

## **Robert Kafin interview with Brad Edmondson.**

Kafin: We were talking about the Hochschild roundtable. Well, Ton-Da-Lay was next to three enormous parcels of private land. One was called Bay Pond and it was owned by the “poor” Rockefellers. The William Rockefellers. The second was Brandon Park, the descendants of the DuPonts.

BE: Brandreth Park. Yeah.

Kafin: Not Brandreth. Brandon. And the third was The Kildare Club, which was the three Friedman sisters.

BE: And they were going to be the neighbors of Ton-Da-Lay?

Kafin: Right. So now we want to do a sophisticated scientifically backed environmental hearing, and that costs money. The Sierra Club, the Adirondack Mountain Club, whose executive director was non-political but opposed all this stuff anyhow, the Constitutional Council for the Forest Preserve, the Association for the Protection of the Adirondacks -- they weren't used to getting involved in stuff at this level. They could send out people to make speeches, but this required a paid team of professionals. Fortunately they had some sources of contributions.

William Rockefeller was a partner in Shearman & Sterling, which at the time I think might have been be the largest law firm in New York, if not the world. And by the way, G. Gordon Davis, who was the first general counsel of the Park Agency, came out of that firm from the recommendation of William Rockefeller. So when Courtney Jones or whoever it was convened the next roundtable on Ton-Da-Lay, they had some capacity to pay not just for Kafin and Needleman, because we were already doing stuff for near nothing, but also some engineers and landscape architects and ecologists, because we were going to have a big hearing. It wasn't a notice and comment hearing, where you show up and make a speech. It was a trial type hearing. And I don't think the Conservation Department had ever held a trial-type hearing before. If they had a trial type hearing, it lasted two or three days. Ours probably lasted 18 months.

BE: And the records of that would be in DEC?

Kafin: Yeah, there should be a hearing transcript. It would be thousands of pages.

So we convinced DEC to have this broad hearing. They appointed a hearing officer—I don't even think they had an administrative law judge in the department at the time, because they hired some Albany lawyer to be the hearing officer. I'm pretty sure. The hearings were in Ray Brook, in the DEC offices. There never had been one before. This was certainly one of the longest hearings ever, and we tried our best to present evidence on every single aspect of environmental quality that would be affected by this development. The developer didn't know what hit him, nor did his lawyer.

BE: They were not ready?

Kafin: Not for this type of proceeding.

BE: They didn't know what was coming?

Kafin: Yeah. Now, the developer was a skilled developer. They had good lawyers. But they were sort of out of their element. And I don't think we did much to prolong it, but the deliberations went on for a long time. Some of it was developer's lack of preparedness. When issues came up, they had to go scurry and find somebody to present the evidence and then we presented our own case. Eventually, I don't know whether the administrative law judge issued a ruling or whether they just turned the transcript over to the department, but the department denied the permits.

BE: The DEC?

Kafin: DEC. Then, they sued. And much of what we did got undone in the appellate division.

BE: Much of what you did in the hearing --

Kafin: Yes. But you see, it didn't matter, because by then the Park Agency law was in place. So then they went and hired a very fine litigator from a New York City law firm, who just retired as an assistant attorney general, a guy named David Ellenhorn. And if you interview him, he will tell you that he won

the case. The court basically rejected the commissioner's view that the definition of public necessity involved a broad environmental impact analysis. But SEQR had passed by then. The Park Agency existed by then. And the court upheld the commissioner's denial on more narrow grounds about the water supply and sanitation system.

BE: They found that those were inadequate?

Kafin: Yeah. That they didn't meet the standards.

BE: So the original health department permit didn't stand up in the appellate division?

Kafin: Right. The function was now a departmental function, and the department denied the permit on a variety of grounds, one of which was the broad public necessity. And the court said the department didn't have that power, but they did have the power on the more engineering and public health standards, and who are we to second guess the agency that the legislatures put in charge of this? That's why the permit denial at the DEC level held up. The reasons that we had creatively put forward fell aside, but by then it no longer mattered.

BE: Wow, that's the oldest trick in the book for environmental lawyers, just to slow things down --

Kafin: Until the law catches up with you.