

Adirondack Daily Enterprise

DEC snowmobile plan was illegal

June 24, 2021

COLUMNS

By David Gibson

Managing Partner, Adirondack Wild

Marc Gerstman, former New York State Department of Environmental Conservation executive deputy commissioner from 2011-16, is today a respected environmental attorney. He is entitled to his opinion (“*Court got it wrong*,” June 21 Enterprise) that, somehow coerced by “*misguided zealots*,” the NYS Court of Appeals ruled incorrectly about the constitutionality of snowmobile community connector trails through the Forest Preserve as constructed by DEC. My organization, Adirondack Wild, was not the plaintiff, but we, along with the Adirondack Council, sided with Protect as a friend of the court.

Unfortunately, Gerstman’s opinion paints a picture at odds with history. He creates a myth that DEC during his tenure solved previously intractable problems about snowmobiling on the Forest Preserve by pulling all stakeholders together, producing and implementing a brilliant trail plan that at once removed such motorized corridors from the Forest Preserve, relocated them near highways, and therefore earned local governmental and environmental support for the Finch, Pruyn protection project. He seems thoroughly perplexed how the Court of Appeals could have upset this apple cart.

“*The snowmobile plan*” Mr. Gerstman refers to was produced during the Republican administration of Gov. George Pataki. In 2001 Pataki’s DEC did bring stakeholders together for three years to discuss, debate and negotiate a new system for snowmobile trail

construction and management. Pataki also committed to public hearings and amendments of the State Land Master Plan required to construct wider, flatter, groomed snowmobile corridors through the Forest Preserve. Then Pataki reneged on that commitment. In 2006, his DEC unveiled “*the comprehensive snowmobile plan*” that was far from comprehensive and still had many rough edges, from a planning, practical, legal and constitutional perspective.

Instead of smoothing out all those rough edges of the Pataki years before starting construction, during Gov. Andrew Cuomo’s first term the Adirondack Park was thrown “*open for business.*” DEC aggressively went ahead to build the first snowmobile community connectors. Where the state Constitution’s Article 14, the State Land Master Plan, and the Wild, Scenic and Recreational Rivers Act stood in their way, Gov. Cuomo’s DEC (with the Adirondack Park Agency’s compliance) shrugged and issued themselves administrative plans and permissions.

When The Nature Conservancy helpfully developed a snowmobile connector between Indian Lake and Newcomb on private conservation easement lands, which the state’s 2006 snowmobile plan establishes as a goal, DEC authorized a duplicative trail to be built across the Forest Preserve to the same Newcomb location.

Curiously, Mr. Gerstman writes that in his opinion the court case was not about snowmobiling. Assuming all DEC wished to do was to plan more of the 800 miles of existing, narrow, meandering snowmobile trails that have the character of a foot trail, he might be right.

But the court case was about cutting tens of thousands of trees on the Forest Preserve to widen, excavate, flatten and groom snowmobile corridors that no longer had that character. Instead of 10 or so mature trees cut down per mile to construct the first generation of narrow, winding snowmobile trails in the 1970s, the state was cutting over 220 mature trees per mile (and many smaller trees) and altering the natural forest floor, all to construct the wide, flat, groomed

snowmobile connectors of 2012-14 — without amending the State Land Master Plan or the state Constitution.

The same misguided environmental “*zealots*” Gerstman decries today must also have been at work 90 years ago in litigating over construction of the Olympic bobsled run on the Forest Preserve near Lake Placid. The 2021 Court of Appeals cites the 1930 court opinion in ruling that, whether high-speed bobsled runs or wide, groomed snowmobile routes, the state Constitution prohibits the state from significantly altering the Forest Preserve to accommodate high-speed, mechanized recreational facilities.

There is a way to build such facilities, said the 2021 court, and that way is to amend the “*forever wild*” provision in effect since January 1895. Ultimately, the people of the state make this determination, not any governor or any DEC administration.

Gov. Cuomo and his DEC, including Mr. Gerstman, failed to heed numerous warnings from a vocal minority of members of the Adirondack Park Agency and from many nonprofit organizations, including Adirondack Wild, advising that by aggressively constructing mini snowmobile roads the DEC was running afoul of the State Land Master Plan, the Wild, Scenic and Recreational Rivers Act, and the state Constitution’s Article 14.

For example, at APA’s meeting in June 2015, even Fred Monroe of the Adirondack Park Local Government Review Board said he believed these issues can and should be addressed in a clearly legal way “*in order to avoid litigation.*” (See APA minutes of the June 2015 State Land Committee.) Mr. Booth of the agency and others asked for a legal opinion from DEC to affirm and persuade that such snowmobile community corridors, river crossings and their management were legal. That opinion was never produced.

At the close of his commentary, Mr. Gerstman’s lecturing tone overlooks the unwillingness of his own department to sit down and negotiate a better way forward on snowmobile corridors rather than

appealing the case all the way to the Court of Appeals, losing 4-2, and then blaming environmentalists instead of undergoing needed self-reflection.

DEC has been in the past — and still could be — a force for consensus building and problem solving with diverse stakeholders out of court. There are many shared trails that can be improved and better connected to Adirondack hamlets and towns without altering the Forest Preserve's character or requiring major construction impacts. DEC could be a leader here.

Climate change is here. Snowpack is declining, in some places faster than others. That fact and the Court of Appeals decision ought to motivate DEC and APA to reexamine, with all stakeholders involved, the entire network of state, county, town and private snowmobile trails in an effort to rewrite the now thoroughly out-of-date (and unconstitutional) snowmobile plan and implementation guidance issued in 2006 and 2009, respectively.