

STATE OF NEW YORK: ADIRONDACK PARK AGENCY

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In the matter of the apparent
violations of § 809 of the
Adirondack Park Agency Act
and 9 NYCRR Part 577 by:

Agency File #E2017-0026

JAMES JOHN MCDONALD
JEFFREY LEE

Respondents.
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STATE OF NEW YORK)
) ss:
COUNTY OF ESSEX)

Shaun E. LaLonde, being duly sworn, deposes and says:

1. I am a professional engineer licensed to practice in the State of New York and have been employed by the Adirondack Park Agency (the APA or 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 October 2002.
2. As part of my duties, I assist in the review of proposals for compliance with the New York State Adirondack Park Agency Act, the Freshwater Wetlands Act, the Wild, Scenic and Recreational River System Act, and Agency regulations.
3. I am familiar with the file in this case. I make this affidavit in support of APA staff's request for a determination by the Enforcement Committee finding the alleged violations and ordering the relief described in the Notice of Apparent Violation and Request for Enforcement Committee Determination.
4. On April 5, 2017, I visited the tourist accommodation known as "The Brampton" on Tax Map Parcel 167.1-1-5 (Lot 5) and Tax Map Parcel 167.3-1-6 (Lot 6) in the Town of Thurman, Warren County, with Agency Enforcement Officer Bart Haralson to meet with Respondents (the first site visit).

During the first site visit, I observed the following structures on Lot 5: a single family dwelling (the 1995 single family dwelling); an accessory structure (the 1995 accessory structure); a yoga deck; and a single family dwelling under construction (the 2016 single family dwelling).

During the first site visit, I observed a shallow spring on Lot 5. Respondents stated that this spring serves as the water supply for the property. Exhibit 1.

During the first site visit, I determined that there is an existing on-site wastewater treatment system serving the 1995 single family dwelling on Lot 5. Upon information and belief, the details of the components of this wastewater treatment system are not known. I observed that the leaching facility for this on-site wastewater treatment system is located within 100 feet of the shallow spring serving as the water supply for the tourist accommodation, and within 100 feet of an intermittent stream on the property. These separation distances do not comply with New York State Department of Health (DOH) or Agency standards.

During the first site visit, I observed two small cabins on Lot 6. Respondents stated that these structures were not part of the tourist accommodation and were for personal use only.

5. Following the April 5, 2017 site visit, I discussed The Brampton tourist accommodation with a representative from the DOH office in Glens Falls, NY.
6. On September 28, 2017, I visited Lots 5 and 6 with Agency Enforcement Officer Haralson, Agency Forester and Soil Scientist Aaron Ziemann, and an engineer from DOH, to meet with Respondents and their engineer (the second site visit).

During the second site visit, on Lot 5, I inspected the interior of the 1995 single family dwelling on Lot 5, observing beds located on all three floors of the dwelling, including the basement, first floor, and second floor. At least three couches were also present. I also observed the 1995 accessory structure, yoga deck, and partially-constructed 2016 single family dwelling, as well the following new structures: a camper van containing a double bed; a nearby outhouse with a flush toilet, attached shower, electric service, and gravity-fed water (the outhouse structure), all connected to a cess pool; a tent platform with a double bed and a single bed; and a large stairway leading to the tent platform. In addition, I observed extension cords running throughout the property to provide electric service to the various structures.

During the second site visit, two deep hole test pits were dug by a contractor hired by Respondents for potential siting of a new on-site wastewater treatment system on Lot 5. I inspected these test pits.

During the second site visit, on Lot 6, I observed that the two small cabins seen during the site visit on April 5, 2017, had been reconfigured to serve as residential cabins. Respondent Lee explained that a third structure, a "tiny home," would be placed in an area on Lot 6 that had been cleared of vegetation.

During the second site visit, I observed a single drilled well on-site water supply on Lot 6 (Exhibit 2 and Exhibit 3). Upon information and belief, the details of the on-site wastewater treatment system(s) serving the structures on Lot 6 is not known.

7. On March 23, 2018, I received an email from Respondents' engineer requesting comments on a conceptual proposal for a new on-site wastewater treatment

system on Lot 5. On March 27, 2018, I responded by email to Respondents' engineer and Respondents that the Agency could not review the proposal until the Agency received a signed settlement agreement resolving the enforcement matter. Exhibit 4.

8. Based on my file review, on May 24, 2018, the Agency received from Respondents an Agency Application for Commercial and/or Industrial Uses for The Brampton tourist accommodation on Lot 5. This application included plans prepared by an engineer for a new on-site wastewater treatment system in the location of one of the test pits dug on Lot 5 on September 28, 2017. I reviewed this application, and my comments were incorporated into a reply letter, dated July 18, 2018, from Agency staff to Respondents. In addition to technical comments on the proposed design, I noted many inconsistencies in Respondents' submission, including inconsistent documentation of existing and proposed structures, the number of occupants that would be accommodated, whether commercial kitchen facilities were proposed, and whether there would be mass gatherings on the site. I also noted that, based upon the design flow, a SPDES permit would be required from the New York State Department of Environmental Conservation, and that permits may be required from DOH for a public water supply, food service operation, and temporary residence.
9. On August 22, 2018, I visited Lots 5 and 6 with Agency Enforcement Program Supervisor Burth, Agency Enforcement Officer Haralson, and a representative from DOH, to meet with Respondent Lee (the third site visit).

During the third site visit, on Lot 5, I observed the structures that had been present during the previous site visits: the 1995 single family dwelling; the 1995 accessory structure; the yoga deck; the partially-constructed 2016 single family dwelling; the camper van containing a double bed; the outhouse structure; the tent platform with a double bed and a single bed; and the large staircase. In addition, I observed the following new structures and development: an illuminated sign with upward-facing lights at the entrance to the property; an area of clearing and grading; a gravel driveway with a culvert crossing to access the newly cleared area; and an Airstream travel trailer.

During the third site visit, on Lot 6, I observed the two cabins that had been present during the second site visit, as well as a newly installed "tiny home."

10. Since Respondents' submission of May 24, 2018, I have not had contact with Respondents' engineer, nor have I received any written correspondence from Respondents addressing this matter.
11. On October 31, 2019, I again spoke with DOH staff and provided an update regarding the Agency's investigation of this matter. Based upon my file review and investigation, no approvals have been granted by DOH for Respondents' tourist accommodation or the associated structures.

12. On November 1, 2019, I spoke by telephone with staff at the Warren County Fire Prevention and Building Code Office, and provided an update regarding the Agency's investigation of this matter. During this telephone call, I confirmed that a stop work order had been issued in 2016 by the Warren County Fire and Building Code Office for the 2016 single family dwelling, and that no permit had since been issued by that office for the 2016 single family dwelling. During this telephone call, I also confirmed that the Warren County Fire Prevention and Building Code Office had identified egress and occupancy issues with the 1995 single family dwelling for fire prevention and building code purposes.

Shaun E. LaLonde, P.E.

Sworn to before me this
day of _____,

Notary Public