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Thursday, November 11, 2021

How Team Cuomo Subverted Basic Norms at the Adirondack Park Agency

by [Peter Bauer](#)[20 Comments](#)

One big change that the Andrew Cuomo years brought to the Adirondack Park Agency (APA) was that the senior staff and the APA Board refused to send a single development project to a formal adjudicatory public hearing. This defies logic in many ways. Based on information from a Freedom of Information request, from 1973 through 2010 there were 151 projects in APA history sent to a formal adjudicatory public hearing. Yet, somehow, during the Cuomo years, the Governor's staff that managed the APA, and the APA senior staff, never allowed a single formal adjudicatory public hearing.

A formal adjudicatory public hearing is not a standard "public hearing" where the public is invited to comment on a specific proposal. This is not a forum where speakers get three minutes to talk about a proposed action. A formal adjudicatory public hearing is a quasi-judicial proceeding that's administered by a Department of Environmental Conservation (DEC) Administrative Law Judge, where different interests can petition for party status, where independent expert testimony is introduced, where APA staff and experts can be cross-examined, and where an applicant's experts can be cross-examined. Experts introduced by intervening parties can also be cross-examined. Some hearings take a day, some take weeks, some take months and years. All the safeguards around ex parte communications are employed.

The purpose of a formal public hearing is to develop a record. After the hearing is completed, the decision by the APA Board is made based on the record and often the contours of a given project and draft permit conditions are shaped by information developed in the hearing. Under the APA Act, the only time it can deny a project is if the projects goes through a formal adjudicatory public hearing. In this way, the APA lacks the basic authority that a local town or village planning board or zoning board of appeals in New York State possesses.

In the past, big projects like the Adirondack Club and Resort project, the Oven Mountain subdivision, and the Butler Lake subdivision were sent to formal adjudicatory public hearings. But even smaller, sensitive projects, like a single cabin on Lens Lake or the sign on the Lowe's superstore in Ticonderoga saw formal adjudicatory public hearings.

In the Cuomo years there were certainly projects that merited a formal adjudicatory public hearing. The controversial Woodworth Lake and [Woodward Lake subdivisions](#) deserved a higher level of scrutiny and review, to name just two. The reality of the Cuomo years is that the Governor's staff and the APA senior staff, with the blithe support of the APA Board, put their fingers on the scales of project review at the APA. When zero formal adjudicatory hearings were held in Cuomo's ten years, after 151 were held in the previous 38 years, it's pretty clear that the project review process was changed dramatically by Team Cuomo, and longstanding norms at the APA were subverted.

Today, new APA Board members have not received any briefings about formal adjudicatory public hearings. They have received no information about the APA's history of using these hearings, about the benefits for improving project outcomes and public participation. APA members on the Board today have not been informed that these hearings are an important part of the APA's regulatory toolbox and served a vital purpose at the APA for decades.

One former APA staffer who worked in Regulatory Affairs at the APA on project review told me that sending a project to a formal adjudicatory public hearing was off the table in recent years. The staff was simply not allowed to recommend this option to the APA Board. That was a dictate that came from Team Cuomo and was rigorously enforced by senior staff and the Governor's staff.

Governor George Pataki made dramatic changes at the APA. In many ways, the APA's downward trajectory started on Pataki's watch with his wholesale Board and staff changes, which transferred the agency to local government control. On one day alone Pataki removed five stalwart environmental Board members and the APA executive director. Yet even in the Pataki years, basic operational norms were upheld. The Pataki years saw important formal adjudicatory public hearings on the use of the aquatic herbicide SONAR in Lake George and the NYCO Minerals mine expansions in Lewis, and for nine other projects as well. It was during the Pataki years that the Adirondack Club & Resort project in Tupper Lake was sent to a public hearing. Even during the dysfunction of the Spitzer-Paterson years, the APA sent four projects to formal adjudicatory public hearings.

The criteria to send a project to public hearing is enumerated in the APA Rules and Regulations Section 580.2 "Determination to Conduct Public Hearing." This section states that there are eight criteria that the APA shall use to evaluate the merits of sending a project to a formal adjudicatory public hearing. The "The criteria employed in determining whether to conduct a public hearing" include:

1. the size and/or complexity of the project, whether measured by cost, area, effect upon municipalities, or uniqueness of resources likely to be affected;
2. the degree of public interest in the project, as evidenced by communication from the general public, governmental officials or private organizations;
3. the presence of significant issues relating to the criteria for approval of the project;
4. the possibility that the project can only be approved if major modifications are made or substantial conditions are imposed;
5. the possibility that information presented at a public hearing would be of assistance to the agency in its review;
6. the extent of public involvement achieved by other means;
7. whether an environmental impact statement will be prepared pursuant to the State Environmental Quality Review Act; and
8. the statutory finding required by section 814(2) of the Adirondack Park Agency Act in the case of State agency projects reviewed.

These criteria are not difficult to meet if the criteria are evaluated in a fair, open, and transparent way. That has not been the case at the APA in the last ten years.

There are at least three projects now in the project review queue at the APA that merit formal adjudicatory public hearings. The proposal to open a [new granite quarry in the Town of Forestport near White Lake has garnered intense public interest](#). The proposal by Barton Mines to expand its Ruby Mountain mine in the Town of Johnsbury with a new 80-year plan where new tailings piles will grow by over 150 feet in elevation and be piled high within a few hundred feet of the Siamese Ponds Wilderness boundary, certainly merits a formal adjudicatory public hearing. The new proposed 120-unit development on 355 acres in Jay certainly seems like a project that merits a higher level of scrutiny.

These three project deserve a decision about a formal adjudicatory hearing that is open and fair.

New APA Chairman John Ernst should investigate how it is that the APA went for ten years without sending a single project to a formal adjudicatory public hearing and make a full report to the public.

Almanack file photo of former Gov. Andrew Cuomo

[Editor's note: Read this related commentary by Lee Nellis: https://www.adirondackalmanack.com/2021/11/formality-will-not-generate-the-planning-needed-in-the-adirondacks.html](https://www.adirondackalmanack.com/2021/11/formality-will-not-generate-the-planning-needed-in-the-adirondacks.html)

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[Peter Bauer](#)


Peter Bauer is the Executive Director of [Protect the Adirondacks](#). He has been working in various capacities on Adirondack Park environmental issues since the mid-1980s, including stints as the Executive Director of the Residents' Committee to Protect the Adirondacks and FUND for Lake George as well as on the staff of the Commission on the Adirondacks in the Twenty-First Century. He also worked at *Adirondack Life Magazine*. He served as Chair of the Town of Lake George Zoning Board of Appeals and has served on numerous advisory boards for management of the Adirondack Park and Forest Preserve. Peter lives in Blue Mountain Lake with his wife and two children, enjoys a wide variety of outdoor recreational activities throughout the Adirondacks, and is a member of the Blue Mountain Lake volunteer fire department. Follow Protect the Adirondacks on [Facebook](#) and [Twitter](#).

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20 Responses


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1.  *Keith Silliman* says:
[November 11, 2021 at 4:36 pm](#)


Good and timely article.

2.  *Boreas* says:
[November 11, 2021 at 5:09 pm](#)


Great article. I have to say, I was unaware of this particular subversion. It seems to be coming to light, shall we say, rather late. But better late, than never.

3.  *upstater* says:
[November 11, 2021 at 6:49 pm](#)

Good riddance to Cuomo. It was obvious that monster wanted to turn the park into an even more grand motorized sport mecca. Anybody wanting things done had to kiss the ring and bring lots of cash.

-  *Steve B* says:
[November 11, 2021 at 8:08 pm](#)


Agree with you upstater. I'm a dyed in the wool downstate liberal Demo and I hated Andrew. A very angry man who's management style was top down and intrusive. God forbid you got on his wrong side, he'd screw you. Very much not the gentleman his father was. Good riddance indeed.

4.  *George L.* says:
[November 11, 2021 at 7:24 pm](#)

Thank you for this important report and call for change.


5.  *Steve Stofelano JR* says:
[November 11, 2021 at 9:22 pm](#)

Absurd to say the least!

6.  *Mara Jayne Miller* says:
[November 12, 2021 at 8:43 am](#)

To label, and repeatedly, anyone who worked on the Governor's staff, and the APA's Board and staff as "Team Cuomo" is rather slippery journalism, don't you think, especially as it has become clear how disparate and fragmented was the so-called team to which you refer.

I think John Ernst will be a great APA Board Chair and will govern with intelligence, transparency, and a commitment to the Adirondacks (which, in his case, has been a lifelong one so far). Asking of him that he spend his time and energy "investigating" that which happened — or didn't happen but should have — in the past ten years, would not be really productive nor helpful to the future of either the APA or the region that we love.

7.  *Todd Eastman* says:
[November 12, 2021 at 9:11 am](#)

Cuomo has always placed his political needs ahead of social norms and standard bureaucratic process.

He looked at the Adirondack Park as a place to polish his "normal dude" credentials...

... like that actually worked! 🤔

8.  *Keith McHugh* says:
[November 12, 2021 at 10:48 am](#)

From the applicant for a “single cabin on Lens Lake” that you mentioned:

Governors Pataki and Cuomo should be applauded for ridding the APA of the corruptible persons that administered the agency in the early 2000’s at the time of my Lens Lake Cabin application.

3 years of delays including 1 year delay in granting the “complete” application status and 2 years of delay including 5 days of court proceedings before a DEC administrative law judge.

All for the benefit of a powerful neighboring landowner that had friends at the APA (Lefebvre & Curran), to do his bidding, to prevent the exposure of the massive conspiracy called the Livingston Lake Club, in Day, NY.

A one mile long, stolen piece of Forest Preserve land being used to access a private 800 acre in-holding that has no “legal” access to a “public” road. Seven wealthy vacation homeowners and a “Tax Exempt” LLC the only beneficiaries.

When personnel at the APA and the DEC are manipulated to protect the powerful landowners and their “status quo” and not the general public, they should be “gutted” and replaced with persons that can be trusted to do the right thing.

NYS taxpayers deserve state agencies that protect all and not just the powerful few.

As I recall, the APA Executive Director forced out was Dan Fitts, and he was ousted due to a porn scandal uncovered at the agency at the time of my 3 year delay.

Remember Peter, you intervened in opposition to my building a 1,500 SF log cabin 250’ from the lake shore on my legal 8 acre building lot. Were you also doing the bidding of the Livingston Lake Club and helping to protect their 1 mile long illegal driveway through the forest preserve?

Keith McHugh



- *william c hill* says:
[November 12, 2021 at 5:59 pm](#)

I’m just going to wait for an answer to this one...



- *Todd Eastman* says:
[November 12, 2021 at 8:33 pm](#)

Yo, exactly where did I say “single cabin on Lens Lake”?

While you may have issues with Mr. Bauer, your poor reading of the information I posted makes it appear you might need to up yer game... 😏



9. *Ryan* says:
[November 12, 2021 at 11:01 am](#)

Peter is simply piling on the Cuomo train because it serves his narrative right now. The APA has had corrupt individuals at its highest levels for decades, well before Cuomo was on the scene. The APA has always done the bidding of the wealthy and powerful landowners in the Adirondack Park, and in the past Peter has happily joined in and supported this perversion of the agency and its resources.

Keith is right, NYS taxpayers deserve agencies that serve ALL, not the wealthy few.



- *Boreas* says:
[November 12, 2021 at 3:48 pm](#)

To me the question is, should the APA board be appointed or elected – and by whom? Which board would be less corruptible?



- *Todd Eastman* says:
[November 12, 2021 at 9:20 pm](#)

Please explain the corruption you describe...

... inquiring minds want to know... 😊



- *Keith McHugh* says:
[November 13, 2021 at 9:12 am](#)

“Brief Summary”:

The last 1 mile of Lens Lake Road in Stony Creek starts by travelling 1/4 mile over private property, 1/2 mile through forest preserve in SC, a final 1/4 mile through the forest preserve in the town of Day and “curiously” dead ends at a gate to the Livingston Lake Club, an 800 acre private enclave to 7 wealthy, mostly out of state owners and a Syracuse LLC. Day, NY claims no road here. See their CHIPS filing. Deed to private property at the first 1/4 mile shows no road through this property. Town of SC highway dept. maintains this entire road through the town of Day to The Livingston Lake Club. There are numerous violations of FP Laws and Fresh Water Wetland laws.

DEC & APA have been notified of these violations and continue the coverup that has lasted for decades.

This was the motivation for the APA’s attempt to run me off my newly purchased land in 2000. “Keith McHugh’s Lens Lake Log Cabin”
Keith



- *Todd Eastman* says:
[November 13, 2021 at 7:27 pm](#)

Perhaps you failed to perform the due diligence for the purchase...




- *Lewis chin* says:
[November 14, 2021 at 11:12 am](#)


Swear out a criminal complaint against the highway superintendent for theft of public services. That usually gets their attention.

10.  *Lewis Chin* says:
[November 12, 2021 at 2:18 pm](#)

There is no end to my amusement listening to those who live in the Adirondack Park pontificate on how everyone else should be excluded. It seems to be founded in the arrogant belief that nobody will be as protective of the environment as they are. But who says they actually are? Peter views himself as a “steward” and Keith as a “developer.” Apparently one is good and the other is bad. Well, I care more about the Park than Peter; and therefore, I suggest the following: Let’s make ALL new development in the Park a “zero-sum” game. In other words, let’s measure each new development proposal against existing development, and if the newly proposed development is more protective of the environment (using LEED or similar criteria) than existing structures, approve the newly proposed development and tear down an equivalent amount of existing, less-protective structures – including private homes and cabins. Would this public purpose pass muster for purposes of eminent domain – Yes. So if a newly proposed home is the same size and yet more energy efficient and less impactful than, say, Peter’s home, then approve the new home and tear down Peter’s less efficient home. I am sure Peter will not object, because he is a good steward of the Adirondack Park and only wants what is best for the Park. Under my plan, within a few decades, the entire Park will consist of only low- or no-impact structures that either are highly efficient or totally off-the-grid. No more septic, run off, utility ROWs, and no more esthetic blight. Adirondack utopia. But here’s the catch: the people prepared to come in and spend the money to reduce environmental impacts, much like pollution credits, get to stay and those relying on historic grandfathered impacts will have to leave. So what do you say folks? Are you ready to put your money where your mouth is and support a program for the Park that will absolutely get rid of the bad and reward the good (for the good of the environment)? Or do you just want to keep being an arrogant hypocrite – judging others and their plans based on criteria you could never, ever meet (or afford to meet)? The point being this – judge not lest thee be judged. If you really and objectively want what is best for the Park, you would advocate for my “zero sum.” Or, if you believe the answer is no development in the Park, you could tear down your own house, restore the lot, and move outside the Park. Either way, let it start with YOU. Otherwise, pipe down and leave you neighbors alone.

- o  *MICHAEL DUMAS* says:
[November 13, 2021 at 7:59 am](#)

How magnanimous of you Mr Marx....

-  *Lewis Chin* says:
[November 13, 2021 at 9:10 am](#)

Read it again Mr. Einstein....

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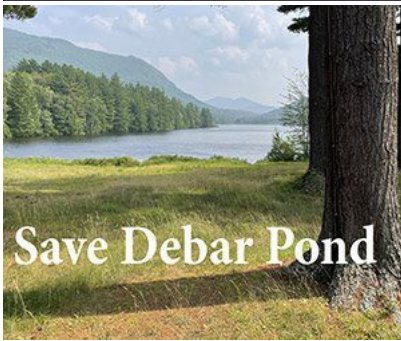
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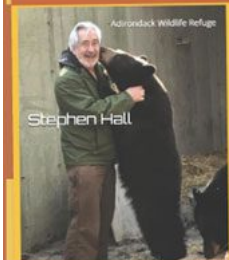



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