

STATE OF NEW YORK SUPREME COURT
ESSEX COUNTY

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ADIRONDACK PARK AGENCY and THE
STATE OF NEW YORK,

Plaintiffs,

v.

ARTHUR SPIEGEL and
MARGARET SPIEGEL,

Defendants.

AFFIDAVIT

Index No. 301-06

RJI No.

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

SHAUN LALONDE, being duly sworn, deposes and says:

- I am a Professional Engineer certified to practice in the State of New York, and have been employed by the Adirondack Park Agency (the "Agency"), an executive agency of the State of New York created pursuant to Executive Law § 803, with offices located in the Town of North Elba, Essex County, New York, in that capacity since 2002. Prior to this position, I was employed by the New York State Department of Environmental Conservation as an engineer from 1988 to 2002. As part of my duties, I am responsible for assisting in the investigation of alleged violations of the Adirondack Park Agency Act, Adirondack Park Agency Rules and Regulations, the New York State Freshwater Wetlands Act, and the NYS Wild, Scenic and Recreational Rivers Act in an area that includes the Town

of North Elba, Essex County. That assistance may call upon me to undertake measurements of the height of structures and to determine or interpret slopes on various development sites.

2. I submit this affirmation in opposition to the defendants' cross-motion for summary judgment, and specifically in response to the affidavit of John D. Hecklau ("Hecklau Affidavit"), which is factually flawed. I am familiar with Spiegel property, having conducted site visits there on February 8, 2005 and on March 16, 2005 for the purpose of measuring the height of the partially-constructed house that is being constructed there and to observe the slopes on the property. I submitted affidavits with my findings based on those site visits in the administrative proceeding that resulted in the Agency's September 7, 2005 order. I have also submitted affidavits in the federal case that was recently dismissed.

Height of Spiegels' House

3. Condition 15(g) in Agency Permit # 87-28 provides that:

"No structure shall exceed 30 ft. in height."
4. The Spiegels' partially-constructed house is approximately 51.7 feet in height based on measurements that I took during my March 16, 2005 site visit. Thus, their house exceeds the permit limit by almost 22 feet, and compliance with the permit limit would require a reduction in the height of the house by that amount.
5. Section 2.0 of the report attached to the Hecklau Affidavit wrongly asserts that the Spiegel house is 43 feet in height, and that a proposed reduction of the height of the structure by 9 feet would make it 34 feet in height. In actuality, if the house were reduced by 9 feet, it would still be nearly 43 in height.

6. In reaching the 51.7 feet height measurement for the Spiegel house, consistent with Agency Permit 87-28 and established Agency practice, I measured from the highest point of the house to the lowest point of original existing grade adjacent to the house.
7. For the highest point of the structure, I measured from the roofline of the main portion of the dwelling. I measured the lowest point from the original existing grade at the base of the retaining wall located at the southeastern corner of the structure. The retaining wall is approximately 8 feet in height from current finished grade to original existing grade at its southeastern corner. The report attached to the Hecklau Affidavit errs in its measurement of the actual height of the house by apparently failing to include the 8 feet of fill between finished grade and original grade.
8. Even if Agency Permit 87-28 did not exist, the Spiegels would have been required to obtain a permit from the Agency prior to construction of their approximately 51.7 foot house, since a permit is required for any such structure proposed to exceed 40 feet in height. Their failure to obtain that permit would have been a violation.

Location of House at or below "Abrupt Change in Slope"

9. Condition 15(j) in Agency Permit #87-28 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."


Finding of Fact 14 from 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%.

10. The topography of the Spiegels' property slopes downward from the edge of Algonquin Drive with gentle slopes of 8% – 10% for a distance of approximately 130 feet. There was thus ample room for the Spiegels' house on the portion of the subject property where slopes are less than 15%.
11. Beyond 130 feet from Algonquin Drive, there is a clear change in the steepness of slopes on the property, with slopes ranging from 16% - 32%. The change in the steepness of slope begins at contour 1946 on the site plan comprising part of Attachment 2 to the report accompanying the Hecklau Affidavit, and clearly represents the "abrupt change in slope" referenced in the Permit.
12. As shown on Mr. Hecklau's site plan, the Spiegels' partially-constructed house is clearly located at or down the slope from contour 1946, on slopes greater than 15%. On his site plan, it is shown slightly upslope from where I found it to be located in 2005, which is reflected in my April 12, 2005 affidavit and its attachment. Compliance with Agency Permit #87-28 requires relocation of the entire house outside of the 20 foot setback onto slopes of less than 15%.
13. Relocation of the house will make it easier for the Spiegels to comply with the 30-foot height limit, since they will not need the supporting fill and retaining wall that adds 8 feet to the current height of their house. It will also leave room to

plant trees, and to maintain those trees, to ensure vegetative screening of the house, consistent with Condition 15 15(i) of Agency Permit 87-28.


SHAUN LALONDE, P.E.

Sworn to before me this
4th day of January, 2010.


Notary Public

MARY B. PALMER
Notary Public - State of New York
Qualified in Franklin County
No. 01PA6128439
Commission Expires June 13, 2013