



STATE OF NEW YORK  
COUNTY OF ESSEX  
COUNTY, FAMILY & SURROGATE'S COURTS

RICHARD B. MEYER  
JUDGE

AMY N. QUINN  
COURT ATTORNEY  
JILL H. DRUMMOND  
SECRETARY

April 11, 2008

Via Fax & Mail

McNamee, Lochner, Titus & Williams, P.C.  
Attn: John J. Privitera, Esq.  
677 Broadway  
Albany, New York 12207

New York State Attorney General  
Attn: Loretta Simon, Esq.  
Assistant Attorney General  
The Capitol  
Albany, New York 12224

Re: Lewis Family Farm, Inc. v. Adirondack Park Agency

Counselors:

Enclosed please find the decision and order relative to the motion for a stay in the above matter. The original will be filed with the Clerk of the Court on Monday, April 14, 2008.

Very truly yours,

A handwritten signature in black ink, appearing to read "Richard B. Meyer", written over a white background.

Richard B. Meyer

RBM/jhd  
cc: Clerk

**Supreme Court of the State of New York**  
**For the County of Essex**

---

Argued April 11, 2008

Decided April 11, 2008

Index No.: 315-08 - RJI No.: 15-1-2008-0109

---

***LEWIS FAMILY FARM, INC.***

Petitioner,

v.

***ADIRONDACK PARK AGENCY,***

Respondent.

---

*Decision and Order on Motion for Stay  
of Enforcement Pursuant to CPLR §7805*

---

*McNamee, Lochner, Titus & Williams, P.C. (John J. Privitera, Esq., of counsel), Albany, New York, attorneys for the Petitioner.*

*Andrew M. Cuomo, Esq., New York State Attorney General (Loretta Simon, Esq., Assistant Attorney General), Albany, New York, attorney for the Respondent.*

---

Motion by Petitioner pursuant to CPLR §7805 for a stay of enforcement of a determination made by Respondent's enforcement committee (9 NYCRR Part 581) dated March 25, 2008 which, *inter alia*, directed Petitioner to apply to the Respondent for a permit for three new dwellings and a four-lot subdivision on or before April 14, 2008, imposed a \$50,000 civil penalty, directed that the dwellings remain unoccupied until

Page -2-

*LEWIS FAMILY FARM v. ADIRONDACK PARK AGENCY*

## Decision and Order

a permit was issued, and required Petitioner to forego "the right to challenge Agency jurisdiction and the review clocks otherwise applicable".

Petitioner is the owner of a 1,100 acre organic farm designated as a single parcel of land on the official county tax maps and town tax rolls, located in the Town of Essex, Essex County. The property lies wholly within the Adirondack Park and within Essex County Agricultural District No. 4. The subject parcel is classified on the Adirondack Park Land Use and Development Plan Map as Resource Management, Rural Use and Hamlet.

In or about November 2006, Petitioner commenced construction of certain single family dwelling units on that portion of the property classified as Resource Management, to be used by Petitioner's employees who work on the farm. Petitioner thereafter filed an application with the Respondent for a permit authorizing construction of "three single family dwellings in a farm compound to be used by farm employees exclusively." Thereafter, a dispute arose between the parties, which resulted in a proposed settlement agreement sent to Petitioner on May 14, 2007 providing for the Petitioner to apply for an after-the-fact permit and pay \$10,000 civil penalty. Petitioner rejected the settlement agreement, and on June 28, 2007 commenced an action against the Agency challenging jurisdiction, as well as seeking a temporary restraining order. That proceeding was dismissed, and the application for temporary relief denied, by a decision and order (Ryan, J.) dated August 16, 2007. Petitioner filed a notice of appeal, but the appeal has not yet been perfected.

Despite dismissal of its declaratory judgment action, Petitioner continued with construction of the dwelling units. Respondent commenced an enforcement proceeding, resulting in its March 25, 2008 determination that the Petitioner violated the Adirondack Park Agency Act (Executive Law Article 27) (the "Act") by failing to obtain from the Respondent a subdivision permit and a permit authorizing construction of the dwelling units. In determining such violations, the Respondent's enforcement committee directed the Petitioner to comply with the following requirements:

- "(1) Lewis Farm will apply for a permit for the three new dwellings and the four-lot subdivision into sites

Page -3-

*LEWIS FAMILY FARM v. ADIRONDACK PARK AGENCY*

Decision and Order

(including retained "lot") by April 14, 2008, by submitting the appropriate major project application.

- (2) By April 28, 2008, Lewis Farm will also submit the following to the Agency:
  - (a) a detailed description of the use of each dwelling and connection to the Lewis Farm agricultural operations,
  - (b) an as-built plan for the septic system and an evaluation by a NYS licensed professional engineer as to whether the installed septic system for the three dwellings complies with NYS Department of Health and Agency standards and guidelines;
- (3) Lewis Farm will reply to any additional information requests within thirty (30) days of receipt.
- (4) Lewis Farm will retain all rights of appeal in the project review process, but foregoes the right to challenge agency jurisdiction and the review clocks otherwise applicable.
- (5) Lewis Farm or its employees shall not occupy the three new dwellings located on the corner of Whallons Bay Road and Christian Road unless and until an Agency permit is issued and the civil penalty paid.
- (6) By April 28, 2008 Lewis Farm will pay a civil penalty of \$50,000 to the Agency.
- (7) Agency staff is directed to review the application for the three dwellings and the subdivisions promptly, towards the goal of issuing the after-the-fact permit in time for farm worker occupancy of the dwellings for the 2008 growing season. However that can only happen if the Respondent responds immediately and favorably to this determination and submits the required information and penalty. The Agency will

Page -4-

*LEWIS FAMILY FARM v. ADIRONDACK PARK AGENCY*

## Decision and Order

not proceed with review of the application unless and until the civil penalty is paid, the information requested above is submitted, and the dwellings remain vacant until approval is issued.”

Petitioner commenced the instant proceeding pursuant to CPLR Article 78 by the filing of a Notice of Petition and Petition on April 8, 2008. Simultaneously with such filing, Petitioner duly moved by Order to Show Cause for a stay pursuant to CPLR 7805. The motion is supported by affidavits of Petitioner’s counsel and Barbara A. Lewis, an officer of Petitioner, both sworn to April 7, 2008. Respondent opposes the motion, submitting affirmations from an associate attorney for the Respondent and from an Assistant Attorney General, both dated April 10, 2008, alleging that the August 2007 decision and order dismissing Petitioners declaratory judgment action has already resolved many of the issues now before this Court in favor of the Respondent, and because Petitioners have failed to establish sufficient grounds to warrant issuance of a stay.

The purpose of a stay is to maintain the *status quo* (see *State v. Town of Haverstraw*, 219 AD2d 64, 641 NYS2d 879). Temporary or preliminary injunctive relief may be granted “when the party seeking such relief demonstrates: (1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the moving party’s favor” (*Doe v. Axelrod*, 73 NY2d 748, 750, 536 NYS2d 44, 45, 532 NE2d 1272). There is no substantive difference between a temporary restraining order or preliminary injunction under CPLR §6301 and a stay pursuant to CPLR §7805, and nothing in the later statute, or in case law, relieves a party seeking a stay from establishing all three elements. Petitioner’s reliance on *Matter of Stewart v. Parker*, 41 AD2d 785, 341 NYS2d 149) to support its claim that only irreparable injury need be shown for relief to be granted under CPLR §7805 is misplaced as the Court there dealt only with the issue of irreparable injury. Indeed the Court there stated “[w]hether it was an order incident to the article 78 proceeding or a preliminary injunction under CPLR 6301, makes little difference (*Id.*, at 786, 341 NYS2d at 192).

Under the circumstances here, Petitioner has minimally met the requisite elements, at least for an award of partial temporary relief. This proceeding involves novel issues of law relating to the interplay of various

Page -5-

*LEWIS FAMILY FARM v. ADIRONDACK PARK AGENCY*

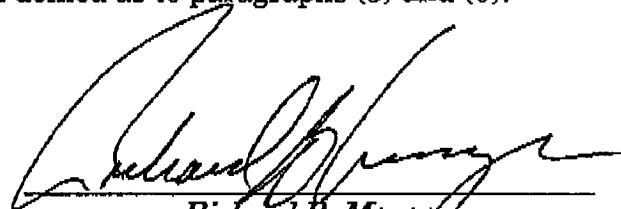
## Decision and Order

statutory definitions contained in the Act, the Respondent's jurisdiction over "agricultural use structures" (*Executive Law §809(8)*), whether a single family dwelling is or can under certain circumstances be such a structure under the Act, whether the Petitioner's project constitutes a "subdivision" (*Executive Law §802(63)*), and the potential impact (if any) of Article 14, §4 of the New York Constitution. Moreover, the unexplained failure of the Respondent to timely refer the Petitioner's noncompliance with the Act to the Attorney General (*Executive Law §813(2)*) over a period spanning almost one year, and more than six months following dismissal of the declaratory judgment action, while Respondent was aware that Petitioner continued to construct the dwelling units at considerable cost, cannot be discounted. To the extent now determinable, the Petitioner has established a likelihood of success on the merits on at least some issues raised in the petition, and a balancing of the equities in its favor.

As to irreparable injury, an insufficient showing has been made to establish that irreparable harm will occur to the Petitioner if the stay is not granted as to certain aspects of the challenged determination, specifically the prohibition against the dwellings being occupied or the payment of the civil penalty. Petitioner conceded at oral argument that the dwelling units are not occupied. No allegation has been made that Petitioner lacks sufficient financial resources to pay the penalty, and should Petitioner ultimately prevail in this proceeding the penalty would have to be reimbursed in full to Petitioner. However, because the instant proceeding challenges the Agency's subject matter jurisdiction, and since the challenged determination requires Petitioner to forego its right to challenge the Respondent's jurisdiction here if it proceeds to apply for the after-the-fact permit(s), it is the determination of this Court that a stay should be, and is, granted as to the remaining enforcement determinations in the March 25, 2008 determination, namely paragraphs (1) through (4), and (7). Petitioner's motion is denied as to paragraphs (5) and (6).

***IT IS SO ORDERED.***

***ENTER***

  
Richard B. Meyer  
Acting Supreme Court Justice