

PRESENT: Hon. Leslie E. Stein
Associate Justice, Appellate Division, Third Department

STATE OF NEW YORK SUPREME COURT
APPELLATE DIVISION THIRD DEPARTMENT

In the Matter of LEWIS FAMILY FARM, INC.,

Petitioner,

-against-

ORDER TO SHOW CAUSE

ADIRONDACK PARK AGENCY,

Respondent.

Index No. 315-08

2008 APR 29 AM 9:56

RECEIVED
APP. DIV.
3RD DEPT.

Upon reading the annexed affirmation of John J. Privitera, dated April 28, 2008, the papers thereto attached and the papers therein referred to, and upon all the pleadings and proceedings had herein, it is

ORDERED, that Respondent show cause before this Court at a motion term thereof, to be held at the Justice Building, Empire State Plaza, Albany, New York, at 9:30 a.m. on May 12, 2008, or as soon thereafter as counsel can be heard, why an order should not be granted that: (1) grants Petitioner-Appellant permission to appeal the April 11, 2008 Decision and Order of the Essex County Supreme Court (Hon. Richard B. Meyer); (2) enjoins enforcement of Respondent's Enforcement Committee Decision of March 25, 2008 pending determination of a permissive appeal to this Court of Justice Meyer's decision and order; and (3) grants such other and further relief as this Court deems just and proper, and it is further

ORDERED, that pending determination by this Court on the motion brought on by this Order to Show Cause, Respondent is enjoined from enforcing its administrative determination dated March 25, 2008 as set forth in Subparagraph "6" on page 3 of the Decision and Order of Supreme Court dated April 11, 2008 on the condition that Petitioner shall pay the sum of

\$50,000 to the Essex County Treasurer's Office pursuant to CPLR 5519(a)(2) or post an undertaking therefore on or before May 5, 2008; and it is further

ORDERED, that pending determination by this Court on the motion brought on by this Order to Show Cause, Respondent is enjoined from enforcing its administrative determination dated March 25, 2008 as set forth in Subparagraph "5" on page 3 of the Decision and Order of Supreme Court dated April 11, 2008 relating to the occupancy of the dwelling known as the "Dormitory" as described in Exhibit A to the Barbara Lewis Affidavit sworn to April 7, 2008, on the condition that Petitioner shall submit to Respondent's counsel the information contained in Subparagraph "2(b)" of said April 11, 2008 Decision and Order, on or before May 5, 2008; and it is further

ORDERED, that service of a copy of this order and a copy of the papers upon which it was granted upon Respondent's counsel by personal or overnight delivery service at:

Loretta Simon, Assistant Attorney General
NYS Office of the Attorney General
Environmental Protection Bureau
146 State Street, 2nd floor
Albany, New York 12224

on or before April 29, 2008, be deemed sufficient service upon Respondent, and it is further

ORDERED that papers in opposition to this motion, if any, are to be served upon Petitioner's counsel so as to be received by May 5, 2008 and filed with this Court on the same date, and it is further

ORDERED that this motion shall be submitted and the personal appearance of the attorneys for the parties is not permitted.

Dated: April 28, 2008
Albany, New York



Hon. Leslie E. Stein
Associate Justice, Appellate Division, Third Department

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

PART 574
STANDARDS FOR THE REVIEW OF PROJECTS PURSUANT
TO THE ADIRONDACK PARK AGENCY ACT

(Statutory authority: Executive Law, art. 27)

Sec.

- 574.1 General rule
- 574.2 Consultations with agency technical staff
- 574.3 Sign standards
- 574.4 Sewage disposal standards
- 574.5 Further definitions of the development considerations
- 574.6 Conformance with local land use controls
- 574.7 Application of the overall intensity guidelines
- 574.8 Conversion of resort hotels, rental cottages, and group camps

§ 574.1 General rule.

Class A and class B regional projects subject to agency review shall be reviewed according to the standards set forth in section 809 of the Adirondack Park Agency Act and this Part. Projects which are also rivers projects or wetlands projects shall be subject, as applicable, to the additional standards in Parts 577 and 578 of this Title.

§ 574.2 Consultations with agency technical staff.

Consultations with the agency's technical staff and reference to the development considerations set forth in section 574.5 of this Part will assist in designing a project which avoids undue adverse impact upon the resources of the Adirondack Park and will facilitate its approval. The agency has also developed an advisory publication, *Development in the Adirondack Park: Objectives and Guidelines for Planning and Review*, to assist the project sponsor.

§ 574.3 Sign standards.

Signs associated with projects subject to agency review shall comply with the sign standards set forth as Appendix Q-3 of this Title.

§ 574.4 Sewage disposal standards.

Unless otherwise provided in the permit, individual sewage disposal systems associated with a project shall be designed, installed and maintained in accordance with the standards of the Commissioner of Health set forth in the booklet *Waste Treatment-Individual Household Systems* filed by the Department of Health as Appendix 75-A to Volume 10 (Health [A]) of the *Official Compilation of Codes, Rules and Regulations of the State of New York*, and with the additional standards set forth in Appendix Q-4 of this Title.

APPENDIX Q-4

ADDITIONAL STANDARDS FOR THE INSTALLATION OF INDIVIDUAL ON-SITE SEWAGE DISPOSAL SYSTEMS

This appendix sets forth the standards employed by the agency in the review of the type and manner of installation of onsite sewage disposal systems associated with a project subject to its jurisdiction.

These standards are applied in addition to those standards set forth in the New York State Department of Health publication *Waste Treatment Facilities - Individual Household Systems*, filed as Appendix 75-A to Volume 10(Health [A]) of NYCRR.

1. The natural ground intended for the leaching facility shall have a minimum depth of four feet of usable soil above bedrock, impervious material, or maximum high seasonal groundwater. When fractured bedrock is encountered, the usable soil depth shall be at least six feet.
2. Within 200 feet of the shoreline of a lake, pond, river or stream: if the percolation rate is 0 to 3 minutes per inch, a leaching facility will not be permitted.
3. Precatory or hortatory language such as "should" in the Department of Health publication referred to above shall be deemed to be mandatory: provided that the agency may approve modifications in the course of its review of individual projects.