



# Is the lawsuit over Tupper resort frivolous?



**Yes** By Jim LaValley

By Bob Glennon **No**

**THE LAWSUIT FILED** by Protect the Adirondacks, the Sierra Club, and three landowners against the Adirondack Park Agency for issuing a permit for the Adirondack Club and Resort has created a setback to Tupper Lake and the surrounding region. Given that the APA spent eight years reviewing this project and voted 10-1 to approve it, the legal action strikes Tupper Lakers as frivolous and a waste of time and money.

State taxpayers will foot the bill for defending the APA in this lawsuit, and I've been told by attorneys that it could cost a few million dollars. The suit also will delay, perhaps by a year or more, the opening of new businesses and the creation of many new jobs.

The defendants' interpretation of the APA rules and regulations stems from an extreme environmental position, not hard scientific evidence. Even the Adirondack Council has acknowledged this point; rather than join the suit, the council is lobbying for legislative change and revisions to the APA Act.

Some preservationist groups argue that the Adirondack Club and Resort would set a precedent for other large-scale resorts. Thus, they have an interest in blocking the ACR and preventing Tupper Lake from seeing its benefits. Many residents of Tupper Lake see the lawsuit as a calculated move to achieve these goals. It's not about the law; it's about thwarting development. In fact, the eight years of review and substantial costs to the project sponsor are probably enough in themselves to scare off other developers.

The legal action has not only disheartened Tupper Lakers, but it has also stopped economic progress. Prior to the lawsuit, community leaders were working with over twenty new business interests that were looking to establish themselves in Tupper Lake. They included restaurants, gift shops, a hotel, and small manufacturers. And many existing business owners were excited at the prospect of growth. We were developing ways to help start-up businesses and teach the public about the region's natural history. The aim was to show the world that Tupper Lake could be a leader in educating people on what true balance is between our human and natural environments.

The lawsuit also harms groups and causes that rely on private donations and public support, including the Wild Center, the Adirondack Observatory, the train station, and downtown revitalization. After the ACR was approved, the Chamber of Commerce saw a dramatic increase in inquiries from people who were interested in visiting the area, because they heard about the project. This was expected to bring a higher volume of traffic to Tupper Lake this summer. More traffic translates into more entry fees paid and more donations made.

Since the developers plan to refurbish and operate the Big Tupper Ski Area, the delay caused by the lawsuit means the volunteers from ARISE (Adirondack Residents Intent on Saving our Economy) must run the mountain for a fourth season. There is tremendous passion for Big Tupper, and many hours have been committed to bring back a community centerpiece. Yet even with a mostly volunteer group, ARISE has seen a financial loss of over \$30,000 over the past three seasons. Although ARISE is determined to open Big Tupper next winter, how long can such losses be sustained?

There was tremendous excitement in Tupper Lake and the region after the APA's vote. People envisioned a future that would have helped transform Tupper Lake into a vibrant community and demonstrated how the natural and human worlds can co-exist and indeed benefit each other. The lawsuit has delayed action. Nevertheless, the hope for a brighter future still burns within.

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**IS A LAWSUIT FRIVOLOUS** when the future of half the private lands in the Adirondack Park, those declared by law the most critically important of all its private lands, is at stake?

Resource Management lands, the state legislature has said, are those "where the need to protect, manage and enhance forest, agricultural, recreational and open space resources is of paramount importance because of overriding natural resource and public considerations." It said the basic purposes of such lands are "to protect the delicate physical and biological resources, encourage proper and economic management of forest, agricultural and recreational resources and preserve the open spaces that are essential and basic to the unique character of the park."

That is exactly what is at stake, nothing less, as a result of the Adirondack Park Agency's approval of the Adirondack Club and Resort project in Tupper Lake.

Is a lawsuit frivolous when the agency charged with protecting those lands knowingly ignores a legislative directive that residential development thereon must occur "on substantial acreages or in small clusters on carefully selected and well designed sites" and approves eighty single-family dwellings sprawled across 4,700 acres which are on neither? The APA's approval of the ACR project, aptly described by one highly credentialed expert witness as "exurban sprawl on steroids" and a "natural resources train wreck," was a violation of law with utterly destructive precedential import for the Park.



Photo by Nancie Battaglia

Tupper Lake hopes the resort will revitalize downtown.

Is a lawsuit against a governmental agency that excuses an applicant which repeatedly failed to provide information sought of it, information necessary to make a finding the agency is legally required to make, frivolous? The APA Act requires that the agency find that a project will not have an "undue adverse impact" upon, among other resources, the Park's wildlife. On four separate occasions, the agency formally requested the developer to provide an on-site, multi-season study and analysis of wildlife resources. None was ever submitted, the developer telling the local newspaper, "Everybody knows Bigfoot doesn't live there." At the hearing, the agency's former deputy director, its own chief scientist, and three Ph.D. wildlife experts testified that the lack of such a study made the legally required finding impossible. The agency's own executive staff, assigned to assist it in its deliberations, advised that such a study was needed as well.

Yet in January, the day before the vote by the APA's board, its counsel presented them with a 1993 policy memo regarding wildlife studies, never before mentioned in the course of the agency's review of

this project, which began in 2005, and asserted that ACR had complied with that document, and the agency so found in its final order of approval.

So is a lawsuit frivolous when an agency makes a legally required finding based on a document almost two decades old, not part of the hearing record (by law the sole basis upon which such findings can be made), and never even mentioned until the day before its decision?

The agency committed dozens more legal errors, many of them fully as egregious as those described above, but the procrustean dictates of space require me to stop here.

If precious open-space lands can be chopped up for a mega-development in Tupper Lake, what's to stop the same thing from happening throughout the Adirondack Park? The wild character of the Park would be destroyed, consigned to the sad fate of most unprotected landscapes everywhere else.

Frivolous? I don't think so. Much, much more is at stake than seven hundred housing units on a mountainside.

BOB GLENNON, former executive director of the Adirondack Park Agency, is a board member of Protect the Adirondacks.