

Adirondack Daily Enterprise
August 6, 2011

ACR briefing schedule now set

By JESSICA COLLIER , Adirondack Daily Enterprise

TUPPER LAKE - After seven years, Tupper Lakers finally know when they should find out whether the state Adirondack Park Agency will allow for the construction of the biggest development it's ever reviewed.

The final schedule for an APA decision on the proposed Adirondack Club and Resort project was set Friday through a briefing schedule laid out by Administrative Law Judge Daniel P. O'Connell.

"It's nice that it's almost over," said lead project developer Michael Foxman.

O'Connell sent an email Friday afternoon to parties involved in an adjudicatory hearing to review the project saying that closing briefs in the hearing will be due by 5 p.m. Friday, Sept. 23. That's about 44 days after he expects parties to receive final hearing transcripts.

According to a July 15 memo from APA attorney Paul Van Cott, the closing briefs "are the opportunity for parties to provide factual and legal argument to the APA board based on the evidence that is part of the hearing record and the law. Closing statements are argument, not testimony."

The statements can also contain comments on the draft permit conditions APA staff proposed before the hearing began, as well as proposed corrections to the hearing transcript.

Then parties will have about 30 days to file replies to the briefs, which will be due by 5 p.m. Monday, Oct. 24.

That sets up APA staff to begin in November with a series of three monthly meetings through which they plan to familiarize the agency's commissioners with the hearing record. The final meeting would be in January.

The three-month review period is longer than usually allowed through typical APA decision time clocks, but ACR developers have agreed to allow the extended period as long as commissioners make a decision by the end of January.

That means they'll have to vote on whether to approve the project, approve it with conditions, reject it or send it back to hearing for more information at their monthly board meeting in January.

Foxman said that he's been expecting the decision to come in January for a while now.

Foxman said he assumes the groups who are challenging the project will try to delay the decision, but he doesn't expect them to be successful.

After the decision is made, parties will have 60 days to appeal it. Foxman said he's expecting an appeal from the Adirondack Council, Protect the Adirondacks and Adirondack Wild: Friends of the Forest Preserve, all of which are parties to the hearing.

"I think that that's the probability," Foxman said, calling it consistent with their behavior to date.

Foxman's attorneys requested 30 days to file both the closing briefs and the replies. He said he's not bothered by the few extra days the judge is allowing.

"Fifteen days, or whatever, at this point seems like the blink of an eye, doesn't it?" Foxman said, in light of the seven years since application materials were submitted to the APA in August 2004 for conceptual review.

John Caffry, who is representing Protect the Adirondacks in the hearing, said it sounds like the timeline the judge set up was down the middle of the road of what each of the parties were requesting.

"I think that's a reasonable schedule," Caffry said. "I think what was important to many of us was to not have to do it before the end of the summer or immediately after Labor Day."

According to O'Connell's email, APA staff had sent out the final computer disk for the hearing transcript earlier in the day, and he anticipates receipt of the final set of transcript CDs within five days.

Each party must submit 15 paper copies of their statement, plus they must email it to all the other parties to the hearing.