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APA closes enforcement action

By KIM SMITH DEDAM, Staff Writer

RAY BROOK — The Adirondack Park Agency has closed a pending enforcement case against Black Brook developer Leroy Douglas.

With it went the threat of more than \$1 million in possible fines to Douglas and his company, Douglas Corporation of Silver Lake, accrued at \$1,000 a day.

The case was based on alleged wetlands violation on a road to an eight-lot subdivision planned on Silver Lake in Black Brook.

ACCUSATION

The APA closed the case last week, about a month after Douglas and his attorney, Matthew Norfolk, moved to have the matter dismissed amid claims of illegal ex parte correspondence.

So far, courts have not vetted Norfolk's several claims that APA attorneys and Enforcement Committee Chairman Cecil Wray brought Douglas back to APA in 2007 at the request of members of the Adirondack Council.

Wray was a member of the Adirondack Council Board of Directors before he was appointed as APA commissioner by former Gov. George Pataki.

The Douglas wetlands concern had been reviewed by the APA and closed once.

In 2006, APA sent Douglas a letter deeming his development project "non-jurisdictional."

Norfolk maintains APA enforcement attorneys revived the case at the express request of environmentalists from the Adirondack Council and its chairman, Brian Ruder, who owns property adjoining Douglas's planned subdivision in Black Brook.

E-MAIL

A copy of one e-mail sent to APA reads: "Knowing Douglas's intentions, can the APA rescind his letter of non-jurisdiction?"

The sender's name is redacted with black marker, but the e-mail is dated March 22, 2007, the same day APA opened a new case against Douglas, according to hearing documents.

Adirondack Council spokesman John Sheehan could not confirm the letter was sent by Ruder, but he said it is their job, as an environmental watchdog agency, to challenge APA decisions.

"Ruder lives in Black Brook, but I don't know if he sent that letter," Sheehan said. "Anybody can ask for a non-jurisdictional case to be reviewed; but that's what we do. It's our job. All we can do is point out what we think is a violation and where. We generally don't have unfounded complaints."

Sheehan said that if the Douglas case was not open when the e-mails were sent, then the communication was not ex parte.

"Mr. Norfolk ought to put his fishing pole away. He has made the same accusation on behalf of Mr. (Jim) McCulley, and it was unfounded then.

"It appears as if he's attempting to throw every piece of furniture possible in front of progress in this case. It's clear he also has a particular dislike for the Adirondack Council, which is shared by his client."

LIKENED TO CLUB

But Norfolk said the core issue is propriety of communication in public office.

"APA's administrative enforcement process cannot be used as a club to force residents of the park to relinquish their lawful rights and entitlements as landowners."

DOUGLAS RELIEVED

APA's decision to close the case last week came as a complete surprise to Douglas.

"It's absolutely a heck of a relief," Douglas told the Press-Republican.

He said APA enforcement action proved an obstacle to his business operation and that he has not tried to sell property tangled in ongoing APA enforcement proceedings.

"I've been dealing with them (APA) for six years now. I was totally flabbergasted and very thankful. I can't say enough good enough about the (Department of Environmental Conservation) administrative law judge (Molly T. McBride). She was very objective. She asked the right questions. I can't express how gratified I was to deal with someone as honest and forthcoming."

AGREEMENT

APA spokesman Keith McKeever confirmed their attorneys reached an agreement with Douglas.

"We would confirm prior remediation actions and, if compliant, close the case."

Norfolk said the wetlands issue was formally settled years ago.

"But we were not going to enter into any settlement with respect to the 2007 proceeding. We believe enforcement proceedings should not have been commenced in the first place."

Neither Douglas nor Norfolk would say if they intend to challenge the APA in federal court.