

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Plaintiff,

- v -

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant.

SUMMONS
(Jury Trial Claimed)

Index No.:

000-98 -07

TO: THE ABOVE-NAMED DEFENDANT:

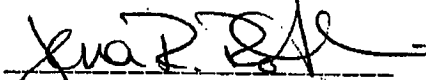
You are hereby summoned and required to serve upon plaintiff's attorneys an answer to the Complaint in this action within twenty (20) days after the service of this Summons, exclusive of the day of service, or within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: June 26, 2007

BRENNAN & WHITE, LLP
By: Joseph R. Brennan
163 Haviland Road
Queensbury, New York 12801
Phone: (518) 793-3424

-and-

NIXON PEABODY LLP


By: David L. Cook
Jena R. Rotheim
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ATTORNEYS FOR PLAINTIFF
Lewis Family Farm, Inc.

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Plaintiff,

- v -

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant.

COMPLAINT

Index No.: _____

060-98-07

Plaintiff Lewis Family Farm, Inc., ("Lewis Farm"), by its attorneys, Nixon Peabody LLP, for its Complaint against defendant New York State Adirondack Park Agency ("APA"), alleges:

NATURE OF THE ACTION

1. This is an action for declaratory judgment and injunctive relief through which Lewis Farm seeks (i) a determination that the Agriculture and Markets Law precludes APA's interference with the Lewis Farm housing project; and (ii) to enjoin the APA from interfering with such construction and thereby preventing Lewis Farm from obtaining the benefit of certain warranties on its modular homes.

PARTIES

2. Lewis Farm is a domestic corporation with a principal place of business located at 1212 Whallons Bay Road, Essex, Essex County, New York 12936. The activities on Lewis Farm constitutes farm operations within an agricultural district pursuant to New York's Agriculture and Markets Law § 305-a ("§ 305-a").

3. The APA is a New York State agency with a principal office located at 1133 NYS Route 86, Ray Brook, Essex County, New York 12977.

JURISDICTION AND VENUE

4. Venue is proper in this county, pursuant to CPLR § 505(a), because the APA is a public authority with a principal office within Essex County.

FACTS

Lewis Farm's History and Mission

5. In or about 1972, the Lewis family purchased the farmstead located at 1212 Whallons Bay Road, Essex County, following a long family association with the Adirondacks dating back to 1951. The farmstead is located within an agricultural district pursuant to the Agriculture and Markets Law article 25-AA (the farmstead shall also be referred to herein as "Lewis Farm").

6. Lewis Farm incorporated in 1985 and is not only a working farm, but one of the largest organic farms in New York State. Lewis Farm's mission is to improve land use methods and the lives of those who live in the vicinity of its operations. Additionally, Lewis Farm seeks to enhance and protect the environment, similar to the stated mission of the APA.

7. Lewis Farm has become a showcase for the Cornell cooperative extension and has, through example, contributed to four neighboring farms having become organic as well.

8. Lewis Farm has a strong reputation which has allowed for students and apprentices, both from the United States and internationally, to work for academic credit in their agricultural programs.

9. Lewis Farm provides employment and education to members of its community and beyond and is highly regarded in both local and non-local agricultural and environmental communities.

10. As evidence of its far-reaching agricultural and environmental reputation, Lewis Farm was recently approached by the government of Nepal to host four Nepali farmers so that they may learn the methods of sustainable, organic farming. The Nepali farmers are scheduled to arrive within the next few months and will need housing upon their arrival.

The Housing Project

11. Lewis Farm has expended significant capital investments to its operations in its efforts to remain economically viable. One of the last capital improvement projects Lewis Farm has left is to build staff housing, which was to have been completed by early summer, 2007 (the "Housing Project").

12. The purpose of the Housing Project is to provide modular housing for Lewis Farm employees and student interns. The modular housing units were constructed in Canada and shipped to New York to be placed on the newly built foundations. The housing units are meant to be installed by the Canadian manufacturer, but the manufacturer is only available through June 30, 2007.

13. After June 30, 2007, Lewis Farm will have to engage another contractor to install the units and is in danger of losing the manufacturer's warranty on the units if they are not installed by the manufacturer.

14. In addition, the modular units must be weatherized once they are installed on the foundations. If this process is interrupted, the resulting loss of warranty and/or quality of construction is unascertainable.

15. Because the Housing Project will provide housing for Lewis Farm employees and interns, it constitutes farm operations within the meaning of § 305-a.

16. In or about November, 2006, in furtherance of the Housing Project, Mark McKenna, the Housing Project's project manager, obtained building permits from the Town of Essex. At that time, the Town's Code Enforcement Officer, David Lansing, told Mr. McKenna that no further permits were necessary since the Housing Project was strictly a farm operation. Lewis Farm relied on this information and, accordingly, did not contact APA.

17. Subsequently, and only after Lewis Farm had expended significant resources on architectural, engineering, and foundation work, did Mr. Lansing, the Code Enforcement Officer travel to the Housing Project and, despite his earlier advisement, suggest that Mr. McKenna contact the APA for an additional permit.

18. Lewis Farm immediately and voluntarily ceased operations on the Housing Project and contacted the APA to ascertain and obtain whatever permit was allegedly necessary. Only after having been contract by Lewis Farm, did the APA inform it that the issue was being addressed by the its Enforcement Division.

19. The interruption of the Housing Project has caused Lewis Farm significant damage including, without limitation, continuation of payments to the project manager and Lewis Farm interns having to be housed off site in housing that is insufficient as a long-term solution.

20. The interruption and ensuing delay is also causing Lewis Farm to potentially lose the warranty on the modular units, as well as potentially causing Lewis Farm further irreparable harm in the form of decreased quality and/or decreased warranty resulting should the weatherproofing process be interrupted.

21. On or about May 14, 2007, Lewis Farm received correspondence from the APA enclosing a proposed settlement agreement, a true copy of which is attached hereto as Exhibit A. Notably, neither the APA's letter nor proposed settlement agreement in any way acknowledge that the Housing Project is taking place on a farm in furtherance of farm-related activities. Rather, the APA letter and proposed agreement give the wrongful appearance that what is at issue is some sort of commercial subdivision plan.

22. Nowhere in the APA's May 14, 2007 correspondence does the APA assert that the Housing Project poses any threat to public health or safety or in any way causing damage to the environment. The proposed agreement requests that Lewis Farm pay a penalty of \$10,000. The APA has indicated that, once Lewis Farm paid the penalty, it did not see any reason why an after-the-fact permit would not issue.

AS AND FOR A FIRST CAUSE OF ACTION
Injunctive Relief

23. Lewis Farm repeats and realleges paragraphs 1 through 22 as if fully set forth herein.

29. The granting of declaratory relief will terminate the controversy as to whether or not the APA may assert its jurisdiction in a manner in which it may interfere with the Housing Project.

WHEREFORE, Lewis Farm demands judgment against the defendant as follows:

- a. On the first cause of action, a temporary then permanent injunction enjoining the APA from interfering with the Housing Project and from imposing any penalty on Lewis Farm;
- b. On the second cause of action, judgment in the form of a declaration the APA does not have jurisdiction over the Housing Project because such jurisdiction, as the APA has attempted to impose it, is in direct conflict with the Agriculture and Markets Law; and
- c. For such other and further relief as this Court may deem just, equitable and proper.

Dated: June 26, 2007

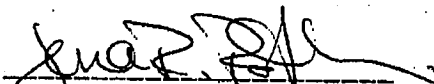
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ATTORNEYS FOR PLAINTIFF
Lewis Family Farm, Inc.

EXHIBIT A



NEW YORK STATE
Adirondack
parkagency

973-610-1866 Barbara's cell

May 14, 2007

S.B. and Barbara Lewis
1212 Whallons Bay Rd.
Essex, NY 12936

RE: Enforcement File E2007-041
Tax Map Parcel 49.3-2-27

Dear Mr. and Mrs. Lewis:

Please find enclosed proposed settlement agreement intended to resolve Agency Enforcement File E2007-041.

The first set of violations addressed by this settlement involve two single family dwellings that were recently constructed on your property and are not located in the immediate vicinity of any pre-existing dwellings. Pursuant to sections 809(2)(a) and 810(2)(d) of the Adirondack Park Agency Act, any new single family dwelling in a Resource Management land use area requires a permit from the Agency. In addition, a permit is required for the construction of any single family dwelling on Resource Management lands in a designated Recreational River Area under Section 577 of the Agency's Regulations. These two dwellings are therefore in violation of the Agency's laws because no permit was sought or obtained for their construction.

The enclosed settlement also addresses three subdivision violations associated with your property. Section 802(63) of the APA Act defines a subdivision as "any division of land into two or more lots, parcel or sites ... for the purpose of any form of separate ownership or occupancy," and Sections 809(2)(a) and 810(1)(e) of the Act require a permit for any subdivision in a Resource Management land use area. In addition, Section 577 of Agency Regulations requires a permit for the undertaking of any subdivision of Resource Management lands in a designated Recreational River Area. Accordingly, because no permit was sought or obtained for the subdivision created by the

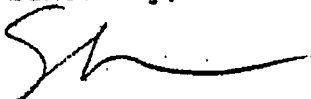
S.B. and Barbara Lewis
May 14, 2007
Page 2

construction of the two dwellings described above, they are in violation of the Agency's subdivision laws. In addition, the construction of a third, proposed replacement single family dwelling constitutes a subdivision violation, as the corresponding pre-existing structure has not yet been removed from the property.¹

The enclosed settlement proposes resolution of these violations through review of the structures under the Agency's after-the-fact permit process. If the agreement is acceptable to you, please sign both copies before a notary public and return them to me by June 8, 2007. Paul Van Cott will then execute the agreements on behalf of the Agency and send you one original for filing in the Essex County Clerk's Office.

Please feel free to call me with any questions. I thank you for your anticipated cooperation in resolving this matter.

Sincerely,



Sarah Reynolds, Esq.
Assistant Enforcement Attorney

SHR:PVC:JLQ:mlr

Enclosure: Proposed Settlement Agreement

¹ Section 570.3(ah)(3) of Adirondack Park Agency regulations defines a subdivision into sites as occurring "where one or more new dwelling(s) or other principal building(s) is to be constructed on a parcel already containing at least one existing dwelling or other principal building, and regardless of whether the existing building is proposed to be removed after completion of the new building(s)." In addition, Section 573.6(e) of Agency regulations states that, where an "existing dwelling will not be removed until after the new dwelling is emplaced or constructed, an Agency permit is required for the 'subdivision into sites' which would result if the subdivision is a class A or class B regional project as provided in Section 810 of the Adirondack Park Agency Act." Pursuant to Section 810(2)(d) of the Adirondack Park Agency Act, the construction of a single family dwelling in a Resource Management land use area constitutes a Class B regional project.

STATE OF NEW YORK: ADIRONDACK PARK AGENCY

-----X
In the matter of the apparent
violations of § 809(2)(a) of
the Adirondack Park Agency Act
and § NYCRR § 577 by:

LEWIS FAMILY FARM, INC.

SETTLEMENT AGREEMENT
Agency File #E2007-041

Respondent, on lands situated in
the Town of Essex, Essex County
(Tax Map Parcel 49.3-2-27)
LUA: Resource Management/Hamlet/Rural Use
-----X

WHEREAS:

1. Pursuant to Section 809(2)(a) of the Adirondack Park Agency Act, a permit is required from the Adirondack Park Agency prior to the construction of any single family dwelling on Resource Management lands in the Adirondack Park.
2. Pursuant to Section 809(2)(a) of the Adirondack Park Agency Act, a permit is required from the Adirondack Park Agency prior to the undertaking of any subdivision of Resource Management lands in the Adirondack Park.
3. Pursuant to Section 577 of Adirondack Park Agency regulations, a permit is required from the Adirondack Park Agency prior to the construction of a single family dwelling on Resource Management lands within any designated recreational river area in the Adirondack Park.
4. Pursuant to Section 577 of Adirondack Park Agency regulations, a permit is required from the Adirondack Park Agency prior to the undertaking of any subdivision of Resource Management lands within any designated recreational river area in the Adirondack Park.
5. Agency investigation reveals that Respondent has undertaken the construction of two post-1973 single family dwellings on Tax Map Parcel 49.3-2-27 ("Lot 27"). These dwellings are located immediately to the north and east of the intersection of Whallons Bay Road and Christian Road on the subject property. No permit was obtained from the Agency prior to the undertaking of the construction of these two single family dwellings.

- 6. Agency investigation reveals that Respondent has undertaken a subdivision into sites of the subject property pursuant to the construction of the two post-1973 single family dwellings described in Paragraph 5 above, as well as the construction of a third, proposed replacement single family dwelling also located immediately to the north and east of the intersection of Whallons Bay Road and Christian Road. No permit was obtained from the Agency prior to the undertaking of this subdivision into sites of the subject property.
- 7. Lot 27 is an approximately 1,111.12 acre parcel that contains Resource Management, Hamlet, and Rural Use lands and is partially located within the designated Boquet River Recreational River Area. The three post-1973 single family dwellings described in Paragraphs 5 and 6 above are located on the Resource Management portion of Lot 27 and within the designated Recreational River Area.
- 8. Respondent is the current owner of Lot 27, as described in a deed recorded in Book 1023, Page 35, in the Essex County Clerk's Office.
- 9. Respondent desires to resolve this matter by settlement and agrees to be bound by the terms of this Settlement Agreement as set forth below.

NOW, THEREFORE, THE AGENCY AND RESPONDENT AGREE AS FOLLOWS:

- 1. By June 15, 2007, Respondent shall submit an after-the-fact permit application to the Agency for the construction of the three post-1973 single family dwellings described above. Respondent shall cooperate in responding to any Agency request for information related to this after-the-fact permit application within 30 days unless otherwise agreed to by the Agency and Respondent. Respondent shall have the rights of administrative appeal and judicial review and all other rights established by law for project applicants, ~~except that Respondent shall not challenge Agency jurisdiction, and Respondent waives the statutory deadlines for Agency determinations on a complete application and a final determination.~~ The Agency makes no representation herein as to the approvability of Respondent's after-the-fact permit application.

*By waiving
it is indicating
waiver
and striking
end lines
that good is
be right to
appeal.*

2. By June 15, 2007, Respondent shall pay a civil penalty in the amount of ~~\$10,000~~ to the State of New York in resolution of the violations noted above.
3. In the event that Respondent fails to submit its after-the-fact permit application or otherwise comply with the after-the-fact permit process as set forth in Paragraph 1 above, Respondent shall pay an additional civil penalty in the amount of ~~\$10,000~~ to the State of New York within 30 days of written notification of such violation by the Agency.
4. Payment of all civil penalties shall be transmitted to the Adirondack Park Agency, Attn: Doug Miller, Enforcement Officer.
5. Respondent, its successors and assigns shall not undertake any new land use or development on the subject property, including the construction of any new principal buildings or the replacement of any pre-existing principal buildings, without first obtaining an Agency permit, variance, or non-jurisdictional determination. Respondent's ongoing construction of a single family dwelling located to the south and east of the intersection of Clark Road and Cross Road is hereby determined to be non-jurisdictional, provided that the replacement structure is not in excess of 40 feet in height as measured from the highest point of the structure to the lower of either the original or finished grade, as this structure replaces a pre-existing single family dwelling that was located in the immediate vicinity of the dwelling currently under construction. Respondent shall obtain an Agency permit before continuing the replacement of this pre-existing single family dwelling if the dwelling under construction will be in excess of 40 feet in height.
6. This settlement is binding on Respondent and all present and future owners of the subject property. All deeds conveying all or a portion of the lands subject to this settlement shall contain references to this Settlement Agreement.
7. By June 15, 2007, Respondent shall file an original copy of this Settlement Agreement in the Essex County Clerk's Office in the same manner as an Agency permit and shall provide proof of such filing to the Agency.

AGREEMENT

Respondent agrees to the terms set forth in this Settlement Agreement to resolve the matter of Adirondack Park Agency File E2007-041.

By: _____
Lewis Family Farm, Inc.

STATE OF)
) SS:
COUNTY OF)

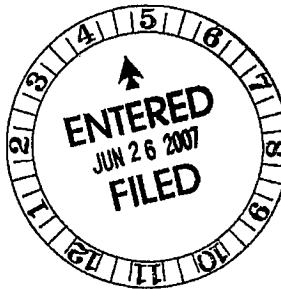
On this _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said State personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacities, and that by their signatures on the instrument, the individuals, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

May 11, 2007 Settlement Agreement

FILINGS

STAMPED <u>6/26/07</u>	INDEXED <input checked="" type="checkbox"/>	ORDERS/JUD _____
COURT COPY <u>✓</u>	VERIFIED <input checked="" type="checkbox"/>	READ _____
OCA BOOK <u>6/26/07</u>	SCANNED _____	VERIFIED _____
_____	_____	_____
_____	_____	_____
_____	_____	_____



ESSEX COUNTY CLERK

NIXON PEABODY LLP
Omni Plaza
30 South Pearl Street
Albany, NY 12207