To Be Argued By: John J. Privitera, Esq.
Time Requested: 15 Minutes

504626 and # 504696

NEW YORK STATE SUPREME COURT
APPELLATE DIVISION: THIRD DEPARTMENT

Matter of LEWIS FAMILY FARM, INC., Appellant.
-against-
ADIRONDACK PARK AGENCY, Respondent.
(Case No. 1)

Matter of LEWIS FAMILY FARM, INC., Respondent,
-against-
ADIRONDACK PARK AGENCY, Appellant.
(Case No. 2)

ADIRONDACK PARK AGENCY, Appellant,
-against-
LEWIS FAMILY FARM, INC., et al., Respondents.
(Case No. 3)

BRIEF OF RESPONDENTS LEWIS FAMILY FARM, INC., et al.

Date: March 31, 2009

John J. Privitera, Esq.
Jacob F. Lamme, Esq.
McNAMEE, LOCHNER, TITUS
& WILLIAMS, P.C.
Attorneys for Respondents
677 Broadway
Albany, New York 12207
Tel. No. (518) 447-3200

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PRELIMINARY STATEMENT

Appellant Adirondack Park Agency ("Appellant") appeals to this Court from a lengthy, tightly-written and well-reasoned decision and order below that annulled Appellant's administrative action as an error of law. The trial court held that Appellant lacks statutory authority to regulate Respondents' farm worker housing. The trial court properly found, under the operative definitions of the Adirondack Park Agency Act ("the Park Act"), that farm worker houses are "agricultural use structures" exempt from Appellant's regulatory jurisdiction, just as they are exempt from regulation by any other land use board in New York, a right-to-farm state.

Rather than addressing the trial court's careful analysis of the Park Act and the Constitutional and statutory context in which it was passed, Appellant attacks Respondents Lewis Family Farm, Inc., Barbara A. Lewis and Salim "Sandy" B. Lewis ("Respondents") by painting their world-class farming operation with unfair pejoratives like "loophole", "objectionable" and "mischief" designed to distract this Court from the task of statutory analysis at hand.

Appellant concedes that the trial court was correct in concluding that, as a matter of law, the Park Act prevents the Appellant from regulating farm buildings of any placement, shape, size, height or color anywhere on farm land in the Adirondack Park as long as such farm buildings are, as here, more than 150 feet from critical waters.

Appellant's sole contention is that, contrary to all other New York laws touching upon agriculture, the Legislature specifically intended that Appellant alone may regulate farm worker houses as a residential subdivision rather than treating them as farm buildings. Appellant's position is incongruous with the seamless exemptions sewn throughout the fabric of New York's land use laws, agriculture laws, and tax laws, all of which treat farm worker houses as farm buildings. The trial court found no statutory support for Appellant's irrational reading of the law, and the appeal to this Court is unable to suggest flaw or failing in the trial court's reasoning below.

Moreover, Appellant brashly demands deference to it based on a self-proclaimed "knowledge of operational practices"; yet Appellant is deaf to a farmer's interests. Appellant lacks delegated power, regulatory expertise or knowledge in farming customs and practices, including on-farm employee housing. The trial court recognized this and properly held that on matters of statutory construction, no deference is due.

The farm worker houses at issue are situated on farmland located in a state-certified agricultural district. These farm buildings were constructed on the footprint of a pre-existing, turn-of-the-century farmhouse that, together with many other uninhabitable farmhouses, was razed on Respondent Farm's land. The farm buildings face each other and share a common yard, driveway, septic and other

infrastructure; they are not sub-dividable. Appellant misleads this Court into believing that these farm buildings pose a significant environmental danger; yet the farm buildings were approved by the Town of Essex's Code Enforcement Officer, and are separated from the nearest body of water by several hundred feet, with the Hamlet of Whallonsburg situated in between. Additionally, the very farm worker houses at issue in this case were deemed an appropriate agricultural use of land by the New York State Department of Agriculture & Markets ("Department of Agriculture") in a final, binding determination under the Right-to-Farm Law. Finally, Appellant's administrative determination states that the houses should stay where they are.

This Brief is submitted by Respondents in opposition to Appellant's appeal from the November 21, 2008, final judgment and November 19, 2008, Decision and Order of Supreme Court (Meyer, J.) which, *inter alia*, weighed the Appellant's punitive order against the body of agricultural law establishing Respondents' right to farm, and concluded that Appellant committed a grave error of law in asserting jurisdiction over the Respondent Farm's approved agricultural housing. As such, the trial court annulled Appellant's erroneous March 25, 2008, administrative decision ("Administrative Determination").[1]

[1] This Brief is also submitted in support of the Respondent Farm's limited appeal from the August 16, 2007, Decision and Order of Supreme Court (Ryan, J.), which properly dismissed Respondent Farm's declaratory action as premature, but improperly reached some of the merits

QUESTIONS PRESENTED

Question No. 1

Do the Adirondack Park Agency Act ("Park Act") and Wild, Scenic and Recreational Rivers System Act ("Rivers Act") exemptions for farm buildings include farm worker housing, as clearly provided in the Agriculture and Markets Law, as construed by the Court of Appeals?

Answer of Supreme Court (Meyer, J.): Yes.

Question No. 2

Are Respondent's employee houses "agricultural use structures" that are exempt from Appellant Agency's jurisdiction under the Park Act and Rivers Act?

Answer of Supreme Court (Meyer, J.): Yes.

STATEMENT OF FACTS

Respondent Farm, comprised of approximately 1,200 acres, is one of New York State's largest USDA Certified organic farms. (R. 1174, 1275). As a recognized leader in farming, Respondent Farm supports organic agriculture education throughout the world; to operate, its size and sophistication merit on-farm employee housing. (R. 1175). Thus, this Court's decision determines the fate of the farm.

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and advised that the Appellant Agency had jurisdiction over the Respondent Farm's employee housing project. Supreme Court (Ryan, J.) also erroneously dismissed the Respondent Farm's claim against the Appellant Agency under Section 305-a of the Agriculture and Markets Law.

Respondent Farm is located on American Heritage Farmland on valuable agricultural soils in the Champlain Valley and within the Essex County Agricultural District No. 4, a county-adopted, state-certified agricultural district subject to Right-to-Farm protections. (R. 1174, 1389-91). Over the years, Respondent Farm has acquired and cleaned up 1,200 acres and demolished at least fifteen (15) residences that were beyond repair. (R. 1175, 1275, 1426). Barbara and Sandy Lewis live in a restored farmhouse on the farm (R. 1426), supported by Marco Turco PhD, the resident farm manager. (R. 1175-76). Respondent Farm has also constructed many farm buildings and other agricultural use structures, including two substantial bridges to protect wetlands and a 60-foot tall grain bin, all without receiving permits from the Appellant Agency. (R. 1175, 1266-67).

As a successful large-scale farm, Respondent Farm has a full-time manager, three full-time employees, and requires interns and other seasonal farm workers working on the farm. (R. 1175-76). Respondent Farm's employees require on-farm housing in order to monitor the barns and operate the farm. (R. 1176, 1276). Suitable and affordable off-farm housing is not available in the area for farm employees. (R. 1176). On-farm housing accommodates the 24-hour work day of farm laborers and management, and addresses the shortage of nearby rental housing in rural farm communities, a fact that is recognized by Appellant's own literature. (R. 1298). Moreover, Respondent Farm cannot operate a world-class

organic farm with livestock without recruiting educated and motivated employees that will raise their families on the farm and settle in the community. Respondent Farm does not employ migrant workers and, as a matter of principle, will not house employees in mobile homes or dilapidated farm houses, like the fifteen (15) that Respondent Farm razed. (R. 1175, 1275, 1426). Thus, Respondent Farm decided to provide decent housing, essential for a large, organic, sustainable farm. (R. 1176-77).

In November 2006, Respondent Farm commenced a modular housing project involving four new on-farm modular houses, three of which are built in a cluster next to the barns on the footprint of buildings previously erected at the old Walker Farm. (R. 1176, 1184, 1241, 1256-72). Respondent Farm obtained the necessary permits from David Lansing, the Town of Essex Code Enforcement Officer, who determined that the buildings met state building code requirements, had complied with Town regulations, and that the water and septic systems were protective of human health and the environment and complied with state and local law. (R. 1187-1232).

The modular housing cluster is located several hundreds of feet from the Boquet River, with several residences and businesses, a railroad track, some high ground, and roads situated between the farm worker houses and the river. (R. 1177, 1282, 1317). In fact, the farm worker houses are well-located, no more than

a few feet east of the Hamlet of Whallonsburg in the Town of Essex, New York. (R. 1281-82, 1317).[2] Appellant has decided that the modular homes can stay where they are, but insisted on treating them as a residential subdivision. (R. 869-70). Appellant now abandons this determination. (See POINT III, *infra*).

The farm employee housing cluster is ideally located to provide easy, energy efficient access to and surveillance of the adjacent barns. (R. 1177, 1276, 1317). These modular farm worker buildings, designed as a farmer community, surround a common courtyard and share a common well, driveway, septic system and leach field. (R. 1177-78, 1241-45). Respondent Farm did not subdivide its land to build these farm buildings.[3] As a three-house cluster of farm buildings with common infrastructure, the modular housing cannot be subdivided. (R. 1390-91). These farm worker buildings are customary, appropriate and essential to the success of Respondent Farm's operation. (R. 1276, 1358-60, 1389-91).

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[2] This is important, because a developer could build a 99 unit apartment complex with 15,000 square feet of first floor retail space supported by 175 parking spaces, on the river (west) side of Christian Road right across the street from Respondent Farm's housing cluster and this large apartment/retail development project would not need a permit from Appellant Agency. See N.Y. Exec. Law § 810 1(a)(3) (threshold for "Class A" projects in hamlets is 100 residential units). Concentrating development at the hamlet, where unlimited growth is allowed, is a farming plan that ought to be recognized, commended and exemplified – not penalized.

[3] Appellant's Administrative Decision created an awkward enforcement position that ordered Respondent Farm to apply for a four-lot residential subdivision in a matter of days. Appellant unsuccessfully argued this illogical position before the lower court. Appellant now concedes that it is not seeking jurisdiction for the purported residential subdivision. (See Appellant's Brief, pg. 16, n.3). As discussed herein, this concession is fatal to Appellant's appeal.

Construction proceeded until mid-March 2007, when Barbara Lewis, an officer of Respondent Farm, contacted Appellant's staff after hearing rumors of complaints about the farm's modular housing project. Respondent Farm voluntarily halted construction of the employee houses. (R. 1179). Without being asked, Respondent then filed a permit application to inform the Appellant of the farm's plans to construct the "three single family dwellings in a farm compound to be used by farm employees exclusively." (R. 996). Respondent Farm expected that this verified information established its right to build the farm buildings as exempt structures, without the need for an Agency permit. (R. 1178-79).

In May 2007, Appellant's staff insisted upon a "settlement agreement" demanding that Respondent Farm (i) allow Appellant unprecedented review of future farm buildings even though they are exempt under the Park Act, (ii) waive its right to challenge Appellant's jurisdiction to regulate farming, (iii) treat the farm worker houses as a three-home residential subdivision rather than as farm buildings; and (iv) immediately pay a $10,000 fine. (R. 972-75, 1179).

Respondent Farm maintained that it could not label the farm worker housing cluster a residential subdivision without destroying the tax structure and economic viability of the farm because the housing was no different from a barn, silo, fence or shed on the farm's books. (See POINT II.D, *infra*). Nevertheless, Appellant commenced an enforcement proceeding, imposed a $50,000 fine and asserted

regulatory power over all development on the Farm. (R. 869).[4] The Article 78 proceeding below followed.

The trial court found that these facts are not in dispute, (R. 214-217), and Appellant does not raise a dispute as to the trial court's factual findings.

PROCEDURAL HISTORY

On June 26, 2007, Respondent Farm prematurely commenced an action (Essex County Index No. 0498-07) seeking a declaratory judgment that Appellant could not prohibit the completion of the farm employee housing project because the regulation of farm development and farm buildings is beyond the Appellant's authority. (R. 13-29, 1181). The very next day, Appellant issued a purported cease and desist letter prohibiting the completion of the farm buildings. (R. 149-51, 1181). Appellant never attempted to enforce the cease and desist letter.

On August 16, 2007, Supreme Court (Ryan, J.), issued a Decision and Order that denied the Lewis Family Farm's motion for declaratory relief, converted the action into an Article 78 proceeding and summarily dismissed it as premature, with leave to commence a new Article 78 proceeding since Appellant had not yet issued a final decision or taken any enforcement action against Respondent Farm. (R. 4-12). However, in dismissing the premature action, Supreme Court (Ryan, J.)

[4] Appellant's effort to "correct" the Administrative Determination ten (10) days after the Article 78 proceeding was commenced by Respondent Farm must be ignored. (R. 855-56). An agency cannot "amend" an order *sua sponte* after the matter is in litigation. This violates the State Administrative Procedure Act. However, the Court can take this illegal act into consideration since it reveals Appellant's awareness of its jurisdictional overreach. (See POINT III, *infra*).

improperly commented on the merits and wrongly advised Appellant that it had jurisdiction over the Respondent Farm's farm buildings.[5] (R. 8-9, 237-42).

On September 5, 2007, Appellant finally commenced an administrative enforcement proceeding against Respondent Farm by serving a Notice of Apparent Violation. (R. 927-35). Appellant alleged that Respondent Farm's employee housing cluster was illegal until Appellant issues a permit authorizing a three-home residential subdivision and sought a massive fine. (Id.).

Appellant's enforcement action against Respondent Farm was met with deep legal concern from farming institutions seeking to enlighten Appellant as to the Right-to-Farm issues at stake. On November 26, 2007, the Commissioner of the New York State Department of Agriculture wrote the Chairman of the Appellant Agency's board, pleading with Appellant to engage in an inter-agency discussion regarding the major legal and policy implications arising from Appellant's attempt to control farm development. (R. 1358-60). Appellant refused. (R. 1355-56).

On February 1, 2008, the Department of Agriculture issued a formal determination pursuant to Section 308(4) of the Agriculture & Markets Law

[5] Notably, not only was the advisory dicta in Supreme Court's (Ryan, J.) Decision and Order improperly rendered, as Supreme Court (Meyer, J.) found, but it was also wrong as a matter of law. Acting Justice Ryan speculated, without any basis in law, that "if the Court were to accept [Respondent Farm's] interpretation of [the law], the APA could do nothing if a landowner built a cow barn within a few feet of the river." (R. 9). This assumption ignores the law that requires cow barns and all other "agricultural use structures" in resource management areas—including Respondent Farm's employee houses—to be located more than 150 feet from the Boquet River. See 9 NYCRR § 577.6(b)(3).

finding that (i) Respondent Farm is a productive, USDA Certified organic farm located in a protected, state certified agriculture district; (ii) the on-farm worker houses at issue are essential to Respondent Farm because suitable off-farm housing is not available; (iii) on-farm employee housing is a common farm practice; (iv) on-farm employee housing is an integral part of a "farm operation" as defined in New York State's Right-to-Farm Law; and (v) that Respondent Farm's employee houses are an integral part of the farm operation that could not readily be separated or subdivided. (R. 1389-91). Appellant ignored this binding determination and declined to challenge it in a special proceeding.

Further, on February 21, 2008, New York Farm Bureau, Inc., a non-profit organization comprised of over 30,000 farm families, issued a letter to then Governor Spitzer and Appellant supporting the Department of Agriculture's formal opinion. (R. 1423-24). This was also ignored.

Finally, on March 5, 2008, the Adirondack Park Local Government Review Board passed a resolution finding that the enforcement proceeding against Respondent Farm conflicted with the terms of the Park Act, which provides that farm buildings are non-jurisdictional. (R. 1428-29).

Notwithstanding the foregoing, Appellant issued a final enforcement determination on March 25, 2008 ("Administrative Determination") asserting jurisdiction over Respondent Farm and assessing a $50,000 penalty. (R. 858-70).

Appellant's Administrative Determination correctly found that the farm buildings at issue are farm worker houses and that they are "important to the enhancement of farm operations." (R. 866). Notwithstanding this finding, Appellant asserted jurisdiction, determined that all three farm employee houses violate the APA Act and Rivers Act,[6] and directed Respondent Farm to (i) forego any right to challenge Appellant's jurisdiction; (ii) apply for a permit for a four-lot residential subdivision; (iii) pay a $50,000 fine; and (iv) refrain from occupying the farm buildings until a permit was issued and the fine was paid. (R. 869).

On April 8, 2008, Respondent Farm commenced an Article 78 proceeding seeking to vacate and annul the Administrative Determination (Index No. 315-08). (R. 277-309). Several days later, Appellant commenced its duplicative action in the nature of a counterclaim seeking to enforce the Administrative Determination, in which Appellant sought to punish Respondent Farm's officers, Barbara Lewis and Sandy Lewis, by naming them as individual defendants (Index No. 332-08). (R. 518-33). The actions were consolidated. (R. 270-71).

On July 2, 2008, Supreme Court (Meyer, J.) issued a Decision and Order that, *inter alia*, (i) dismissed the duplicative enforcement action as against defendants Sandy Lewis and Barbara Lewis; and (ii) held that Supreme Court's

[6] Ignoring Appellant staff's own affidavits, which swore that only two of three farm buildings (without indicating which two) were illegal, the Administrative Determination found, without any basis in the record, that all three farm worker houses were illegal. (See R. 120, 868, 927-34).

(Ryan, J.) erroneous advisory opinion, for the most part, did not affect Respondent Farm's ability to challenge the Administrative Determination. (R. 234-44).

On November 19, 2008, Supreme Court (Meyer, J.) issued a Decision and Order that retains the seamless fabric of New York laws providing blanket protection to farmers against the chill of land use regulations by "annulling the Agency's March 25, 2008 determination on the ground that it was affected by an error of law, as well as [granting] summary judgment dismissing the Agency's amended complaint dated May 14, 2008 and all causes of action therein." (R. 213-227). Several days later, the lower court signed a final Judgment, which ended the consolidated cases below and directed the Essex County Treasurer to release the escrowed $50,000 penalty to Respondent Farm. (R. 209-10). Appellant appeals.

ARGUMENT

Standard of Review

This Court's review of Appellant's Administrative Determination is "limited to the grounds invoked by the agency at the time the determination was made and [this] court may not confirm on other grounds that it finds to be more proper." Matter of Friends of the Shawangunks, Inc. v. Zoning Bd. of Appeals of Town of Gardiner, 56 A.D.3d 883, 884 (3d Dep't 2008); Matter of Sherbyn v. Wayne-Finger Lakes Bd. of Coop. Ed. Svcs., 77 N.Y.2d 753, 758 (1991); SEC v. Chenery Corp., 332 U.S. 194, 196, 67 S. Ct. 1575 (1947).

POINT I

THE TRIAL COURT PROPERLY ANNULLED APPELLANT'S ADMINISTRATIVE DETERMINATION

The trial court correctly concluded that single family dwellings built and used for farm workers inside the Adirondack Park are "directly and customarily associated with agricultural use" and thus exempt from Agency jurisdiction in resource management areas, just like barns and sheds. (R. 225) (reported at Lewis Family Farm, Inc. v. Adirondack Park Agency, 868 N.Y.S.2d 481, 2008 NY Slip Op. 28455 (Essex County Sup. Ct. Nov. 19, 2008)). In reasoning that this fundamentally correct point of statutory construction was also consistent with the entire fabric of New York Agriculture Law, the trial court noted:

> Though not controlling here, farm residential buildings have been held to constitute 'farm operations' exempt from town zoning regulations under Agriculture and Markets Law § 305-a (Town of Lysander v. Hafner, 96 N.Y.2d 558, 562, 733 N.Y.S.2d 358, 359, 759 N.E.2d 356, 357). In so holding, the court in *Lysander* relied upon the Legislature's recognition that residential buildings on a farm "contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise" (Agriculture and Markets Law § 301[11]) (Id.).

Lewis Family Farm, Inc., 868 N.Y.S.2d at 492. (R. 225).

As the trial court observed in canvassing New York law, the Legislature defined "farm building", interpreted in Town of Lysander to include farm worker housing, and "agricultural use structure" the same way. (Id.). Thus, the trial court

correctly found that there is no reason to conclude that the Legislature intended different treatment of farm worker housing inside the Adirondack Park.

Moreover, the trial court applied fundamental principles of statutory construction and held that "[a] statute must be read and given effect as it is written by the Legislature . . .(Lawrence Const. Corporation v. State, 293 N.Y. 634, 639, 59 N.E.2d 630, 632)." (R. 225). See also Matter of Kittredge v. Planning Bd. of Town of Liberty, 57 A.D.3d 1336, 1339 (3d Dep't 2008) (stating that courts must harmonize all parts of a statute and give meaning to it as a whole).

A. The Park Act Clearly Includes Farm Worker Houses Within The Definition of Exempt Agricultural Use Structures

The Park Act contains the following operative definitions:

1. "Agricultural use structure" means "any barn, stable, shed, silo, garage, fruit and vegetable stand ***or other building or structure directly and customarily associated with agricultural use***" (Executive Law § 802[8]a) (emphasis supplied).

2. "Structure" is defined to include "single family dwellings" (Executive Law § 802[62]).

3. "Single family dwelling" means "any detached building containing one dwelling unit, not including a mobile home" (Executive Law § 802[58]).

4. "Agricultural use" means "any management of any land for agriculture; raising of cows, horses, pigs, poultry and other livestock; horticulture or orchards; including the sale of products grown or raised directly on such land, and including the construction, alteration or maintenance of fences, agricultural roads, agricultural drainage systems and farm ponds" (Executive Law § 802[7]).

5. "Accessory structure" means "any structure or a portion of a main structure customarily incidental and subordinate to a principal land use or development and that customarily accompanies or is associated with such principal land use or development, including a guest cottage not for rent or hire that is incidental and subordinate to and associated with a single family dwelling" (Executive Law § 802[5]).

(R. 220, 223).

These definitions are important in serving the broad legislative purpose of insulating farms from all regulation by Appellant under the Land Use Plan that is the centerpiece of the Park Act.

It is well-established that "administrative agencies, as creatures of statute, are without power to exercise any jurisdiction beyond that conferred by statute." Flynn v. State Ethics Comm'n, 208 A.D.2d 91, 93 (3d Dep't 1995); see also Foy v. Schechter, 1 N.Y.2d 604 (1956) (stating that an agency must have jurisdiction in order for its determinations to be valid, and absent such jurisdiction, agency acts are void). To this end, "the APA cannot operate outside its lawfully designated sphere, with the propriety of its actions often depending upon the nature of the subject matter and the breadth of the legislatively conferred authority." Gerdts v. State, 210 A.D.2d 645, 648-49 (3d Dep't 1994).

Here, Appellant cannot operate outside of the scope of the Park Act in order to usurp jurisdiction over Respondent Farm's farm buildings. The Legislature specifically determined to "exempt bona fide forest and agricultural management

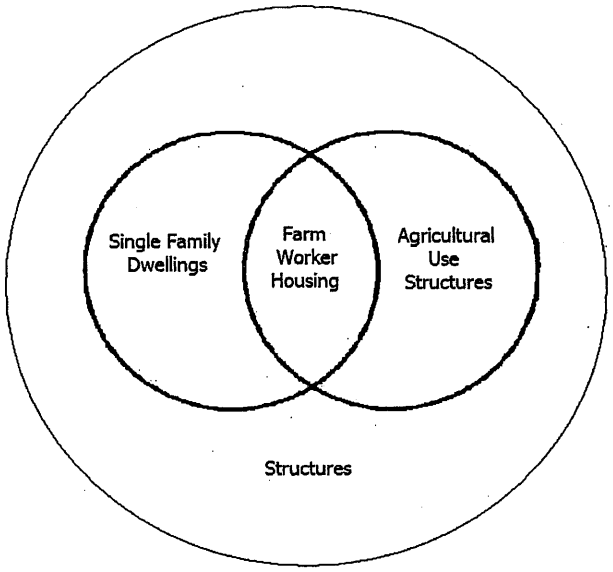
practices" from regulation by the Appellant Agency. (McKinney's 1971 Session Laws of New York, Legislative Memoranda, Adirondack Park Agency-Creation, ch. 706 pg. 2471). Although the height, size, location and density of principal buildings in the Adirondack Park are comprehensively regulated, "agricultural use structures" are not regulated or even counted under the Park Act's intensity guidelines. N.Y. Exec. Law §§ 802(50); 805(3). Indeed, the Park Act specifically instructs the Appellant not to regulate farming. N.Y. Exec. Law § 815(4)(b). Under the Park Act's statutory scheme, "agricultural use structures" and "agricultural uses" in resource management areas do not require an Agency permit because they are primary compatible uses which are neither "Class A" nor "Class B" regional projects (Executive Law §§ 805[3][g][4][1]-[2] and 810[1][e], [2][d]). (R. 220). See also 9 NYCRR §§ 577.4[b][3][ii] and 577.6[b][3] (stating that no permit is required for "agricultural use structures" in recreational river areas unless located "inside the mean high water mark of the river or within 150 feet of the mean high water mark"). (R. 220). Thus, the trial court necessarily concluded that if a "single family dwelling" can be an "agricultural use structure" under the Park Act's plain definitions, then Appellant lacks jurisdiction over Respondent's farm worker houses. (R. 221).

Appellant's erroneous Administrative Determination found that that the word "structure" in the definition of "agricultural use structure" (Executive Law §

802[8]) means an "accessory structure". (R. 865-66). Specifically, Appellant's Administrative Determination erroneously found that "[t]he language '...or other building or structure directly and customarily associated with agriculture use' is intended to include other structures of an accessory nature only." (R. 866). The trial court disagreed with Appellant's legal conclusion, declaring that: "Clearly, had the Legislature intended to limit 'agricultural use structures' to 'accessory structures' and preclude a single family dwelling from qualifying as an 'agricultural use structure', it would have done so by inserting appropriate language readily at hand, including using its own definition." (R. 224).

Realizing this fundamental error, Appellant now argues that a "single family dwelling" cannot be an "agricultural use structure" because both of those terms are separately defined in the Park Act. (See Appellant's Brief, pg. 28). However, under Appellant's logic, a "single family dwelling" would also not be a "structure" since both of these terms are also defined separately under the Park Act. This is nonsense because, of course, a house is a structure.

The trial court found that the definition of "agricultural use structure" expressly includes the term "structure", which is separately defined to include "single family dwelling". (R. 224). Thus, the trial court recognized that the Legislature necessarily provided for some overlap in these definitions, which is fairly illustrated in the following Venn diagram:



Appellant continues to have no response to this basic truth, which the trial court found is revealed in any fair and rational interpretation of the operative definitions in the Park Act. (R. 224).

The trial court correctly concluded that, contrary to Appellant's erroneous Administrative Determination, the Park Act's statutory language cannot be manipulated to show legislative intent that the word "structure" in the definition of "agricultural use structure" (Executive Law § 802[8]) means an "accessory structure". (R. 223). The Legislature defined "accessory structure" separately, yet chose not to use that more limited term in its definition of "agricultural use structure" (Executive Law § 802[8]).

"Courts are constitutionally bound to give effect to the expressed will of the Legislature and the plain and obvious meaning of a statute is always preferred to any curious, narrow or hidden sense that nothing but a strained interpretation of

legislative intent would discern." Finger Lakes Racing Assoc. v. NYS Racing & Wagering Bd., 45 N.Y.2d 471, 479-80 (1978). Thus, Appellant's interpretation of the Park Act would "make the judicial superior to the legislative branch of government and practically invest it with lawmaking power" in violation of law. Id. As the trial court found, this must not happen.

Heeding its constitutional obligation, the trial court aptly cautioned that "court[s] should not ignore the words of a statute, clear on its face, to reach a contrary result through judicial interpretation (McKinney's Cons. Law of NY, Book 1, Statutes, § 76; Kleefeld, 55 N.Y.2d 253, 259, 448 N.Y.S.2d 456, 433 N.E.2d 521)." (R. 223). Moreover, if the court were to accept "the Agency's fundamentally incorrect reading of the Park Act" (i.e., that "structure" in the definition of "agricultural use structure" should be read to mean "accessory structure"), then such a reading would render the term "structure" superfluous, redundant and would deprive the term of its own separate meaning. (R. 223-24) (citing SIN, Inc. v. Dep't of Fin. of City of New York, 71 N.Y.2d 616, 621, 528 N.Y.S.2d 524, 523 N.E.2d 811 (1988)). Simply stated, it is incorrect to ignore a portion of a statute as surplus, which is why the trial court held that structures that are "directly and customarily associated with agricultural use" are "agricultural use structures" under the Park Act. (R. 224).

The trial court further concluded that the Legislature's exclusion of "agricultural use structures" from all Agency regulation is a clear indication that the exclusion was intended. (R. 224) (citing Pajak v. Pajak, 56 N.Y.2d 394, 397, 452 N.Y.S.2d 381, 437 N.E.2d 1138, McKinney's Cons. Laws of NY, Book 1, Statutes § 74; People v. Tychanski, 78 N.Y.2d 909, 911-912, 573 N.Y.S.2d 454, 456, 577 N.E.2d 1046, 1048). Despite Appellant's exasperation by this fundamental statutory truth, "Courts cannot correct supposed error, omissions or defects in legislation." (R. 226) (citing McCluskey v. Cromwell, 11 N.Y. 593, 601-02 (1854)); see also People v. Dan, 55 A.D.3d 1042, 1044 (3d Dep't 2008) (holding the same).

Respondent secured building permits from the Town of Essex, which is all that is required under both the Park Act and Town of Lysander. (R. 1247-50). On-farm employee housing is essential for a self-sustaining farm in the Adirondack Park. (R. 1176, 1276). Because of the complexities of organic farming, any successful organic farm requires skilled professional employees. (R. 1276). Such employees are housed on site so that they can properly monitor and survey the adjacent barns and provide around the clock surveillance. (Id.). On-farm housing allows the farm to leverage the knowledge and training of employees with high levels of education. (R. 1176, 1276). These facts are well established in the

record, unchallenged by Appellant, as provided through the testimony of Klaas Martens, one of New York State's most successful organic farmers. (R. 1274-76).

Thus, the trial court necessarily found that Respondent Farm conclusively established that (i) the buildings at issue in this proceeding are farm employee houses; and (ii) on-farm employee housing is a sound agricultural practice "directly and customarily associated with agricultural use" that provides the foundation for this self-sustaining farm. (R. 1176, 1276, 1389-91). Respondent Farm's modular farm houses are "agricultural use structures" that are as or more important to a farming operation as a barn, a silo or a fence. As such, they are exempt from Appellant's jurisdiction under the unambiguous terms of the Park Act.

B. Appellant Erroneously Interprets the Park Act

Appellant's argument in favor of asserting jurisdiction rests almost entirely on the grammatical conjunction "and" in the definition of "principal building". (See Appellant's Brief, pp. 26-34). The Park Act defines "principal building" as:

> All agricultural use structures ***and*** single family dwellings or mobile homes occupied by a farmer of land in agricultural use, his employees engaged in such use and members of their respective immediate families, will together constitute and count as a single principal building.

N.Y. Exec. Law § 802(50) (emphasis supplied).

Appellant wrongly claims that the definition of "principal dwelling" gives it jurisdiction over all projects so that it can determine whether a structure counts as a

principal building. (See Appellant's Brief, pg. 8). The Legislature already made the determination that farm buildings do not count and expressly instructed Appellant to ignore farm buildings because they are invisible to the Land Use Plan. Appellant ignores this legislative directive and stands the definition on its head. The Administrative Determination essentially states that, because this sub-definition contains the word "and" instead of the word "including", single family dwellings were never intended to be covered by the broad definition of "agricultural use structures." (R. 865-66). This is plain wrong for three reasons.

First, use of the word "including" in place of the word "and" would have been incorrect, which the Legislature clearly knew when it wrote the definition. Under New York law, a farm owner's home, such as the home of Sandy and Barbara Lewis, is not an agricultural use structure. (See POINT II.D, *infra*). It is a single family dwelling, but it is not an "agricultural use structure". Appellant is entitled to treat it as such. So, it would have been incorrect and confusing for the Legislature to have used "including" rather than "and" as a conjunction between farm buildings and all houses on farms.

Second, Appellant's interpretation and emphasis on the word "and" fails to acknowledge the syntax of the entire sentence and the multiple meanings of the conjunction. Statutes are never to be construed by strictly adhering to technical and grammatical rules. N.Y. Statutes § 251 (McKinney 1971). It is well-

established that dictionary definitions are considered "useful as guide posts" in determining the legislative intent of a word. N.Y. Statutes § 234 (McKinney 1971). Merriam-Webster defines the word "and" to include "supplemental explanation."[7] Thus, when the Legislature said that all agricultural use structures and single family dwellings occupied by a farmer and his employees will count as one "principal building," it meant to supplement rather than limit the definition of "agricultural use structure." Indeed, if the Legislature had used the word "including" in place of the word "and", the statute would not make sense because it would then include a farmer's personal residence in the definition of "agricultural use structure."

Finally, the words in a statute must be construed in connection with other statutes *in pari materia* and in harmony with the circumstances surrounding the enactment of the statute. See N.Y. Statutes § 234 (McKinney 1971); Matter of Plato's Cave Corp. v. State Liquor Auth., 68 N.Y.2d 791, 793 (1986); Matter of Inter-Lakes Health, Inc. v. Town of Ticonderoga Town Bd., 13 A.D.3d 846, 848 (3d Dep't 2004). Thus, the definitions of "principal building" and "agricultural use structure" must be construed in connection with Article 25-AA of the Agriculture and Markets Law, which requires all state agencies to modify their procedures and regulations to encourage farming. Read in harmony with the circumstances

[7] See http://www.merriam-webster.com/dictionary/and (last visited March 26, 2009).

surrounding the enactment of the Park Act, the definition of "agricultural use structure" most certainly includes farm worker buildings. See Town of Lysander, *supra*. This is the only reading of the Park Act that would breathe life into the legislative intent surrounding the enactment of the Park Act and Article 25-AA of the Agriculture and Markets Law. See N.Y. Statutes § 92 (McKinney 1971) (stating that "legislative intent is said to be the fundamental rule, the great principle which is to control—the cardinal rule—and the grand central light in which all statutes must be read") (internal quotations omitted). Simply stated, Appellant is unable to identify any legislative intent empowering it to treat farm worker housing as non-agricultural buildings when other governmental agencies and departments treat them as unregulated farm buildings.

Appellant's erroneous Administrative Determination wrongfully concludes that "single family dwellings" are the "keystone of Agency jurisdiction". (R. 866). Rather, Appellant's sole purpose is to administer the Land Use Plan, which pertains to "principal buildings" – not single family dwellings. See N.Y. Exec. Law § 805(3). Thus, there is no clearer indication of legislative intent than the special, exclusionary definition of "principal building" that relates only to farms. The hallmark of the Land Use Plan is to impose intensity guidelines, yet the guidelines do not apply to farms. Appellant is in the absurd position of arguing that Respondent Farm's housing cluster is jurisdictional, in the face of the admission

that must be made that the Park Act deems the farm buildings invisible to the Land Use Plan itself. Surely, there is no legislative intent to regulate buildings that do not count and, thus, are immaterial.

C. Appellant's Erroneous Reading of the Park Act Harms the Open Space Plan that is a Core Legislative Purpose of the Park Act

The Park Act states that Appellant's "policy shall recognize the major state interest in the conservation, use and development of the Park's resources and the preservation of its open space character." N.Y. Exec. Law § 801. To be sure, farmland in state-certified agricultural districts is rare inside the Park. (R. 1285). Thus, the statutory schemes of the Park Act and the Rivers Act are designed to protect and conserve the open space that is fostered by farming. The Legislature's intent to protect the open space in the Champlain Valley inside the Park is clear:

> Important and viable agricultural areas are included in resource management areas, with many farms exhibiting a high level of capital investment for agricultural buildings and equipment. These agricultural areas are of considerable economic importance to segments of the park and provide for a type of open space which is compatible with the Park's character.

N.Y. Exec. Law § 805(3)(g)(1).

The Legislature realized that the Land Use Plan only works with sustainable agriculture inside the Park. Indeed, the Legislature sought to encourage the creation of open space in resource management areas, where the Respondent Farm is located, by supporting farm development and making it clear to Appellant that

all farm buildings, including farm worker housing, are not to be counted in the intensity guidelines that are the crux of the Land Use Plan. See N.Y. Exec. Law 802(50)(g) (stating that farm employee houses do not count as principal buildings).

Appellant's contention that the trial court must be reversed because farm worker houses "have great potential to adversely impact the natural resources and scenic vistas in the Adirondack Park" is a red herring. (See Appellant's Brief, pp. 3-4). Appellant cannot regulate any agricultural use structures, even if a farmer should decide to build an 80-foot tall barn perched on a ridgeline. Farm worker housing, like all farm buildings, is immaterial to the vistas that otherwise can be freely impacted by all farmers inside the Park because the Legislature acknowledged that farms create—not destroy—open space inside the Park.

No farm must, no farm can, and no farm will be subjected to development controls by Appellant, as the New York Farm Bureau, Inc., has made clear to the trial court.[8] In context of modern farming technology, no self-sustaining farm can succeed without on-farm worker housing, a fact that is established and unchallenged on this record. To be sure, Respondent Farm will fail if Appellant succeeds in usurping jurisdiction because the farm cannot be viable without on-farm worker housing. Appellant demands that Respondent Farm file a permit

[8] In addition to appearing as *amicus curiae* for Respondent Farm in the Article 78 proceeding below, New York Farm Bureau, Inc., has been granted permission to file an *amicus curiae* brief in support of Respondent Farm's opposition to Appellant's appeal.

application for a four-lot residential subdivision. (R. 869). If the farm is broken up into sites as Appellant has commanded, the two square mile farm in a resource management area can be developed with thirty (30), 42.7-acre home sites. See N.Y. Exec. Law § 805(3)(g)(3). Of course, this will defeat the open space character in resource management areas that was envisioned by the Legislature by protecting farms from Agency regulation in the first place.

D. Appellant Erroneously Interprets the Rivers Act

The Wild, Scenic and Recreational River System Act (the "Rivers Act") was enacted pursuant to a legislative finding that certain rivers need buffer protections from development. N.Y. Envtl. Conserv. Law § 15-2701(1).

Except for a few select areas where wild rivers are found, the Legislature made clear that the right to farm, as bolstered by the Constitution and New York's Agriculture and Markets Law, ought to be fortified with respect to the regulation of development near scenic and recreational rivers. Thus, the Rivers Act specifically provides as follows:

> In recreational river areas, ***the lands may be developed for the full range of agricultural uses***, forest management pursuant to forest management standards duly promulgated by regulations, stream improvement structures for fishery management purposes, ***and may include small communities as well as disbursed or cluster residential areas***.

N.Y. Envtl. Conserv. Law § 15-2709(2)(c) (emphasis supplied).

Appellant, the agency responsible for administering the Rivers Act, followed through with this legislative directive and promulgated the following regulation:

> The following ***may be undertaken without a permit*** if in compliance with the restrictions and standards set forth in Section 577.6 of this Part:
>
> In recreational river areas:
>
> Agricultural uses, agricultural use structures, open space recreation uses, game preserves and private parks . . .

9 NYCRR § 577.4(b)(3)(ii) (emphasis supplied).

Moreover, Appellant's regulations provide that "agricultural use structures" may be constructed in a river area without a permit as long as the structures are located at least 150 feet from the mean high water mark of the river. See 9 NYCRR § 577.6(b)(3). (R. 220). Thus, a farm building may be constructed without a permit if it is located more than 150 feet from the mean high water mark of a protected river. (Id.).

Here, it is undisputed that Respondent's farm employee buildings are located several hundreds of feet from the Boquet River. (See R. 1177). Thus, since Respondent Farm's farm worker houses are "agricultural use structures" under the Park Act, the buildings are not subject to Rivers Act jurisdiction, as the trial court correctly found. (R. 226-27).

E. Appellant's Erroneous Legal Conclusion is Not Entitled to Deference

Appellant attempts to mislead this Court by claiming that Appellant made a factual determination about Respondent Farm's farm buildings in order to gain access to an inapplicable line of cases that would entitle Appellant's Administrative Determination to deference. (See Appellant's Brief, pp. 22-26).[9] The Court must not accept this falsehood. As the trial court properly found, the essential facts are not in dispute and this entire case hinges solely on the statutory interpretation of definitions contained in the Park Act. (R. 214, 221).

Appellant claims that it made a factual determination that Respondent Farm's farm worker buildings are "single family dwellings" and, therefore, this determination should be given deference. However, Appellant did not make a "determination" that the buildings are, in fact, houses. In fact, prior to Appellant's commencement of the enforcement proceeding, Respondent Farm informed Appellant that the "three single family dwellings [are] in a farm compound to be used by farm employees exclusively." (R. 996). To be sure, at both the administrative level and trial court level, Appellant has never questioned whether the farm buildings at issue are, in fact, farm worker dwellings. Only now on

[9] None of the cases cited by Appellant support the contention that Appellant's legal conclusion that "single family dwelling" cannot be "agricultural use structures" is entitled to deference. See e.g., Flacke v. Onondaga Landfill Sys., Inc., 69 N.Y.2d 355, 363 (1987) (deferring to DEC's factual determination concerning a landfill); Matter of Riverkeeper v. Johnson, 52 A.D.3d 1072 (3d Dep't 2008) (deferring to DEC's factual determination as to the correct calculation of water flow reduction at a plant).

appeal does Appellant question the use of the dwellings. Appellant's newly-minted argument misses the point.

In Town of Lysander, the Court of Appeals deferred to the Department of Agriculture's determination that farm worker housing is an integral part of farm operations. Town of Lysander, 96 N.Y.2d at 564 (stating that the "Commissioner's view in this regard is entitled to deference"). Here, Appellant's Administrative Determination makes the same determination and acknowledges that "farm worker housing is important to the enhancement of farm operations." (R. 866). Supported by Affidavits in the record (R. 1174-82, 1274-77) and the Department of Agriculture's formal opinion concerning Respondent Farm's farm worker houses (R. 1389-91), this is the only factual determination entitled to deference.[10]

Appellant's legal conclusion that "single family dwellings" cannot be "agricultural use structures" under the Park Act is an irrational and erroneous statutory interpretation that is not entitled to any deference by this Court. See Matter of Putnam Northern Westchester Bd. of Coop. Educ. Svcs. v. Mills, 46 A.D.3d 1062, 1063 (3d Dep't 2007) (citing Matter of Madison-Oneida Bd. of

[10] Appellant ignores the fact that the Administrative Determination made this factual determination. Appellant misrepresents the record throughout its brief in an effort to distract the Court from the pure question of law at hand. Even Appellant's "Issue Presented" is disingenuous, stating that the Appellant should not "lose jurisdiction if the landowner states that it intends to use the dwellings to house farm workers". (See Appellant's Brief, pg. 4). It is beyond any reasonable doubt that all three farm buildings are, indeed, farm worker houses. Indeed, this Court has permitted the use of one of the three farm buildings to be used as it was intended to be used during the pendency of this appeal. (R. 261-63).

Coop. Educ. Svcs. v. Mills, 4 N.Y.3d 51, 29 [2004]); see also Kennedy v. Novello, 299 A.D.2d 605, 607 (3d Dep't 2002) (acknowledging that "a question of 'pure legal interpretation' of clear and unambiguous statutory terms requires no deference to an agency's interpretation").

As the Court of Appeals found in Town of Lysander, the inquiry as to whether farm worker housing fits into a statutory exemption is clearly statutory in nature. See Town of Lysander, 96 N.Y.2d 558 (examining this inquiry under the Right-to-Farm Law). Here, the Legislature has instructed Appellant not to develop any agricultural expertise and not to regulate agricultural activities at all. N.Y. Exec. Law § 815(4)(b). Appellant has no agricultural expertise. The Park Act declines to provide Appellant with any responsibility with respect to agricultural matters. Appellant presumes to define and classify farm buildings when it lacks the expertise, understanding, and authority to do so. Therefore, the Administrative Determination is not entitled to deference by this Court. See Matter of Salvati v. Eimicke, 72 N.Y.2d 784, 791 (1988) (stating that only an agency "acting pursuant to its authority and within its area of expertise" is entitled to judicial deference).

POINT II

THE LEGAL PROTECTIONS FOR FARM WORKER HOUSING IN THE PARK ACT AND RIVERS ACT ARE CONSISTENT THROUGHOUT NEW YORK LAW

The exemptions for farm worker houses in the Park Act must be construed in connection with other identical farm building exemptions *in pari materia* and in harmony with the circumstances surrounding the enactment of the Park Act.

A. Appellant's Erroneous Reading of the Park Act and Rivers Act is Contrary to the New York State Constitution

In 1969, two years before the Park Act was enacted, Article 14 of the New York State Constitution was adopted by the People of New York State to protect the State's natural resources and agricultural lands. Specifically, Section 4 of Article 14 states as follows:

> The policy of the state shall be to conserve and protect its natural resources and scenic beauty and ***encourage the development and improvement of its agricultural lands*** for the production of food and other agricultural products.

N.Y. CONSTITUTION, Article 14, § 4 (McKinney 2006) (emphasis supplied).

This section of the New York State Constitution, which was adopted as part of the "Conservation Bill of Rights", imposes a mandatory duty upon Appellant to encourage improvement of farms—not penalize farm development. It also specifies that the development of agricultural lands is a matter "of particular importance for action by the legislature." Proceedings of the Constitutional

Convention of the State of New York, Vol. XI, Document No. 53, pg. 5 (1967). In fact, Section 4 of Article 14 further directs the Legislature "to provide for the exercise of various governmental powers to encourage the maintenance of lands in their agricultural state." Id.

The Constitutional directive to "encourage the development and improvement" of farm lands is contained in the very same Article of the New York State Constitution as the highly regarded and well-known "forever wild" clause. See N.Y. CONSTITUTION, Article 14, § 1 (McKinney 2006)[11] ("Conservation Article"). Accordingly, the "pro-farm development clause" is no less important than the "forever wild" clause, and it must be equally honored and obeyed. The Conservation Article states our promise to stand vigilant in conserving our forests and our farm soils. Just as all constitutional rights must be recognized, agricultural soils must be farmed to be conserved.

New York State's Constitution is unquestionably the supreme law of the State. See Dalton v. Pataki, 5 N.Y.3d 243, 296 (2005). Thus, Appellant must obey the New York State Constitution by construing its narrowly delegated powers consistent with encouraging the development and improvement of agricultural lands. Farm development is not to be regulated by Appellant. Appellant must not

[11] Section 1 of Article 14 of the New York State Constitution provides, in pertinent part, as follows: "The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands."

be empowered with farm development controls that are not wielded by any other board, town, state agency, or authority anywhere else in the State, because such empowerment and development control plainly is unconstitutional.

The trial court's sound interpretation of the operative definitions in the Park Act protects the statute from constitutional infirmity. As the trial court wisely understood, the constitutional issue need not be reached if this Court finds that Appellant lacks the statutory power it seeks in this case.[12] Indeed, every effort should be made to reconcile the Park Act with the Constitution. See In re Fay, 291 N.Y. 198 (1943) (stating that every statute has a presumption of constitutionality). That reconciliation is cogent and attainable upon this Court's affirmance of the trial court's ruling that Appellant cannot regulate farm worker housing.

Since this milestone amendment to the Constitution was adopted, the Legislature has carved a wide statutory sanctuary to express and support soil conservation rights and provide a safe harbor for all sound agricultural practices against any land use regulation by any department, board or agency. This statutory protection, built upon the foundation of the Conservation Article, is called the Right-to-Farm law. See N.Y. Agric. & Markets Law § 301, et seq.

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[12] By adopting the interpretation of the Act set forth herein, the Court would also avoid the precariously difficult situation regarding any effort by the New York State Attorney General to defend the Appellant's Administrative Determination as comporting with the New York State Constitution, given his sworn obligation to uphold and defend it. The dilemma is avoided if the Court finds that Appellant lacks jurisdiction to regulate Respondent Farm's farm worker buildings.

B. Appellant's Erroneous Reading of the Park Act and Rivers Act is Contrary to the Right-to-Farm Law

In 1971—the same year that the Agency was formed—the Legislature enacted Article 25-AA of the Agriculture and Markets Law, also known as the Right-to-Farm Law. The Court of Appeals has succinctly stated the purpose of this statute as follows:

> The Legislature enacted [A]rticle 25-AA of the Agriculture and Markets Law in 1971 for the stated purposes of protecting, conserving and encouraging 'the development and improvement of [this State's] agricultural lands' (L 1971, ch 479, § 1). At that time and again in 1987 (L 1987, ch 774, § 1), the Legislature specifically found that 'many of the agricultural lands in New York state are in jeopardy of being lost for any agricultural purposes' due to local land use regulations inhibiting farming, as well as various other deleterious side effects resulting from the extension of nonagricultural development into farm areas.

Town of Lysander v. Hafner, 96 N.Y.2d 558, 563 (2001) (citing N.Y. Agric. & Mkts. Law § 300). To facilitate this purpose, the Legislature enacted Section 305 of the Agriculture and Markets Law to require all New York State agencies—including Appellant—to create and/or modify their regulations and procedures to support the development of farming in agricultural districts as here:

> 3. Policy of state agencies. It shall be the policy of **all** state agencies to encourage the maintenance of viable farming in agricultural districts and their administrative regulations and procedures shall be modified to this end...

N.Y. Agric. & Mkts. Law § 305(3) (McKinney 2004) (emphasis supplied).

This statutory mandate, which is more focused and direct than the Conservation Article, requires Appellant to modify and interpret its regulations and procedures in order to encourage farming in agricultural districts inside the Park. Id. The Park Act must be read consistent with this mandate. Appellant's regulations and procedures are clearly not "encouraging the maintenance of viable farming" in this case because the Administrative Determination violates the Constitution, state agricultural law, and the Park Act by penalizing Respondent Farm for constructing locally-permitted, exempt farm buildings.

Since the Park Act and the Right-to-Farm Law were both enacted in 1971, the Legislature was undoubtedly mindful of New York State's constitutional mandate to promulgate and maintain a policy of encouraging farm development, which was adopted only two years prior to the enactment of these statutes. Therefore, the Legislature's deliberate exclusion of "agricultural use structures," a defined term in the Park Act, from Appellant's jurisdiction, is informed by its historical context. That is, the Park Act was written to exempt farm buildings from Appellant's regulatory power promptly after the Constitution was amended to mandate a pro-farm development policy and at the same time that the Legislature established the statutory Right-to-Farm in agricultural districts. See Friedman v. Connecticut Gen. Life Ins. Co., 9 N.Y.3d 105, 115 (2007) ("A court must consider a statute as a whole, reading and construing all parts of an act together to determine

legislative intent, and...[give] effect and meaning...to the entire statute and every part and word thereof") (internal citations omitted); see also Briar Hill Lanes, Inc. v. Ossining Zoning Bd. of Appeals, 142 A.D.2d 578, 581 (2d Dep't 1988) ("The task in interpreting a statute or ordinance is to give effect to the intent of the body which adopted it"); American Motors Sales Corp. v. Brown, 152 A.D.2d 343, 349 (2d Dep't 1989) ("courts are required to harmonize statutes with each other as well as with the overall legislative intent in an effort to provide a logical and unstrained interpretation to each").

Appellant's contorted reading of the Park Act abuses and ignores the legislative intent and careful structure of the Park Act, which was crafted to be consistent with the Right-to-Farm Law and the then-recently amended Constitution. See N.Y. Statutes § 234; Matter of Plato's Cave Corp., 68 N.Y.2d at 793 (1986); Matter of Inter-Lakes Health, Inc., 13 A.D.3d at 848 (stating that legislative history must not be ignored even if the words of a statute appear to be clear). Under the Park Act, Appellant only has jurisdiction to review "Class A" and "Class B" regional projects within the Park. See N.Y. Exec. Law § 810. In defining this limited class of projects over which Appellant has jurisdiction, the Legislature was careful to protect farming by exempting farm buildings from Appellant's jurisdiction.

The fundamental truth that on-farm employee housing is an "agricultural use structure" under the Act is the same under the Right-to-Farm Law, as construed by the Court of Appeals. See N.Y. Agric. & Markets Law § 301, et seq.; Town of Lysander v. Hafner, 96 N.Y.2d 558, 759 N.E.2d, 733 N.Y.S.2d 358 (2001). In Town of Lysander, the Court of Appeals found that a single family dwelling used by a farm worker qualified as a "farm building" used in a "farm operation", even in the face of a statutory amendment that appeared to limit the scope of that term. Town of Lysander, 96 N.Y.2d at 563-64. The definition of "agricultural use structure" under the Park Act does not and should not differ from the definition of "farm building" under the Right-to-Farm Law, since both statutes were enacted at the same time following the adoption of the Conservation Clause to the New York State Constitution.

Here, the trial court's holding is harmonious with Town of Lysander, which held that the "protective reach" of the Right-to-Farm Law prohibits local government from regulating farm worker housing. Town of Lysander, 96 N.Y.2d at 564. The trial court's decision correctly recognized the wide statutory sanctuary that the Legislature afforded farm buildings under the Park Act.

C. Appellant's Erroneous Reading of the Park Act and Rivers Act is Contrary to the Department of Agriculture's Binding Determination in This Case Under the Right-to-Farm Law

On February 1, 2008, the Department of Agriculture made a formal determination under New York State's Right-to-Farm Law (N.Y. Agric. & Mkts. Law § 308(4)) that Respondent Farm's modular housing project is an agricultural land use. (R. 1389-91). The Department proclaimed that:

> Farm worker housing, including mobile, modular or stick-built homes, are an integral part of numerous farm operations. Farmers often provide on-farm housing for their farm laborers to, among other things, accommodate the long work day, meet seasonal housing needs and address the shortage of nearby rental housing in rural areas. The use of such homes for farm worker housing is a common farm practice. On-farm housing provides a practical and cost effective means for farmers to meet their farm labor housing and recruitment needs.

(R. 1390). Applying this finding here, the Department of Agriculture's formal opinion under the Right-to-Farm Law further determined that Respondent Farm's modular housing project is warranted and that the use of land for the employee houses in this case is undoubtedly "agricultural in nature." (R. 1391).

Appellant proclaims, for the first time, that it essentially disagrees with the Department of Agriculture's findings that Respondent Farm's use of its land for the modular housing project is "agricultural in nature" because it questions Respondent Farm's intent to use the land for agricultural purposes. (See Appellant's Brief, pp. 24, 26). Not only is Appellant's position unsupported by facts on this record, but

Appellant chose not to commence an Article 78 proceeding and challenge the Department of Agriculture's factual and legal determination. Thus, the Department's findings are binding on Appellant.

D. Appellant's Erroneous Reading of the Park Act and Rivers Act is Contrary to the Tax Law and Will Destroy the Economic Sustainability of Farming in the Champlain Valley

The Park Act recognizes that farms are of "considerable economic importance" to the Park. N.Y. Exec. Law § 805(3)(g)(1). This importance is reflected in the tax laws applicable to farmers. Under federal law, the Internal Revenue Code permits a farmer to treat the cost of boarding farm labor on the farm as a deductible labor cost.[13] There is no deduction for a farmer's personal residence. Both the Department of Agriculture and Markets[14] and New York State Board of Real Property Services[15] also adhere to this distinction.

The tax deduction makes it economically feasible for farmers to incur the cost of erecting farm housing for the benefit of farm laborers. Without this tax deduction and the ability to depreciate the cost of on-farm housing, Respondent Farm would be unable to afford the cost of suitable on-farm housing. Appellant's

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[13] See IRS Publication 225 – Farmer's Tax Guide, *available at* http://www.irs.gov/pub/irs-pdf/p225.pdf (last visited March 26, 2009).

[14] See http://www.agmkt.state.ny.us/AP/agservices/guidancedocuments/305-aFarmHousing.pdf (last visited March 26, 2009).

[15] See Form RP-483-Ins (providing farmers with a tax exemption for farm worker housing, but denying the exemption to the farmer's personal residence), *available at* http://www.orps.state.ny.us/ref/forms/pdf/rp483ins.pdf (last visited March 26, 2009).

erroneous Administrative Determination requires Respondent Farm to file a permit application for a 4-lot residential subdivision. (R. 869). This jeopardizes Respondent Farm's economic sustainability because if on-farm housing is considered residential real property under local law, the farm will lose the foregoing deductions.

To be sure, a farm owner's house must be considered a "single family dwelling" that is not an "agricultural use structure" under the Act. This is the only rational way to read the Act. A farmer's house is not an "agricultural use structure" because it is not "directly and customarily associated with agricultural use." See N.Y. Exec. Law § 802(8). The Park Act provides that the farmer's house and all associated "agricultural use structures" constitute only a "single principal building" for intensity purposes because only the farmer's dwelling is counted. That is, the farmer's home is the "principal building" and all the other farm buildings are "agricultural use structures" that are not counted under the Land Use Plan. See N.Y. Exec. Law § 802(50)(g).

Appellant's tenuous Administrative Determination has already inflicted substantial economic harm upon the productivity of Respondent Farm during the past three growing seasons. Without on-farm employee houses, the farm cannot recruit, much less hire, quality employees. Appellant's untenable legal theory

cannot support the economic devastation caused to Respondent Farm in violation of the Constitution, Park Act and Right-to-Farm Law.

Thus, the trial court properly annulled Appellant's Administrative Determination and restored Respondent Farm's right to economic sustainability inside the Park.

POINT III

APPELLANT'S ABANDONMENT OF ITS UNTENABLE "SUBDIVISION" DETERMINATION IS FATAL TO ITS APPEAL

Appellant is bound by the findings and determinations set forth in its Administrative Determination. Appellant cannot re-craft the Administrative Determination on appeal, nor can this Court review it on grounds other than those set forth in the Administrative Determination. See Matter of Friends of the Shawangunks, Inc., 56 A.D.3d at 884; Matter of Sherbyn, 77 N.Y.2d at 758.

Nevertheless, Appellant improperly asks this Court to ignore a substantial portion of the flawed Administrative Determination. Indeed, Appellant concedes that it "determined that Lewis Farm violated the APA Act and the Rivers Act by not obtaining a permit before subdividing its property...[, but] does not here press this basis for asserting jurisdiction." (Appellant's Brief, pg. 16 n.3). This concession is fatal to Appellant's appeal.

The First and Second Violations set forth in Appellant's Administrative Determination are findings that Respondent Farm "violated [the Park Act and Rivers Act] by failing to obtain a permit from the Agency prior to subdividing the Lewis Farm into sites by the construction of three new single family dwellings." (R. 867-68). The Administrative Determination then directs Respondent Farm to submit a permit application for a 4-lot residential subdivision. (R. 869). Thus, according to Appellant's Administrative Determination, a subdivision was automatically created by Respondent Farm's construction of the new farm worker buildings. (R. 867-69). Appellant now cannot claim jurisdiction by abandoning the irrational foundation of the Agency's Administrative Determination.

Appellant asks this Court to "confirm the APA's March 25, 2008 determination" in its entirety and "grant the APA's motion for summary judgment in Case No. 3", in which Appellant specifically pleads subdivision violations (R. 583-84), even though it appears to concede the fallacy of its *de jure* subdivision determination. (Appellant's Brief, pg. 48). This cannot stand. This Court cannot divorce Appellant's mistake from the Administrative Determination. This Court is "powerless to sanction the determination" because Appellant is unwilling to stand by the Administrative Determination that improperly found that a subdivision occurred. See Trump Equitable 5th Ave. Co. v. Gliedman, 57 N.Y.2d 588, 593, 457 N.Y.S.2d 466, 468, 443 N.E.2d 940, 942 (1982).

The trial court correctly held that a "subdivision", as that term is defined in the Park Act and Rivers Act, could not occur if the buildings being constructed are "agricultural use structures" since these structures are exempted from density controls under the Park Act. (R. 221). To be sure, Appellant has a legislative directive to ignore and not count farm buildings when it applies density controls under the Park Act. See N.Y. Exec. Law § 802(50)(g) (providing that "all agricultural use structures and single family dwellings or mobile homes occupied by a farmer of land in agricultural use, his employees engaged in such use and member of their respective immediate families, will together constitute and count as a single principal building" under Appellant's intensity guidelines). (R. 221). Thus, when a farmer constructs on-farm housing for her employees on lands of her own, no land is divided, no new lots are created and, indeed, the employee houses are not even counted as "principal buildings" in the density analysis under the Park Act's Land Use Plan. The trial court correctly found that "the Legislature made clear its intent that all such structures situate on agricultural lands be treated as one and the same under the APA Act." (R. 227).

Appellant's regulations clarify that the construction of farm employee housing does not automatically create a subdivision because "subdivision into sites" only occurs when an additional principal building is constructed. See 9 NYCRR § 570.3(ah)(3). Since the very definition of "principal building" that is

relied upon in this regulation demands that farm employee housing not be counted as a "principal building", the subdivision statute and regulations are not triggered such that Appellant gains subdivision jurisdiction. Farm employee housing is never an additional "principal building". See N.Y. Exec. Law § 802(50)(g). Since the land is not divided and no principal buildings are built, farm employee housing is never an automatic subdivision over which Appellant can skirt around legislative intent and assert jurisdiction. By conceding that a subdivision has not occurred, Appellant now recognizes the stark irrationality imbedded in the Administrative Determination that claims regulatory jurisdiction over buildings that are specifically deemed invisible to the Park Act's Land Use Plan, the administration of which is Appellant's sole mission.

Appellant fears that Respondent Farm's proper use of its agricultural lands might spur others to concoct a strategy to build farm employee homes on farm land, and then sell the land and buildings as a non-agricultural subdivision. (See Appellant's Brief, pp. 35-36). These "what if" arguments are without basis in this case. "What if" goes against the overwhelming evidence that Respondent Farm's employee housing cluster near the barn plaza is essential for a self-sustaining farm. (R. 1176, 1276). The record is clear that Respondent Farm has no interest in subdividing; the farm employee houses are part of the farm. (R. 1177-78). Indeed, Appellant has stated that Respondent Farm's farm worker buildings can stay where

they are currently located. (R. 869-70). Appellant improperly frames its appeal based on theoretical concerns of future land use changes. Appellant should not be allowed to penalize Respondent Farm's proper use of land now because Appellant is theoretically concerned about a possible conversion of land use that is unsupported by the factual record. As such, this Court should not be burdened with Appellant's far-fetched hypothetical any more than the many "what if's" in land use law. In any event, if Respondent subdivides so that an additional principal building is constructed, Appellant will have subdivision jurisdiction at that time. See N.Y. Exec. Law § 802(63); 9 NYCRR § 570.3(ah). Unless and until that occurs, Appellant has no jurisdiction over Respondent Farm.

POINT IV

APPELLANT'S ERRONEOUS ADMINISTRATIVE DETERMINATION VIOLATES SECTION 305-a OF THE AGRICULTURE AND MARKETS LAW

New York's Right-to-Farm Law prohibits local planning and zoning laws from unreasonably hindering farming operations in agricultural districts.

> 3. Policy of local governments. a. Local governments, when exercising their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations shall exercise these powers in such a manner as may realize the policy and goals set forth in this article, and ***shall not unreasonably restrict or regulate farm operations with agricultural districts.***

N.Y. Agric. & Mkts. Law § 305-a(1)(a) (McKinney 2004) (emphasis supplied).

The statute defines "farm operation" to include "the land and on-farm buildings, equipment and practices which contribute to production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise." N.Y. Agric. & Mkts. Law § 301(11). The Court of Appeals, in a seminal right-to-farm-case, declared that this definition includes farm worker housing. Town of Lysander v. Hafner, 96 N.Y.2d 558, 563-64 (2001). The Legislature does not define "local government" in the statute. See N.Y. Agric. & Mkts. Law § 301. Therefore, this Court should adopt a practical approach to the definition.

Here, the Administrative Determination states that Section 305-a of the Agriculture & Markets Law does not apply because Appellant is not a "local government" in the traditional sense. (R. 866). But Appellant has no more power than a local government. It administers the Land Use and Development Plan in order to control intensity of development just like a local government. See N.Y. Exec. Law § 805. The Court of Appeals has found that Appellant is the functional equivalent of a "***local*** planning board and a ***local*** zoning entity." Hunt Brothers v. Glennon, 81 N.Y.2d 906, 909 (1993) (emphasis supplied). Therefore, the Court of Appeals' holding in Town of Lysander, which prohibits local governments from regulating farm worker housing, also prevents Appellant from regulating farm buildings in agricultural districts. This prohibition comports with the New York State Constitution.

Accordingly, the properly annulled Administrative Determination unreasonably regulated Respondent Farm's farm operation, which is located in Essex County Agricultural District No. 4.

POINT V

THE TRIAL COURT PROPERLY DISMISSED APPELLANT'S CLAIMS AGAINST SANDY AND BARBARA LEWIS

This point is rendered moot by an affirmance. The trial court properly found that Appellant had no basis to seek enforcement by a separate, civil case of its erroneous Administrative Decision against Respondent Farm's officers, Sandy and Barbara Lewis. (R. 243). The trial court correctly found that Appellant commenced the administrative enforcement only as against Respondent Farm. (R. 243). Indeed, Respondent Farm is the only named party in the Notice of Apparent Violation. (R. 927). Thus, to the extent that the Administrative Determination is an "order", enforcement can only be commenced as against Respondent Farm. See N.Y. Exec. Law § 813(2).

Here, Appellant has failed to allege—let alone prove—any fact that would indicate that Sandy or Barbara Lewis personally abused Respondent Farm's corporate structure so as to warrant piercing the corporate veil. See Island Seafood Co. v. Golub Corp., 303 A.D.2d 892, 893 (3d Dep't 2003); Mendez v. City of New York, 259 A.D.2d 441, 442 (1st Dep't 1999) (dismissing action against two corporate officers where the plaintiff failed to allege individual tortious conduct on

the part of the individuals). Appellant has no legitimate reason for seeking enforcement against Sandy or Barbara Lewis, especially since Appellant concedes that it is not seeking a monetary penalty from them in their individual capacities. (See Appellant's Brief, pg. 38). Appellant's tenuous prosecution against Sandy and Barbara Lewis is nothing more than a punitive measure. Adopting Appellant's baseless position destroys the entire purpose of incorporation and opens the floodgates of exposure to any corporate officer for any corporate obligation. This must not be permitted.

CONCLUSION

This Court must find that the right to farm is the right to house farm workers. For all of the foregoing reasons, it is respectfully submitted that the November 21, 2008, final judgment and November 19, 2008, Decision and Order of Supreme Court (Meyer, J.), which properly annulled Appellant's erroneous Administrative Determination, should be affirmed in all respects.

Dated: March 31, 2009
Albany, New York

McNAMEE, LOCHNER, TITUS & WILLIAMS, P.C.

John J. Privitera, Esq.
Jacob F. Lamme, Esq.
Attorneys for Respondents
677 Broadway
Albany, New York 12207
Tel. (518) 447-3200