

NEW YORK STATE: ADIRONDACK PARK AGENCY

In the Matter of the Application to
Construct the Adirondack Club and
Resort by

Preserve Associates, LLC,
Applicant.

Ruling on Party
Status

Adirondack Wild:
Friends of the Forest
Preserve, Inc.

APA Project No:
2005-100

November 19, 2010

SENT VIA E-MAIL AND REGULAR MAIL

With an email dated October 19, 2010, David Gibson and Dan Plumley filed a petition of the same date on behalf of Adirondack Wild: Friends of the Forest Preserve (Adirondack Wild) to intervene in the captioned matter. I acknowledged receipt of the petition to intervene at the October 20, 2010 pre-hearing conference. Because the petition had not been served upon all parties to the proceeding, I stated at the October 20, 2010 pre-hearing conference that I would circulate the petition to the parties via email, and provide a schedule for parties to comment about the petition. A representative of Adirondack Wild did not attend the October 20, 2010 pre-hearing conference.

In an email dated October 21, 2010, I circulated a copy of the petition to the parties. The October 21, 2010 email set November 4, 2010 as the deadline for filing comments about the petition, and November 12, 2010 as the deadline for a response from Adirondack Wild. The email instructed the parties to send a copy of their comments to Mr. Gibson and to me. The October 21, 2010 email provided Mr. Gibson's email address.

I. Petition for Intervention

Adirondack Wild's petition to intervene consists of the following documents: (1) a letter dated October 19, 2010; (2) a copy of the by-laws for Friends of the Forest Preserve, Inc. (doing business as Adirondack Wild: Friends of the Forest Preserve); and (3) an information sheet. The information sheet

provides the mission statement for Friends of the Forest Preserve, Inc., outlines the objectives of the organization, and identifies some of the partners and the officers of the organization.

According to the petition, the mission of Adirondack Wild is to advance the State's forever wild legacy and forest preserve policies as they apply to the Adirondack and Catskill Parks. The organization promotes public and private land stewardship. Adirondack Wild was "newly reconstituted this summer." According to the information sheet included with the petition, Friends of the Forest Preserve was founded in 1945 by Paul Schaefer.

Messrs. Gibson and Plumley noted that they were employees of the former Association for the Protection of the Adirondacks. In their previous roles, Messrs. Gibson and Plumley stated that since November 2004 to the present, they provided extensive public comment about the proposal, and have participated in the various public hearings and attended public meetings related to the proposal.

According to the petition, Adirondack Wild has participated in the following proceedings before the Adirondack Park Agency not related to the captioned matter. Adirondack Wild has attended monthly APA Board meetings since July 2010. Adirondack Wild submitted testimony at the public hearings concerning the unit management plan for the Jessup River Wild Forest and the Moose River Plains Wild Forest, as well as the reclassification and unit management plan for the St. Regis Canoe and Hurricane Mountain Primitive areas. Adirondack Wild filed comments on the APA-DEC Memorandum of Understanding addressing conservation easements. Also, Adirondack Wild commented about APA Project No. 2010-0070 concerning the development project on Utowana Lake, which is a Resource Management land use area.

Adirondack Wild stated that it would contribute to the record related to Issue No. 1 as identified in the Board's February 15, 2010 Order. Adirondack Wild contended that the proposal does not adequately protect forest resources, habitat, wild land values, and other natural resources. According to Adirondack Wild, the proposed Great Camp Lots have not been planned or designed well to mitigate potential impacts. Adirondack Wild asserted that Applicant's proposal unnecessarily fragments the Resource Management land use areas on the project site, and argued that alternative designs that it would present during the hearing would mitigate or avoid potential impacts.

Adirondack Wild asserted that it has a material social, economic and environmental interest in the captioned matter, which is likely to be affected by the final determination. To support this argument Adirondack Wild referenced its mission statement, which, as noted above, is to advance the State's forever wild legacy and forest preserve policies as they apply to the Adirondack and Catskill Parks. According to the petition, Adirondack Wild represents the interests of its donors and contributing members. One member owns lands in a Resource Management land use area. Others own camps in the Adirondack Park; one is located in Franklin County north of the project site. Adirondack Wild notes further that two principal partners are full-time residents of the Adirondack Park.

II. Comments

I received comments about Adirondack Wild's petition to intervene from the following parties.

Dan McClelland filed an email dated October 21, 2010, and stated that the preservationist community is well represented by the two parties already present. Mr. McClelland did not send a copy of his October 21, 2010 email to Mr. Gibson.

Susan Potterton filed an email dated November 1, 2010, and stated that she and her family support the petition filed by Adirondack Wild. Ms. Potterton did not send a copy of her November 1, 2010 email to Mr. Gibson.

In an email dated November 1, 2010, **Dennis and Brenda Zicha** stated their support for the petition filed by Adirondack Wild. Mr. and Mrs. Zicha argued that the petition complied with the criteria outlined at 9 NYCRR 580.7. They noted that Adirondack Wild's petition included a summary of the history of the organization, and copies of the by-laws and mission statement. Mr. and Mrs. Zicha noted that the adjudicatory hearing has not commenced, and argued that the proceedings would not be delayed if I granted Adirondack Wild's petition to intervene. Finally, Mr. and Mrs. Zicha stated that Messrs. Gibson and Plumley have been extensively involved in the review of the project for more than five years. Mr. and Mrs. Zicha sent a copy of their November 1, 2010 email to Mr. Gibson.

Don Dew Jr. sent an email dated November 3, 2010, and opposes the petition. Mr. Dew argued that the petition offers

no new items that are not already included in the original APA order, or are being considered as a result of the pre-hearing conference. Mr. Dew copied Mr. Gibson on the email.

Under cover of an email dated November 4, 2010, **APA Staff** filed a letter of the same date concerning the petition filed by Adirondack Wild. APA Staff does not object to Adirondack Wild's petition to intervene. APA Staff recommended that parties should consolidate their appearances in the hearing as much as possible to conserve resources and to assure the development of a comprehensible and useful record for the Board's consideration. APA Staff sent a copy of its letter to Mr. Gibson.

In an email dated November 4, 2010, **Phyllis Thompson, Ph.D.**, supports the petition filed by Adirondack Wild. According to Dr. Thompson, the leaders of the organization have demonstrated a dedication to the examination of the issues and a knowledge of the Adirondacks that will benefit the discussion. A copy of this message was not sent to Mr. Gibson.

Elaine Yabroudy and Peter Littlefield filed an email dated November 4, 2010 in support of the petition. They noted that Messrs. Gibson and Plumley have been actively involved in the proceedings to date. They noted further that Messrs. Gibson and Plumley have attended local planning board meetings concerning the proposal. Ms. Yabroudy and Mr. Littlefield argued that Adirondack Wild would contribute to a complete and accurate record for the Board's consideration. A copy of this message was sent to Mr. Gibson.

With an email dated November 4, 2010, **Applicant** filed comments of the same date, which were circulated to Mr. Gibson and all parties. Applicant opposes the petition filed by Adirondack Wild. Applicant asserted that the petition filed by Adirondack Wild does not meet any of the regulatory criteria outlined at 9 NYCRR 580.7(a)(1-5). In its comments, Applicant addressed each criterion. According to Applicant, the testimony and argument that Adirondack Wild proposes to offer would be irrelevant, unduly repetitious, tangential and speculative.

Applicant noted that Messrs. Gibson and Plumley had participated in this matter as members of the Association for the Protection of the Adirondacks. Applicant noted further that the Association for the Protection of the Adirondacks merged with another organization to form Protect, and that Protect is a party to this proceeding. Applicant argued that Messrs. Gibson

and Plumley should not be allowed to leave Protect to form a new organization, and to file a petition to intervene. Applicant argued this is essentially Adirondack Wild's "third opportunity" to intervene in this proceeding, and asserted that Adirondack Wild's petition is objectionable because about 40 parties are already involved in this matter.

With an email dated November 5, 2010, **B.G. Read** filed a letter of the same date in support of the petition. Mr. Read sent a copy of his November 5, 2010 letter to Mr. Gibson. However, Mr. Read's November 5, 2010 letter was received after the November 4, 2010 deadline established in my October 21, 2010 email.

Mr. Read noted that members of Adirondack Wild participated in the mediation as members of another organization and are, therefore, familiar with the project. Mr. Read contended that Adirondack Wild would contribute to the development of the record for Issues No. 1 and 7. Mr. Read asserted that all of the parties' respective viewpoints should be considered in making a final determination about the project. Mr. Read objected to the tone of Applicant's comments, which suggest a lack of tolerance and respect for the parties.

With a letter dated November 5, 2010, **Protect** responded to Applicant's comments. Protect takes no position about the Adirondack Wild's petition to intervene. Protect argued, however, that Applicant's comments are misplaced. My October 21, 2010 scheduling email did not authorize responses of this nature.

Kirk Gagnier, counsel for the **Town of Tupper Lake and the Tupper Lake Planning Board**, filed a letter dated November 9, 2010 under cover of an email of the same date. The Town and the Board object to Protect's November 5, 2010 comments because they are untimely and unauthorized. The Town and Board argued that I should order either the consolidation of Adirondack Wild with Protect, or deny the petition. As previously noted, my October 21, 2010 scheduling email did not authorize responses of this nature.

III. Petitioner's Response

As noted above, my October 21, 2010 email provided Adirondack Wild with the opportunity to respond by November 12,

2010. As of the date of this ruling, however, I have not received a response from Adirondack Wild.

IV. Discussion and Ruling

Pursuant to 9 NYCRR 580.7(a), any person may seek to become a party in order to present evidence, cross-examine witnesses, and otherwise participate in public hearings. In order to participate in a public hearing, the prospective party must file a written petition with either the executive director or the hearing officer. The petition must be filed before the hearing commences. The requirements for the petition are outlined at 9 NYCRR 580.7(a)(1 through 5). The hearing officer shall grant the petition if the petitioner either has an interest described in 9 NYCRR 580.7(a)(5), or would further the purpose of the hearing (see 9 NYCRR 580.7[d]).

I grant the petition to intervene filed by Adirondack Wild. The petition includes the required information outlined in the regulations at 9 NYCRR 580.7(a)(1 through 5). As outlined in its petition, I conclude that Adirondack Wild would further the purpose of the hearing by contributing to the record related to Issue No. 1 (see November 16, 2010 summary and issues ruling, Appendix B).

The hearing officer may consider late-filed petitions based on the criteria outlined at 9 NYCRR 580.7(g). I conclude that the criteria outlined at 9 NYCRR 580.7(g) do not apply in this instance because the adjudicatory hearing has not commenced although Adirondack Wild filed its petition the day before the October 20, 2010 pre-hearing conference. There is a distinction in the applicable regulations between holding a pre-hearing conference and commencing the adjudicatory hearing.

Finally, I deny the request by the Town and the Planning Board to consolidate Adirondack Wild with Protect. However, I encourage all parties with similar positions to make joint presentations in order to avoid duplication, and to conserve the parties' limited resources.

V. Appeals

Section 580.7(f)(1) of 9 NYCRR states, in pertinent part, that:

[a]ny decision of the executive director or hearing officer to grant or deny intervention may, within five days of receipt, be appealed to the agency, which will decide the appeal at its next regular meeting. Other parties may submit briefs in support of or in opposition to the decision.

In addition, pursuant to 9 NYCRR 580.7(f)(2), notice of any appeal and a copy of all materials filed in support of any appeal must be given to the executive director or hearing officer and all parties to the hearing.

Consistent with the provisions outlined at 9 NYCRR 580.7(f), this ruling on party status may be appealed to the Adirondack Park Agency Board. According to the APA web site, the Board will meet on December 16 and 17, 2010. I understand that the materials that the Board will consider at the December 16 and 17, 2010 meeting will be mailed to the members one week in advance of the meeting.

Daniel P. O'Connell
Administrative Law Judge

Dated: Albany, New York
November 19, 2010

To: Service List (revised October 22, 2010)

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