

STATE OF NEW YORK SUPREME COURT
ESSEX COUNTY

ADIRONDACK PARK AGENCY and
THE STATE OF NEW YORK,

Plaintiffs,

VERIFIED ANSWER

-against-

Index Number: 301-06

ARTHUR SPIEGEL and MARGARET SPIEGEL,

Defendants.

Defendants Arthur Spiegel and Margaret Spiegel, by and through their attorneys, McNamee, Lochner, Titus & Williams, P.C., as and for their Answer herein, state as follows:

PRELIMINARY STATEMENT

1. Defendants deny the allegations contained in paragraphs "1" and "2" of plaintiffs' Verified Complaint.
2. With respect to paragraph "3" of plaintiffs' Verified Complaint, defendants admit that plaintiffs have served a complaint that speaks for itself and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

JURISDICTION AND VENUE

3. With respect to paragraph "4" of plaintiff's Verified Complaint, defendants admit that the Court has jurisdiction and deny the remaining allegations therein.
4. With respect to paragraph "5" of plaintiffs' Verified Complaint, defendants admit that the subject property is in Essex County, make no response to so much of paragraph "5" of plaintiffs' Verified Complaint as states a legal conclusion, because no response to such an allegation is required, and deny the remaining allegations therein.

PARTIES

5. With respect to paragraphs "6" and "7" of plaintiffs' Verified Complaint, defendants make no response to so much thereof as states legal conclusions or quotes from statutes or regulations, because no response to such allegations is required, and deny knowledge or information sufficient to form a believe as to the truth of the remaining allegations therein.

6. With respect to paragraph "8" of plaintiff's Verified Complaint, defendants admit the allegations therein.

STATUTORY FRAMEWORK

7. With respect to paragraphs "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", and "27" of plaintiffs' Verified Complaint, defendants make no response to so much thereof as states legal conclusions or quotes from statutes or regulations, because no response to such allegations is required, and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

Permit 87-28

8. With respect to paragraphs "28", "29", "30", "31", "34", "35", "37" and "38" of plaintiffs' Verified Complaint, defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations therein.

10. With respect to paragraph "32" of plaintiffs' Verified Complaint, defendants admit that there is a subdivision known as Fawn Ridge and deny knowledge

or information sufficient to form a belief as to the truth of the remaining allegations therein.

11. With respect to paragraph "33" of plaintiffs' Verified Complaint, defendants admit that the Fawn Ridge subdivision overlooks Route 86, Lake Placid and its environs and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

12. With respect to paragraph "36" of plaintiffs' Verified Complaint, defendants admit that a copy of a map is attached to the Verified Complaint and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

13. With respect to paragraph "39" of plaintiffs' Verified Complaint, defendants admit that a copy of a permit is attached to the Verified Complaint and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

14. With respect to paragraph "40" of plaintiffs' Verified Complaint, defendants state that the records of the Essex County Clerk speak for themselves, state that whether a document was "properly recorded" is a matter of law for the court to decide, and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

15. With respect to paragraphs "41", "42", "43", "44", "45", "46", "47", "48", "49" and "50" of plaintiffs' Verified Complaint, defendants state that the document referred to speaks for itself and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

History of Fawn Ridge

16. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs "51" and "52" of plaintiffs' Verified Complaint.

Lot 39

17. With respect to paragraph "53" of plaintiffs' Verified Complaint, defendants admit the allegations therein.

18. With respect to paragraph "54" of plaintiffs' Verified Complaint, defendants admit that Lot 39 is approximately .86 acres and overlooks the surrounding area, make no response to so much thereof as states legal conclusions and quotes from statutes or regulations, because no response to such allegations is required and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

19. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "55" of plaintiffs' Verified Complaint.

20. With respect to paragraph "56" of plaintiffs' Verified Complaint, defendants admit the allegations therein.

21. With respect to paragraph "57" of plaintiffs' Verified Complaint, defendants admit that defendants own other lots in the subdivision and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

22. With respect to paragraphs "58", "59", "60" and "61", of plaintiffs' Verified Complaint, defendants state that the deed speaks for itself and deny knowledge

or information sufficient to form a belief as to the truth of the remaining allegations therein.

23. Defendants deny the allegations contained in paragraphs "62" and "63" of plaintiffs' Verified Complaint.

Vegetation at Lot 39

24. Defendants admit the allegations contained in paragraph "64" of plaintiffs' Verified Complaint with respect to the "open field" of Lot 39, but state that the document referred to speaks for itself and deny knowledge or information sufficient to form a belief or to the truth of the remaining allegations therein.

25. With respect to paragraphs "65" and "66" of plaintiffs' Verified Complaint, defendants state that the relevance and admissibility of photographs and what they may or may not depict is for the court to decide, and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

26. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "67" of plaintiffs' Verified Complaint.

Construction at Lot 39

27. With respect to paragraphs "68" and "69" of plaintiffs' Verified Complaint, defendants admit that Robert M. Marvin executed a sworn affidavit on June 27, 2005, but deny the remainder of the allegations therein.

Enforcement by the Agency

28. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs "70", "72", "76", "78", "81", "82" and "83" of plaintiffs' Verified Complaint.

29. With respect to paragraphs "71", "73", "74" and "77" of plaintiff's Verified Complaint, defendants admit the allegations therein.

30. Defendants deny the allegations contained in paragraph "75" of plaintiffs' Verified Complaint.

31. With respect to paragraph "79" of plaintiffs' Verified Complaint, defendants state that the document referred to speaks for itself and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

32. Defendants deny the allegations set forth in paragraph "80" of plaintiffs' Verified Complaint.

33. With respect to paragraph "84" of plaintiffs' Verified Complaint, defendants admit that defendants have proposed measures to modify and screen the structure and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

34. With respect to paragraph "85" of plaintiffs' Verified Complaint, defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations as to whether an enforcement order was issued, state that whether any order that was issued is a "Final" order is a matter of law for the court to decide and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

Current Status of the Site

35. Defendants deny the allegations set forth in paragraphs "86", "87", "91" and "92" of plaintiffs' Verified Complaint.

36. With respect to paragraph "88" of plaintiffs' Verified Complaint, defendants state that the relevance and admissibility of photographs and what they may or may not depict is for the court to decide and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

37. With respect to paragraph "89" of plaintiffs' Verified Complaint, defendants deny that there are preferable building sites and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

38. Defendants admit the allegations contained in paragraph "90" of plaintiffs' Verified Complaint.

39. With respect to paragraph "93" of plaintiffs' Verified Complaint, defendants admit that the house can be seen from different vantage points and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

40. With respect to paragraph "94" of plaintiffs' Verified Complaint, defendants admit that defendants have attempted to settle their disputes with plaintiffs and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

41. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "95" of plaintiffs' Verified Complaint.

42. Defendants admit the allegations set forth in paragraph "96" of plaintiffs' Verified Complaint.

**AS TO THE FIRST CAUSE OF ACTION
(violation of Permit Condition 15[j])**

43. Defendants deny the allegations set forth in paragraphs "97", "98" and "99" of plaintiffs' Verified Complaint.

**AS TO THE SECOND CAUSE OF ACTION
(violation of Permit Condition 15[g])**

44. Defendants deny the allegations set forth in paragraphs "100", "101" and "102" of plaintiffs' Verified Complaint.

**AS TO THE THIRD CAUSE OF ACTION
(violation by the Spiegels of Permit Condition 15[i])**

45. Defendants deny the allegations set forth in paragraphs "103", "104" and "105" of plaintiffs' Verified Complaint.

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

46. Defendants deny the allegations set forth in paragraphs "106", "107" and "109" of plaintiffs' Verified Complaint.

47. Defendants deny the allegations of paragraph "108" of plaintiffs' Verified Complaint because they do not understand what is being alleged.

FIRST AFFIRMATIVE DEFENSE

48. Plaintiffs fail to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

49. Adirondack Park Agency Permit No. 87-28 is void on its face.

THIRD AFFIRMATIVE DEFENSE

50. Adirondack Agency Permit Number 87-28 is void on its face due to the failure of conditions set forth therein.

FOURTH AFFIRMATIVE DEFENSE

51. Plaintiffs lack standing to enforce any restrictive covenants contained in defendants' deed.

FIFTH AFFIRMATIVE DEFENSE

52. Even if plaintiffs have standing to enforce the restrictive covenant pertaining to the structure height in defendants' deed, the restrictive covenant is unenforceable as to the plaintiffs, for whom it fails to provide actual and substantial benefit, and should be extinguished.

53. Conditions within the Fawn Ridge subdivision have changed, due to the plaintiffs' failure to enforce height restrictions against other homeowners, so that any enforcement now would be inequitable.

54. The restrictive covenant imposes a heavy burden on defendants without a commensurate benefit to plaintiffs.

55. Plaintiffs have sustained no damage by the alleged breach of the covenant and will sustain no damage if the restriction is extinguished.

SIXTH AFFIRMATIVE DEFENSE

56. Adirondack Park Agency Permit Number 87-28, insofar as it seeks to impose requirements regarding successional growth, is unconstitutionally vague under the New York State Constitution.

SEVENTH AFFIRMATIVE DEFENSE

57. Adirondack Park Agency Permit Number 87-28, insofar as it seeks to impose requirements regarding structure height, is unconstitutionally vague under the New York State Constitution.

EIGHTH AFFIRMATIVE DEFENSE

58. Adirondack Park Agency Permit Number 87-28, insofar as it seeks to impose requirements regarding setback, is unconstitutionally vague under the New York State Constitution.

NINTH AFFIRMATIVE DEFENSE

59. Any enforcement of Adirondack Park Agency Permit Number 87-28 that treats defendants as permit holders is unconstitutional as applied under the New York State Constitution.

TENTH AFFIRMATIVE DEFENSE

60. Any enforcement of Adirondack Agency Permit Number 87-28 that results in any deconstruction of defendants' home violates defendants' substantive due process rights under the New York State Constitution.

ELEVENTH AFFIRMATIVE DEFENSE

61. Any enforcement of Adirondack Agency Permit Number 87-28 that results in any deconstruction of defendants' home violates defendants' constitutionally protected property rights under the New York State Constitution.

TWELFTH AFFIRMATIVE DEFENSE

62. Defendants' rights to procedural due process under the New York State Constitution have been violated by plaintiffs' enforcement of Adirondack Park Agency Permit Number 87-28.

THIRTEENTH AFFIRMATIVE DEFENSE

63. This action is barred by the applicable Statute of Limitations.

FOURTEENTH AFFIRMATIVE DEFENSE


64. Plaintiffs have failed to join a necessary party, the original permittee of Adirondack Park Agency Permit Number 87-28.

WHEREFORE, defendants Arthur Spiegel and Margaret Spiegel respectfully request that the Court dismiss plaintiffs' Verified Complaint in its entirety, and/or extinguish the restrictive covenant set forth in the Verified Complaint.

DATED: June 12, 2006

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

By:



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VERIFICATION


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

The undersigned, an attorney admitted to practice in the courts of the State of New York, is a principal in the firm of McNamee, Lochner, Titus & Williams, P.C., the attorneys of record for the defendants in the within action; deponent has read the foregoing Answer and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. This verification is made by deponent and not by defendants, because defendants do not reside and are not present in the county in which deponent maintains his office.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge is as follows: Documents provided by defendants and review of the file contents.

Deponent affirms the foregoing is true under the penalties of perjury pursuant to CPLR 2106.

DATED: June 12, 2006



JOHN J. PRIVITERA