

APA lacked will, not authority, to require wildlife survey for ACR

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To the editor:

OK, "let's talk about APA improvements" (editorial, May 5). First step: honest reading of the Adirondack Club and Resort hearing transcript, and Adirondack Park Agency law and regulations. If you had done so, you would not reach the conclusion that "of all things the APA required a wildlife survey wasn't one of them." That is utter nonsense contradicted by the hearing record.

Whatever the Adirondack Council may say about the matter, it is a fact that APA has all the regulatory authority it needed to deny ACR a permit based in part on the applicant's failure to provide adequate wildlife and habitat information over the course of many years. In the end, 10 commissioners, backed by their senior staff, lacked the will to deny a permit, not the authority.

The hearing record shows that agency staff went to great lengths to clarify its request for substantive wildlife and habitat information in no less than three Notices of Incomplete Application (2005-06), in its Motion to Proceed to Hearing (Jan. 31, 2007) and during three years of pre-hearing conferences and mediation (2007-09).

The transcript also provides proof from APA staff and the applicant's own consultants that Mr. Foxman decided not to comply with APA requests which were grounded in APA law and regulations. A frustrated APA staff then deemed the application complete when it truly wasn't, but it did so for political reasons, not because of inadequate authority. APA staff hoped the hearing would fill in these big information gaps. Of course, the hearing did not (although Adirondack Wild did provide valuable wildlife insights based on a rapid amphibian assessment).

Certainly, APA Act and Regulations need many improvements, including some of the items that John Sheehan and your editorial board discussed. As far as "structural weaknesses" at APA, the first place to check and to stabilize is the agency's backbone.

For more on the APA's legal authority to require just what APA staff requested of Mr. Foxman over seven years, read parts 572, 574 and 578 of the agency's regulations.

Sincerely,

David Gibson, partner

Adirondack Wild: Friends of the Forest Preserve

Ballston Lake