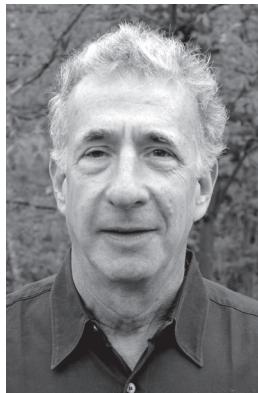


# Adirondack LANDOWNERS ASSOCIATION

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## PRESIDENT'S COMMENTS



In looking over the minutes of last December's ALA Board meeting, I noticed that the final paragraph indicated I had reported hearing on the radio on the way to the meeting that a New York Superior Court decision had just come down that would bar the state

from paying property taxes on state-owned land. This was the first appearance on our horizon of the infamous Dillenburg decision.

As most of you are aware, in October an appellate court voted 5-0 to overturn Justice Timothy Walker's decision in the Dillenburg case and ruled that the state need not pay taxes on any land but can exercise its discretion to do so. John Dillenburg has said he will probably not file an appeal. ALA joined a number of other groups in taking quick and effective action to oppose a decision that would have had devastating effects on many Adirondack communities.

After election day 2008, the political landscape in New York has a new look, with the State Senate majority becoming Democratic for the first time since the 1950's. There will be repercussions for ALA in terms of what legislation moves and what doesn't, but it is far too soon to make any wide-ranging predictions.

One subject that has already been discussed at several meetings of ALA's Legislative Committee is the navigable waters bill that has been introduced a number of times and that has been modified by comments from ALA in the past. The bill was bottled up in the Senate in past sessions, but now may have a better chance of passage. Accordingly, the committee has been working on draft improvements to the bill in hopes of addressing significant ALA concerns. I look forward to a discussion of this issue at our board

and membership meetings in December.

Another issue that will clearly affect us all is the economy and its impact on the state budget. Early fall-out from this is Governor Paterson's call for \$139 million in cuts over two years in the state's Environmental Protection Fund. This, together with "sweeps" that have taken place since 2002, would remove a total of \$586 million from the EPF. The legislature approved \$255 million for the fund last April and had promised an increase to \$300 million in the 2009-10 fiscal year. Now all bets seem to be off. The timing could not be worse when the state is looking to acquire Finch Pruyn lands from The Nature Conservancy and Follensby Pond, beyond that. Stay tuned.

Coming up soon is the ALA winter meeting at the Adirondack League Club. Those of you who have attended these meetings in the past know that they embody the essence of the ALA – a chance for landowners to drive through three or four feet of snow in order to discuss issues and ideas, to get to know one another, and to

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share our experience, knowledge, and love of the Adirondacks. And did I mention have a good time?

A regular feature of the winter meeting is the Friday night auction conducted by Tom Williams that always creates as much laughter as it does welcome dollars for the ALA coffers. And this year on Saturday morning we will have a panel discussion with Senator Betty Little, Assemblywoman Teresa Sayward, AATV President Bill Farber, and Adirondack Community Trust Executive Director Cali Brooks – definitely and interesting lineup.

I look forward to seeing many of you next month.

John L. Ernst

## STATE ELECTION HAS IMPLICATIONS FOR ALA

On the evening of November 4 many of us were glued to the television waiting on the election returns to tell us who the next President of the United States would be. At our house less attention was being paid to local and state elections. In fact, in our district the members of the Assembly and Senate were running unopposed. So there wasn't much excitement in those races. The next day, however, it sunk in that the New York Senate had a Democratic majority.

Now the ALA is certainly not associated with any particular political party. Therefore, the fact that the State Senate changed from a Republican majority to a Democratic majority in November might be viewed as irrelevant to ALA's purposes. It is worth mentioning to our membership, however, because our legislators are now mostly in the minority. No matter how diligent they are in supporting our interests, in this State a legislator's effectiveness is enhanced or curtailed by the party to which they belong.

Perhaps, it is as much a matter of geography as it is political party. It may be a bit of an exaggeration to say that the closer to New York City you get the more you are likely to run into Democratic legislators. Therefore, how well the interests of the Adirondack land owners and citizens will be reflected in the decisions of the next legislative session is a significant question. Who from "down-state" will join with Adirondack legislators in championing the cause of North-country land owners? As the State deals with its serious budget shortfall will the North-country or other rural areas suffer disproportionately when the remaining, necessarily

meager budget is allocated across the State?

We will keep you informed throughout the coming year of both the successes and pitfalls of working with the new legislature.

## WILD CENTER HOSTS TWO CLIMATE CHANGE CONFERENCES

The Wild Center hosted a three day national meeting on climate change in June. This meeting was attended by 200 corporate and NGO executives and representatives from all levels of government. The meeting built on a study, Reducing U.S. Greenhouse Gas Emissions: How Much at What Cost? prepared by McKinsey and Company. The conference resulted in recommendations for legislative action in three sectors; power generation, buildings and appliances, forests and land use, and finance. The product of the conference is a document entitled A Strategy to Reduce U.S. Greenhouse Gas Emissions: A Message to the Nation. Those involved in the organizing the conference have been assured that the Message to the Nation will play a role in the design of the Obama Administration's strategy for dealing with greenhouse gas emissions and energy independence.

Following the June conference a second one, The Adirondack Model: Using Climate Change Solutions to Restore a Rural American Economy was held November 18 and 19, also at the Wild Center in Tupper Lake. This conference was attended largely by Adirondack citizens, government leaders and organizations. As suggested by the title of the conference, attendees addressed ways in which changes construction, sources of energy and energy efficiency can be an economic asset to the region. An optimistic tone was set throughout the conference by brief presentations on existing success stories. These ranged in scale from the Monadnock Region in New Hampshire to the city of Keene, NH to local communities and businesses in the Adirondack Park. Many attendees at the conference volunteered to work with the conference steering committee to prepare an Adirondack Climate Action Plan and several individuals and organizations accepted responsibility for implementation of the recommendations coming from the conference.

Further information on both conferences is available at [usclimateaction.org](http://usclimateaction.org).

## **NATURE CONSERVANCY PURCHASES FOLLENSBY POND IN THE ADIRONDACKS**

(Excerpts from a Nature Conservancy press release)

The Nature Conservancy has purchased Follensby Pond in New York's Adirondack Mountains. This 14,600-acre property of mixed northern hardwood forests borders the state's largest wilderness area, the High Peaks, and includes more than 10 miles of meandering frontage on the Raquette River, one of New York's longest rivers. Its centerpiece, 1,000-acre Follensby Pond, is considered the largest lake owned by a private individual in the northeastern United States. The property has been lovingly cared for and enjoyed by the McCormick family, of Manchester, Vermont, for more than five decades.

Follensby Pond drains into the Raquette River where a 20-mile stretch of silver maple floodplain forest is considered to be the best example of that natural community type in the Adirondacks and among the best in the state. The quiet, slow-moving backwater pools associated with that largely undisturbed stretch of river also earned high ranks in a three-year Nature Conservancy study which assigned local, state, and global rankings to approximately 102 natural community types found in the Adirondacks.

Visited 150 years ago by Ralph Waldo Emerson and other 19th century scholars, Follensby Pond stands today as a symbol of Transcendentalism, the American-born philosophy that emphasizes the intuitive and spiritual over the empirical and holds nature in high regard. Such thinking, expressed in art and literature by Emerson, William James Stillman, Louis Agassiz, and other intellectuals, helped to transform America's relationship with nature.

In the 1950s Follensby Pond was one of the last places in the Adirondack Park with nesting bald eagles. At that time, bald eagle populations were plummeting, leaving just one unproductive pair in the entire state by the mid-1960s, and landing the species on the endangered species list. The decline was linked to habitat destruction and DDT, a pesticide put into use nationwide in the 1940s. Follensby Pond was selected as the only site in the Adirondack Park where bald eagles were reintroduced, a process known as "hacking." New York State Department

of Environmental Conservation endangered species unit leader Peter Nye led the effort in the 1980s. "Follensby was an ideal location because it had suitable habitat for current and future use by the eagles, was free from human disturbance, and good for nesting," he said, adding that it was "a place where eagles could be eagles."

The property is not open to the public. "We know that many people are eager to visit Follensby Pond, but ask that the public be patient as we work through the transactional and transitional details," said Mike Carr of The Nature Conservancy. Hunting clubs currently lease the property. Out of respect for hunting as a traditional recreational activity, Mr. McCormick and The Nature Conservancy agreed to continue the five leases for the next several years.

The 200,000-acre High Peaks Wilderness links the Follensby tract with some of the former Finch, Pruyn lands purchased by The Nature Conservancy in 2007. Both land conservation efforts contribute to the Adirondack Park's dynamic history as a place where people and nature can co-exist.

## **APPELLATE DIVISION OVERTURNS SUPREME COURT DECISION IN THE DILLENBURG CASE**

It is good news for Adirondack landowners and local governments that the 4th District of the Appellate Division supported the State's sovereignty in determining when it would or would not pay taxes or payments in lieu of taxes on state owned land. The court implicitly upheld the constitutionality of the 1886 law that requires the state to pay taxes on the Forest Preserve land in the Catskill and Adirondack Parks. Had the Appellate Division not reversed the decision of the Superior Court, taxes on private lands would have "sky-rocketed" or local taxing jurisdictions would have collapsed due to inadequate revenues to pay for schools, Medicaid and other local government services.

Another positive outcome of the process leading to this decision is that local governments, the environmental organizations and the ALA worked together in making a compelling case that supported the Attorney General's appeal of the Superior Court decision.

## NEWS NOTES

**APA Passes Changes to Regulations**—At its November 14 meeting the Adirondack Park Agency adopted five proposed revisions to its rules and regulations. Revisions were approved for: (1) wetland subdivision; (2) expansion of non-conforming shoreline structures; (3) land division along roads or rights-of-way; (4) definition of “floor space”; and (5) definition of “hunting and fishing cabin”. The revisions will apply to future Agency determinations and are expected to take effect on December 31, 2008.

The Agency deleted provisions allowing unlimited expansion of pre-existing non-conforming shoreline residential structures located within the setback area. As a result most expansions will require a variance, similar to the variance required by many municipalities for non-conforming structures under local zoning. The right to replace pre-existing structures is unaffected by the revision as long as it is on the same foot print as the original building. The definition revisions for “floor space” and “hunting and fishing cabins” establish structure criteria that provide clarity and consistency for jurisdictional determinations according to the APA.

The changes to “subdivisions involving wetlands” remove long recognized unintended consequences that ensnare individuals in inadvertent violation of the law and often resulted in the creation of lots with no development potential, solely to avoid APA jurisdiction. APA claims that the adopted regulation carefully tailors jurisdiction to the potential for impacts to the wetlands protected by the APA statute and Wetlands Act.

Further information on the specifics of these regulatory changes can be found on the Adirondack Park Agency website ([www.apa.state.ny.us](http://www.apa.state.ny.us))

Senator Little and Assemblywoman Sayward contended that these revisions were a stretch of APA’s authority and should have been addressed through legislation. Following the same rationale several Adirondack counties are considering a court suit contending that the Agency exceeded its authority on the regulation requiring a variance for expansion of dwellings existing prior to the creation of the Agency.

**Navigable Waterways**—During the 2008 legislative session a revised bill on Navigable Waterways was introduced to both houses of the legislature. ALA was advised that this bill would not be acted on

during the 2008 session. The prospect for a vote on a bill dealing with navigable waterways may change with a Democratic majority in the Senate.

For those of our readers who have not been following this issue over the past several years, past proposed legislation has been promoted as a codification in law of what had previously been determined by the courts in interpreting common law on the meaning of “navigable-in-fact” waterways. Of interest to ALA members is the right of the public to traverse streams that cross private property. ALA’s position on past legislation has been twofold; first, legislation is not needed because the courts interpretation of the common law offers enough clarity on the rights of the public on “navigable-in-fact” waterways, and second if legislation is passed it should only be a codification of the courts findings and not an expansion of public rights to navigate waters that pass through private lands. Issues of particular concern to ALA members are: access to and from stream across private lands, the extent of the right to portage across private lands, limiting the kind of “boats” to those traditionally used for stream navigation, limiting the public right to navigation and not other recreation activities on waters that pass through private lands.

Your Legal Committee and Senior Advisor have put considerable effort into tracking this issue and trying to influence the outcome. We will keep the members informed as the issue ripens.

**Property Taxes**—The Common Ground Alliance in cooperation with the Adirondack Association of Towns and Villages and AdkAction.org has been addressing the problem of increasing property taxes on Adirondack properties. There are two proposals that are waiting for funding to move ahead. The first would be an independent study reviewing the consistency of assessment practices across the towns of the Adirondacks. The second proposal is for an independent study of the appropriateness of the current law on taxation of Forest Preserve. At issue in the second study is that current policy is the result of an 1886 law. Are the mandates of this law still appropriate the 21st century?

While there are various committees, task forces and commissions exploring property tax concerns across the state. The above efforts will focus on the Adirondacks specifically.

## MEMBERSHIP AND ORGANIZATIONAL INFORMATION

### NEW MEMBERS

The ALA welcomes membership by Adirondack landowners who share its commitment to promoting private stewardship and protecting the basic rights of private property owners in the Adirondacks. Membership information is available from the corporate office: One Park Place, Suite 410, 300 S. State Street, Syracuse, NY 13202. Telephone (315) 701-5990

### OFFICERS & DIRECTORS

President:	John L. Ernst Elk Lake Lodge
Vice President:	Ted S. Wickersham North Woods Club
Treasurer:	Robert E. Friedman Kildare Club
Secretary:	Sally Hart Big Wolf Lake Association
Directors:	Peter K. Bertine John G. Fritzinger, Jr. Thomas E. Williams Michael M. Gridley David Dearborn Frank A. Clark Peter B. Robinson Kevin Arquit David Skovron
Senior Advisor:	Ross S. Whaley 478 Bungalow Bay Tupper Lake, NY 12986

### OUR ORGANIZATIONAL MEMBERSHIP

The following clubs and individuals, by their membership in ALA, help to achieve the organization's goals of promoting good private stewardship in the Adirondacks:

Adirondack League Club  
Adirondack Mountain Reserve  
Ampersand Pond  
Arquit Property  
Asgaard Farm  
Bay Pond Park  
Big Wolf Lake Association  
Brandon Park  
Brandreth Park Association  
Camp Otterbrook  
Dug Mountain Ponds  
Elk Lake Lodge  
Grasse River Club  
Heart Bay Environment  
Hollywood Club  
Kildare Club  
Little Rapids Park  
Livingston Lake Club  
Matamek Corporation  
McCavannaugh Pond Club  
Meenahga  
Miller Park Association  
Moose Pond Club  
North Woods Club  
Paine Family Estate  
Sellon Property  
Sheriff Lake Property  
Skye Notch  
Thisse Family Properties  
Watch Rock Point Property  
West Canada Preserve  
Wilmurt Club



## 2008 WINTER MEETING

ALA's winter meeting and reception will be held Friday and Saturday, December 5 and 6 at the Adirondack League Club. If the last meeting is any indication of what to expect, there will be terrific entertainment, fine conversation with fellow members and a meaningful discussion of current issues relevant to all Adirondack land owners.

The meeting is open to all ALA members, constituents of member clubs and organizations, and invited guests. Those seeking information may contact Ingrid L. Smith, Executive Secretary, One Park Place, Suite 410, 300 South State Street, Syracuse, NY 13202, Tel. (315) 701-5990 Email: [ingridsmith@twcny.rr.com](mailto:ingridsmith@twcny.rr.com)

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