



**Adirondack
Park Agency**

For Immediate Release: 2/28/20

Contact: Keith P. McKeever | Keith.McKeever@apa.ny.gov
Adirondack Park Agency | Press Office | (518) 891-4050

Adirondack Park Agency Press Statement for Brampton Enforcement Case

RAY BROOK, NY - The Adirondack Park Agency Enforcement Committee issued a determination and order in the matter of the Brampton Enforcement case which involved the operation of a tourist accommodation in violation of the Adirondack Park Agency Act and the New York State Wild, Scenic and Recreational Rivers Act. The determination requires the owners of the Brampton to immediately cease operations and remove all unlawful structures and signage. The determination also imposes a civil penalty of \$438,000 with 20% (\$87,600) pending by March 6, 2020. The remainder of the penalty would be suspended upon satisfactory completion of all remediation within the time periods established in the determination. The Brampton will not be allowed to operate as a tourist accommodation unless and until all required APA permits are secured.

Agency staff exhausted all standard negotiating processes and were forced to seek a determination from the Agency Enforcement Committee. The determination and order seeks remediation to protect the environment and a civil penalty structured to encourage the remediation, while penalizing the Brampton for their blatant violations and failure to cooperate.

The mission of the Adirondack Park Agency is to protect the public and private resources of the Adirondack Park through the exercise of the powers and duties of the Agency as provided by law.



Adirondack Park Agency

ANDREW M. CUOMO
Governor

TERRY MARTINO
Executive Director

VIA CERTIFIED MAIL

21 February 2020

Mr. James John McDonald
205 Mulberry St.
New York, NY 10012

Mr. Jeffrey Lee
1525 River Road
Warrensburg, NY 12885

**RE: Agency Enforcement File E2017-0026
Tax Map Parcel 167.1-1-5 and 167.3-1-6
Town of Thurman, Warren County**

Dear Mr. McDonald and Mr. Lee:

On behalf of the Adirondack Park Agency Enforcement Committee, I thank you for your appearance on February 13, 2020.

Enclosed, please find the determination of the Enforcement Committee in the above-referenced matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Cooper".

Christopher E. Cooper
Counsel

CEC:mp

cc: Terry Martino, Executive Director
Jennifer Hubbard, Senior Attorney

STATE OF NEW YORK: ADIRONDACK PARK AGENCY

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

**DETERMINATION AND ORDER
OF THE ENFORCEMENT
COMMITTEE
Pursuant to 9 NYCRR § 581-2.6**

**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
-----X

The Enforcement Committee of the Adirondack Park Agency (Agency), with the full Agency hearing the matter, considered the Agency Staff Request for an Enforcement Committee Determination for Enforcement File E2017-0026 on February 13 and 14, 2020.

The Record before the Committee consists of the following documents:

- Agency Staff's Notice of Apparent Violation and Request for Enforcement Committee Determination dated December 17, 2019
- Memorandum of Law in Support of Agency Staff's Notice of Apparent Violation and Request for Enforcement Committee Determination dated December 17, 2019
- Affidavit of Enforcement Officer Bart H. Haralson, dated December 17, 2019, including Exhibits 1-81
- Affidavit of Agency Environmental Engineer Shaun E. LaLonde, dated December 17, 2019, including Exhibits 1-4

Respondents did not provide an answer to the Notice of Apparent Violation.

Agency staff and Respondents James John McDonald and Jeffrey Lee appeared before the Enforcement Committee, with the full Agency hearing the matter, on February 13, 2020. Based on the Record and the proceedings before the Enforcement Committee, the Enforcement Committee makes the following findings, determinations, and orders pursuant to 9 NYCRR § 581-2.6(d).

Applicable Law

Pursuant to Agency regulations at 9 NYCRR Part 577, a permit is required from the 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 (Executive Law or EL), single family dwellings and accessory structures are compatible uses in a Rural Use land use area.

Pursuant to EL § 809(2)(a), a permit is required from the Agency prior to the establishment of any tourist accommodation on Rural Use lands in the Adirondack Park. Pursuant to EL § 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 EL §§ 802(50) and 805(3)(f)(3).

Pursuant to Agency regulations at 9 NYCRR Part 577, a permit is required from the 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 EL § 805(3)(f), tourist accommodations are compatible uses on Rural Use lands.

Pursuant to EL § 809(2)(a), a permit is required from the 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 EL §§ 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.

Findings

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 on the Adirondack Park Land Use and Development Plan Map, 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. 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. 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. 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. 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 cesspool. No permit was obtained from the Agency prior to the construction or installation of these structures on Lot 5.
9. 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 renovation or installation of these structures on Lot 6.
10. On March 20, 2017, Agency staff opened Enforcement File E2017-0026 in response to complaints that Respondents had established a tourist accommodation on Lot 5, installed structures on Lot 5 associated with this tourist accommodation, and undertaken construction of a single family dwelling on Lot 5 without obtaining a permit from the Agency.
11. During the subsequent investigation, Agency staff conducted site visits on April 5, 2017; September 28, 2017; and August 22, 2018. During the various site visits, Agency staff observed the above-listed structures on Lots 5 and 6. Agency staff also observed that the leaching facility of the existing on-site wastewater treatment system serving the 1995 single family dwelling is located within 100

feet of Respondents' water supply and an intermittent stream, contrary to New York State Department of Health (DOH) and Agency standards.

12. Agency staff sent written correspondence to Respondents on April 14, 2017; July 12, 2017; July 18, 2018; and September 18, 2018.
13. On November 10, 2017, Agency staff received a letter from Respondent McDonald stating that Lot 6 "will henceforth be used solely for personal use." On May 24, 2018, Agency staff received a permit application for The Brampton tourist accommodation, which included professionally prepared plans for an on-site wastewater treatment system for the 1995 single family dwelling. The Agency received no other written response or submission from Respondents.
14. Agency staff met with Respondent Lee at the Agency's offices on March 29, 2018.
15. Agency staff spoke with Respondent Lee by telephone on the following dates: May 22, 2017; June 12, 2017; July 17, 2017; September 5, 2017; five times during October 2017; February 21, 2018; March 27, 2018; five times between May 26, 2018, and June 27, 2018; three times between July 23, 2018, and August 6, 2018; and November 5, 2018.
16. Agency staff sent proposed settlement agreements to Respondents on February 13, 2018; January 8, 2019; and August 2, 2019. Each proposed settlement agreement offered to resolve the enforcement matter provided the Respondents obtained an after-the-fact permit authorizing continued operation of the tourist accommodation, removed the non-conforming structures, installed an Agency-approved on-site wastewater treatment system for the 1995 single family dwelling, and paid a civil penalty of \$2,500. Respondents did not sign any of the proposed settlement agreements.
17. Throughout the Agency's investigation, Respondents have continuously advertised The Brampton tourist accommodation as an operating tourist accommodation. Despite Respondents' statements to the contrary, all of the accommodation structures on Lots 5 and 6 have been advertised as available for rent.
18. Advertised rental rates for The Brampton vary depending on the season and type of rental, ranging from \$1,500 for a weekend for the 1995 single family dwelling, to \$3,000 per person for a week-long adventure retreat, to \$10,000 for weddings.

Determination of the Violation

Respondents are violating EL § 809(2)(a) by the establishment since at least 2015 of a tourist accommodation on Rural Use lands in the Adirondack Park without first obtaining a permit from the Agency on the subject property.

Respondents are violating EL § 809(10)(c) by the establishment since at least 2015 of a tourist accommodation involving the use of more tourist cabins or other units available for rent than allowed under EL §§ 802(50) and 805(3)(f)(3).

Respondents are violating EL § 809(2)(a) by 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 without a permit.

Respondents are violating EL § 809(10)(c) by the construction of more than one principal building after May 22, 1973, on a non-shoreline lot containing less than 12.75 acres in a Rural Use land use area.

Respondents are violating Agency regulations at 9 NYCRR Part 577 implementing the Wild, Scenic, and Recreational Rivers System Act by the construction of a single family dwelling and accessory and other structures on Rural Use lands within a designated Recreational River Area in the Adirondack Park without a permit.

Respondents are violating Agency regulations at 9 NYCRR Part 577 implementing the Wild, Scenic, and Recreational Rivers System Act by the establishment of a tourist accommodation on Rural Use lands within a designated Recreational River Area in the Adirondack Park without a permit.

Determination and Order of Appropriate Disposition

Now, therefore, having considered this matter, the Enforcement Committee orders the following:

Cease Operations

1. Effective immediately, Respondents shall cease operating The Brampton tourist accommodation on Lots 5 and 6 and shall not resume operating unless and until the Agency issues a permit authorizing a tourist accommodation. Within 15 days of service of this Determination and Order, Respondents shall provide notice confirming the following:
 - a. All current reservations at The Brampton have been cancelled,
 - b. No additional reservations will be accepted unless and until the Agency issues a permit authorizing a tourist accommodation, and
 - c. All advertising of The Brampton has ceased; and
2. By April 1, 2020, Respondents shall remove all signs associated with the tourist accommodation from Lots 5 and 6; and

Remove Nonconforming Structures

3. By June 1, 2020, Respondents shall remove the yoga deck, camper van, tent platform, large staircase, Airstream travel trailer, second travel trailer, and outhouse structure from Lot 5; and
4. By July 1, 2020, Respondents shall remove the 2016 single family dwelling from Lot 5; and

Install Wastewater Treatment System

5. With respect to a replacement on-site wastewater treatment system to serve the 1995 single family dwelling on Lot 5 the Respondents shall do the following:
 - a. By April 1, 2020, submit a plan to the Agency, DEC, and DOH for review and approval. The plan shall 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
 - b. By September 1, 2020, install an on-site wastewater treatment system on Lot 5 in accordance with the plan approved by the Agency. Installation of the approved plan shall be under the supervision of a licensed design professional; and
 - c. Within 30 days of complete system installation, and prior to use, the design professional shall provide the Agency with written certification that the system was built in compliance with the approved plans; and

Ongoing Conditions

6. The roof, siding, and trim of the 1995 single family dwelling and accessory structure on Lot 5 shall be restricted to a dark shade of green, grey, or brown; and
7. There shall be no outdoor lights located on Lot 5 within 75 feet of River Road or any neighboring properties, and any other free-standing or building-mounted outdoor lights shall employ full cut-off fixtures that are fully shielded to direct light downward and not into the sky or toward River Road; and

8. 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
9. Prior written Agency authorization shall be required 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
10. Prior to submission of any permit application for a tourist accommodation on Lot 6, one of the renovated cabins and the Tiny Home shall be removed from Lot 6; and
11. If both renovated cabins remain on Lot 6, no more than one cabin may contain permanent facilities for septic; and
12. If the Tiny Home remains on Lot 5 or 6, the structure shall be and 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

Record

13. Within 15 days of service of this Determination and Order, Respondents shall record this Determination and Order in the Warren County Clerk's Office. Respondents shall provide the Agency with proof of recording within 30 days of service of this Determination and Order.

Notice

14. Unless otherwise specified above, Respondents shall provide written notice by first class mail or hand delivery to the Agency c/o Enforcement Division prior to the respective specified deadline confirming that each of the above actions has been completed.

Civil Penalty

15. Respondents shall pay a civil penalty to the State of New York in the amount of \$200 per day for violations of the Adirondack Park Act and \$400 per day for violations of Agency Regulations 9 NYCRR Part 577 implementing the Wild, Scenic, and Recreational Rivers System Act, each for for 730 days beginning February 13, 2018 for a total of \$438,000.

\$87,600 of this penalty is due by March 6, 2020. The remaining \$350,400 of the total penalty is suspended pending satisfactory completion of remediation by the deadlines specified above. Should any element of the remediation not be completed by its respective deadline, the suspended \$350,400 penalty shall be immediately due and payable to the State of New York, in the same manner as the initial penalty, and such additional proceedings as are necessary to achieve full compliance with the law will be commenced.

Payment of this penalty shall be by certified check or money order and shall be transmitted to the Agency c/o Enforcement Division.

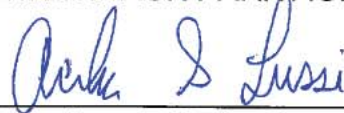
General

16. The Agency makes no representation herein as to the approvability of any proposed activity on Lot 5 or Lot 6; and
17. Agency staff may conduct site inspections to confirm compliance with this Determination and Order. Respondents shall cooperate with Agency staff to facilitate these inspections.
18. The violation described herein shall be deemed resolved so long as Respondents remain in compliance with the terms of this Determination and Order.

DATED: Ray Brook, New York
February 21, 2020

ADIRONDACK PARK AGENCY

BY:


Arthur Lussi, Chair
Enforcement Committee

State of New York)
) ss:
County of Essex)

On the 21st day of February in the year 2020, before me, the undersigned, a Notary Public in and for said State personally appeared Arthur Lussi, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

MARY B. PALMER
Notary Public - State of New York
Qualified in Franklin County
No. 01PA6128439
Commission Expires June 13, 2021