



**Adirondack
Park Agency**

ANDREW M. CUOMO
Governor

TERRY MARTINO
Executive Director

STATE OF NEW YORK: ADIRONDACK PARK AGENCY

In the matter of the apparent
violation of Executive Law § 806
by:

Agency File #2019-0127

JOSEPH COTAZINO, JR.
JOY COTAZINO

Respondents.

**MEMORANDUM OF LAW IN SUPPORT OF AGENCY STAFF'S
NOTICE OF APPARENT VIOLATION AND REQUEST FOR
ENFORCEMENT COMMITTEE DETERMINATION**

Respectfully submitted by:

Jennifer Hubbard, Senior Attorney
Adirondack Park Agency Staff

January 31, 2020

PRELIMINARY STATEMENT

This administrative enforcement proceeding is brought by Adirondack Park Agency (Agency) staff to enforce Executive Law § 806 against Joseph and Joy Cotazino (Respondents) to address a deck attached to the shoreline side of a single family dwelling within 50 feet of Lake Algonquin that was constructed by Respondents on property in the Town of Wells, Hamilton County (the subject property or Lot 17.100).

Agency staff request a determination by the Enforcement Committee pursuant to 9 NYCRR § 581-2.6(d) that the apparent violation alleged in the Notice of Apparent Violation and Request for Enforcement Committee Determination (the NAV) has occurred and is occurring. Agency staff further request that the Enforcement Committee determine appropriate injunctive relief and penalties against Respondents as provided by 9 NYCRR § 581-2.6(d).

FACTS

Respondents own tax map parcel 130.18-1-17.100, the subject property, which is an approximately 0.24-acre parcel located in the Town of Wells, Hamilton County. Affidavit of Trevor S. Fravor, dated January 31, 2020 (Fravor Aff.), ¶ 4. The subject property is located on lands classified Hamlet by the official Adirondack Park Land Use and Development Plan Map. Fravor Aff. ¶4, Exhibit 1 of Fravor Aff. The property is improved by a single family dwelling constructed in 2019. Fravor Aff. ¶ 10. The foundation of the single family dwelling is located approximately 50-feet from the mean high-water mark of Lake Algonquin. Fravor Aff. ¶ 10.

On July 25, 2017, Agency staff issued Jurisdictional Determination J2017-0444 in response to a proposal from Respondents to construct a single family dwelling on Lot 17.100 as shown on a site plan titled "Survey Map of Joseph & Joy Cotazino," prepared by Ferguson & Foss PLSPC, and dated August 9, 2012. Fravor Aff. ¶ 5, Exhibit 4 of Fravor Aff. As stated in J2017-0444, this proposal did not require a permit or variance from the Agency. On August 7, 2018, the Agency received an updated proposal from Respondents proposing to construct a single family dwelling within 50 feet of the mean high water mark of Lake Algonquin. Fravor Aff. ¶ 6. With this updated proposal, Respondents included a letter from the Town of Wells indicating that the Town had concerns with the placement of the originally-proposed single family dwelling in "such close proximity" to Kibler Point Road. Fravor Aff. ¶ 6, Exhibit 5 of Fravor Aff.

On August 20, 2018, Agency Enforcement Officer Trevor Fravor and Agency Engineer Shaun LaLonde visited Lot 17.100 to meet with Respondent Joseph Cotazino. Fravor Aff. ¶ 7; Affidavit of Shaun E. LaLonde, dated January 30, 2020 (LaLonde Aff.), ¶ 4. Prior to this site visit, Respondents had staked out a single family dwelling footprint that was partially within the shoreline setback area. During the site visit, Agency Engineer Shaun LaLonde identified the mean high-water mark of Lake Algonquin and then measured and staked a potential single family dwelling footprint that would comply with the Agency's 50-foot structure setback and also increase separation from Kibler Point Road. Engineer LaLonde informed Respondent Joseph Cotazino that a dwelling constructed in the location staked by Agency staff would not require a variance from the Agency. Respondent Joseph Cotazino indicated that he was satisfied with the location of the new footprint. LaLonde Aff. ¶ 4. Enforcement Officer Fravor advised Respondent

Joseph Cotazino that any deck attached to the shoreline side of the single family dwelling would be located within the shoreline setback area of Lake Algonquin and require a variance from the Agency. Fravor Aff. ¶ 7. On October 18, 2017 and October 16, 2018, Respondents were issued a building permit by the Town of Wells for a “one family dwelling” with a 704 square foot deck. Fravor Aff. ¶ 8, Exhibit 6 of Fravor Aff.

On June 11, 2019, Agency staff conducted a second site visit to Lot 17.100 after receiving a complaint that Respondents had constructed a single family dwelling within the shoreline setback area without first obtaining a variance from the Agency. Fravor Aff. ¶¶ 9, 10. During this site visit, Agency staff observed that the foundation of the single family dwelling under construction on Lot 17.100 was located approximately within the footprint identified by Agency staff during the August 2018 site visit, and determined the single family dwelling to be in compliance with Agency regulations. During this site visit, Enforcement Officer Fravor reminded Respondent Joseph Cotazino that attaching a deck to the shoreline side of the single family dwelling on Lot 17.100 would require a variance from the Agency. Fravor Aff. ¶ 10.

On August 13, 2019, after receiving another complaint that Respondents were in violation of the Agency’s shoreline restrictions, Agency staff confirmed by field visit that Respondents had constructed a deck attached to the single family dwelling on Lot 17.100 within 50 feet of the mean high water mark of Lake Algonquin without obtaining a variance from the Agency. Fravor Aff. ¶ 12. The deck is approximately 336 square feet (12 feet in width and 28 feet in length), and most, if not all, of the deck is located within the shoreline setback area. The deck is visible from Lake Algonquin and neighboring properties. Fravor Aff. ¶ 12, Exhibit 7 of Fravor Affidavit.

On August 21, 2019, a cover letter and proposed settlement agreement intended to resolve the apparent shoreline structure setback violation on Lot 17.100 were forwarded by staff to Respondents. Fravor Aff. ¶ 14. The proposed agreement required the deck to be removed by October 31, 2019, and payment of a civil penalty in the amount of \$1000. In response, Agency staff received a letter from Respondents' attorney indicating that Respondents' "are not able to enter into the settlement agreement as currently proposed." Fravor Aff. ¶ 15, Exhibit 8 of Fravor Aff. On October 1, 2019, Agency Enforcement Program Supervisor John Burth spoke with Respondents' attorney by telephone. Affidavit of John M. Burth, dated January 31, 2020 (Burth Aff.), ¶ 4. Mr. Burth explained the Agency's position, stating that Respondent Joseph Cotazino was informed by Agency staff that any deck on the shoreline side of the dwelling would require a variance. Mr. Burth also advised Respondents' attorney that, in these cases, requiring removal of the deck is consistent with the Agency's enforcement practice. Burth Aff. ¶ 4.

On October 16, 2019, Agency staff received another letter from Respondents' attorney confirming that Respondents "cannot consent to the terms of [the] proposed Settlement Agreement" and indicated their understanding that the "Agency will now issue a Notice of Apparent Violation." Fravor Aff. ¶ 17, Exhibit 9 of Fravor Aff. On November 8, 2019, Agency staff forwarded a letter to Respondents' attorney advising that the enforcement matter would be referred to the Agency's Enforcement Committee. Fravor Aff. ¶ 18, Exhibit 10 of Fravor Aff. Following this letter, Agency staff viewed Lot 17.100 from off-site. Agency staff observed that additional construction had been undertaken on the deck, including the addition of posts and a stairway. Fravor Aff. ¶ 19,

Exhibit 11 and Exhibit 12 of Fravor Aff. In a letter forwarded to Respondents' attorney on December 20, 2019, staff advised "that any further construction associated with the apparent shoreline structure setback violation on [Lot 17.100] may result in additional enforcement action and/or the assessment of civil penalties." Fravor Aff. ¶ 20, Exhibit 13 of Fravor Aff. On January 27, 2020, Agency staff observed that no additional construction has taken place on the deck since November 2019. Fravor Aff. ¶ 21, Exhibit 14 of Fravor Aff.

ARGUMENT

Procedural Basis

This enforcement proceeding is brought pursuant to 9 NYCRR Subpart 581-2. As provided by 9 NYCRR § 581-2.6(b), Agency staff have initiated this proceeding by serving a NAV on Respondents. Respondents have 30 days to serve their Response on Agency staff pursuant to 9 NYCRR § 581-2.6(c). Agency staff request a determination by the Enforcement Committee in this matter pursuant to 9 NYCRR § 581-2.6(d).

Respondents' Shoreline Violation

Pursuant to Executive Law § 806, a variance is required from the Adirondack Park Agency prior to the construction of any new principal building or accessory structure greater than 100 square feet in size within 50 feet of the mean high-water mark of any lake on Hamlet lands in the Adirondack Park.

Agency staff investigation indicates that, in 2019, Respondents constructed a single family dwelling on Lot 17.100 and subsequently attached a deck to the shoreline

side of the dwelling. The structure comprised of the dwelling and deck is greater than 100 square feet in size, and most of the deck, if not all, is located within 50 feet of the mean high-water mark of Lake Algonquin. Because Respondents failed to obtain a variance from the Agency prior to construction of the deck within the shoreline setback area, they have violated and are continuing to violate § 806 of the Executive Law.

RELIEF SOUGHT

Remediation

For remediation of this continuing violation, Agency staff seek a determination from the Enforcement Committee requiring removal of the deck attached to the single family dwelling on Lot 17.100 in order to bring the structure into compliance with Executive Law § 806. Fravor Aff. ¶ 15.

Penalty

Agency staff recommend that the Enforcement Committee determine an appropriate penalty in this matter based on consideration of the following relevant factors from the Enforcement Committee's General Penalty Guidelines:

1. Potential Harm and Actual Damage

This factor focuses on the extent to which the violators' conduct resulted in or could potentially result in harm to the environment or human health. The penalty should be proportional to potential or actual harm.

Respondents have constructed a single family dwelling with an attached deck on the shoreline of Lake Algonquin. The deck is 336 square feet in size and most, if not all,

of the deck is located within the shoreline setback and is visible from Lake Algonquin and neighboring properties. Respondents' activities have been undertaken in derogation of the statutory setback requirement and the statutory goal of providing "adequate protection of the quality of the lakes, ponds, rivers and streams of the park and the qualities of their shorelines". Executive Law § 806.

2. Culpability

The violators' culpability is relevant in assessing the amount of a penalty; a higher penalty is appropriate where a violator is culpable for the violation. In assessing the degree of Respondents' culpability, staff recommend consideration of the following: (i) how much control Respondents had over the events constituting the violation; and (ii) the foreseeability of the violation.

In 2017, Respondents requested a jurisdictional determination from the Agency regarding their proposal to construct a single family dwelling on Lot 17.100. Agency staff determined that this proposal was outside of the shoreline setback and issued a Jurisdictional Determination to Respondents stating that no permit or variance would be required from the Agency. In 2018, Respondents revised their proposal, indicating that the Town had concerns with how close the originally-proposed single family dwelling would be to Kibler Point Road. Agency staff then visited the subject property and identified a potential footprint for the single family dwelling that would not require a variance and would also increase separation from Kibler Point Road. Respondent Joseph Cotazino indicated to Agency staff he was satisfied with this footprint for the dwelling. During this site visit, Agency staff advised Respondent Joseph Cotazino that if

a deck was attached to the shoreline side of the single family dwelling it would be located within the shoreline setback area and require a variance from the Agency.

In June 2019, Agency staff visited the subject property to meet with Respondent Joseph Cotazino after receiving a complaint that Respondents were in violation of the Agency's shoreline restrictions. During this site visit, Agency staff observed a single family dwelling under construction on the subject property in the approximate location of the footprint previously identified by Agency staff. Agency staff reminded Respondent Joseph Cotazino that a deck attached to the shoreline side of the single family dwelling would be located within the shoreline setback area and would require a variance prior to construction.

Respondents were on notice that a variance was required to construct this deck and had been advised of this fact multiple times by Agency staff, including prior to constructing the single family dwelling. Despite this advice, Respondents chose to construct a deck in violation of the Agency's shoreline restrictions. In addition, it appears that Respondents continued construction of this deck after being advised they were in violation of Agency law.

3. Cooperation

The cooperation of violators in remedying a violation and the self-reporting of a violation may be mitigating factors in determining an appropriate penalty. Those factors do not apply in this case, as Agency staff only discovered Respondents' violation when construction of the deck was reported to the Agency by a party other than Respondents. In addition, Respondents have not agreed to sign a settlement agreement with staff or

otherwise resolve the violation with staff in accordance with Agency standards for resolving apparent violations of the shoreline restrictions.

4. Extent of Compliance Attained Through Resolution

In this case, full compliance with the shoreline restrictions of Executive Law § 806 will be achieved if Respondents are required to remediate their shoreline violation based on staff's recommendation. It is appropriate for the Committee to take the costs of remediating the shoreline violation into consideration in determining an appropriate penalty.

5. Importance to the Regulatory Scheme

This factor focuses on the importance of the violated requirements in achieving the goal of the underlying statute. The shoreline restrictions of Executive Law § 806 were enacted to protect the quality and shorelines of the lakes, ponds, rivers, and streams of the Adirondack Park. Executive Law § 806(1). In this case, Respondents failed to obtain the required variance for the construction of their deck, resulting in a structure greater than 100 square feet in size within 50 feet of the mean high-water mark of Lake Algonquin.

CONCLUSION

Agency staff request a determination by the Enforcement Committee pursuant to 9 NYCRR § 581-2.6(d) that the apparent violation alleged in the NAV has occurred and is continuing to occur. Agency staff further request that the Committee determine appropriate injunctive relief and penalties against Respondents as authorized by 9 NYCRR § 581-2.6(d) and consistent with the NAV and Agency staff's recommendations.