

STATE OF NEW YORK SUPREME COURT
ESSEX COUNTY

LEWIS FAMILY FARM, INC.,

Petitioner,

AFFIRMATION

v.

NEW YORK STATE ADIRONDACK PARK
AGENCY,

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

Respondent.

SARAH REYNOLDS, an attorney licensed to practice law in the courts of the State of New York, affirms under penalty of perjury:

1. I am an attorney for the Adirondack Park Agency (the "Agency") and work in the Agency's Enforcement division. In this role, I am responsible for administrative enforcement of the Agency's laws and regulations, including in the Town of Essex, Essex County. I am familiar with the facts of the matter based on my review of Agency files and my settlement discussions and exchange of settlement correspondence with Lewis Family Farm, Inc. ("Lewis Farm") and its attorneys.

2. I make this affirmation in opposition to the Petitioner's Motion to Reargue and Renew the Decision and Order of Justice Richard B. Meyer of this Court, dated April 11, 2008, which granted in part and denied in part a stay of a

March 25, 2008, determination of the Agency involving Lewis Farm's violations of the Adirondack Park Agency Act ("APA Act") (Executive Law § 801 et seq.) and the Wild, Scenic and Recreational River System Act ("Rivers Act") (Environmental Conservation Law § 15-2701 et seq.).

3. Petitioner's action and a prior action (Lewis Family Farm v. APA (Essex Co. Sup. Ct. Index No. 498-07, RJI No. 15-1-2007-0153, 2007) stem from petitioner's subdivision and construction of three single-family dwellings on a Resource Management property within the designated Boquet River Recreational River area in the Town of Essex, Essex County.

FACTUAL STATEMENT

4. A brief summary of the facts is recited in the attached Affirmation of Paul Van Cott dated April 10, 2008, previously submitted to the Court, along with a copy of the Agency determination in this matter. See Exhibit A.

5. On June 27, 2007, Agency staff issued a Cease and Desist Order to petitioner in an effort to cease construction of the three single-family dwellings. See Exhibit B.

6. On or about August 31, 2007, Agency staff forwarded a letter to former counsel for petitioner alleging that construction was continuing on the dwellings and reminding

petitioner that the Cease and Desist Order required the cessation of all such construction. See Exhibit C.

7. On or about September 5, 2007, Agency staff served a Notice of Apparent Violation on petitioner. See Exhibit D.

8. On or about December 17, 2007, Agency staff forwarded a Notice of Request for Enforcement Committee Determination to counsel for petitioner. See Exhibit E.

9. On March 13, 2008, the Agency's Enforcement Committee heard presentations from counsel for petitioner and counsel representing the Agency in the matter. See Exhibit F.

10. On or about March 25, 2008, the Agency issued a determination finding the Lewis Farm in violation of the APA Act and the Rivers Act. See Exhibit A (attachment to Van Cott Aff.)

11. On April 18, 2008, the Chairman of the Agency's Board and the Chairman of the Agency's Enforcement Committee, acting on behalf of the Agency pursuant to the authority of the "Resolution of the Adirondack Park Agency on Delegating Certain Powers and Responsibilities" (March 9, 2007), transmitted to counsel for petitioner a revised Enforcement Committee Determination striking Paragraph 4, Page 12 of the original Determination. See Exhibit G.

STATUTORY FRAMEWORK

12. The Official Adirondack Park Land Use and Development Plan Map classifies private lands in the Adirondack Park under the following land use categories: "Hamlet," "Moderate Intensity Use," "Low Intensity Use," "Rural Use," "Resource Management," and "Industrial Use." Executive Law § 805.

The Adirondack Park Agency Act

13. Executive Law § 809(2)(a) requires individuals and corporations to obtain a permit from the Agency prior to the undertaking of any Class A regional project or the undertaking of any Class B regional project in any town not governed by an Agency-approved local land use program in the Adirondack Park. The Town of Essex does not have an Agency-approved local land use program.

14. Pursuant to 9 NYCRR § 570.3(ai)(1), "undertake" is defined as the:

commencement of a material disturbance of land, including ... clearing of building sites, excavation (including excavation for the installation of foundations, footings and septic systems), ... or any other material disturbance of land preparatory or incidental to a proposed land use or development or subdivision.

Subdivision Jurisdiction

15. Executive Law § 810(1)(e) lists the Class A regional projects in a Resource Management land use area that require an Agency permit pursuant to Executive Law § 809(2)(a). These projects include, inter alia, any subdivision of land (and all land uses and development related thereto) involving two or more lots, parcels or sites. Executive Law § 810(1)(e)(3).

16. Pursuant to Executive Law § 802(63), a "subdivision" is:

any division of land into two or more lots, parcels, or sites ... for the purpose of ... any form of separate ownership or occupancy (including any grading, road construction, installation of utilities or other improvements or any other land use and development preparatory or incidental to any such division) . . .

(Emphasis added.)

17. 9 NYCRR § 570.3(ah)(3) defines a subdivision into sites as occurring "where one or more new dwelling(s) or other principal building(s) is to be constructed on a parcel already containing at least one existing dwelling or other principal building, and regardless of whether the existing building is proposed to be removed after completion of the new building(s)."

Single Family Dwelling Jurisdiction

18. Executive Law § 810(2)(d) lists the Class B regional projects in a Resource Management land use area that are subject to Agency review in the Town of Essex pursuant to Executive Law § 809(2)(a). These projects include, inter alia, the construction of any new single family dwelling. Executive Law § 810(2)(d)(1).

19. Executive Law § 802(58) defines a "single family dwelling" as "any detached building containing one dwelling unit, not including a mobile home."

Distinguishing Single Family Dwelling Jurisdiction From Agricultural Use Structure Jurisdiction

20. Executive Law § 802(8) defines an "agricultural use structure" as "any barn, stable, shed, silo, garage, fruit and vegetable stand or other building or structure directly and customarily associated with agricultural use."

21. Executive Law § 802(50)(g) indicates that agricultural use structures and single family dwellings, including dwellings used for farmworker housing, are separate structures for jurisdictional purposes by providing under the definition of "principal building" that:

all agricultural use structures and single family dwellings or mobile homes occupied by a farmer of land in agricultural use, his employees engaged in such use and members of their respective immediate

families, will together constitute and count as a single principal building.

(Emphasis added.) Executive Law § 802(50)(g) also indicates that, although they require a permit, single family dwellings constructed for farmworker housing are more easily approvable by the Agency than dwellings used for non-agricultural purposes, as the approval requirements of Executive Law §§ 805(3) and 809(10) are lessened when dwellings are to be used for farmworker housing.

22. Unlike single family dwellings, including dwellings used for farmworker housing, the Executive Law exempts agricultural use structures from Agency jurisdiction by omitting such structures from the list of jurisdictional projects. In addition, Executive Law § 810(1) specifically exempts land use and development within various critical environmental areas from Agency jurisdiction when the land use and development involves agricultural uses. Executive Law § 810(1) also exempts agricultural use structures in excess of forty feet in height from Agency jurisdiction, where all other structures except residential radio and television antennas require permits from the Agency.

The Civil Penalty Provision

23. Executive Law § 813 states in part:

1. Any person who violates any provision of this article or any rule or regulation promulgated by the agency, or the terms or conditions of any order or permit issued by the agency pursuant to this article shall be liable to a civil penalty of not more than five hundred dollars for each day or part thereof during which such violation continues. The civil penalties provided by this subdivision shall be recoverable in an action instituted in the name of the agency by the attorney general on his own initiative or at the request of the agency.

2. Alternatively or in addition to an action to recover the civil penalties provided by subdivision one of this section, the attorney general may institute in the name of the agency any appropriate action or proceeding to prevent, restrain, enjoin, correct or abate any violation of, or to enforce any provision of this article or any rule or regulation promulgated by the agency, or the terms of conditions of any order or permit issued by the agency pursuant to this article.

(Emphasis added.)

The Rivers Act and 9 NYCRR § 577

24. The Rivers Act was enacted pursuant to a legislative finding that "many rivers of the state, with their immediate environs, possess outstanding natural, scenic, historic, ecological and recreational values." ECL § 15-2701(1).

25. The Rivers Act was enacted to implement a public policy "that certain selected rivers of the state which, with

their immediate environs, possess the aforementioned characteristics, shall be preserved in free-flowing condition and that they and their immediate environs shall be protected for the benefit and enjoyment of present and future generations." ECL § 15-2701(3).

26. Section 15-2705 of the Rivers Act states that "the functions, powers and duties encompassed by this section shall be vested in the Adirondack park agency as to any privately owned part of a river area within the Adirondack park as defined by law which may become part of this system." Section 15-2709(1) states that, within the Adirondack Park, the Adirondack Park Agency "shall make and enforce regulations necessary for the management, protection, and enhancement of and control of land use and development in the wild, scenic and recreational river areas."

27. Pursuant to 9 NYCRR § 577.4(a), "no person shall undertake a rivers project without first obtaining an agency permit."

28. In recreational river areas, rivers projects include, inter alia, all subdivisions of land in Resource Management land use areas. 9 NYCRR § 577.5(c)(1).

29. In recreational river areas, rivers projects include, inter alia, all land uses and developments classified

compatible uses by the Adirondack Park land use and development plan in Resource Management land use areas. 9
NYCRR § 577.5(c)(1).

30. Pursuant to Section 805(3)(g)(4) of the Adirondack Park Agency Act, single family dwellings constitute compatible uses in Resource Management land use areas.

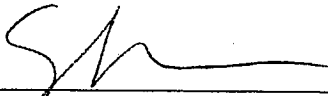
31. Section 15-2723 of the Rivers Act states in part:

Any person who violates any provision of this title or any regulation or order issued pursuant to this act by the commissioner or the agency may be compelled to comply with or obey the same by injunction, mandamus or other appropriate remedy. In addition, any such person shall pay a civil penalty of not less than one hundred dollars or more than one thousand dollars for each day of such violation.

(Emphasis added.)

Dated: Ray Brook, New York

April 22, 2008



SARAH REYNOLDS, Esq.

SARAH REYNOLDS AFFIRMATION

EXHIBIT LIST

- Exhibit A Van Cott Affirmation dated April 10, 2008
(from stay) with Exhibit A, March 25, 2008
Determination of Adirondack Park Agency
- Exhibit B Cease and Desist Order dated June 27, 2007
- Exhibit C Letter from Paul Van Cott, Esq., Adirondack Park
Agency to David Cooke, Esq. dated August 31, 2007
re: Cease and Desist Order
- Exhibit D Notice of Apparent Violation
- Exhibit E Notice of Request for Enforcement Committee
Determination dated December 17, 2007
- Exhibit F Transcript of March 13, 2008 Adirondack Park
Agency proceeding
- Exhibit G Corrected Determination of Adirondack Park Agency
Enforcement Committee striking paragraph 4 on page
12 dated April 11, 2008