Issue #1 (portion)

Are the proposed great camp lots "substantial acreage… on carefully and well designed sites?"

Are the proposed great camp lots "substantial acreage… on carefully and well designed sites?"

Statutory background

"The agency shall not approve any project … unless it first determines that such project meets the following criteria:"

1) consistent with the land use and development plan
2) ***compatible with the*** character description and ***purposes, policies and objectives of the land use area(s)***
3) consistent with the overall intensity guidelines
4) comply with the shoreline restrictions
5) no undue adverse impact

- APA Act § 809(10)

Are the proposed great camp lots "substantial acreage… on carefully and well designed sites?"

Statutory background:

2) The project must be compatible with the … purposes, policies and objectives of the land use area(s)

Resource Management:

"The basic purposes and objectives of RM areas are to protect the delicate physical and biological resources, encourage proper and economic management of forest, agricultural and recreational resources and preserve the open spaces that are essential and basic to the unique character of the park. Another objective of these areas is to prevent strip development along major travel corridors in order to enhance the aesthetic and economic benefits derived from a park atmosphere along these corridors.

Finally, RM areas will allow for residential development on ***substantial acreages*** or in small clusters ***on carefully*** selected ***and well designed sites***."

- APA Act § 805(3)(g)(2)

NEW YORK STATE Adirondack parkagency

Are the proposed great camp lots "substantial acreage…?"

Cited Witnesses:

- Applicant
  - Jeff Anthony/Kevin Franke
    - June 22, 2011 Transcript
- Agency hearing staff
  - Mark Sengenberger
    - Pre-file and Supplemental Pre-File, Attachments A and B to April 26, 2011 Transcript
    - April 26, 2011 Transcript
- Others
  - Heidi Kretser/Adirondack Council
    - June 24, 2011 Transcript
  - Joel Russell/Adirondack Council
    - Pre-file testimony, Attachment C to April 26, 2011 Transcript

Are the proposed great camp lots "substantial acreage…?"

- Background (based on MP-0)
  - Western Great Camp Lots
    - Fifteen 20-30 acre lots
    - Thirteen building sites in RM, two in MIU
  - Small Eastern Great Camp Lots
    - Sixteen 20-30 acre lots
    - Fourteen building sites in RM, two in MIU
  - Large Eastern Great Camp Lots
    - Eight lots, ranging in size from 111 – 1211 acres
    - All RM lands
  - One single family residence proposed for each lot

the LA group
Landscape Architecture and Engineering, PC

Design MUT/SJA
Drawn MUT
Checked MUT/SJA

FOR REGULATORY APPROVALS ONLY

PREPARED FOR
Preserve Associates, LLC
4272 Conestoga Road
Elverson, PA 19250

THE ADIRONDACK CLUB AND RESORT

TUPPER LAKE, NY
FRANKLIN COUNTY

Overall Site Development Plan

Key Plan

NORTH

Revisions

Scale 1" = 1000'
Project 201011
Date 06/30/10

Drawing
MP-0

NEW YORK STATE
Adirondack
parkagency

Are the proposed great camp lots "substantial acreage…?"

Background

- "The term 'substantial acreage' is not defined in the Agency's law or regulations. Nor has the term been defined or applied in any precise or inflexible way by the Agency."

- APA Hearing Staff Closing Statement, September 23, 2011, pp. 29-30

Are the proposed great camp lots "substantial acreage…?"

Background

- Sengenberger
  - "I spoke about staff's concern that [the term 'substantial acreage' was] not clearly defined in Agency statute or regulations" during "at least two" Agency meetings while Deputy Director, Regulatory Programs.
  - "I conferred with the Chairman and members of the Regulatory Programs Committee as to whether staff should prepare any draft policy or guidance on these subjects."
  - "The direction that I received was that it was not necessary to precisely define these terms."

- April 26, 2011 Transcript, Attachment A (Sengenberger pre-file), pp. 10-11

Are the proposed great camp lots "substantial acreage…?"

Background:

- Sengenberger
  - "So long as there is compliance with the OIGs, the question of compatibility depends upon a careful assessment of the project using the 37 development considerations."
  - "This approach to the RM compatibility determination, which recognizes 'small clusters on carefully selected and well designed sites' and 'substantial acreage' as important considerations for reducing impacts rather than as inflexible mandates… was the practice I employed in my role as Deputy Director throughout my tenure."

- April 26, 2011 Transcript, Attachment A (Sengenberger pre-file), p. 11-12
- April 26, 2011 Transcript, Attachment A (Sengenberger pre-file), p. 12
- See also: April 26, 2011 Transcript, pp. 748, line 16 to p. 749, line 21

Are the proposed great camp lots "substantial acreage…?"

Background

- Sengenberger: "During the period when I was Deputy Director, I signed about 180 subdivision permits involving RM lands. About 125 of these permits were for minor two-lot subdivisions… About 55 were major subdivisions involving 3-lots or greater having RM lands on some portion of the project sites. About 10 of these subdivisions involved 5-lots or greater. As I recall, I took all of these larger subdivisions to the Agency Board for their review and permit decision. Lots in these subdivisions… were of significantly varying sizes; from less than 1 acre to over 6,000 acres."

- April 26, 2011 Transcript, Attachment A (Sengenberger pre-file), pp. 12-13

Are the proposed great camp lots "substantial acreage…?"

<u>Western and Small Eastern Great Camp lots</u>

- Agency hearing staff
  - The proposed Great Camp lots that contain less than the 42.7 acre average lot size for RM lands "do not comprise 'substantial acreage'…"
  - Sengenberger testimony
    - Caffry: "Is it your understanding that for the smaller great camp lots, not including the larger ones to the east, but the acreage lot size is roughly 25 acres?"
    - Sengenberger: "I think it's a little larger, but in that ballpark."
    - Caffry: "Would you consider that to be a – a substantial acreage?"
    - Sengenberger: "My personal opinion is no."

- APA Hearing Staff Closing Statement, Sept. 23, 2011, p. 114
- April 26, 2011 Transcript, p. 824, line 18 to p. 825, line 3

Are the proposed great camp lots "substantial acreage…?"

<u>Large Eastern Great Camp lots</u>

- Applicant
  - "The acreage size of the 'large great camp lots' is … approximately 8 times greater than the prescribed 42.7 acres. The Project Sponsor and its consultants consider this to meet the spirit of 'substantial acreage' as referenced in the APA Act."
- Agency hearing staff
  - "In staff's opinion, the eight large Great Camp Lots could fairly be considered to constitute 'substantial acreage' for purposes of RM compatibility, since they all substantially exceed the 42.7 [acre] average lot size for RM lands."

- Applicant's Brief of the Hearing Record and Closing Statement, Sept. 23, 2011, p. 101
- APA Hearing Staff Closing Statement, Sept. 23, 2011, p. 114

Are the proposed great camp lots "substantial acreage…?"

<u>All of the Great Camp lots</u>

- Russell (for The Adirondack Council)
  - "The terms 'substantial acreages' and 'small clusters' are somewhat subjective and vague… The terms must be interpreted within the context of the evolving practice of cluster development and the historic ownership patterns in the Adirondacks."
  - The 31 smaller Great Camp lots and the 8 larger Great Camp lots are not "large enough to be considered a 'substantial acreage' in the historical context of true great camps in the Adirondacks."
  - "I would suggest 500 acres at the very least, with 800-1000 acres being the norm based upon the acreage of those properties historically recognized as Great Camps and the sizes of adjacent large holdings."

- April 26, 2011 Transcript, Attachment C (Russell pre-file), p. 8
- April 26, 2011 Transcript, Attachment C (Russell pre-file), p. 14
- April 26, 2011 Transcript, Attachment C (Russell pre-file), p. 14

Are the proposed great camp lots "substantial acreage…?"

<u>All of the Great Camp lots</u>

- Agency hearing staff
  - Sengenberger: "I do respectfully disagree with Mr. Russell's assertion that 'substantial acreages' somehow means '1000's' of acres in the Adirondack context. That assertion is simply not reasonable or consistent with my experience with the ownership patterns of RM lands in the Park. The vast majority of permit applications involving proposed residential subdivisions in RM Lands involve project sites that are less than 250 acres in size. The APA Act allows the Project Sponsor to propose and define the site."

- April 26, 2011 Transcript, Attachment B (Sengenberger supplemental pre-file), p. 5

Are the proposed great camp lots "substantial acreage…?"

Legal Response

- Statute: "RM areas will allow for residential development on substantial acreages or in small clusters…"
- Protect the Adirondacks! Inc.
  - "Residential development is only allowed on RM lands if it is 'on substantial acreage or in small clusters…'"
  - "There is nothing optional about this language. It is not just conceptual guidance. It is a mandate."

- Reply Brief and Closing Statement of Protect the Adirondacks! Inc., Oct. 24, 2011, p.31
- Reply Brief and Closing Statement of Protect the Adirondacks! Inc., Oct. 24, 2011, p.34

Are the proposed great camp lots "substantial acreage…?"

Legal Response – Applicant

- "Neither 'clustering' or 'substantial acreage' is a mandatory requirement when proposing development on RM lands under the APA Act."
- Ulasewicz: "The project cannot succeed if the Agency deems it within its regulatory powers to establish new parameters for such terms as substantial acreage and small clusters as applied to the ACR residential development on RM lands in the project review process…"

- Exhibit 81, p. 35
- March 22, 2011 Transcript, p. 124, line 12 to line 18

Are the proposed great camp lots "substantial acreage…?"

Legal Response – Agency hearing staff

- "Protect!'s argument that Executive Law § 805(3)(g)(2) automatically excludes as incompatible any residential development in RM that is not 'in small clusters' or 'on substantial acreages' is not correct."
- "Single family dwellings, already presumed by law to be compatible and generally found as such in RM, are even more likely to be compatible if they are located 'in small clusters' or 'on substantial acreages' and on 'carefully selected and well designed sites."
- "This framework provides an incentive for project sponsors to cluster single family dwellings or to create large lots, but would still allow for a finding of compatibility for single family dwellings in other projects, including the proposed project here."

- APA Hearing Staff Reply, October 24, 2011, pp. 18-19

Are the proposed great camp lots "substantial acreage…?"

Secondary Question – Are the great camp lots in small clusters?

- Applicant
  - Franke
    - "We contend that we've taken our small Great Camp lots and have clustered them in two clusters, one on the east and one on the west side of the ski area. And then the remainder of the project are the eight large Great Camps. So in a way, we're considering this a clustered project."
    - "We're not getting [the smaller Great Camp lots] into an extremely tight neighborhood, but those are clustered… You have to take into account the scale of the project."

- June 22, 2011 Testimony (Anthony/Franke), p. 3872, line 8 to line 14
- June 22, 2011 Testimony (Anthony/Franke), p. 3873, line 3 to line 8

Are the proposed great camp lots "substantial acreage…?"

Secondary Question – Are the great camp lots in small clusters?

- Agency hearing staff
  - The proposed Great Camp lots that contain less than the 42.7 acre average lot size for RM lands "do not comprise 'substantial acreage, nor in staff's opinion are they 'in small clusters.'"

- APA Hearing Staff Closing Statement, Sept. 23, 2011, p. 114

Are the proposed great camp lots "substantial acreage…?"

Secondary Question – Are the great camp lots in small clusters?

- Russell (for the Adirondack Council)
  - The 31 smaller Great Camp lots and the 8 larger Great Camp lots "inhabit a middle ground that is neither small enough to be considered a 'cluster' nor large enough to be considered a 'substantial acreage' in the historical context of true great camps in the Adirondacks."
- Kretser (for the Adirondack Council)
  - None of the Great Camp lots are "clustered."
- Protect the Adirondacks! Inc.
  - "The proposed Great Camp lots are neither 'on substantial acreages… on carefully selected… sites' or 'in small clusters…'"

- April 26, 2011 Transcript, Attachment C (Russell pre-file), p. 14
- June 24, 2011 Transcript, p. 4400, line 15 to p. 4401, line 15
- Post-Hearing Brief and Closing Statement of Protect the Adirondacks! Inc., Sept. 23, 2011, p. 62

Are the proposed great camp lots "…on carefully and well-designed sites?"

Issues involved

- Agency hearing staff
  - Wastewater treatment
    - Sengenberger: "In my experience the most important element in RM residential subdivisions is not lot size but finding suitable locations for proposed onsite waste water treatment systems."
  - Water supply
  - Access
  - Natural resources

- See Agency Hearing Staff Closing Statement, Sept. 23, 2011, pp. 31-35
- April 26, 2011 Transcript, Attachment A (Sengenberger pre-file), p. 13
  - see also April 26, 2011 Testimony (Sengenberger), p. 817, lines 11-17 and p. 845, lines 19-23

Are the proposed great camp lots "…on carefully and well-designed sites?"

Cited Witnesses:

- Agency hearing staff
  - Mark Sengenberger
    - Pre-file, Attachment A to April 26, 2011 Transcript
    - April 26, 2011 Transcript
  - Shaun LaLonde
    - Pre-file, Attachment B to June 23, 2011 Transcript
    - June 23, 2011 Transcript
  - Dan Spada
    - Pre-file, Attachment C to June 23, 2011 Transcript

Are the proposed great camp lots "…on carefully and well-designed sites?"

Wastewater treatment

- "The Project Sponsor did not provide engineered plans for Great Camp Lots E, 20, 23, 26, 29, 30 and 31 prior to or during the hearing."
  - "Groundwater on these lots cannot be considered adequately protected in the absence of engineered wastewater treatment designs."
- "Great Camp Lots 22, 23, and 24 are also problematic, due to the need to cross the Village water supply line with the septic lines."
- "The proposed 3-acre development envelopes for Great Camps B, C, D and E should be reconfigured to include the associated septic envelope."
- "The proposed absorption fields exceed Agency sewage pumping distance guidelines at Great Camp Lots 22, 23, 24, 26, 29 [and 31]."

- APA Hearing Staff Reply, Oct. 24, 2011, pp. 28-29
  - APA Hearing Staff Closing Statement, Sept. 23, 2011, p. 34
- APA Hearing Staff Closing Statement, Sept. 23, 2011, p. 34
- June 23, 2011 Transcript, Attachment B (LaLonde pre-file), p. 25
- APA Hearing Staff Closing Statement, Sept. 23, 2011, p. 32

Are the proposed great camp lots "…on carefully and well-designed sites?"

Water supply

- "Despite concerns raised by reviewing agencies including the Village of Tupper Lake, the Project Sponsor has continued to propose that water supply for Great Camp Lots 1 through 15 [and 27 and 28] will be from the Village of Tupper Lake's municipal water supply system."
  - "In APA hearing staff's opinion, municipal concerns about providing water supply to any of the Great Camp Lots are relevant to the Agency Board's determination of whether the Great Camp Lots are 'carefully selected and well designed sites'… The ability of government to provide facilities and services is a development consideration that factors into that determination. In this case, the Village's concerns are shared by NYSDOH and APA hearing staff."

- APA Hearing Staff Reply, Oct. 24, 2011, pp. 30-31

Are the proposed great camp lots "…on carefully and well-designed sites?"

Access

- "The Village water line is – runs across both of those proposed access driveways" for Great Camp Lots 22 and 23.
- Great Camp Lot 24 "has the Village water line crossing the driveway."
- "Great Camp Lot E… has an extremely long access driveway (over twice as long as any other of the large Great Camp lots)… the access road impacts wetlands and traverses relatively steep slopes."

- June 23, 2011 Transcript, p. 4032, line 10 to line 12
- June 23, 2011 Transcript, p. 4105, line 11 to line 13
- June 23, 2011 Transcript, Attachment C (Spada pre-file), pp. 13-14

Are the proposed great camp lots "…on carefully and well-designed sites?"

Natural Resources

- Development envelopes:
  - Great Camp Lot A – approx. 3 feet from stream
  - Great Camp Lot 6 – approx. 45 feet from stream
  - Great Camp Lot 21 – approx. 25 feet from stream
  - A larger buffer "would prevent surface water quality impacts by providing a buffer between the stream and any proposed land clearing and would clarify the limits of clearing to any potential purchaser."
- Other natural resource issues covered in other presentations.

- June 23, 2011 Transcript, Attachment B (LaLonde pre-file), pp. 15, 16, 18, 25-26