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APA drops claims against Douglas

ELIZABETHTOWN — The Adirondack Park Agency has decided to forego any further action against a man accused of disturbing wetlands on his property near Silver Lake.

LeRoy Douglas said that after more than three years of being scrutinized by the APA, he was astonished when the agency agreed to drop their enforcement action against him at a meeting held Nov. 9.

"It was absolutely an unbelievable scene," he said.

The meeting was a status conference held with DEC Administrative Law Judge Molly T. McBride. APA Enforcement Program Supervisor Paul Van Cott joined Douglas and his attorney, Matt Norfolk of the Lake Placid law firm Briggs & Norfolk, in reviewing the case with the judge..

"The DEC judge said it would be in the best interest of both parties if this proceeding ended," said Norfolk. "We met, and we basically stated we would not settle or compromise."

"I told them I wasn't going to back down," said Douglas, noting that he was prepared to sell some of his properties in order to fund a potential lawsuit with the agency. "They have tried everything they could for the past couple weeks to try to get me to settle this, but I refused."

"In response," said Norfolk, "the APA agreed to withdraw the 2007 enforcement proceeding with prejudice," meaning Douglas cannot have similar enforcement action brought against him in the future.

"The agency came to an agreement with Mr. Douglas to remediate wetlands on his property to the satisfaction of the Adirondack Park Agency," said APA spokesman Keith McKeever.

The case arose from an APA claim that Douglas, when repairing a road on his property that passes through a wetland area, illegally widened the road. An enforcement hearing on the matter led to a settlement.

"They asked if he would do some remedial work [to narrow the road], and he agreed," said Norfolk. "We contend he's complied with it."

But the agency decided to re-open enforcement in March 2007, claiming he failed to follow through with his promise to narrow the road. Douglas asked the agency to reconsider, but an April 2008 enforcement meeting denied his request.

According to Norfolk, the agency had offered to settle the matter with Douglas provided he pay fines amounting to as much as \$6,000.

On Sept. 28, Norfolk filed a motion with McBride to vacate the ruling from that meeting, claiming the APA communicated illegally with private citizens about Douglas's case. Norfolk pointed to several letters and e-mails suggesting Agency staff sent and received collusive "ex parte" communication with staff from the Adirondack Council.

The ex parte rule, in summary, says state agency members involved in a hearing cannot communicate with any person about the hearing without providing an opportunity for all parties involved to participate; for example, by providing copies of their written correspondence.

Some of the e-mails specifically discussed Douglas's enforcement matter and directed Van Cott to take specific action in order to find Douglas in violation.

The sender's identity in the e-mails is blacked out with marker, but Norfolk suggests they came from Adirondack Council Chairman Brian Ruder, whom Douglas claims also owns land along Silver Lake.

"The collusion is absolutely unbelievable," said Douglas, who is convinced environmental groups like Adirondack Council and The Nature Conservancy urged APA enforcement against him in an effort to motivate him to sell or allow conservation easements on his land.

"I am absolutely not a developer," he said, claiming most of his land has been owned by ancestors dating back to the Civil War. "I sell land only to pay taxes to be able to live in New York State."

As for why the agency decided to drop their enforcement against Douglas, he can only speculate.

"I think Paul Van Cott realized that some of the stuff he's involved in with The Nature Conservancy and the Adirondack Council is illegal," he said.

"I think this withdrawal speaks volumes," said Norfolk, suggesting the agency might have simply decided to honor the previous settlement. "We're very happy for LeRoy and his family, and that this has ended for him."