. At the request of the Adirondack Park Agency, the project sponsor shall report in writing the status of the project including details of compliance with any terms and conditions of this permit.
21. The terms and conditions of this permit shall be binding upon the heirs, successors, agents and assigns of the project sponsor; the exercise by the sponsor or by any successor or agent of any and all rights granted by this permit shall be subject to the completion of all obligations imposed by it.

THIS PERMIT SHALL EXPIRE WITHIN SIXTY DAYS OF THE DATE OF ISSUANCE UNLESS THE ORIGINAL PERMIT IS DULY RECORDED IN THE OFFICE OF THE CLERK OF ESSEX COUNTY. IN ORDER FOR THE PERMIT TO BE RECORDED, THE APPLICANT MUST PAY THE FOLLOWING FEES AT THE TIME OF RECORDING: FIVE DOLLARS AND, IN ADDITION THERETO, THREE DOLLARS FOR EACH PAGE OR PORTION OF A PAGE OF THE PERMIT AND ANY ATTACHMENTS TO IT. THE ORIGINAL OF THE PERMIT WILL BE RETURNED TO THE APPLICANT BY THE COUNTY CLERK.

Now, therefore, upon all of the foregoing and upon a majority vote of Agency members on April 22, 1988, duly had and recorded, it is ordered that subject to the foregoing, the project is conditionally approved.

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Project & Permit
No. 87-28

FERTIL issued this 21st day
of April, 1977.

ALLENDALE PARK AGENCY

By: William J. Curran
William J. Curran
Director of Operations

STATE OF NEW YORK

County of Essex) ss:

On this 21st day of April, 1977, before me, the subscribed personally
appeared, William J. Curran, to me personally known and known to me to be the
same person described in and who executed the within instrument, and he
acknowledged to me that he executed the same.

KAREN A. LONG
Notary Public
State of New York
Commission Expires 12/31/87

Karen A. Long
Notary Public

STATE OF NEW YORK
COUNTY OF ESSEX
CLERK'S OFFICE

ss:

I, Joseph A. Provoncha, Clerk of said County, do hereby certify that I have
compared the foregoing copy of APA

with the original record hereof in this office, and that it is a correct transcript thereof, and
the whole of said original, which said original was recorded on the 4th
day of May, 1977 in book No. 21 of APA
page 333

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my
official seal this 11th day of April, 2005



Joseph A. Provoncha Clerk



THIS INDENTURE, made this 2nd day of August, Nineteen Hundred and Ninety-Four

BETWEEN: PATRICIA JONES EDGERTON, as Trustee of the Nettie Marie Jones Trust, Charlottesville, Virginia, party of the first part,

and

ARTHUR S. SPIEGEL AND MARGARET C. SPIEGEL, tenants in common, both residing in Rouses Point, New York, parties of the second part,

WITNESSETH, that the party of the first part in consideration of ONE DOLLAR (\$1.00) lawful money of the United States, and other good and valuable consideration paid by the parties of the second part, does hereby grant and release unto the parties of the second part, their heirs, executors and assigns forever, the following described premises (the "Property"):

LOT NO. 39

All that piece or parcel of land situate in the Town of North Elba, County of Essex and State of New York, being a part of Lot Number 233 of Township Number 11 of Old Military Tract, Richards Survey and being designated as Lot Number 39 of a subdivision shown on a map entitled "Subdivision Plan, Fawn Ridge, Lands of Lakewood Properties, Inc." by Ivan Zdrahal, P.E. and Bert K. Hough, L.S., dated November 13, 1987, a copy of which is on file with the Office of the Clerk of the County of Essex and more particularly described as follows:

Beginning at a point in the Northeasterly bounds of Algonquin Drive which point is the Northwest corner of Lot Number 39 of the above mentioned subdivision and running thence N. 54° 10' 40" E. along the division line between Lots Numbers 39 and 40 a distance of 263.00 feet to the most Northerly corner of Lot Number 39; thence S. 19° 45' 00" E. along the Easterly bounds of Lot Number 39 a distance of 177.00 feet to the Southeast corner thereof; thence S. 64° 38' 30" W. along the Southerly bounds of Lot Number 39 a distance of 217.46 feet to a point in the Northeasterly bounds of Algonquin Drive; thence Northwesterly along said bounds along a curve to the left of radius 613.00 feet, central angle 11° 50' 00" a distance of 128.67 feet to the point or place of beginning. Containing 37,325 square feet of land.

TOGETHER with an easement and right-of-way for ingress and egress from New York State Route 86 over and along Algonquin Drive to the above described premises as shown on the above mentioned filed map.

RESERVING to the party of the first part and others all that portion of a 30 foot wide utility easement, abutting the above described parcel on the south which lies within the bounds of said parcel. All as shown on the above mentioned filed map.

SUBJECT to all utility easements located upon the Property as shown on the above mentioned filed map.

CONVEYANCE OF THE PROPERTY IS MADE SUBJECT TO THE FOLLOWING CONDITIONS, COVENANTS AND RESTRICTIONS WHICH SHALL FOREVER RUN WITH THE LAND AND BE BINDING UPON THE PARTIES HERETO, THEIR RESPECTIVE TRANSFERREES, HEIRS, SUCCESSORS AND ASSIGNS, TO WIT:

- 1. The Property shall be used solely for one family, private residential purposes. A residence may have as accessory to it a garage of not more than two-car capacity and one other accessory

Map 3877

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structure not to exceed an area of 150 square feet in size. All accessory structures shall be of the same materials and color scheme as the residence.

2. No commercial use of the Property shall be made except that residences may be rented to private families for private use.
3. The Property shall not be further subdivided into smaller parcels.
4. No building, structure, wall, fence, TV antenna or satellite dish or accessory residential feature or installation shall be erected, placed, constructed or maintained on the Property until and unless complete and adequate plans, specifications, exterior color and site location have been filed with, reviewed and approved in writing by the Architectural Review Committee established by the party of the first part (the "ARC"), and/or its agents, successors and assigns. The level of required detail for each submission shall be established by the ARC and/or its agents, successors and assigns. The ARC shall have the right to refuse to approve any plans, specifications, or building locations which are not suitable or desirable, provided that such refusal shall not be deemed unreasonable. The ARC shall have thirty (30) days from receipt of a complete and adequate set of plans to approve or disapprove said plans. Said plans shall be considered approved if they are not disapproved within said thirty (30) day period. A copy of said plans or specifications, as approved, shall be permanently lodged with the party of the first part, or its successors or assigns, and such plans and specifications shall be strictly abided by in the erection of said building or structure.

All proposed lot development components including any building, structure, driveway, deck, wall, fence, TV antenna or satellite dish or accessory residential feature or installation, including but not limited to utility service lines (sanitary, water, electric, telephone, CATV) shall be installed and located within the Development Area as indicated on the Development Control Plan issued on July 27, 1992 by Ivan Zdrahal Associates unless otherwise approved in writing by the ARC and/or its agents, successors and assigns.

Siting of all proposed lot development components shall be field verified by the ARC and/or its agents, successors and assigns prior to the beginning of construction. The party(ies) of the second part shall be responsible to provide a stakeout of all required components which stakeout shall be to the satisfaction of the ARC and/or its agents, successors and assigns.

5. Upon approval of said plans or specifications as indicated in Paragraph #4, all structures shall be completed on the exterior within twelve (12) months from the start of construction subject, however, to abnormal delays beyond one's control.
6. No house trailer, mobile home, camping trailer, boat trailer, or construction trailer shall be permitted on the Property except that camping trailers, boat trailers or construction trailers may be stored in a garage. No tent shall be placed or maintained on the land except that a tent for use by children shall be permitted after a dwelling has been constructed on the land.
7. No animals, livestock or the equivalent of any kind shall be raised, bred or kept on the Property, except that dogs, cats or other normal household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose.
8. Cutting of trees shall be permitted only upon the consent of the ARC and/or its agents, successors and assigns. Cutting of trees shall only be allowed for the purpose of providing a cleared area for construction in accordance with the provisions of these covenants, for the purpose of access and landscaping and for the limited purpose of providing views or scenic vistas from a residence.
9. Cutting of trees/clearing of vegetation shall only be permitted within the Development Area as indicated on the Development Control Plan issued on July 27, 1992 by Ivan Zdrahal Associates

- unless otherwise approved in writing by the ARC and/or its agents, successors and assigns.
10. All buildings must be erected within the setback requirements as indicated on the Subdivision Plan of Fawn Ridge filed in the Essex County Clerk's Office on August 25, 1988, as map no. 1877.
 11. No building or structure shall exceed 35 feet in height when measured from the highest point of the structure, excluding the fireplace chimney.
 12. No clothesline, trash storage or bottled gas containers shall be placed on the Property unless screened from view from other lots and roads.
 13. No sign of any kind shall be displayed to public view on the Property and no advertising of any kind shall be placed upon the Property or any structure located thereon except one "For Sale" sign shall be permitted.
 14. The Property shall be maintained in good condition and kept neat in appearance; no noxious, obnoxious, noisy, unsightly, or otherwise offensive objects or activities, specifically including, but not limited to, vehicle repairs, dumping, trash or junk cars shall be permitted, nor shall anything be permitted that may be an unreasonable annoyance or nuisance to other owners of property in Fawn Ridge.
 15. There shall be no overhead or above ground utility service lines of any kind or nature permitted on the Property.
 16. The party of the first part reserves unto itself, its agents, successors and assigns a ten (10) foot right of way for the purpose of installing and maintaining water lines, telephone lines, electric lines and cable TV lines, which right of way shall be located along the boundary line(s) of the Property which adjoin all roads dedicated or proposed to be dedicated to the Town of North Elba. said roads are named on the above referenced Subdivision Plans as Algonquin Drive, Iroquois Lane, Ahmek Way, Tonakela Trail, Waponeo Way and Temagami Trail.
 17. If any building upon the Property is totally or partially destroyed by any catastrophe, then in such event, such building or buildings shall be repaired or razed within twelve (12) months of said occurrence.
 18. The minimum building size for any residence to be constructed on the Property shall not be less than 1,800 square feet of living area excluding the basement area. This restriction may be waived by the ARC and/or its agents, successors and assigns upon request in its sole and absolute discretion.
 19. The party of the first part and/or its agents, successors or assigns reserves the right to waive or alter such of the above restrictions as it may deem best for the benefit of the Fawn Ridge Subdivision, which waiver shall also require the consent of at least two-thirds (2/3) of the owners of lots within said development. Such written consent to be acknowledged and recorded in Essex County Clerk's Office.
 20. In addition to the restrictions contained herein, the party(ies) of the second part shall be subject to and abide by the terms and conditions in the Adirondack Park Agency Permit No. 87-28, issued to the party of the first part for the Fawn Ridge Subdivision which Permit was recorded in the Essex County Clerk's Office on May 4, 1988 in Liber 21 ADA at Page 333.
 21. The restrictive covenants contained herein are created for the mutual benefit of the party of the first part, the owners of property located within the Fawn Ridge Subdivision and the Fawn Ridge Homeowners Association of Lake Placid, Inc. Any such party shall be authorized to commence an action to enforce compliance with said covenants. In the event it is found and determined by a court of competent jurisdiction that the party(ies) of the second part have violated any one or more of the above restrictive covenants then said party(ies) of the second part shall be responsible for and pay, inter alia, reasonable attorneys' fees to the successful party(ies) of any such action.

BOOK 1067 PAGE 237

22. The party(ies) of the second part shall be responsible for the repair, replacement and maintenance of the lateral sewer lines extending from the Property to the main trunk sanitary sewer line.

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to the Property,

TO HAVE AND TO HOLD the Property herein granted unto the parties of the second part, their heirs, executors and assigns forever,

AND said party of the first part covenants as follows:

FIRST, that said party of the first part is seized of said Property in fee simple, and has good right to convey same;

SECOND, that the parties of the second part shall quietly enjoy the Property;

THIRD, that the Property is free from encumbrances;

FOURTH, that the party of the first part will execute or procure any further necessary assurance of the title to the Property;

FIFTH, that said party of the first part will forever WARRANT title to the Property.

SIXTH, that in Compliance with Sec. 13 of the Lien Law, the grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement before using any part of the total of the same for any other purpose.

IN WITNESS WHEREOF, the party of the first part has executed this instrument day and year first above written.

IN PRESENCE OF

0055

NETTIE MARIE JONES TRUST

RECEIVED
\$ 240.00
AUG - 9 1994
REGISTERED
ESSEX
COUNTY

BY: *Patricia Jones Edgerton*
PATRICIA JONES EDGERTON
Trustee

STATE OF NEW YORK
COUNTY OF ESSEX

On this 9th day of August, 1994, before me personally came PATRICIA JONES EDGERTON, to me known, who being duly sworn, did depose and say that she resides in Charlottesville, Virginia, that she is the Trustee of the Nettie Marie Jones Trust; she is known to me to be the person described in and who executed the foregoing instrument and she acknowledged to me that she executed the same.

RECORDED AUG 03 1994
TIME 10:41 AM
BOOK 1067 PAGES
PAGE 237

J. P. ...
ESSEX CO. CLERK

Laurie J. Christian
Notary Public

LAURIE J. CHRISTIAN
Notary Public, State of N.Y.
No. 4871368
Qualified in Essex County
Commission Expires Oct 31, 1995

*Re Smith, Attorney & Co.
33 Governor St.
Hills P. Land 12946*

COUNTY OF ESSEX
CLERK'S OFFICE

ss:

I, Joseph A. Provoncha, Clerk of said County, do hereby certify that I have compared the foregoing copy of

Deed

with the original record hereof in this office, and that it is a correct transcript thereof, and the whole of said original, which said original was recorded on the 4th day of AUGUST 1994 in book No. 1067 of Deeds

page 231

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal this 11th day of April, 2005



by J. A. Provoncha Clerk
Deputy



-----X

In the Matter of the Apparent
Violations of the Adirondack Park
Agency Act by:

ARTHUR AND MARGARET SPIEGEL

CEASE AND DESIST ORDER
Agency File #E2004-252

Respondent, in the Town of
North Elba, Essex County

-----X

NOTICE: YOU ARE HEREBY ORDERED, PURSUANT TO 9 NYCRR §581-2.4, TO CEASE AND DESIST ANY AND ALL LAND USE AND DEVELOPMENT, INCLUDING BUT NOT LIMITED TO ANY CONSTRUCTION ON THE SUBJECT PROPERTY. ANY SUCH ACTIVITY OR CONVEYANCE IS PROHIBITED UNTIL THIS MATTER IS RESOLVED, THE ENFORCEMENT CASE IS CONCLUDED, AND/OR AN AGENCY PERMIT AUTHORIZING SUCH LAND USE AND DEVELOPMENT IS ISSUED AND RECORDED. YOUR FAILURE TO ABIDE BY THIS ORDER WILL RESULT IN THE IMMEDIATE REFERRAL OF THE APPARENT VIOLATIONS IN THIS MATTER TO THE ATTORNEY GENERAL FOR CIVIL PROSECUTION.

WHEREAS:

1. Arthur Spiegel and Margaret Spiegel own the subject property, comprised of Tax Map Parcel 42.01-1-45 in the Town of North Elba, Essex County, based on an August 2, 1994 deed recorded on August 9, 1994 in Book of Deeds 1067 at Page 224 in the Essex County Clerk's Office.
2. The subject property is located in a subdivision between New York State Route 86 and Old Military Road in the Town of North Elba, Essex County, in an area designated Moderate Intensity on the Official Adirondack Park Land Use and Development Plan Map.
3. Based on Agency investigation, it appears that the Spiegels are constructing a single family dwelling on the subject property in violation of conditions set forth in Agency Permit 87-28.
4. The Spiegels had voluntarily agreed to cease construction until this matter could be resolved.

- 71
5. By letter of March 9, 2005, the attorney for the Spiegels sought Agency staff concurrence in a proposal to temporarily secure the partially-constructed single family dwelling against damage from the elements. By letter of March 9, 2005, the Spiegels proposed to place plywood and tar paper on the roof and as a wrap around the structure.
 6. Agency staff responded by letter of March 11, 2005, concurring in the Spiegels' proposal to take temporary measures to cover the partially constructed single family dwelling with plywood and tar paper. Agency staff specifically advised the Spiegels that the Agency could not authorize measures that were more permanent in nature.
 7. A site visit by Agency staff on March 30, 2005 revealed that the Spiegels have proceeded with construction beyond that authorized by Agency staff's March 11, 2005 letter. Specifically, the Spiegels have constructed a deck off of the single family dwelling and are in the process of constructing a roof cover for the deck.

NOW, THEREFORE, IT IS ORDERED:

- I. Pursuant to 9 NYCRR §581-2.4, the Spiegels and their agents shall cease and desist from any and all land use and development, including any construction activity, on the subject parcel until this matter is resolved and the enforcement case is concluded.
- II. This order shall bind the Spiegels, their agents, successors and assigns.
- III. The Spiegels may address any and all communications with the Agency concerning this matter to Enforcement Attorney Paul Van Cott at the Agency's headquarters.

Dated: March 30, 2005
Ray Brook, New York

ADIRONDACK PARK AGENCY

BY: Mark Sengenberger
Mark Sengenberger
Acting Executive Director

To: Thomas Ulasewicz, Esq. (via fax and mail)



NEW YORK STATE
Adirondack
parkagency

-----X
In the matter of Agency
Permit 87-28 in relation to
lands owned by:

NOTICE OF INTENT
Agency File E2004-252

ARTHUR AND MARGARET SPIEGEL

Permit Holders, on property located in
the Town of North Elba, Essex County
(Tax Map Parcel 42.10-1-45)
LUA: Moderate Intensity Use
-----X

PLEASE TAKE NOTICE THAT pursuant to 9 NYCRR Part 581 the
Enforcement Committee shall be convened at 1:00 P.M., or as soon
thereafter as this matter shall be scheduled to be heard, on
July 7, 2005 at the offices of the Adirondack Park Agency (the
"Agency") on Route 86 in Ray Brook, Essex County, State of New
York, to consider Agency staff's proposed suspension of Agency
Permit 87-28 in relation to the subject property, as more
specifically described in the allegations of fact and law set
forth below.

PLEASE ALSO TAKE NOTICE THAT you have 30 days following the date
of this Notice of Intent ("NOI") to provide a written response
to the NOI at the address below. Pursuant to 9 NYCRR § 581-3.3,
your response shall provide reasons why Agency Permit 87-28
should not be suspended, including the material facts,
documentary evidence, and the provisions of law on which such

statement is based. Failure to respond within the 30-day period may result in the Enforcement Committee's accepting as true the allegations of fact and law made in this NOI.

PLEASE ALSO TAKE NOTICE THAT your written response to the NOI may also include a request for a hearing in this matter, in which case a hearing will be convened and a determination made by the Agency pursuant to 9 NYCRR Subpart 581-4.

PLEASE ALSO TAKE NOTICE THAT if you do not request a hearing, the Enforcement Committee will consider the NOI and any written response from you, and make a recommendation to the Agency for consideration. The Agency will then make a determination pursuant to 9 NYCRR § 581-3.4.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

General Facts

1. Arthur Spiegel and Margaret Spiegel, Permit Holders, own the subject property, comprised of Tax Map Parcel 42.01-1-45 in the Town of North Elba, Essex County, based on an August 2, 1994 deed recorded on August 9, 1994 in Book of Deeds 1067 at Page 234 in the Essex County Clerk's Office. See, Affidavit of Susan Parker, dated April 11, 2005 ("Parker Affd."), ¶2, Exhibit ("Ex.") A.
2. The subject property is located in a subdivision between New York State Route 86 and Old Military Road in the Town

of North Elba, Essex County, in an area designated Moderate Intensity Use on the Official Adirondack Park Land Use and Development Plan Map. Parker Affd., ¶3, Ex. B.

3. The subject property is Lot 39 in a 54-lot subdivision identified as the "Fawn Ridge Subdivision" that was approved by the Agency pursuant to Permit 87-28 issued to Lakewood Properties, Inc. on April 22, 1988 and recorded in the Essex County Clerk's Office on May 4, 1988 in Book 21 of Agency Permits at Page 333. Parker Affd., ¶4, Ex. C (hereinafter, the "Permit").
4. The Fawn Ridge Subdivision is shown on a map entitled "Base Map and General Development Map, Lands of Lakewood Properties, Inc.", dated November 23, 1987. Parker Affd., ¶5, Ex. D. This map is referenced in the Permit in Finding of Fact (5)(a) on page 3 and shall hereinafter be referred to as the "Base Map". Parker Affd., Ex. C.
5. Sheet 2 of the Subdivision Plan for the Fawn Ridge Subdivision shows a portion of the subdivision that includes the subject property. Parker Affd., ¶6, Ex. E. This map is referenced in the Permit in Finding of Fact (5)(b) on Page 3 and shall hereinafter be referred to as the "Subdivision Plan Map". Parker Affd., Ex. C.

6. The subject property comprises approximately .86 acres based on a June 8, 2004 survey completed for Permit Holders. Parker Affd., ¶7, Ex. F. This survey expressly references the Permit in the top right-hand corner, and shall hereinafter be referred to as the "Survey". Parker Affd., ¶7, Ex. A.
7. The extent of vegetative cover as of 1987 on the lands comprising the Fawn Ridge Subdivision is shown on a topographic map done for Lakewood Properties, Inc. on June 28, 1987, which was submitted as Exhibit B accompanying the subdivision permit application of Lakewood Properties, Inc. Parker Affd., ¶8, Ex. G. This map shall hereinafter be referred to as the "Topographic Map".
8. The Spiegels are constructing a single family dwelling on the subject property. Parker Affd., ¶18.
9. The dimensions of the dwelling are approximately 95 feet in length by 38 feet in width. Parker Affd., ¶33.
10. The dwelling comprises approximately 10,556.5 square feet of living space. Parker, Affd., ¶33.
11. The Speigels own at least two other parcels in the Fawn Ridge Subdivision in addition to the subject property. Parker Affd., ¶10. All three of the deeds for the lots

owned by the Spiegels, including the deed for the subject property, contain the following language:

"In addition to the restrictions contained herein, the parties of the second part shall be subject to and abide by the terms and conditions in the Adirondack Park Agency Permit 87-28..." Parker Affd., ¶33, Ex. C.

12. The Agency-approved deed restrictions for the Fawn Ridge Subdivision required by the Permit included the following language:

"No building or structure shall exceed 30 feet in height when measured from the highest point of the structure (excluding the fireplace chimney) and the lowest point of either existing or finished grade adjacent to the structure." Parker Affd., ¶11, Ex. C.

These deed restrictions were required by Condition 7(a) in the Permit to be included in all deeds conveyed within the Fawn Ridge Subdivision. Parker Affd., ¶11, Ex. C.

13. The Spiegels' deed for the subject property does not include the required deed restriction language regarding height, nor does the deed for the lot most recently acquired by Arthur Spiegel in the Fawn Ridge Subdivision. Parker Affd., ¶¶12, 13. However, the Spiegels' deed for the property on which they built a house in 1991, a deed from the Spiegels to themselves, does include the express deed restriction language regarding height required by the Permit. Parker Affd., ¶¶14, 15. The Spiegels' 1991 house

appears to be less than 30 feet in height as required by the Permit and their deed restrictions. Parker Affd., ¶15.

Other Approvals Obtained for the Spiegels' Project

14. By letter of June 8, 2004, Ivan Zdrahal, P.E. approved the Spiegels' proposed construction of a single family dwelling on the subject property on behalf of the Architectural Review Committee for the Fawn Ridge Homeowners Association. Parker Affd., ¶28; Exhibit J.
15. Mr. Zdrahal is a homeowner in the Fawn Ridge Subdivision and was professionally involved in the development of the application for the Permit, having prepared both the Base Map and the Subdivision Plan Map. Parker Affd., ¶29.
16. The Zdrahal letter also approved, on behalf of the Architectural Review Committee for the Fawn Ridge Subdivision, a variance from Town of North Elba setbacks for the house, despite the fact that Condition 15(h) of the Permit expressly required compliance with the Town's setback requirements. Parker Affd., ¶30.
17. Arthur Spiegel was a member of the Fawn Ridge Homeowner Association's Architectural Review Committee until 2003. Parker Affd., ¶31.
18. On June 16, 2004, Arthur Spiegel applied to the Town of North Elba for a building permit to construct a single

family dwelling on the subject property. Parker Affd.,
¶32.

19. A building permit was issued to Arthur Spiegel on that same date by the Town of North Elba. Parker Affd., ¶34.
20. The proposed house was to be 36 feet in height, reduced by agreement between the Town and Arthur Spiegel to 34 feet in height. Parker Affd., ¶35.

History of Agency Enforcement Action

21. Agency staff responded to citizen complaints about the single family dwelling being constructed on the subject property by conducting a site visit on February 8, 2005. Parker Affd., ¶16.
22. In the course of that site visit, Agency staff determined that the dwelling under construction on the subject property exceeded the 30-foot height restriction imposed by the Permit. Parker Affd., ¶18.
23. Thereafter, Agency staff contacted Arthur Spiegel by telephone and he voluntarily agreed to cease construction until this matter could be resolved. Parker Affd., ¶19.
24. Subsequently, Agency staff and the Permit Holders attempted, unsuccessfully, to negotiate a resolution of this matter. Parker Affd., ¶20.

25. Failing to reach such a resolution, Agency staff decided to initiate a permit suspension proceeding pursuant to 9 NYCRR Part 581 in order to obtain an Agency decision in this matter. Parker Affd., ¶21.
26. By letter of March 9, 2005, the attorney for the Spiegels sought Agency staff concurrence in a proposal to temporarily secure the partially-constructed single family dwelling against damage from the elements. Parker Affd., ¶24.
27. Agency staff responded by letter of March 11, 2005, concurring in the Spiegels' proposal to take temporary measures to cover the partially-constructed single family dwelling with plywood and tar paper. Parker Affd., ¶25.
28. On March 16, 2005, with the Spiegels' permission, Agency staff conducted a site visit to the subject property with Arthur Spiegel in attendance. Parker Affd., ¶36. The March 16, 2005 site visit shall hereinafter be referred to as the "Site Visit".
29. On March 30, 2005, having found that the Permit Holders were in the process of constructing a porch on the single family dwelling, Agency staff issued a Cease and Desist Order to the Spiegels. Parker Affd., ¶26. The Cease and Desist Order, attached hereto as Exhibit I, has been

modified to allow the Spiegels to continue covering the partially-constructed single family dwelling with plywood and tar paper. Id.

30. In response to complaints from the Permit Holders, Agency staff are in the process of investigating other single family dwellings in the Fawn Ridge Subdivision that may exceed the 30-foot height limitation imposed by the Permit. Parker Affd., ¶22.
31. Initial investigation by Agency staff indicates that there may be other homes that have been previously built in the subdivision exceeding the 30-foot height limit. Parker Affd., ¶23.

Relevant Findings of Fact and Conclusions of Law in the Permit

32. Findings of Fact 14, 15, and 17 in the Permit state in relevant part that:

"14... Portions of Lots 1, 2, 8, 9, 11-13, 15, 18, 32-34, 39-42, and 50-54 contain slopes from 15 to 25%. However, all lots have suitable sites with slopes less than 15% for a homesite and driveway. Careful siting and construction should be required to avoid excess cut and fill, soil erosion and removal of existing vegetation on lots containing slopes exceeding 15%."

"15... Spruce-fir woodlands dominate the lower plateau and successional mixed woodlands of scotch pine, birch, and maple dominate the slopes and upper plateau of the project site. The successional mixed tree cover ranges from 8 to 30 ft. in height with an estimated average height of 20 ft. The existing vegetation is important in...screening development from view from public travel corridors such as Route 86 and

the waters of Lake Placid. The project sponsor has proposed the following deed covenant restricting vegetation cutting on individual lots:

'Cutting of trees shall be permitted only upon permission of Lakewood Properties, Inc. and/or its successors and assigns or its agent and solely for the purpose of providing a cleared area for construction in accordance with the provisions of these covenants and for the purpose of access and landscaping and for the limited purpose of providing views or scenic vistas from a residence.' The proposed covenant does not ensure that only limited cutting will occur, and therefore, conditions are required to ensure that the visual impacts of this project are minimized and that soils remain stabilized."

"17... Lots 10-15 and 39-41 will likely be readily visible from Route 85, Hillcrest Avenue, commercial establishments north of Route 86, Mount Whitney, and the east central portion of Lake Placid, all within two miles of the project site. Lots 39 and 40 are principally or entirely open field... Topography, 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 will aid in screening the visibility of the project."

33. The Permit included the following Conclusion of Law:

"4. The project would not have an undue adverse impact pursuant to Section 809(10)(e) of the Adirondack Park Agency Act provided that:

...d. the amount of cut and fill and removal of tree vegetation for road construction, driveways and homesites is minimized."

Height of Single Family Dwelling on the Subject Property

34. Condition 15(g) in the Permit provides that:

"No structure shall exceed 30 ft. in height."

35. Condition 7(a) in the Permit requires deeds for lots in the Fawn Ridge Subdivision to reference the Permit and to include deed restrictions including:

"a 30 ft. building height limitation, measured from the highest point of the structure (excluding fireplace chimney) and the lowest point of either existing or finished grade adjacent to the structure."

36. The single family dwelling under construction for the Spiegels on the subject property is approximately ~~43.2~~ 51.7 feet in height based on measurements taken by Agency staff during the Site Visit. Affidavit of Shaun LaLonde, P.E., dated April 12, 2005 ("LaLonde Affd."), ¶5.

37. The height of the face of the single family dwelling facing to the northeast, NYS Route 86 and Lake Placid is approximately ~~43.2~~ feet. LaLonde Affd., ¶8. A retaining wall and fill supporting the dwelling adds an additional eight feet in height to the structure, for the total height of approximately 51.7 feet measured as the Permit requires. LaLonde Affd., ¶¶6,8.

38. Based on Finding of Fact 17 in the Permit (see paragraph 32 above), it is clear that the Agency believed that restricting the height of dwellings to 30 feet would help to minimize the visibility of development on the subject property. Affidavit of John Quinn, dated April 15, 2005, ("Quinn Affd."), ¶10.

Location of Single Family Dwelling on the Subject Property

39. Condition 15(j) in the Permit provides that:

"Dwellings and accessory structures for lots 39-41 and 50-54 shall be located at least 20 ft. back from the abrupt change in slope at the top of the hill."

40. Finding of Fact 14 in the Permit noted that while the subject property had steep slopes ranging from 15% - 25%, there was room for locating a dwelling on the subject property on slopes less than 15%. Supra, ¶32.
41. Agency staff used the Survey and Topographic Map, confirmed by field measurements, to map the approximate location of the Spiegels' single family dwelling in relation to the slopes on the subject property shown on the Topographic Map. Parker Affd., ¶9; LaLonde Affd., ¶10. The resulting excerpt from the Topographic Map is attached to the Parker Affidavit as Exhibit H. A copy of the excerpt, used to more specifically describe the slopes on the subject property, is attached to the LaLonde Affidavit as Exhibit A.
42. As depicted on the excerpt from the Subdivision Plan Map, the topography of the subject property slopes downward from the edge of Algonquin Drive with gentle slopes of 8% - 12% to topographic elevation contour 1946. LaLonde Affd., ¶12, Ex. A. Mr. Lalonde has shaded this portion of the subject

property in red on the excerpt from the Subdivision Plan Map. LaLonde Affd., ¶12, Ex. A.

43. As found by the Agency in Finding of Fact 14 in the Permit, there was ample room for a single family dwelling on the portion of the subject property where slopes are less than 15%, as the approximate distance between the Spiegels' property adjacent to Algonquin Drive and contour 1946 ranges from 105 feet to 155 feet. LaLonde Affd., ¶13.
44. Northeast of contour 1946, there is a clear change in the steepness of slopes on the subject property, with slopes ranging from 21%-29%. Mr. Lalonde has shaded this portion of the subject property in green on Exhibit A to his affidavit. LaLonde Affd., ¶14, Ex. A.
45. The change in the steepness of slope on the subject property begins at contour 1946, and clearly represents the "abrupt change in slope" referenced in Condition 15(j) in the Permit. LaLonde Affd., ¶15; Parker Affd., Ex. C.
46. The portion of the property above this change in slope (shaded in red on the excerpt from the Topographic Map attached to the LaLonde Affd. as Exhibit A) is the only location on the property where development could occur on slopes less than 15% as contemplated by Finding of Fact 14 in the Permit. LaLonde Affd., ¶16; Parker Affd., Ex. C.

47. The Spiegels' single family dwelling is not being constructed 20 feet back from the abrupt change of slope on the subject property; rather, it is located is on or down the slope from the "abrupt change in slope". LaLonde Affd., ¶17, Ex. A. The dwelling, as currently located, is at its nearest point approximately 130 feet from the edge of the Spiegels' property adjacent to Algonquin Drive. LaLonde Affd., ¶17.
48. Specifically, the Spiegels' single family dwelling is located on slopes that are more than 15%, rather than on the portion of the subject property closer to Algonquin Drive having slopes of less than 15%. LaLonde Affd., ¶18.
49. Finding of Fact 14 in the Permit (see paragraph 32 above) clearly shows that the Agency believed that careful siting of dwellings on slopes less than 15% on the subject property would help to minimize potential adverse impacts, including visual impacts. Quinn Affd., ¶18.

Elimination of Successional Tree Growth on the Subject Property

50. Condition 15(i) of the Permit provides that:
- "Successional tree growth shall be allowed to occur..."
51. Condition 15(c) of the Permit provides that:
- "In no event shall a clearing for a view be greater than 20 ft. wide."

52. The Topographic Map describes the subject property as "sparsely wooded" as of 1987. Affidavit of Brian Grisi, dated April 12, 2005 ("Grisi Affd."), ¶7; Parker Affd., Ex. G.
53. This characterization is consistent with Finding of Fact 15 of the Permit, which described vegetation in the area including the subject property as successional mixed woodlands of scotch pine, birch, and maple, ranging from 8 to 30 feet in height with an estimated average height of 20 feet. Grisi Affd., ¶9.
54. Aerial photographs of the subject property taken in 1994, and the results of Agency staff investigation and analysis, establish that significant successional tree growth was occurring in the area where the Spiegels' single family dwelling is being constructed. Grisi Affd., ¶¶8-19, Ex. A.
55. According to Arthur Spiegel himself, tree growth on the subject property in the area where the Spiegel's single family dwelling is being constructed was similar to the tree growth on the neighboring property to the west of the subject property. Parker Affd., ¶37.
56. Agency staff estimate that the percentage of tree cover, predominantly (scotch pine), birch and (maple), on neighboring properties surrounding the subject property is

approximately 80%, that is, tree canopies cover approximately 80% of the land. Grisi Affd., ¶¶14-16.

57. Arthur Spiegel acknowledged to Agency staff that he had removed the trees on the subject property where the single family dwelling is being constructed. Parker Affd., ¶38.
58. Aerial photographs of the subject property taken in 2003 establish that most of the successional tree growth in the area of the Spiegels' single family dwelling had been removed between 1994 and 2003. Grisi Affd., ¶20.
59. Successional tree growth on the subject property in the area where the Spiegels' single family dwelling is being constructed has not been allowed to occur, as required by Condition 15(i) of the Permit, since that area is now covered by the partially-constructed dwelling itself, the driveway, and grading associated with the dwelling. Grisi Affd., ¶21.
60. The successional tree growth that was occurring in the area where the Spiegels' dwelling is being constructed would have provided vegetative screening from views from the north and northeast, including views from NYS Route 86 and Lake Placid, had those trees been retained and the dwelling constructed where Condition 15(j) of the Permit intended it to be built, i.e., 20 feet back from the abrupt change in

Visibility of the Permit Holders' Partially-Constructed Dwelling

63. The Permit anticipated that there would be potential adverse visual impacts from construction of a single family dwelling on the subject property and sought to minimize those impacts through permit conditions including limitations on the height and location of dwellings on the property, and through the retention of successional tree growth intended to provide screening of the dwelling. Quinn Affd., ¶24.
64. Finding of Fact 17 in the Permit stated that development on the subject property would likely be visible from NYS Route 86, Mount Whitney, Hillcrest Avenue, and Lake Placid. Supra, ¶32.
65. In the course of their investigation, Agency staff observed the Spiegels' single family dwelling from NYS Route 86 and Lake Placid, and documented the adverse visual impacts that the Permit, through its conditions, sought to minimize. Quinn Affd., ¶26. Photographs of the partially-constructed structure from NYS Route 86 and Lake Placid, taken by Agency staff on April 14, 2005 and March 18, 2005, are attached to the Quinn Affidavit as Exhibits A and B, respectively.

66. Findings of Fact 14 and 17 in the Permit, read together with Conditions 15(g), (i) and (j), clearly indicate that the Agency believed that the potential adverse visual impacts of development on the subject property could be satisfactorily minimized by the careful siting of a dwelling on the subject property on slopes less than 15%, the retention of successional tree growth on all sides of the house, including the side facing NYS Route 86 and Lake Placid, and by limiting the height of structures on the subject property to 30 feet. Quinn Affd., ¶27.
67. Rather than minimizing the visual impacts of their single family dwelling, the dwelling that the Spiegels are building has resulted in the very adverse visual impacts that the Permit sought to avoid. Quinn Affd., ¶28. As a result, the Spiegels' single family dwelling is the most visible of any dwelling in the Fawn Ridge Subdivision as seen from NYS Route 86 or Lake Placid. Id.
68. The Spiegels' dwelling is perched on the edge of the slope and extends in height above the trees along the ridge line on either side and behind it. Quinn Affd., ¶29. The dwelling is "skylighted", meaning that it extends above the trees and ridgelines as seen from NYS Route 86 and Lake Placid. Id. No trees or other vegetation screen any

portion of the Spiegels' single family dwelling from NYS Route 86 and Lake Placid, except for perhaps a small portion of the basement of the structure. Id.

69. Snow-covered roofs of other single family dwellings in the subdivision are visible from NYS Route 86 and Lake Placid as well; however, the mass of those dwellings are broken up by trees on all sides and the roofs are located below the tree-line along the ridge. Quinn Affd., ¶30. Further, those dwellings will be well-screened during the times of year when leaves are on the trees. Id.
70. The Spiegels' dwelling is out of character with the other houses in the Fawn Ridge subdivision due to its large size, overall mass, height, and extent of visibility. Quinn Affd., ¶31.
71. Based on Agency staff observations, the adverse visual impacts of the Spiegels' single family dwelling from NYS Route 86 and Lake Placid would have been substantially minimized had the Spiegels complied with Conditions 15(g), (i) and (j) of the Permit. Quinn Affd., ¶32.
72. In Agency staff's opinion, the adverse visual impacts of the Spiegels' single family dwelling would be significantly minimized if the Spiegels are required to comply with the Permit by limiting the height of their single family

dwelling to 30 feet, moving their house back 20 feet from the abrupt change in slope on the subject property, and planting trees in an area including that 20-foot buffer area to screen the single family dwelling from views from NYS Route 86 and Lake Placid. Quinn Affd., ¶33; Grisi Affd., ¶25; LaLonde Affd., ¶13.

FIRST CLAIM OF NONCOMPLIANCE WITH THE PERMIT

73. Condition 15(g) of the Permit restricted the height of structures on the subject property to no more than 30 feet.
74. Agency investigation reveals that the single family dwelling that the Spiegels are constructing on the subject property is approximately 51.7 feet in height.
75. The Permit Holders are violating Condition 15(g) of the Permit by constructing a single family dwelling on the subject property that is more than 30 feet in height.

SECOND CLAIM OF NONCOMPLIANCE WITH THE PERMIT

76. Condition 15(j) of the Permit required any dwelling to be set back 20 feet from the abrupt change of slope on the subject property.
77. Agency investigation reveals that the single family dwelling that the Spiegels are constructing on the subject property is located on or downslope from the abrupt change in slope on the subject property.

78. The Permit Holders are violating Condition 15(j) of the Permit by constructing a single family dwelling within 20 feet of the abrupt change of slope on the subject property.

THIRD CLAIM OF NONCOMPLIANCE WITH THE PERMIT

79. Condition 15(i) of the Permit provides that successional tree growth shall be allowed to occur on the subject property.
80. Agency investigation reveals that the Spiegels have removed all successional tree growth from the subject property in the area where their single family dwelling is being constructed.
81. As claimed above, the Spiegels' single family dwelling is being constructed in a location not authorized by the Permit, i.e., on steep slopes rather than 20 feet back from the abrupt change of slope on the subject property. Successional tree growth was required by the Permit to be allowed to occur in this area for purposes of providing a vegetative screening buffer between any dwelling and views of the subject property from public locations including NYS Route 86 and Lake Placid.
82. Permit Holders are violating Condition 15(i) of the Permit by failing to allow successional tree growth to occur on

the subject property in the area where the single family dwelling is being constructed.

Relief Sought

In this matter, Agency staff seek an Agency determination that the violations of the Permit described above have occurred and are continuing to occur. In addition, Agency staff request the issuance of an order by the Agency as follows:

- (1) Suspending the Permit on the subject property until such time as the Permit Holders have taken measures to bring their development of the subject property into compliance with the Permit.
- (2) Requiring the Permit Holders to comply with the Permit by:
 - (a) reducing the height of the single family dwelling on the subject property to no more than 30 feet measured from the highest point (excluding the fireplace chimney) and the lowest point of either existing or finished grade adjacent to the structure;
 - (b) relocating the single family dwelling to a location approved by Agency staff that is more than 20 feet back from the abrupt change of slope on the subject property;
 - (c) developing and implementing a tree-planting and maintenance plan, subject to prior approval by Agency staff, for the purpose of screening the single

family dwelling from views from NYS Route 86 and Lake
Placid.

- (3) Such other and further relief as the Agency may deem just
and proper.

DATED: Ray Brook, New York
APRIL 15, 2005

ADIRONDACK PARK AGENCY

BY: MARK SENGENBERGER
Mark Sengenberger
Acting Executive Director

To: Thomas Ulasewicz, Esq.