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APA to drop enforcement case against Silver Lake man

Defense lawyer had argued APA was colluding with environmental groups to target his client

By CHRIS KNIGHT, Enterprise Senior Staff Writer

The state Adirondack Park Agency has agreed to drop an enforcement case against the owner of a resort and campground on Silver Lake.

Leroy Douglas was the subject of a 2007 enforcement action for failing to remediate a wetlands violation stemming from repairs he made to a road on his property. Douglas owns and operates the Douglas Resort and Campground in the town of Black Brook.

Matthew Norfolk of Lake Placid, Douglas' lawyer, said APA officials agreed to drop the enforcement case after he said he would provide the agency with a sworn statement showing the remedial work has been done. The deal was reached during a Monday meeting with state Department of Environmental Conservation Administrative Law Judge Molly McBride, who's been overseeing the enforcement proceeding against Douglas

"We left with the agreement or understanding that the 2007 enforcement proceeding against Leroy Douglas and his family-owned company would be discontinued with prejudice by the APA," Norfolk said. "I'm waiting for the judge to put it in writing."

The APA initially took enforcement action over the wetlands violation in 2005, but a settlement agreement ended that case. However, when Douglas allegedly failed to complete the remediation work according to the terms of the agreement, the agency opened a new enforcement case in 2007.

Norfolk says he argued that the second enforcement action was "unlawful and redundant"

"From a strict legal point of view, this should never have been brought up again," he said. "If they thought he was violating the settlement agreement, they should have brought an action on that, not a new enforcement proceeding. You can't just keep going after one guy for the same thing when it's already been settled."

APA spokesman Keith McKeever said the agency has reached an "agreement in principle" to discontinue the enforcement proceeding once it's been confirmed that the remediation work has taken place.

"He agreed to remediate the wetlands violation to the satisfaction of the agency," McKeever said. "Environmental remediation is our number-one priority."

Norfolk said Douglas is "thrilled" with the agency's decision.

"He's elated," he said. "He feels a weight lifted off his shoulders."

Collusion?

In late September, Norfolk asked the judge to dismiss the enforcement action on the grounds that the APA had been working in collusion with environmental groups to "strategize and plot against Mr. Douglas for no legitimate purpose, to stop his clients' lawful development plans."

Norfolk cited a April 7, 2008 letter sent by Scott Lorey, the Adirondack Council's legislative director, to APA Commissioner Cecil Wray, chair of the agency's Enforcement Committee and former member of the Council's board of directors. The letter urged the Park Agency to issue a substantial fine against Douglas, calling him "one of the developers most in need of deterrence" and "infamous in the Silver Lake area for his bullying and bulldozing."

The letter also notes that Douglas' shoreline lands were recognized by the state as a conservation priority in the 2005 Open Space Plan.

"Owners of important lands who are illegally damaging those lands should be punished to the maximum extent of the law," Lorey wrote.

Norfolk's motion also cited a series of e-mails sent to APA staff offering the agency legal advice on how to handle the enforcement case. The name of the person who sent the e-mails was blacked out by the Park Agency, but Norfolk alleges they came from Adirondack Council board chairman Brian Ruder, who also owns land on Silver Lake.

Norfolk said copies of the letters and e-mails were not provided to Douglas or the attorney handling his case at the time, in violation of state "ex parte" laws. State Administrative Procedure Law prohibits members or employees of an agency assigned to render a decision or make findings of fact about an adjudicatory proceeding from communicating with any party unless all parties involved are notified.

Norfolk suggested the APA's decision to drop the case against Douglas may have been prompted by the allegations of collusion.

"We would be kidding ourselves if we didn't say perhaps this had something to do with that motion," he said. "It was like the elephant in the room."

But McKeever said that isn't the case.

"Absolutely not," he said. "We felt we didn't do anything at all that violated ex parte (laws). The ex parte was a non-issue."

Adirondack Council Executive Director Brian Houseal said there was no collusion between his group and the APA.

"We're an environmental advocacy group," he said. "We write letters and consult with the agency all the time."

Council spokesman John Sheehan said remediation of the wetlands violation is what they wanted.

"If they're going to fix the problem, that's exactly what we were hoping they would do," he said.

Asked about the the allegations that Ruder was trying to influence the agency, Sheehan said "any citizen is entitled to encourage the agency to pursue an enforcement action, regardless of who they work for.

"Frankly, we thought that Brian Ruder had a legitimate concern and one that ought to be pursued," he said.

Telephone messages left for Ruder at his home and at the Adirondack Council's Albany office were not immediately returned Thursday.

With the enforcement case dropped, Norfolk said his motion accusing the APA of illegal ex parte communications is now moot. But his client still feels he was singled out.

"Leroy thinks he's been a target," he said. "Maybe it's because he has a prime piece of property they'd like to see reverted to state ownership, or maybe it's because he's ruffled some feathers."

Contact Chris Knight at 891-2600 ext. 24 or cknight@adirondackdailyenterprise.com.