

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ESSEX

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LEWIS FAMILY FARM, INC.,

Petitioner,

-against-

**AFFIDAVIT IN  
SUPPORT OF STAY**

ADIRONDACK PARK AGENCY,

Respondent.

Index No.  
RJI No.

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STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF ESSEX    )

**JOHN J. PRIVITERA**, being sworn, deposes and says:

1. I am duly licensed and admitted to practice law in the State of New York, and I am a principal with the law firm of McNamee, Lochner, Titus & Williams, P.C., attorneys for Petitioner Lewis Family Farm, Inc. (hereafter "Lewis Family Farm"). As such, I am fully familiar with the pleadings and proceedings had in this action, and with the matters set forth herein.

2. I make this affidavit in support of the Lewis Family Farm's motion to stay the enforcement of Respondent Adirondack Park Agency's March 25, 2008 Determination, whereby it wrongfully asserted jurisdiction over the Petitioner's agricultural use structures.

3. The Agency's Determination, among other things, directs Petitioner to (1) apply for an Agency permit for three new farm employee housing structures and a 4-lot subdivision by April 14, 2008; and (2) pay a \$50,000.00 civil penalty to the Agency by April 28, 2008. The

Determination further prohibits Petitioner's employees from occupying the farm employee houses until the Agency issues a permit.

4. Respondent has effectively slashed Petitioner's time in which to challenge the Determination from sixty (60) days to twenty (20) days by attempting to force compliance with the Determination by April 14, 2008. See N.Y. Executive Law § 818.

5. The Lewis Family Farm will suffer an actual and immediate irreparable injury during the pendency of this Article 78 proceeding if a stay of the enforcement of the Agency's Determination is not awarded.

6. If the Lewis Family Farm is compelled to obey the Agency's Determination and applies for a permit April 14, 2008, this entire proceeding becomes moot since the Petitioner will have already submitted to the Agency's jurisdiction.

7. Most importantly, if the Lewis Family Farm is forced to comply with the Agency's Order during the pendency of this litigation, the Lewis Farm will suffer significant financial harm. Specifically, the Agency wrongly refused to consider the Lewis Family Farm worker housing as "agricultural use structures"; rather, the Determination by the Agency directs Barbara Lewis, on behalf of the farm, to file an application for a "three-home subdivision." If Barbara Lewis does not receive a stay, and the farm is obliged to apply for subdivision approval, the farm employee houses may be treated as a development project rather than a farm asset. In this event, the accounting treatment, tax treatment and tax exemption of agricultural structures are at significant risk. That is, although a tax exemption is supposed to apply to building used to provide housing for regular and essential employees and their immediate families who are primarily employed in farming operations, there is no guarantee of this treatment by federal, state and local taxing authorities if Barbara Lewis is forced to abide by the Agency's directive to

complete an application for a three-home subdivision upon a finding that the buildings are not agricultural use structures. (See generally, Real Property Tax Law § 483-a (New York State Board of Real Property Services Form RP-483-ins), attached hereto as **Exhibit "A"**).

8. This case presents compelling questions of constitutional law as well as the relationship between New York State's Agricultural & Markets Law and the other laws of New York State, including the Adirondack Park Agency Act. These matters were fully briefed before the Agency, but the Agency failed to consider these significant matters. (See *Petitioner's Right to Farm* Memorandum of Law, dated January 22, 2008, attached hereto as **Exhibit "B"**.)

9. Without a stay, the Lewis Family Farm runs the risk of accumulating hundreds of thousands of dollars in additional penalties pursuant to Executive Law §813 during this appeal of the Agency's Determination, because the Determination directs payment by April 28, 2008.

10. Respondent will not be harmed if a stay is granted. This case is solely about jurisdiction. The Agency has already declared that the structures at issue in this proceeding can remain in their current position. There is no threat of any harm to the environment. Further, there is no harm to the Agency's land use plan, which counts all agricultural use structures and single family dwellings occupied by farm workers and their families as one principal building for intensity purposes. See N.Y. Exec. Law § 802(50)(g).

11. The Lewis Family Farm commenced the farm employee housing project in November 2006, and despite being aware of the project, the Agency did not issue a Notice of Apparent Violation until September 2007. This was not enforced until the Determination that is the subject of this proceeding. Thus, the Agency cannot claim any prejudice by the passage of time if a stay is granted.

12. Based on the foregoing, and for the reasons set forth in the accompanying memorandum of law submitted herewith, the Lewis Family Farm respectfully asks this Court to enter an order staying the enforcement of the Agency's Determination pending the outcome of this Article 78 proceeding.

13. In accordance with the Local Rules, I asked the Agency to agree to a stay pending judicial review of the Determination. After several days in considering this request, the Agency declined to agree.

*/s/ John J. Privitera*

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John J. Privitera

Sworn to before me this  
7th day of April, 2008.

*/s/ Notary Public*

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Notary Public