

Press-Republican

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State, Lewis Farm agree on repayment in APA case

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RAY BROOK — The state's attorney general and Lewis Family Farm have agreed to a repayment settlement in a case the farmers won against the Adirondack Park Agency.

The legal clash arose nearly six years ago over farm-worker housing that Salim B. "Sandy" and Barbara Lewis built on their 1,100-acre organic cattle and crop farm in Essex.

APA asserted jurisdiction and opened enforcement proceedings against the farm, but lost when the Lewises challenged the agency's action in state courts.

STATE OFFER

The state's reimbursement offer to the Lewis Farm amounts to \$71,690.28 for court-related costs — a figure ordered 18 months ago by Acting Essex County Supreme Court Justice Richard B. Meyer.

Lewis farmers appealed some aspects of the award, and the matter has moved through several hearings since.

The Attorney General's Office had not issued paperwork Thursday confirming the settlement agreement, and a call to its press officer was not returned.

The APA had no comment.

OBJECTED TO CLAUSE

But Mr. Lewis said attorneys initially sought to reimburse the farm only if Meyer — as a third party to the deal — agreed to remove the November 2009 repayment order from court records.

Mr. Lewis said that when he went to the hearing in Albany last week he did not expect any clause in an accord brokered, in part, through state lawmakers.

"My attorney John J. Privitera suggested we take the settlement offer, but it came with a catch — that we would have to go before Judge Meyer, in agreement with the state, and ask him to expunge the record of all settlement negotiations since 2009. They wanted the condition to come before any payment was made."

Mr. Lewis flatly rejected the offer.

"I told them I will settle this case on Judge Meyer's number. It's as simple as that.

"The judge's writings are writings that have always made a certain amount of sense to us. We'll have no conditions. We'll have no third-party settlement. My lawyer and them (attorney general) found some common ground. They just forgot about me."

RETRACTED

The state apparently reconsidered.

Mr. Lewis said he received a call from his lawyer Thursday morning saying APA and the Attorney General's Office retracted the condition.

This round in court is the second phase of an ongoing legal battle drawn across state environmental and farm-use regulatory boundaries.

Courts ruled in 2008 that APA has no jurisdiction over agricultural-use buildings on working farms.

The farmers won again when APA and the Attorney General's Office, then run by now-Gov. Andrew Cuomo, appealed the lower court's decision.

'ABUSE OF LAW'

"This second part of the proceeding, which started in 2009, is about money," Mr. Lewis said.

But it is also about precedent.

Lewis Family Farm initially sought \$208,000 in itemized costs associated with the case.

In ordering what the state would repay, Meyer essentially created a road map for legal recourse, should other farms or property owners challenge APA enforcement actions in court.

"The state knows the decision sets dangerous precedent whereby small companies can get court fees back," Mr. Lewis said Thursday.

"Meyer's decision pointed to abuse of the law in a process that has deliberately protracted this case."

The attempt by state lawyers to erase the record, Mr. Lewis suggested, is an abuse of privilege as government.

"The message they want to send is no one should challenge the APA."

'BUYING THE COURT'

He takes criticism a step further in commentary published on his website: www.sblewis.com.

Lewis claims the agreement was parlayed in an attempt to silence due process.

"In a sense, government was buying the court of Judge Meyer, the people's court," Lewis wrote.

"For \$72,000, government proposed to alter the record, to eliminate any trace of two years' action."

ROAD MAP

Howard Aubin, a member of the Local Government Review Board who has worked on APA issues with many Adirondack landowners, said the attorney general and APA wanted a "do-over."

"There is a key Equal Opportunity to Justice Act component of the (settlement) decision," Aubin said Thursday.

"Meyer drew a road map for individuals to follow to get legal fees back from cases brought against APA. Lawyers can use that case as a precedent.

"And to his credit, Sandy (Lewis) turned their deal down on principle."

"Now they can't get rid of it (the legal decision)," Mr. Lewis said Thursday.

AWAITING FINALIZATION

But the court settlement is not signed, sealed or delivered.

"No, I haven't signed anything," Mr. Lewis said.

"They (Attorney General's Office) have to type up the documents. The moment that thing is signed, interest rates — they start, I think, at 8 percent — start accumulating."

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