

Adirondack Daily Enterprise
April 28, 2010

Jones settles 18-year legal battle with APA

By CHRIS KNIGHT, Enterprise Senior Staff Writer

TUPPER LAKE - What may be the longest-running legal battle in the history of the state Adirondack Park Agency quietly came to an end last month.

Tim Jones signed a settlement agreement with the APA in March and was given an after-the-fact permit for a small cabin he built next to the Raquette River in the town of Tupper Lake in 1992.

Jones, 51, described the case as "18 years of hell" and said the APA didn't want to grant him a permit. It only did so, he said, under pressure from officials in Gov. David Paterson's office, specifically Glen Bruening, counsel to the governor.

"The governor's office forced the agency to do this," Jones said. "I can't thank the governor's office enough and especially Glen Bruening. He took the obstructionists off the case."

APA officials dispute that account, saying they've been more than willing to give Jones a permit, and even mailed him a permit application at one point.

"The agency has always been open to issuing him a permit," said APA spokesman Keith McKeever. "He just refused to acknowledge jurisdiction even after two court orders that acknowledged we have jurisdiction."

The case involves a 500-square-foot cabin Jones built in 1992 on property he owns on River Road. The rustic cabin is elevated above a wetland on concrete piers and has electricity but no water, sewer or insulation.

Although Jones got a town building permit for the cabin, the APA has argued that the single-family dwelling was built in a wetland without the necessary APA permits, in violation of the APA Act, the Freshwater Wetlands Act and the Wild, Scenic and Recreational Rivers Act.

But Jones, who grew up in Tupper Lake but now lives in Cayuga County, says the agency has no jurisdiction because the property is in a subdivision that existed long before the APA was created in 1971. He also argued that adjacent single-family homes in the same subdivision were found to be non-jurisdictional.

APA officials eventually admitted that Jones' lot is part of a pre-existing subdivision, but they said building on the lot without a permit violated the Rivers act, which became law in 1976.

The case has a long and complicated legal history that includes a 1996 APA Enforcement Committee determination against Jones, which he subsequently appealed; a 2000 state Appellate Court ruling that upheld the Enforcement Committee's findings; and a 2004 order from Franklin

County State Supreme Court Judge David Demarest that gave Jones 30 days to apply to the agency for an after-the-fact permit.

Jones eventually submitted a permit application that his attorney, Sheila Galvin of Delmar, says "met every single statutory requirement, but they refused to accept it."

The APA, however, says the application didn't suffice because it was for a "port-a-john facility" located "in a cabin in a pre-existing non-jurisdictional subdivision," not an application for a single-family home, as the court had required.

In September 2005, Demarest fined Jones \$6,500 and continued an injunction that had been in effect since 1993, preventing him from using the cabin.

Four years later in 2009, after the agency still hadn't received a satisfactory permit application from Jones, the state Attorney General's Office, on behalf of the APA, asked Demarest to find Jones in contempt of court and order the removal of the cabin.

That's when Jones says he decided to take his case to the governor's office.

"I saw a chance to resolve this thing because I knew I couldn't resolve it in the corrupt courts, and I knew I wasn't going to get anywhere with the agency because the agency never planned on issuing me a permit," Jones said.

In January, Jones said he was invited to meet with Bruening and other Paterson administration officials in Albany. Sheila Galvin of Delmar, Jones' attorney, also attended that meeting.

"We were given an opportunity - and believe me, it was a good opportunity - to go back to the beginning of this case and bring it forward," she said. "We just laid out the facts."

The end result of that presentation, Galvin said, was a phone call from the agency offering an "after-the-fact" permit and a settlement.

"Even though Tim was reluctant, since his property technically is non-jurisdictional, rather than see this drag out for another 20, 30 or 40 years without his being able to use the property at all, he opted to accept what was being offered," Galvin said.

Jones credited Bruening for getting the case resolved. He said he decided to accept the settlement offer because he feared it may no longer be on the table once Paterson leaves office.

The Enterprise tried to ask Bruening about the extent of his involvement in the Jones case, but a woman who answered the phone in Bruening's office in Albany said he wasn't taking any calls on the matter. She referred questions to Paterson spokesman Morgan Hook, who didn't immediately return a call for comment.

McKeever says the APA was not under pressure from the governor's office to settle the case.

"The agency has always offered a permit for a residential structure," he said. "This is the first time Mr. Jones signed documents for such a permit."

As part of the settlement, the agency agreed to suspend the \$6,500 civil penalty as long as Jones lives up to the terms of the permit. Demarest approved the agreement on March 15.

Jones' APA permit grants him after-the-fact approval for the cabin as well as a 93-foot wooden boardwalk on the property. While the permit establishes the agency's jurisdiction, it also notes that the lot is part of a pre-existing subdivision. Galvin said those two factors seem to conflict.

"It's very strange," she said. "It's pre-existing, and therefore there is no basis for jurisdiction. So it should be non-jurisdictional, but they're requiring us to get this permit."

Environmental group the Adirondack Council had been following the case closely. Spokesman John Sheehan said he believes it's the longest legal battle in the agency's history.

"I never thought it was much more than a mole hill that was made into a mountain, and I'm glad this chapter is closed," he said. "Our advice had always been that if (Jones) had come in to talk to the Park Agency, that the war of words could come to an end. All the agency was trying to do was protect the river."

Jones said the case dragged on for years because he was singled out by the Park Agency, specifically by APA attorney Barbara Rottier, who handled Jones' case.

"She, along with the Adirondack Council, had this angst against me," he said. "They wanted to crush me because I was being vocal about what they were doing to me."

Rottier is one of several agency staff who will retire next month. Jones says Paterson administration officials forced her to retire because of how she handled his case, an accusation the APA denies.

Jones' feud with the APA has made him a hero to opponents of the Park Agency and property rights advocates. His story has been featured in the conservative-leaning publication *New American*, which is owned by the John Birch Society, and *Standing Ground*, a publication of the American Land Foundation.

While he now has the right to use the cabin, Jones said he feels it's "scarred" by what took place over the last 18 years.

"It's just not the same," he said. "It will never be the same. It's like an American tragedy."

The case also cost Jones tens of thousands of dollars in legal fees and took a personal toll on his family.

"My sons grew up with this," he said. "That's what really angers me."

Galvin said Jones never wanted to harm the land.

"He wanted to use it to teach his sons about the outdoors, so they could learn the importance and the value of preserving the land, and he missed that opportunity because of what the APA did in preventing his use of the property," she said. "But now he may have a chance to do that with his grandchildren."