

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:

**NOTICE OF APPARENT VIOLATION
AND REQUEST FOR ENFORCEMENT
COMMITTEE DETERMINATION**

**JAMES JOHN MCDONALD
JEFFREY LEE**

Agency File #E2017-0026

Respondents, on lands situated in
the Town of Thurman, Warren County
Tax Map Parcels 167.1-1-5 and 167.3-1-6
Adirondack Park Agency Land Use Area: Rural Use
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PLEASE TAKE NOTICE THAT pursuant to 9 NYCRR Part 581, the Enforcement Committee shall be convened at the offices of the Adirondack Park Agency (hereinafter Agency) on Route 86 in Ray Brook, Essex County, State of New York, on February 13, 2020, to consider the apparent violations by you of Executive Law § 809 and 9 NYCRR Part 577 as more specifically described in the allegations of fact and law set forth below.

PLEASE ALSO TAKE NOTICE THAT you have 30 days from the date of this Notice of Apparent Violation and Request for Enforcement Committee Determination (hereinafter NAV) to provide a written response to each of the numbered allegations and the requested relief set forth in this NAV. Any affirmative defenses, including exemptions from permit requirements, must be raised in your response. Affidavits and exhibits, as well as written legal argument, should be provided in support of your response.

PLEASE ALSO TAKE NOTICE THAT the Enforcement Committee will consider this matter based on a record consisting of relevant testimony, exhibits, and legal argument. If there are no material facts in dispute, the Committee may issue a determination pursuant to 9 NYCRR § 581-2.6(d) based on the NAV, your response, affidavits, exhibits, and argument in support thereof. A hearing may be scheduled concerning any disputed material facts and will follow the relevant procedural requirements provided by 9 NYCRR Subpart 581-4.

PLEASE ALSO TAKE NOTICE THAT you are invited to appear and make a statement before the Enforcement Committee either in person, by authorized representative so long as you also appear, or by legal counsel. Any statements made before the Committee must be based only on the record consisting of the Notice of Apparent

Violation and supporting documents and any responses. All Enforcement Committee meetings, except for Enforcement Committee deliberations, are open to the public.

PLEASE ALSO TAKE NOTICE THAT, whether or not you appear, the Enforcement Committee will convene at the designated time and place, and that your non-attendance shall not prevent the Enforcement Committee from finding the apparent violations alleged herein or from deciding upon an appropriate disposition of this matter.

Factual Allegations Common to All Apparent Violations

1. Tax Map Parcel 167.1-1-5 (Lot 5) is an approximately 10.47-acre parcel, with frontage on River Road. Lot 5 is located on Rural Use lands within the designated Hudson River Recreational River Area in the Town of Thurman, Warren County.
2. Respondent McDonald is the current owner of Lot 5, as described in a deed recorded under Book 5223, Page 157, in the Warren County Clerk's Office.
3. Tax Map Parcel 167.3-1-6 (Lot 6) is an approximately 2.1-acre parcel, with frontage on River Road. Lot 6 is located on Rural Use lands within the designated Hudson River Recreational River Area in the Town of Thurman, Warren County.
4. Respondent McDonald is the current owner of Lot 6, as described in a deed recorded under Book 5584, Page 158, in the Warren County Clerk's Office.
5. Agency investigation reveals that, between 1995 and 2000, a prior owner constructed a single family dwelling, referred to by Respondents as a lodge (the 1995 single family dwelling), and a 1,144 square foot accessory structure, referred to by Respondents as a barn (the 1995 accessory structure), on Lot 5.

No permit was obtained from the Agency prior to the construction of the 1995 single family dwelling and the 1995 accessory structure.

6. Agency investigation reveals that, in 2015, Respondents established a tourist accommodation known as "The Brampton" on Lots 5 and 6. Respondents have operated The Brampton as a tourist accommodation since this time.

No permit was obtained from the Agency prior to the undertaking of this tourist accommodation.

7. Agency investigation reveals that, in 2016, Respondents undertook construction of a single family dwelling on Lot 5 (the 2016 single family dwelling) to be associated with the tourist accommodation. Construction of the 2016 single family dwelling has not been completed.

No permit was obtained from the Agency prior to undertaking construction of the 2016 single family dwelling on Lot 5.

8. Agency investigation reveals that, since 2015, Respondents have used the 1995 single family dwelling and the 1995 accessory structure in association with The Brampton tourist accommodation. In addition, Respondents have constructed or installed the following structures associated with the tourist accommodation on Lot 5: a yoga deck, a camper van with a double bed, a tent platform with a double bed and a single bed, a large staircase, an Airstream travel trailer, and a second travel trailer. Respondents have also installed an outhouse with a flush toilet, attached shower, electric service, and gravity-fed water (the outhouse structure), all connected to a cess pool.

No permit was obtained from the Agency prior to the construction or installation of these structures on Lot 5.

9. Agency investigation reveals that, between 2015 and 2019, Respondents renovated two small cabins and installed a “tiny home” structure on Lot 6. These three structures are associated with the tourist accommodation use.

No permit was obtained from the Agency prior to construction or installation of these structures on Lot 6.

First Apparent Violation

10. Pursuant to Adirondack Park Agency regulations at 9 NYCRR Part 577, a permit is required from the Adirondack Park Agency prior to any new land use or development classified a compatible use on Rural Use lands within any designated Recreational River Area in the Adirondack Park.

Pursuant to § 805(3)(f) of the Adirondack Park Agency Act, single family dwellings and accessory structures are compatible uses in a Rural Use land use area.

11. Agency investigation reveals that a prior owner of Lot 5 violated 9 NYCRR Part 577 by constructing the 1995 single family dwelling and the 1995 accessory structure without an Agency permit.
12. Agency investigation reveals that Respondents violated 9 NYCRR Part 577 by installing the yoga deck, camper van, tent platform, large staircase, Airstream travel trailer, and second travel trailer on Lot 5 without an Agency permit.

Second Apparent Violation

13. Pursuant to Executive Law § 809(2)(a) of the Adirondack Park Agency Act, a permit is required from the Adirondack Park Agency prior to the establishment of any tourist accommodation on Rural Use lands in the Adirondack Park.

Pursuant to Executive Law § 809(10)(c), the Agency cannot authorize the establishment of a tourist accommodation involving the use of more tourist cabins or other units available for rent than allowed under Executive Law §§ 802(50) and 805(3)(f)(3).

14. Agency investigation reveals that Respondents violated Executive Law § 809(2)(a) by operating The Brampton tourist accommodation on Lot 5 and Lot 6 without an Agency permit since 2015. The Brampton tourist accommodation involves the use of more tourist cabins and other units available for rent than allowed under Executive Law §§ 802(50) and 805(3)(f)(3).

Third Apparent Violation

15. Pursuant to Adirondack Park Agency regulations at 9 NYCRR Part 577, a permit is required from the Adirondack Park Agency prior to any new land use or development classified a compatible use on Rural Use lands within any designated Recreational River Area in the Adirondack Park.

Pursuant to § 805(3)(f) of the Adirondack Park Agency Act, tourist accommodations are compatible uses on Rural Use lands.

16. Agency investigation reveals that Respondents violated 9 NYCRR Part 577 by operating The Brampton tourist accommodation on Lots 5 and 6 without an Agency permit since 2015.

Fourth Apparent Violation

17. Pursuant to Executive Law § 809(2)(a), a permit is required from the Adirondack Park Agency prior to the construction of more than one principal building after May 22, 1973, on a non-shoreline lot containing less than 14.70 acres in a Rural Use land use area.

Pursuant to Executive Law §§ 805(3)(f)(3) and 809(10)(c), the Agency cannot issue a permit authorizing the construction of more than one principal building after May 22, 1973, on a lot containing less than 12.75 acres in a Rural Use land use area.

18. Agency investigation reveals that Respondents violated Executive Law § 809(2)(a) by undertaking construction of the 2016 single family dwelling on Lot 5 without an Agency permit.

Relief Sought

Agency staff respectfully request that the Enforcement Committee issue a determination finding the alleged violations and order the following relief:

- (1) Require Respondents to cease operating The Brampton tourist accommodation on Lots 5 and 6 unless and until the Agency issues a permit authorizing a tourist accommodation; and
- (2) Require that, by April 1, 2020, Respondents remove all signs associated with the tourist accommodation from Lots 5 and 6; and
- (3) Require that, by April 1, 2020, Respondents remove the yoga deck, camper van, tent platform, large staircase, Airstream travel trailer, and second travel trailer from Lot 5; and
- (4) Require that, by June 1, 2020, Respondents remove the 2016 single family dwelling from Lot 5; and
- (5) Require that, by June 1, 2020, Respondents remove the outhouse structure from Lot 5; and
- (6) Require that, by April 1, 2020, Respondents submit a plan to the Agency, DEC, and DOH for a replacement on-site wastewater treatment system to serve the 1995 single family dwelling on Lot 5 for review and approval; and

Require the plan to be prepared by a New York State design professional (licensed engineer or registered architect), consider the use of the property, and be prepared in accordance with all requirements set forth by the current version of New York State Department of Health's "Wastewater Treatment Standards for Individual Household Systems" (10 NYCRR Appendix 75 A), New York State Department of Environmental Conservation's Design Standards for Intermediate Sized Wastewater Treatment Systems, the Agency's Project Guidelines for Residential On-Site Wastewater Treatment, and with Agency standards in 9 NYCRR Appendix Q-4; and

Require that, by July 1, 2020, Respondents, their successors or assigns install an on-site wastewater treatment system on Lot 5 in accordance with the plan approved by the Agency; and

Require that installation of the approved plan be under the supervision of a licensed design professional; and

Require that within 30 days of complete system installation and prior to use, the design professional provide the Agency with written certification that the system was built in compliance with the approved plans; and

- (7) Require that the roof, siding, and trim of the 1995 dwelling and the 1995 accessory structure on Lot 5 be restricted to a dark shade of green, grey, or brown; and
- (8) Require that there be no outdoor lights located on Lot 5 within 75 feet of River Road or any neighboring properties; and that any other free-standing or building-mounted outdoor lights employ full cut-off fixtures that are fully shielded to direct light downward and not into the sky or toward River Road; and
- (9) Require that, within 75 feet of the centerline of River Road, no trees, shrubs or other woody-stemmed vegetation may be cut, culled, trimmed, pruned or otherwise removed or disturbed on Lot 5 without prior written Agency authorization, except for the removal of 1) an area up to 25 feet in width for maintenance of the existing driveway, and 2) dead or diseased vegetation, rotten or damaged trees, or any other vegetation that presents a safety or health hazard; and
- (10) Require prior written Agency authorization for any expansion in height or footprint of the 1995 dwelling, the 1995 accessory structure, or any other structure or replacement structure on Lot 5; and
- (11) Require that, prior to submission of any permit application for a tourist accommodation on Lot 6, Respondents remove one of the renovated cabins and the Tiny Home from Lot 6; and
- (12) Require that, if both renovated cabins remain on Lot 6, no more than one cabin may contain permanent facilities for septic; and
- (13) Require that, if the Tiny Home remains on Lot 6, the structure must remain registered with the New York or New Jersey department of motor vehicles, contain no permanent facilities for septic, be set back at least 150 feet from the river, and have no attached permanent structures, including porches and steps; and
- (14) Provide the Respondents with notice that the Agency makes no representation herein as to the approvability of any proposed activity on Lot 5 or Lot 6; and
- (15) Pursuant to Executive Law § 813, Respondents may be assessed a civil penalty of up to the statutory maximum of \$500 per day for each day the violation has continued in an amount to be determined by the Enforcement Committee; and

- (16) Pursuant to § 15-2723 of the Rivers Act, any person who violates any provision of the Rivers Act may be compelled to comply and pay a civil penalty of not less than \$100 and not more than \$1,000 per day for each day of the violation; and
- (17) Such other and further relief as the Enforcement Committee may deem just and proper.

DATED: Ray Brook, New York
December 17, 2019

ADIRONDACK PARK AGENCY

BY: _____
Terry Martino
Executive Director