



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 25, 2008

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 12224-0341

Re: Lewis Family Farm, Inc. v. Adirondack Park Agency
Index No.: 315-08
RJI No.: 15-1-2008-0109

Adirondack Park Agency -v- Lewis Family Farm, Inc.,
Salim B. Lewis and Barbara Lewis
Index No.: 332-08
RJI No.: 15-1-2008-0117

Counselors:

This letter constitutes the decision of this Court on the motions by Lewis Family Farm, Inc. to renew and reargue, and for consolidation, as well as on the cross-motion of the Adirondack Park Agency to transfer both cases to the Hon. Kevin K. Ryan, Acting JSC.

The Court has considered the following papers on each motion:

Motion to Reargue and Renew– Notice of Motion dated April 14, 2008 and Affirmation of John J. Privitera, Esq. dated April 14, 2008, with exhibits A-D, in support of the motion. There was no affidavit of Marco Turco sworn to April 14, 2008 included in the motion papers. Submitted in opposition were Affirmations of Assistant Attorney

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General Loretta Simon with exhibits A-K, and Sarah Reynolds, Esq. with exhibits A-G, both dated April 22, 2008.

Motion to Consolidate and Cross Motion to Transfer – Notice of Motion dated April 14, 2008 and Affirmation of John J. Privitera, Esq. dated April 14, 2008, with exhibits A and B. Notice of Cross Motion dated April 21, 2008 and Affirmation of Assistant Attorney General Loretta Simon dated April 21, 2008, with exhibits A-J. Affirmation of John J. Privitera, Esq. dated April 23, 2008, with exhibits A-D, in opposition to cross motion.

The motion to consolidate both proceedings is granted. Nothing in the papers submitted by counsel for the Adirondack Park Agency indicates opposition to the motion. Moreover, by seeking transfer of both cases to the Acting Supreme Court Justice who decided the prior action in 2007, the Adirondack Park Agency impliedly concedes that consolidation is proper and appropriate here.

The cross motion to transfer is denied. The prior action between the parties was finally disposed of by a Decision and Order dated August 16, 2007 and filed in the Essex County Clerk's Office on August 29, 2007. Although counsel for Lewis Family Farm stated at oral argument that this decision had been appealed, the transcript of the March 13, 2008 hearing before the Adirondack Park Agency enforcement committee indicates that no appeal had been taken (see Exhibit F to Affirmation of Sarah Reynolds, Esq. dated April 22, 2008 at page 44, line 24 through page 45, line 2). A review of the records of the Essex County Clerk regarding this prior action (Index No. 498-07) reveals that a notice of appeal was filed on October 1, 2007. Whether such was timely is unknown at this time and, if timely, jurisdiction of that action lies with the Appellate Division, Third Department. The assignment of the two pending actions now before this Court was made pursuant to the Administrative Order dated December 20, 2007 established by the Hon. Ann T. Pfau, Chief Administrative Judge of the Courts, and approved by the Hon. Anthony V. Cardona, presiding justice of the Appellate Division, Third Judicial Department. As a result, assignment to this Court of both proceedings complied in all respects with 22 NYCRR §202.3 (see also 22 NYCRR §80.1[b][2]), particularly since there is no related action now pending before the Hon. Kevin K. Ryan.

Counsel for Lewis Family Farm, Inc. is hereby directed to submit an order, on notice to Assistant Attorney General Simon, granting the motion for consolidation and denying the cross motion for transfer, all without costs.

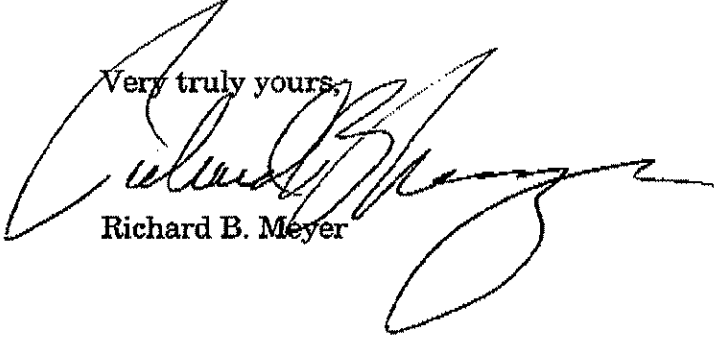
The combined motion by Lewis Family Farm, Inc. to reargue and renew (CPLR §221[f]) is granted, and upon such reargument and renewal, the decision and order of this Court dated April 11, 2008 is adhered to. The "new facts," alleged in support of a stay of the APA's prohibition against use or occupancy of the subject dwelling units,

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were available at the time of the prior motion. Even upon considering those facts, granting a stay for the purposes requested – so that the subject dwelling units could be used and occupied pending final judgment – would go beyond the purposes of a stay, namely to maintain the *status quo* (see *State -v- Town of Haverstraw*, 219 AD2d 64, 641 NYS2d 879). The arguments advanced by Lewis Family Farm, Inc. in its motion to reargue in support of a stay would similarly go beyond the purpose of a stay.

The other arguments advanced by Lewis Family Farm in support of its motion to reargue, to the effect that payment of the fine would constitute a deprivation of constitutional rights since the time for challenging the March 25, 2008 determination under statute (Executive Law §818 [1]) would not have expired by the due date of payment, are without merit. Payment of the fine would not preclude Lewis Family Farm, Inc., from seeking judicial review, and does not constitute an admission or a concession to the March 25, 2008 determination now under review. No irreparable harm has been shown by Lewis Family Farm, Inc., to payment of the fine at this time. Assistant Attorney General Simon is to submit an order on notice to Mr. Privitera, without costs.

Very truly yours,



Richard B. Meyer

RBM:jhd
cc: Clerk