

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Petitioner,

v.

NEW YORK STATE ADIRONDACK
PARK AGENCY,

Respondent.

SUPPLEMENTAL ANSWER
RESPONDING TO THE THIRD,
FIFTH, SIXTH, SEVENTH,
EIGHTH, NINTH, TENTH AND
ELEVENTH CLAIMS IN THE
AMENDED PETITION

INDEX NO. 315-08
RJI No. 15-1-2008-0109
Hon. Richard B. Meyer

ADIRONDACK PARK AGENCY,

Plaintiff,

v.

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

Defendants.

INDEX No. 332-08
RJI No. 15-1-2008-0117

State respondent, the Adirondack Park Agency (the "Agency" or "APA") by its attorney Andrew M. Cuomo, Attorney General of the State of New York, objects to the amended petition dated April 14, 2008 herein and without waiving its objections in point of law, its motion to dismiss, and partial answer previously submitted, the APA, as and for its supplemental answer to the third, fifth, sixth, seventh, eighth, ninth, tenth and eleventh claims in the amended petition, dated April 14, 2008:

AS AND FOR A THIRD CAUSE OF ACTION

1. Denies the allegations in ¶ 73, and affirmatively asserts that the APA's March 25, 2008 determination is not affected by error of law in violation of Town of Lysander v. Hafner ("Lysander"), 96 N.Y.2d 558 (2001), and that the holdings of the Court of Appeals in Lysander relate to Agriculture and Markets Law § 301(11), not the Adirondack Park Agency Act ("APA Act") (Executive Law § 801 et. seq.) or the Wild, Scenic and Recreational Rivers System Act ("Rivers Act") (Environmental Conservation Law § 15-2701 et. seq.), and do not apply to or supercede the APA's enforcement authority pursuant to the APA Act, the Rivers Act or the Agency's March 25, 2008 determination. Specifically, the Agency further asserts that the APA Act definition of "agricultural use structure" does not include single family dwellings, which dwellings require a permit pursuant to the APA Act and the Rivers Act, and refers to Executive Law § 802 (8) and (58) for the full meaning, text, context and effect of the terms "agricultural use structure" and "single family dwelling" and refers to the APA's March 25, 2008 determination for its full text, context, effect and meaning.

AS AND FOR A FIFTH CAUSE OF ACTION

2. Denies the allegations in ¶ 77, denies that the Agency is regulating Lewis Farm's "agriculture use" as that term is

defined in the APA Act § 802(7), and affirmatively asserts that the APA has statutory and regulatory authority to require permits for Lewis Farm's three single family dwellings and subdivision into sites in a Resource Management area pursuant to the APA Act, and in a designated recreational river area pursuant to the Rivers Act, as provided in Executive Law §§ 802, 805, 809 and 810 and Environmental Conservation Law ("ECL") Article 15, Title 27, and 9 NYCRR Part 577, and refers to those provisions and to the APA's March 25, 2008 determination for their full meaning, text, context and effect.

AS AND FOR A SIXTH CAUSE OF ACTION

3. Denies the allegations in ¶ 79, and affirmatively asserts that the APA has jurisdiction pursuant to §§ 809 and 810 of the APA Act to regulate Lewis Farm's three single family dwellings, as the term "single family dwelling" is defined in Executive Law § 802(58), because: (i) the dwellings are on Resource Management lands in the Town of Essex; (ii) single family dwellings under the APA Act are not included in the definition of "agricultural use structure" set forth in APA Act § 802(8); and (iii) all new single family dwellings (except for lawful replacements of pre-1973 dwellings) in Resource Management areas in the Town of Essex are within the Agency's jurisdiction, and refers to Executive Law §§ 802(58) and 802(8) and to the APA

March 25, 2008 determination for their full meaning, text, context and effect.

AS AND FOR THE SEVENTH CAUSE OF ACTION

4. Denies the allegations in ¶ 81 and affirmatively asserts that the APA has jurisdiction to regulate all subdivisions of land into sites on Resource Management lands pursuant to §§ 809 and 810 of the APA Act, and that Lewis Farm's construction of three single family dwellings for separate occupancy constitutes a violation of the subdivision requirements of the APA Act and refers to Executive Law § 802(63) and 9 NYCRR § 570.3(ah)(3), and to the APA March 25, 2008 determination for their full meaning, text, context and effect.

AS AND FOR A EIGHTH CAUSE OF ACTION

5. Denies the allegations in ¶ 83, denies that the Agency is regulating Lewis Farm's "agricultural use" as that term is defined in APA Act § 802(7), and affirmatively asserts that Lewis Farm's three single family dwellings are located, and its subdivision into sites occurred, within the designated Bouquet River recreational river area pursuant to 9 NYCRR, Appendix Q-6, Item 5a (Recreational Rivers), and that the APA has jurisdiction to regulate the three single family dwellings and subdivision into sites herein pursuant to the Rivers Act and 9 NYCRR Part

577, which requires a permit for all single family dwellings and subdivisions on Resource Management lands within a designated recreational river area, and refers to the Rivers Act, 9 NYCRR Part 577, and to the APA March 25, 2008 determination for their full meaning, text, context and effect.

AS AND FOR A NINTH CAUSE OF ACTION

6. Denies the allegations in ¶ 85, and denies that Lewis Farm's three single family dwellings are agricultural use structures and affirmatively asserts that the APA has jurisdiction to require permits for Lewis Farm's three single family dwellings located on Resource Management lands within the Bouquet River recreational river area pursuant to 9 NYCRR Part 577, and that the Bouquet River recreational river area extends 1/4 of a mile from each bank of the river in the Town of Essex, Essex County, pursuant to 9 NYCRR Appendix Q-6, Item 5a (Recreational Rivers), and refers to the Rivers Act, 9 NYCRR Part 577, and to the APA March 25, 2008 determination for their full meaning, text, context and effect.

AS AND FOR A TENTH CAUSE OF ACTION

7. Denies the allegations in ¶ 87, and affirmatively asserts that the APA has jurisdiction to require permits for Lewis Farm's subdivision into sites of Resource Management lands

within the Bouquet River recreational river area pursuant to 9 NYCRR Part 577, and 9 NYCRR Appendix Q-6, Item 5a (Recreational Rivers), and refers to the Rivers Act, 9 NYCRR Part 577, and to the APA March 25, 2008 determination for their full meaning, text, context and effect.

AS AND FOR AN ELEVENTH CAUSE OF ACTION

8. Denies the allegations in ¶ 89 and affirmatively asserts that the resolution of the Adirondack Park Local Government Review Board, which resolution is not binding on the APA under Executive Law § 803-a, was considered by the APA and is part of the Record of the APA March 25, 2008 determination; and that the Executive Director of the Local Government Review Board was present at the Agency proceeding in this matter and participated in the proceeding, and refers to the Record, Executive Law § 803-a, and the APA March 25, 2008 determination for their full meaning, text, context and effect.

WHEREFORE, the Agency respectfully requests an Order and Judgment:

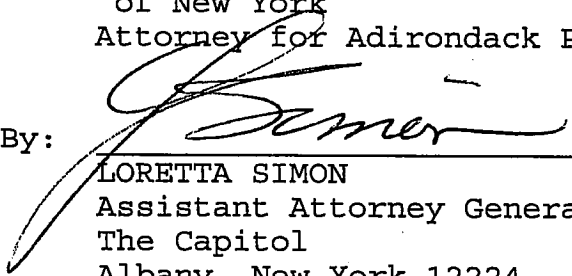
I. Denying claims three, five, six, seven, eight, nine, ten and eleven in the Amended Petition for all the reasons stated herein and for the reasons stated in the State APA's Answer In Part dated June 13, 2008; and

- II. Dismissing the Amended Petition in its entirety; and
- III. Granting such other and further relief that this Court may find to be just and equitable, together with costs and disbursements.

Dated: Albany, New York
July 30, 2008

ANDREW M. CUOMO
Attorney General of the State
of New York
Attorney for Adirondack Park Agency

By:



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To: Jacob F. Lamme, Esq.
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VERIFICATION

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

PAUL VAN COTT, being duly sworn, deposes and says:

I am an Associate Attorney for the Adirondack Park Agency (the "Agency"). I have read the foregoing objections in point of law and supplemental answer, and know the contents thereof, and the same is true to my own knowledge except as to matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. The source of my knowledge, information and belief are the Agency's files, and discussions with Agency personnel. I make this verification pursuant to CPLR § 3020(d)(2), on the basis that I am acquainted with the facts.



PAUL VAN COTT

Sworn to before me this
30th day of July, 2008.

Mary B. Palmer

MARY B. PALMER
Notary Public, State of New York
01PA6128439
Commission Expires June 13, 20 09