

The Adirondack Park Agency: “Under the Influence and In Need of Detoxification”

*A Report to Gov. Paterson and
the New York State Legislature, August 2010*

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Established at the same time and under the same law as the Adirondack Park Agency, the Adirondack Park Local Government Review Board’s statutory mission is to advise and assist the Adirondack Park Agency in carrying out its functions, powers and duties.¹

The Review Board was established in law to ensure that local governments would have a guaranteed place in the larger, regional discussions about land issues in the Adirondack Park. The Review Board is composed of representatives from each of the counties inside the Blue Line, the more than 100 communities whose very existence depends on how these lands are used and protected. The Review Board was structured in this way to “insure optimum overall conservation, protection, preservation, development and use of the unique scenic, aesthetic, wildlife, recreational, open space, historic, ecological and natural resources of the Adirondack Park.”²

New York State policymakers recognized the imperative to balance long-term economic revitalization with environmental protection and built it into law in the Adirondack Park Agency Act in 1973. But as environmental protection, zoning and land acquisition took precedence, economic policy never became a paramount interest of the APA, so local government efforts to encourage and protect the economic life of their communities were under-funded, fragmented, episodic, frustrated by state regulations, and rarely successful.

New York State has a strong interest in preserving the economic life of the Adirondacks. It is the home of Empire State icons like Lake Placid, Saranac Lake, Lake George, North Creek, Indian Lake and Old Forge. The economic activity that has continued in some of these places is increasingly isolated from the stagnation and decline that has become a way of life in many other Adirondack communities.

¹ <http://codes.lp.findlaw.com/nycode/EXC/27/803-a>

² <http://codes.lp.findlaw.com/nycode/EXC/27/801>

New York's creation of the Adirondack Park is widely seen as a broad-scale social experiment. Is it possible, on a long-term basis, to balance the goal of isolating and permanently protecting millions of acres of forest, while maintaining in close proximity strong, economically vibrant communities with sustainable employment and educational opportunities for local residents and essential services to millions of visitors?

The answer: Not so far. Environmental protection has been strong. But economic deterioration is deep, prolonged, and spreading. And it is this imbalance that raises concerns of the residents, businesses and governments in the Adirondacks as the Review Board, which has been chronically underfunded (keeping it as a less-than-effective reviewing agency or watchdog), constantly raises its collective voice in order to be part of the debate over our future.

Attempting to Legislate by Regulation

Throughout the modern history of the Adirondack Park – from the formation of the Adirondack Park Agency in the early 1970s – the focus from New York State's perspective has been on land acquisition, followed by tightening APA regulation on land in the Adirondacks, public and private.

An industry has grown up in Albany, Ray Brook and elsewhere around the regulatory framework. As environmental advocacy groups have deftly used the process to build their own fortunes while driving their need to continue the state's string of land purchases and to apply tight APA regulations. Many have well-paid lobbyists and public relations teams working to continually pressure the state to buy more land and classify it restrictively, for the enjoyment of the well-heeled at the expense of the rest of New York State's residents.

Local governments and other groups have no dedicated presence in Albany and nowhere near the same financial resources to focus on the needs of the 130,000 residents of the Adirondacks. So the balance of New York State's policy for more than 30 years on Adirondack issues has been driven by environmental pressure groups and driven by personal private agendas that seek to prevent ordinary people from building sensible, needed projects that in no way threaten the environment, even when there clearly is no law or regulation against them.

A target on the advocacy agenda this year was boathouses in the Adirondack Park. The APA said the regulations needed to be amended because its staff members had expended "untold hours poring over elaborate boathouse designs in order to determine if the design meets the definition. It has been a constant struggle."³

³ <http://www.apa.state.ny.us/Mailing/0902/Legal/Boathouse%201b%20102308%20BAR.pdf>

The boathouse definition that the staff members were troubled by can be found in APA regulations § 570 3(c): “*Boathouse* means a covered structure with direct access to a navigable body of water which (1) is used only for the storage of boats and associated equipment; (2) does not contain bathroom facilities, sanitary plumbing, or sanitary drains of any kind; (3) does not contain kitchen facilities of any kind; (4) does not contain a heating system of any kind; (5) does not contain beds or sleeping quarters of any kind; and (6) does not exceed a single story.”

Following past practice, the APA staff’s proposed changes would have dramatically restricted it further: requiring a footprint of 900 square feet or less, a height of fifteen feet or less, and a roof with a minimum pitch of four on twelve for all rigid roof surfaces – meaning the rooftop decks that are very much in character of Adirondack boathouses would be banned.

Even the commissioners, historically deferential to the staff’s wishes, were hard-pressed to accept the proposed new definition, which, far beyond simply describing a boathouse would have imposed new restrictions that the state Legislature had never authorized.^{4 5} They questioned the authority of the APA to make legislative changes in regulations, and ended up tabling the discussion over months. The fundamental question of whether the regulation was actually needed to protect the environment, as was stated in the impact statement, was virtually never discussed.⁶

One of the APA’s common practices is to declare that a restrictive new regulation will advance environmental protection – rarely, if ever, will the agency present empirical evidence to support such claims. The oft-cited example is the Agency’s effort to restrict paint colors in the Adirondacks. The APA staff historically has conditioned permits on the applicants’ willingness to use earthtone paints. There is, of course, no evidence that earth tones are more environmentally protective than neon pink but the APA staff uses its intimidating power to deny permits to achieve aesthetic outcomes.

The Review Board couldn’t understand the reluctance on the part of the APA staff to send their proposed changes to the Legislature and allow a proper review and approval of the changes, or to even ask the Legislature to amend the statute to clarify the regulations.

The staff preferred to do what it has done in the past: To change its own regulation rather than run the risk of a legislative debate over the issue, where uncomfortable questions might be asked. Uncomfortable questions like: What evidence exists that boathouses pose a threat to the environment?

It was clear at that meeting that there was no answer why. The staff brought the

⁴ “APA members disagree over boathouse deck rules” by Dayelin Roman, The Post-Star, March 11, 2010

⁵ “APA commissioners pan boathouse limits” by Chris Knight, Adirondack Daily Enterprise, March 12, 2010

⁶ “Environmental concerns all but absent from APA boathouse debate” by Chris Knight, Adirondack Daily Enterprise, June 8, 2010

regulatory change back for a vote a few months later with an increase in total square footage allowed and without the roof requirement. Those changes were approved over the concerns of local commissioners Art Lussi, Frank Mezzano and Richard Booth and the outcry from local residents in letters to the editor in regional newspapers.

From the Adirondack Daily Enterprise story on the vote:

Commissioner Frank Mezzano, who also opposed the new definition, noted that boathouses are generally exempt from APA jurisdiction.

"I think the change to a definition, which in effect takes jurisdiction over a certain size and certain height, is not something I'm comfortable with," Mezzano said. "I would be much more comfortable if this were to go to the Legislature, where I think it belongs."⁷

Setback exemptions removed

The APA routinely expands its authority by imposing more restrictive requirements in permits than are required by its legislation or regulations. One part in a series of regulatory changes that it passed in 2008 changed shoreline setback requirements in the Adirondacks to require APA variances for almost all additions to homes. Previously, homes that were built before 1973 were exempted from shoreline setbacks (typically between 50 and 100 feet of a water body) to expand laterally or rearward – away from the mean high water line.⁸

Nine counties and multiple towns filed a lawsuit in state Supreme Court to challenge that change and others, detailed below, in the same regulations. The counties and towns say the regulation change removes the protections that the legislature built in for homeowners whose houses were built before 1973. The case was part of a split decision – the judge denied this claim by the counties, a ruling that has been appealed to the New York State Appellate Division, Third Department.⁹

Seeking to Change Nature

What we see here is an agency engaged in, first, protecting its prerogatives, the wide latitude it enjoys to make arbitrary demands not supported by law or regulation, and second, an agency engaged in using its vast regulatory power to pursue its particular vision of Adirondack land use. Neither is appropriate. Yet the Agency has successfully pursued this strategy for more than 30 years because few applicants have the financial resources to challenge its arbitrary rulings and most reluctantly accept onerous and unreasonable conditions as the price that must be paid to get a project approved. The kinds of unreasonable restrictions the agency was unable to persuade the Legislature to put into law it, itself, imposes on permit applications. It

⁷ "APA approves boathouse rules 7-3" by Chris Knight, Adirondack Daily Enterprise, June 11, 2010

⁸ "Agency restricts Adirondack shoreline rebuilding," WTSM-TV, Nov. 17, 2008

⁹ "Counties appeal Supreme Court ruling regarding shoreline regulations" by Jon Alexander, WNBZ radio, Feb. 26, 2010

then cites those imposed conditions as a precedent for imposing similar restrictions in future cases.

Another part of the 2008 regulatory changes had the agency seeking to change nature and reality itself. The agency wanted to repeal a rule called the “natural subdivision” regulation that states that land divided by public road, railroad or right of way, owned by the same person, is two pieces of property and therefore can be sold without a formal (and costly) subdivision process. The APA wanted to require a permit to “divide” the separated land, even if the owner’s purpose was to give a parcel to a family member or sell it, and even though the agency would still have authority over development on the land. A state Supreme Court judge said no¹⁰, rescinding the regulation does not change nature and eliminate the “natural subdivision.” The ruling further stated that the Agency’s belief that rescinding the regulation which recognizes that parcels on opposite sides of a road or right-of-way are separate parcels was improper.

The agency also attempted to change those regulations to keep rustic hunting and fishing cabins – structures that are already non-jurisdictional if less than 500 square feet – from becoming slightly more comfortable places to stay. The APA change said henceforth hunting and fishing cabins had to be one-story only, built on posts or piers with no permanent foundation; served by a pit privy or chemical toilet and not have a conventional, on-site wastewater treatment system; not have pressurized or indoor plumbing; and not be connected to any public utilities. Hunting and fishing are cherished traditions in the Adirondacks and the small, remote cabins where generations of Adirondackers and visitors have enjoyed the outdoors are no threat to the environment.

Again a judge reversed the regulatory change.¹¹ His ruling stated that the change promulgated by APA went beyond what the Legislature had intended and was enacted in excess of the Agency’s lawful authority. The rules, in effect, changed the Legislature’s view of the structural limitations, and “encroached on the legislative powers and intent of the State Legislature.”

Lows Lake Classification

There are many examples of environmental groups pressuring the Agency to make decisions that benefit their members primarily, not the public at large. And even if the Agency doesn’t deliver, which is quite rare, in many cases the organizations can get what they want.

For example, take the issue of Lows Lake. The APA Commissioners, upon recommendation of staff, originally voted in September 2009 to classify the water and lakebed of manmade Lows Lake as “wilderness.”¹² The lake, a feat of

¹⁰ New York State Supreme Court decision and order, 36-09 and 37-09, filed November 19, 2009

¹¹ *ibid*

¹² “Split board approves Lows Lake wilderness designation” by Chris Knight, Adirondack Daily Enterprise, September 11, 2009

engineering that was created by two concrete dams, has a mix of public and private land along its shoreline, similar to Lake Placid and Lake George. Never has the water and bed of a lake with a mix of shoreline classifications been classified “wilderness.”

Lows Lake is already protected from any kind of development as part of the Forest Preserve. Much of the Forest Preserve land around it is correctly classified as “primitive,” affording much of the same protections as a “wilderness.” Why the change, then? To ban motorboats from bothering canoers, apparently. Even the DEC Assistant Commissioner for Natural Resources was against the change, as it would make DEC’s campsite work along the lake more difficult and dangerous.¹³

But it is a much larger issue than canoeists or motorboats. If, for example, the APA were to classify the lakebed and waters of Lake George or Lake Placid as wilderness, the APA’s jurisdiction would automatically extend up 660 feet onto the surrounding private parcels. The APA could deny use or permits to make any changes on any private home or building on the shores, any dock or boathouse.

This scenario, far-fetched as it may be, helps to illustrate the inapplicability of wilderness designations to lakes with mixed land-ownership shorelines.

The commissioners rescinded their vote at the next monthly meeting – caused both by the public concern over the issue and a question over the legality of the vote. A procedural discussion and changes in the proposal followed that did not include the bed and water of Lows Lake in the classification. That measure was approved in November 2009.¹⁴

The footnote to this story is that the environmental advocacy groups got what they wanted through a back door, anyway. Shockingly, DEC Commissioner Peter Grannis, in a letter to Adirondack Mountain Club Executive Director Neil Woodworth just after the November vote,¹⁵ wrote that “Effective immediately, the department will manage Lows Lake as a wilderness lake, subject only to existing riparian rights and the limited floatplane access recently provided for.”

Enforcement Overstepping

In enforcement actions, the APA continues to assert jurisdiction where none exists, and make regulatory changes where it has no business doing so. Sandy Lewis had a long battle with the agency before winning in court and seeing the attempt to expand power overturned.

Mr. Lewis is an organic farmer in northern Essex County. He had sought to build housing for farm workers on his 1,200 acres of land – land that is designated as a single parcel of land on county and town tax rolls.

¹³ “APA classifies land but not Lows water,” by Mike Lynch, Adirondack Daily Enterprise, Nov. 13, 2009

¹⁴ Ibid

¹⁵ “Grannis vows to defy APA decision on Lows Lake” by Joe Hackett, Denton Publications, Dec. 17, 2009.

Even though New York State Law makes expressly clear¹⁶ that agricultural use structures – including housing – are exempt from requiring permits from APA to subdivide and build on resource management land, the APA insisted that it had authority to control the private agricultural buildings on a parcel of agricultural land.

And this act of overreaching will cost taxpayers plenty.

Mr. Lewis challenged the APA’s jurisdiction and won at the State Supreme Court¹⁷ and Appellate Division levels¹⁸. Essex County Acting Supreme Court Judge Richard Meyer ruled early this year that the Agency must repay the legal fees and expenses incurred by Mr. Lewis, which he says are more than \$200,000.

Blistering Email

In the midst of these court cases, the APA’s then-director of enforcement sent a blistering email from his taxpayer-funded agency email account to Mr. Lewis – a citizen who had the temerity to complain – calling him a “sociopath.”¹⁹

“Please shut up,” Paul Van Cott wrote to Mr. Lewis from his agency email. “Go out and get a shovel and work like a real person on your farm. Enjoy life and be a real farmer. You are very fortunate. Realize that and get a life.”

Mr. Van Cott was reassigned internally following the remark, but continues to work at the APA.²⁰

Emblematic of many of the issues that Adirondack citizens have had with the Adirondack Park Agency is a dispute between the Zelanis family and the agency.²¹

The case dates back 20 years, to a host of disputes over definitions of floor space, porches, deed restrictions and docks and boathouses. The June 1 decision that overturned much of the APA’s enforcement case, by Acting Supreme Court Justice Richard Meyer, reads like a list out of the British occupation during the American Revolution. Justice Meyer found that over the time of the enforcement case, the APA had:

- violated fundamental property rights, including due process violations,
- attempted to enforce regulations retroactively,
- attempted to impose a condition not authorized by law, and
- attempted to create new regulations by citing past practice.²²

¹⁶ http://pressrepublican.com/0100_news/x155045384/APA-considers-big-fine-for-Lewis-Farms/print

¹⁷ http://www.sblewis.com/SBLewis/The_Decision_files/Decision%20M0201400.PDF

¹⁸ <http://decisions.courts.state.ny.us/ad3/decisions/2009/504626.pdf>

¹⁹ “Van Cott removed as head of APA enforcement” by Chris Knight, Adirondack Daily Enterprise, November 24, 2009

²⁰ Ibid

²¹ “Couple clings to future of home” by Will Doolittle, The Post-Star, July 2, 2010

The Zelanis' lawyer, Matt Norfolk, said the decision sets judicial precedent that prevents the APA from applying new regulations to pre-existing structures.²³

No Protection For Landowners

For years, local government officials have been talking about creating a law that would offer some protection to Adirondack landowners who may unknowingly be harboring violations on their property. Right now, the Adirondack Park Agency can begin an enforcement proceeding on an alleged violation that goes as far back as 1973 – virtually a lifetime ago – even if the current owner didn't own it then and doesn't know anything about it.

As part of a request from local governments, Sen. Elizabeth Little, R-Queensbury, and Assembly Member Teresa Sayward, R-Willsboro, introduced a bill²⁴ again this year that would require the APA to begin enforcement proceedings within 10 years of the violation.

It's a reasonable length, considering New York State Criminal Law provides a five-year statute of limitations for all but the most serious felonies.

The state Senate passed the bill unanimously on June 25.²⁵ Opposed by the region's environmental groups (according to press reports), the Assembly's version was laid aside by the Assembly committee chairman, Assembly Member Steven Englebright, D-Suffolk County,²⁶ and did not come to the floor for a vote.

The measure is expected to be brought up again next year. Until the law is passed, however, the APA staff has full reign to prosecute 37-year-old cases of alleged violations where the original owner is long since dead.

Policy Decisions by Private Agendas, not Public Good

The situation has become so bad that some members of environmental advocacy groups have come to think of the APA as the environmental enforcement agency of private interests. That revelation was exposed in a series of stories by Glens Falls Post-Star projects editor Will Doolittle about an APA enforcement case against LeRoy Douglas²⁷. Mr. Douglas' lawyer, Matt Norfolk, had filed a Freedom of Information Law request asking the APA for any and all documents related to the case and turned up a wealth of information, including an email to APA enforcement staff from someone (the name was blacked out) who demanded the staff crack down

²² http://courts.state.ny.us/Reporter/3dseries/2010/2010_50964.htm

²³ "Judge reverses most of APA enforcement order" by Chris Knight, Adirondack Daily Enterprise, June 4, 2010

²⁴ <http://open.nysenate.gov/legislation/api/1.0/html/bill/S323>

²⁵ "Senate approves APA statute of limitations bill" by Chris Knight, Adirondack Daily Enterprise, June 28, 2010

²⁶ "APA statute of limitations bill dies in the Assembly," by Jon Alexander, WNBZ Radio, Saranac Lake, NY

²⁷ "The Road to Trouble" by Will Doolittle, The Post-Star, January 11, 2010

on Mr. Douglas over an existing road that the enforcement staff – including Mr. Van Cott – said he had built in wetlands, despite evidence to the contrary.

The email issued orders to the APA about what needed to be done in the case and generally disparaged the landowner whose family had lived there for more than a century, promising “I am prepared to support whatever you can do here with my own legal team to back you up ... Please deal with this with all the force that the APA has in its arsenal,” according to the Post-Star story²⁸.

Mr. Norfolk believes that the email was written by a leader of the Adirondack Council who owns a home near Mr. Douglas. The Adirondack Council wouldn’t confirm or deny the email was written by one of their officials, although Adirondack Council spokesman John Sheehan said that members of the council have the right to make their views known to the APA.

That case spawned a lawsuit by Mr. Douglas in U.S. District Court against the APA and the Adirondack Council²⁹ that says both “conspired and worked together in concert” to violate his constitutional and civil rights.

The judge in that suit is scheduled to hear preliminary motions this fall from the APA and the Adirondack Council to dismiss.

Douglas filed a separate lawsuit in November 2009 in state Supreme Court in Essex County against the Adirondack Council³⁰ for interfering with Douglas’ business affairs. The Adirondack Council had asked for the lawsuit to be dismissed but Acting Essex County Supreme Court Judge Richard B. Meyer denied that motion and allowed the action to go forward.³¹

Snowmobile Plan Derailed

Even when there is broad agreement on new programs, new guidelines, or new procedures, environmental advocacy groups will do whatever they can to push their agenda and derail the agreement. In November 2009, the APA approved (by a 10-1 vote) new guidelines for snowmobile trails in the Adirondacks that moved trails from the interior of Forest Preserve land to the outskirts of those parcels – lowering the environmental impact of creating, working on and riding the trails. They also allowed modestly wider trails – connector trails – to link communities and provide a safer riding environment, as well as allow tracked groomer vehicles on the trails.

²⁸ ²⁸ “The Road to Trouble” by Will Doolittle, The Post-Star, January 11, 2010

²⁹ “Douglas files federal suit against APA, Adirondack Council” by Chris Knight, Adirondack Daily Enterprise, March 16, 2010

³⁰ “Campground owner sues Ad’k Council” by Chris Knight, Adirondack Daily Enterprise, November 23, 2009

³¹ http://iapps.courts.state.ny.us/webcivil/FCASCaseInfo?parm=Motion&index=SXoAT1JHo3L8NVT7TiGfbw%3D%3D&county=X5F3QhXCSGQV_PLUS_XyOVeOVZw%3D%3D

Most individual snowmobile clubs groom the trails with tracked groomers under agreements with the state Department of Environmental Conservation because DEC is not able to provide internal resources to groom them.

The plan and its regulations were agreed to – and approved – by a wide variety of organizations across the spectrum: the state Department of Environmental Conservation, the APA, environmental organizations, snowmobile groups and local governments. In fact, reports said that the guidelines were viewed as a “major accomplishment,” and an example of how working together can benefit everyone.³²

Snowmobiling is a huge economic engine in the Adirondacks – in some towns and villages it is the only economic driver in the winter months. Many businesses and families let out a sigh of relief when the plan was approved, allowing riders to be safer, ride farther, and patronize businesses and towns along the way.

Then came the lawsuit.

The Adirondack Council filed a lawsuit in January challenging the guidelines³³, though confusingly their spokesman said, “We could support all three of these if we felt the public had been given a chance to comment on them and to participate in the decision.³⁴” What the Adirondack Council doesn’t want to believe is that the public did, in fact, have its say through the environmental organizations, snowmobile groups and local governments that agreed on the plan in the first place. That feedback, apparently, is invalid, according to them.

Stacking the Deck at the APA

When you consider that three members of the Adirondack Council Board of Directors have been appointed to the Adirondack Park Agency Board of Commissioners (there are five in-park seats and six out-of-park seats [three agency chiefs and three state residents] appointed by the governor with Senate approval), it becomes clear that bloc of votes can easily sway decisions. While they left the board of the environmental advocacy group to become commissioners, they kept the mentality.

Former members of the Adirondack Council who are now APA Commissioners are:

- Agency Chairman Curt Stiles (appointed in 2007)
- Cecil Wray (who was acting chairman before Mr. Stiles)
- Richard Booth (appointed at the same time as Mr. Stiles in 2007)

³² “New snowmobile trail rules adopted for Forest Preserve” by Mike Lynch, Adirondack Daily Enterprise, November 13, 2009
³³ <http://iapps.courts.state.ny.us/webcivil/FCASCaseInfo?parm=CaseInfo&index=rZ7ue6Xfo07hlCiGM1%2FncQ%3D%3D&county=aEgKpqdXb1%2FDERY208xCtg%3D%3D&motion=M&docs=&adate=06/04/2010>

³⁴ “Council sues APA over trail plan” by Mike Lynch, Adirondack Daily Enterprise, January 12, 2010

A fourth leader of an environmental advocacy group – boatbuilder Peter Hornbeck of Olmsteadville, a board member of Protect the Adirondacks – was nominated in February for a seat on the APA Board to replace Art Lussi, a hotel owner in Lake Placid, chairman of the New York Ski Foundation and a 46er. Immediately, the Review Board and many other groups – from business groups like Adirondack Residents Intent on Saving the Economy, to residents, to Adirondack legislators on the state, county and local levels – strongly opposed the nomination, as it would add a fourth seat to the environmental advocacy bloc.

Local governments are very concerned about this nomination – which is still active, though in an “in-depth review” – because of the large impact the APA has on the ability of their residents to own an affordable home, find a job paying a living wage or be successful with a small business.

In stacking the APA Board with people who are leaders of environmental advocacy groups, the balance between environmental protection and economic growth is tilted further away from the 132,000 residents of the Adirondack Park.

The Hornbeck nomination was approved by the Senate Environmental Conservation Committee and sent to the Senate Finance Committee. Upon the panel’s approval, EnCon committee chairman Sen. Antoine Thompson, D-Buffalo, proved that advocacy trumped good decision-making when he said, “I don’t want to get into a thing with the governor about his appointment. If (Hornbeck) came in and smacked me going to the bathroom I wouldn’t know who he is. But he must be somebody important if they asked me to advance the nomination.”³⁵

The controversy over his nomination prompted Sen. Little to propose a bill³⁶ (S6999) that would require nominees for all five in-park commissioner seats be selected from a list of nominees presented to the governor by local government organizations. The bill is co-sponsored by the other three state senators whose districts are included in the Adirondack Park.

Yet, Adirondack Council spokesman John Sheehan said he couldn’t understand the opposition to the Hornbeck nomination. He said in a Press-Republican news story that he “does not believe former Adirondack Council members appointed to APA present an inherent conflict of interest.”³⁷

Blowing Sunshine

According to Mr. Sheehan in an opinion piece he wrote for the Times Union, all is bright in the Adirondack region as it is an economic engine that is the fastest growing in New York.³⁸

³⁵ “Senate committee approves Hornbeck nomination” by Chris Knight, Adirondack Daily Enterprise, February 24, 2010

³⁶ <http://open.nysenate.gov/legislation/api/1.0/html/bill/S6999>

³⁷ “Hornbeck nomination sinks in Senate ‘review’” Plattsburgh Press Republican, March 5, 2010

³⁸ “Prosperity up north: Adirondack Park emerges as a New York success story,” by John Sheehan, Times Union, April 11, 2010

Using data from the APRAP report, he put on rose-colored glasses and claimed the region has a better economy and quality of life than any other area of the state.

The APRAP report – which was a welcome look into life inside the Blue Line, warts and all – said nothing of the kind.

The “prosperity” referred to in his tale must refer to the inanimate parts of the Adirondacks. Because the residents and business owners of the Adirondacks would tell you another story, the same one that is reflected in the APRAP report.

- Since 1950, the population of the United States has increased nearly 100 percent. The population of New York State has increased by 31 percent. The population of the whole Adirondack Park has increased less than 25 percent, a much lower pace than either the state or U.S.
- Fifty-four of the 103 Adirondack communities experienced a decline in population from 2000-2006. What growth there was in the Adirondacks was primarily restricted to the southern and southeastern perimeters of the Adirondacks – Saratoga County (which is the fastest growing county in the state) and Warren County. Both are close to the Northway (Interstate 87) and have the kind of municipal amenities that most communities farther inside the Blue Line do not.
- The median age of park residents is just under 43 years, according to the APRAP study – older than almost all other areas of the country and rising more rapidly than elsewhere. And, by 2020, only the west coast of Florida will be, on average, older. The reason? Young families are moving out – there are few good jobs for them – and retirees are moving in.
- Seasonal unemployment in five of the 12 counties in the Adirondacks was more than 8 percent from 2001 to 2008; this rate is 50 percent more than the statewide average during the same period;
- School enrollments are decreasing, on average, by 329 students a year as young families move out, the equivalent of losing one average-size Adirondack school district every 19 months.
- Only seven park communities – out of 103 – have complete cell phone coverage. Thirty-five percent of the survey respondents identify the lack of telecommunications services – wireless and broadband – as a negative influence in retaining or attracting businesses to their communities.

In order to have the growth that the Adirondack Council is imagining is happening in the Adirondacks, the region needs investment from private businesses, large and small.

The region needs infrastructure that is lacking throughout much of the Adirondacks – except in areas near the lakes.

The region needs honest evaluations of its situation.

The APA and the Land it Controls

Decisions made by the Adirondack Park Agency have a huge impact on the 132,000 residents of the Adirondacks. That fact gets downplayed or lost in discussions about how land should be classified or whether New York State should purchase more land in the Adirondacks.

The Adirondack Park represents one-fifth of the land area of New York State – and already holds two-thirds of all the land New York State owns. Setting aside the game of chicken that the state played with the financing for state parks this spring, New York has trouble maintaining the land that it has. Gov. David Paterson made an impassioned argument on that topic in an Op-Ed piece earlier this year in the Times Union.³⁹

When New York State purchases land to add to the “Forever Wild” lands, a number of serious issues crop up for residents and towns. They include:

- Loss of private land and building rights
- Loss of tax income, sportsmen income
(Forever Wild parcels can have no hunting cabins on them)
- Threat to community viability
- Insecurity of real property tax base
- Problems siting utilities
(Imagine having to get a state constitutional amendment every time you are developing a municipal project)
- State land purchases are virtually irreversible
(An amendment to the state constitution is required to make a change)

New York State taxpayers already own or control more than 75% of the land area in six towns: Arietta (94%); Benson (90%); Inlet (88%); St. Armand (80%); Wells (79%); and Lake Pleasant (78%). Adirondack communities with a high percentage of state land risk the loss of services, their residents and, ultimately, their viability.

Already, more than 75 percent of the land in the Adirondacks is classified as “Wild, Forested, Conservation Lands and Public Parks.” Eleven percent is residential, and half of one percent of the land is commercial or industrial.⁴⁰

³⁹ “NY should put its focus on the land it already owns” by Gov. David Paterson, Times Union, February 13, 2010

⁴⁰ “Adirondack Regional Assessment Project Report,” May 2009, Page 90.

There are many number sets being used by organizations to represent the breadth of state land ownership in the Adirondacks. The Adirondack Park Regional Assessment Project Report⁴¹ had the clearest and most comprehensive breakdown of how many acres are used for what purpose in the Adirondacks (total Adirondack Park = 5,619,139 acres). Updated information from the New York State Department of Environmental Conservation brought an increase in the number of acres under public easements, and that figure is included here.

Type of land	# of acres	Percent of Adirondacks
Publicly owned Lands	2,501,395	(44.5%)
Public Easements	756,000	(13.5%)
Private Easements	173,197	(3.1%)
480 and 480a Lands	608,959	(10.8%)
Slopes and Hydro	583,306	(10.4%)
Other Existing Land Uses ⁴²	578,195	(10.3%)
Net Area remaining	418,087	(7.4%)

How much more land does New York State and its citizens need to buy and maintain? The environmental advocacy groups would tell you that there is never enough. And one of the APA's purposes is to classify land purchased by New York State, giving the APA board wide latitude on classifications.

But if there is already that much land owned in fee or through easements, and the state continues to have problems paying for it, (including an ill-fated proposal in 2008 to cap the property taxes the state pays on Forest Preserve land,⁴³ leaving towns and schools no way to survive, short of dramatically increasing local tax loads) it does not make sense to invest any more money into land purchases.

As the Adirondack Park Agency watchdog, the Review Board has every right to be part of the discussions on land use and land classification and would not be following the law if it didn't. It's in the executive law that created the Review Board: "The agency shall, in consultation with the Adirondack Park Local Government Review Board, continually review and evaluate the land use and development plan as an ongoing planning process in the light of changing needs and conditions. The agency shall consult and work closely with local governments and local, county and regional planning agencies in this ongoing planning process, particularly as it pertains to their respective territorial areas and jurisdictions."⁴⁴

Media Concerns Over APA

⁴¹ The full report can be found on the website for the Adirondack Association of Towns and Villages, one of the main sponsors of the project: <http://aatvny.org/content/Generic/View/1>

⁴² Other existing land uses include unknown, agricultural, residential, commercial, recreational and entertainment, community services, industrial and public service.

⁴³ "Governor: Cap Forest Preserve taxes," by Mike Lynch, Adirondack Daily Enterprise, Dec. 19, 2008

⁴⁴ <http://codes.lp.findlaw.com/nycode/EXC/27/805>

The concerns over the actions of the APA have been evident in regional newspapers' editorial pages over the last year. The Post-Star said, "No one is asking that the Adirondack environment be sacrificed at the expense of development and property rights - only that fairness be instituted in the review process that manifests itself in horror stories for ordinary folks just trying to make reasonable use of their properties."⁴⁵

The Post-Star's wariness of the APA's steps toward remaking its image this spring spoke of the work that the Agency has had to do to restore trust that the agency is working for the residents: "The Adirondack Park Agency's awkward attempts at contrition are a little difficult to believe. Actions speak louder than words. So if you're sincere about changing, APA, don't say it. Prove it." The Editorial Board went on to list a number of suggestions, starting with "If you don't have a good reason for a regulation, don't create the policy" and "Prove it by showing you care as much about the Adirondack people as you do about the environment."

The Adirondack Daily Enterprise suggested multiple changes in the Adirondack Park Agency in a three-part series of editorials⁴⁶ aimed at "renovating" not "razing" the agency. The editorial board envisions:

- "It would be an agency that applies rules but doesn't make them, prosecutes violations but doesn't judge them, and has at least five of its 11 members chosen by the people who have to deal with these regulations."
- "Therefore, all rules the APA has made on its own should be repealed - perhaps submitted to the Legislature as bills, but rolled back nevertheless - and the definitions of words should be standardized according to statewide planning and zoning norms. The APA should only work with rules made by elected lawmakers."

Toward a Better Adirondack Park

The Adirondack Park is a unique place in New York and the United States. One of the most rural, the region has 132,000 people, along with mom-and-pop businesses and large companies that employ them and serve them, and more than 100 governments. It attracts millions of tourists and has some of the most spectacular landscapes anywhere.

Bold new strategies and investment will be required to address the complex needs of the communities, as will an enduring partnership among state agencies, local governments, local communities and businesses and the multiplicity of Adirondack

⁴⁵ "APA board needs more balance," The Post-Star, May 4, 2010

⁴⁶ "An APA Reform Plan," Adirondack Daily Enterprise, Feb 11, 12, 13, 2010

interest groups. Such strategies must support sustainable development of communities consistent with both quality of life and environmental stewardship.

The Adirondack Park Agency needs to better reflect the needs of the people whose private land it regulates and to take a stronger interest in the economic policies needed to create sustainable communities. The APA needs to partner with local governments – as was envisioned in the original APA Act. As such, the following changes need to be made:

- In order to create an agreed-upon process for nominees to the agency that controls much of the lives of Adirondack residents, Sen. Little's bill – to require all nominees for in-park seats be selected from a list of nominees presented to the governor by local government organizations – needs to be passed and signed into law.
- In order to make sure that the Adirondack Park residents are represented at all times on the APA Board, in the event that a seat on the Board is vacant for more than 60 days – because of inaction from the governor or the Senate – the APA Act should be amended to make a nominee chosen by the local government be deemed seated.
- To provide transparency expected of government officials, the APA Act should be amended to require Agency commissioners and staff to publish a report at each monthly meeting listing all contacts, by date and topic discussed, between Agency staff and/or Agency commissioners on any matter before the Agency or relating to Agency business.
- In order to protect landowners from outside influences on APA decisions, the APA Act should be amended to ban any and all ex parte communications on private land use matters, other than by those outside the agency who have statutory authority for such discussions. Communication between staff /commissioners and parties should be allowed for procedural, scheduling and status inquiries.
- In order to protect landowners from losing their homes over potential violations from decades ago, the statute of limitations bill on alleged violations in enforcement actions should be passed and signed into law.
- In order to end the process of legislating by regulation, the APA should be required to roll back all of the rule and regulation changes it has made and submit them to the Legislature for approval. It cannot be judge, jury, executioner, cop and DA, as the Adirondack Daily Enterprise said, and have its decisions be trusted.
- In order to allow local governments to seek judicial review of APA decisions, the APA Act should be amended to specifically authorize

Adirondack local governments and the Review Board to file lawsuits against the agency – for example, to ask for judicial review. Private individuals, businesses, advocacy groups and clubs do have the standing to sue the APA and DEC to seek judicial review of their administrative actions. Currently, court decisions that directly affect the financial condition, municipal services, future growth, and programs of local governments are being made in the absence of those officials who are elected by their communities to represent the concerns of their constituents.

- To remove the perpetual imbalance in the split of local commissioners to outside-the-Adirondacks commissioners, the Administration should add a sixth seat to the board, and that seat should be filled by a locally nominated commissioner.
- To provide detailed analysis on employment effects in the Adirondack Park, the APA Act should be amended to require development of a job impact analysis on each project application. In addition, the APA Act should be amended to require development of a job impact analysis on each project decision, and compare it to the impact analysis performed on the application.
- To provide a detailed analysis on the effects that APA decisions have on employment opportunities in the Adirondack Park, the APA Act should be amended to require the agency to issue a report at the end of each year on how many jobs were impacted in its decisions and their total cost.