

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : THIRD DEPARTMENT

LEWIS FAMILY FARM, INC.,
Plaintiff-Appellant,

v.

NEW YORK STATE ADIRONDACK
PARK AGENCY,

Defendant-Respondent.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : THIRD DEPARTMENT

LEWIS FAMILY FARM, INC.,
Petitioner,

v.

NEW YORK STATE ADIRONDACK
PARK AGENCY,

Respondent.

ADIRONDACK PARK AGENCY,
Plaintiff,

v.

LEWIS FAMILY FARM, INC.,
SALIM B. LEWIS and BARBARA LEWIS,
Defendants.

SUR-REPLY
AFFIRMATION TO LEWIS
FARM'S MOTION TO
EXTEND TIME TO PERFECT
UPON JOINT RECORD AND
BRIEFS

AD Docket No. 504696
Essex County
Index No. 498-07

AD Docket No. 504626
Essex County
Index No. 315-08

AD Docket No.
Essex County
Index No. 332-08

Pursuant to CPLR § 2106, Loretta Simon, an attorney
duly admitted to practice in the courts of the State of New York,
hereby affirms the following under penalty of perjury:

1. I serve as an Assistant Attorney General in the Environmental Protection Bureau of the Office of the New York State Attorney General and am counsel to the Adirondack Park Agency ("the APA") in Lewis Family Farm, Inc. v. NYS Adirondack Park Agency, (Sup. Ct., Essex Co. Index No. 498-07) ("Lewis Farm I"), and in the subsequent CPLR article 78 proceeding, Matter of Lewis Family Farm, Inc. v. APA, (Sup. Ct., Essex Co. Index No. 315-08) ("Lewis Farm II"). I also represent the APA in its enforcement action, APA v. Lewis Family Farm, Inc., Salim B. Lewis, and Barbara Lewis, (Sup. Ct., Essex Co. Index No. 332-08) ("Lewis Farm III"), which was consolidated below with Lewis Farm II. Accordingly, I am familiar with the underlying facts and the litigation among the parties.

2. I submit this sur-reply affirmation in response to Lewis Family Farm, Inc.'s ("Lewis Farm's") reply affirmation with respect to its motion to extend its time to perfect its appeal in Lewis Farm I and for an order requiring all appeals in these cases to be perfected upon a joint record prepared by the APA, and briefs.

3. To summarize the APA's position, the APA consents, upon the conditions set forth in paragraph four below, to Lewis Farm's request to have the following three appeals perfected upon a joint record and briefs: (1) Lewis Farm's appeal of the Decision and Order dated August 16, 2007 in Lewis Farm I (Ryan, Acting J.S.C.); (2) the APA's appeal of the Decision and Order dated

November 19, 2008 and the Judgment dated November 21, 2008 in Lewis Farm II and III (Meyer, Acting J.S.C.); and (3) the APA's appeal of the Decision and Order dated July 2, 2008 in Lewis Farm III. See Affirmation of Loretta Simon dated January 2, 2009 ("Simon Aff. 1/2/09").

4. The APA agrees to file a single joint record for the appeals on the conditions that (1) Lewis Farm's counsel transmits the originals of the record in Lewis Farm I to the Office of the Attorney General within ten days of the Court's order on this motion; (2) Lewis Farm pays the cost of reproduction of that portion of the joint record on appeal that relates to its appeal in Lewis Farm I; (3) the APA has until March 2, 2009, instead of the February 17, 2009 deadline proposed by Lewis Farm, to file the joint record and appellants brief; and (4) the other briefs are filed in accordance with the briefing schedule set forth in the Simon Affirmation dated January 2, 2009, paragraphs 15 and 16.

5. In reply, Lewis Farm objects to the APA's proposal to file the joint record and brief on March 2, 2009, arguing there is no justification for the extra two weeks beyond the 60 day time period set forth in 22 NYCRR § 800.9(a). See Affidavit of Jacob F. Lamme dated January 5, 2009 ("Lamme Aff 1/5/09"), ¶6. The reasons for the APA's request are self-evident. The questions of law raised in these three separate appeals are important and require substantial internal review. Moreover,

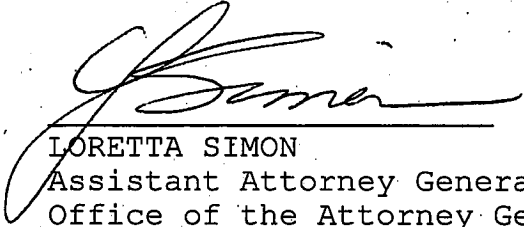
preparation of the joint record, including settlement of the transcripts in Lewis Farm II and III, will also require time and coordination.

6. Lewis Farm incorrectly argues that the appeal involves "a single issue of New York law." See Lamme Aff 1/5/09, ¶ 7. These appeals raise important issues regarding the APA's jurisdiction over these single-family dwellings under the APA Act (Executive Law § 801 et. seq.), and the Rivers Act (ECL § 15-2701 et. seq.). The APA's appeal of the Decision and Order dated July 2, 2008 in Lewis Farm III also raises issues regarding Lewis Farm's principals' responsibility in this matter. Moreover, Lewis Farm's petition raises sixteen claims against the APA in Lewis Farm II, including a claim under Article IV § 4 of New York's Constitution; a due process claim; claims under the Agriculture and Markets Law; and a claim that the APA failed to consider a resolution of the Adirondack Park Local Government Review Board. The Supreme Court did not expressly address many of these claims, but the judgment granted the amended petition.

7. The APA further objects to Lewis Farm's proposal to shorten the APA's time to ten days to respond to its respondent's-cross-appellant's brief. Lewis Farm's appeal has now been pending for well over a year and there is no basis for abbreviating the APA's time to respond to that appeal. The APA adheres to its request for the briefing schedule proposed in the Simon affirmation of January 2, 2009.

8. Finally, Lewis Farm misconstrues the APA's offer to print Lewis Farm's record on appeal in Lewis Farm I on the condition that it pay for the costs of reproduction when it suggests that Lewis Farm would be required to pay about \$19,000 in printing costs. See Lamme Aff 1/5/09, ¶ 9. The policy of the Department of Law Finance Office provides for a cost of \$2.37 per page of the original record, regardless of the number of copies up to a maximum of 40 copies. The Department's policy does not require Lewis Farm to pay \$2.37 per page, per reproduced copy. Assuming that the record on appeal in Lewis Farm I is approximately 200 pages (see Lamme Aff 1/5/09 ¶ 9, footnote 2), the total cost to Lewis Farm for printing the required number of copies to perfect its appeal would be under \$500.00.

Dated: Albany, New York
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