

STATE OF NEW YORK
SUPREME COURT COUNTY OF ESSEX

ADIRONDACK PARK AGENCY,

Plaintiff,

-against-

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

Defendants.

VERIFIED ANSWER

Index No.: 332-08

RJI No.: 15-1-2008-0117

Hon. Richard B. Meyer

Defendant Lewis Family Farm, Inc. ("Defendant"), through its attorneys, McNamee, Lochner, Titus & Williams, P.C., for its Verified Answer to the Verified Amended Complaint ("Complaint"), hereby states as follows:

1. Defendant admits that it constructed certain structures on land located in the Town of Essex, County of Essex, and further admits that the Adirondack Park Agency ("Agency") issued an administrative determination dated March 25, 2008, but denies the remaining allegations set forth in paragraph 1 of the Complaint.

2. Defendant denies that it has knowledge or information sufficient to form a belief as to what the Agency seeks, as set forth in the allegations of paragraph 2 of the Complaint.

3. Defendant admits that this Court has jurisdiction over actions commenced pursuant to N.Y. Executive Law § 813 and N.Y. Environmental Conservation Law § 15-2705, as alleged in paragraph 3 of the Complaint.

4. Defendant admits that venue is proper in Essex County, but denies the remaining allegations set forth in paragraph 4 of the Complaint.

5. Defendant denies that it has knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 5 of the Complaint.

6. Defendant admits the allegations set forth in paragraph 6 of the Complaint.

7. Defendant admits the allegations set forth in paragraph 7 of the Complaint.

8. Defendant admits the allegations set forth in paragraph 8 of the Complaint.
9. To the degree that the allegations of paragraph 9 of the Complaint refer to a principle of law or recite statutory authority, the Defendant leaves to the Court the resolution of those matters, and denies the remaining allegations therein.
10. To the degree that the allegations of paragraph 10 of the Complaint refer to a principle of law or recite statutory authority, the Defendant leaves to the Court the resolution of those matters, and denies the remaining allegations therein.
11. To the degree that the allegations of paragraph 11 of the Complaint refer to a principle of law or recite statutory authority, the Defendant leaves to the Court the resolution of those matters, and denies the remaining allegations therein.
12. To the degree that the allegations of paragraph 12 of the Complaint refer to a principle of law or recite statutory authority, the Defendant leaves to the Court the resolution of those matters, and denies the remaining allegations therein.
13. To the degree that the allegations of paragraph 13 of the Complaint refer to a principle of law or recite statutory authority, the Defendant leaves to the Court the resolution of those matters, and denies the remaining allegations therein.
14. To the degree that the allegations of paragraph 14 of the Complaint refer to a principle of law or recite statutory authority, the Defendant leaves to the Court the resolution of those matters, and denies the remaining allegations therein.
15. To the degree that the allegations of paragraph 15 of the Complaint refer to a principle of law or recite statutory authority, the Defendant leaves to the Court the resolution of those matters, and denies the remaining allegations therein.
16. To the degree that the allegations of paragraph 16 of the Complaint refer to a principle of law or recite statutory authority, the Defendant leaves to the Court the resolution of those matters, and denies the remaining allegations therein.

17. To the degree that the allegations of paragraph 17 of the Complaint refer to a principle of law or recite statutory authority, the Defendant leaves to the Court the resolution of those matters, and denies the remaining allegations therein.

18. To the degree that the allegations of paragraph 18 of the Complaint refer to a principle of law or recite statutory authority, the Defendant leaves to the Court the resolution of those matters, and denies the remaining allegations therein.

19. To the degree that the allegations of paragraph 19 of the Complaint refer to a principle of law or recite statutory authority, the Defendant leaves to the Court the resolution of those matters, and denies the remaining allegations therein.

20. To the degree that the allegations of paragraph 20 of the Complaint refer to a principle of law or recite statutory authority, the Defendant leaves to the Court the resolution of those matters, and denies the remaining allegations therein.

21. To the degree that the allegations of paragraph 21 of the Complaint refer to a principle of law or recite statutory authority, the Defendant leaves to the Court the resolution of those matters, and denies the remaining allegations therein.

22. To the degree that the allegations of paragraph 22 of the Complaint refer to a principle of law or recite statutory authority, the Defendant leaves to the Court the resolution of those matters, and denies the remaining allegations therein.

23. To the degree that the allegations of paragraph 23 of the Complaint refer to a principle of law or recite statutory authority, the Defendant leaves to the Court the resolution of those matters, and denies the remaining allegations therein.

24. To the degree that the allegations of paragraph 24 of the Complaint refer to a principle of law or recite statutory authority, the Defendant leaves to the Court the resolution of those matters, and denies the remaining allegations therein.

25. To the degree that the allegations of paragraph 25 of the Complaint refer to a principle of law or recite statutory authority, the Defendant leaves to the Court the resolution of those matters, and denies the remaining allegations therein.

26. Defendant admits the allegations set forth in paragraph 26 of the Complaint.

27. Defendant denies that all of its land is located on Whallons Bay Road in Essex, New York, and denies that it has knowledge or information sufficient to form a belief as to the remaining allegations set forth in paragraph 27 of the Complaint.

28. Defendant admits that it operates an organic farm, but denies the remaining allegations set forth in paragraph 28 of the Complaint:

29. Defendant admits that the Agency's Director, Counsel, and Deputy Director of Regulatory Programs visited the Lewis Family Farm at the long-standing invitation by Sandy Lewis, but denies the remaining allegations set forth in paragraph 29 of the Complaint.

30. Defendant denies that S.B. Lewis submitted a permit application to the Agency, admits that Barbara Lewis submitted an application to establish the fact that the houses are farm buildings, and denies that she applied for subdivision approval as alleged in paragraph 30 of the Complaint.

31. Defendant admits that a Notice of Incomplete Permit Application is attached as Exhibit D to the Complaint, but denies that it has knowledge or information sufficient to form a belief as to the remaining allegations set forth in paragraph 31 of the Complaint.

32. Defendant admits that Barbara Lewis contacted the Agency in mid-March 2007 concerning the three farm worker dwellings, but denies that it has knowledge or information sufficient to form a belief as to the remaining allegations set forth in paragraph 32 of the Complaint.

33. Defendant denies that it has knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 33 of the Complaint.

34. Defendant admits that it did not obtain an Agency permit prior to the commencement of construction of its farm worker housing, as alleged in paragraph 34 of the Complaint.

35. Defendant denies that it has knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 35 of the Complaint.

36. Defendant admits that Agency staff sent a letter and proposed settlement to the Lewis Family Farm on or about May 14, 2007, but denies the remaining allegations set forth in paragraph 36 of the Complaint.

37. Defendant admits that it requested the Agency to remove the proposed civil penalty and that Agency staff declined to do so, but denies that it has knowledge or information sufficient to form a belief as to the remaining allegations set forth in paragraph 37 of the Complaint.

38. Defendant admits that the Agency purported to issue a "Cease and Desist Order" on June 27, 2007, but denies that it has knowledge or information sufficient to form a belief as to the remaining allegations set forth in paragraph 38 of the Complaint.

39. Defendant admits the allegations set forth in paragraph 39 of the Complaint, except Defendant denies that it commenced its action "on or about June 28, 2007". In truth, Defendant commenced its action on June 26, 2007—*before* the Agency issued its purported "Cease and Desist Order". Date-stamped copies of the Index Number Application and Request for Judicial Intervention, dated June 26, 2007, which were obtained from the Essex County Clerk, are attached hereto as **Exhibit "A"**.

40. Defendant denies that it has knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 40 of the Complaint.

41. Defendant admits that Acting Supreme Court Justice Kevin J. Ryan issued a decision on August 16, 2007, but to the degree that the allegations of paragraph 41 of the Complaint seek to interpret that decision, Defendant leaves to the Court the resolution of those matters, and denies the remaining allegations therein.

42. Defendants admit that there is a purported letter from Paul Van Cott dated August 31, 2007 attached as Exhibit "F" to the Complaint, but denies that it has knowledge or information sufficient to form a belief as to the remaining allegations set forth in paragraph 42 of the Complaint.

43. Defendant admits that the Agency served a Notice of Apparent Violation dated September 5, 2007, and further admits that it removed a pre-existing dwelling which had been located at the new farm worker housing, but denies that it has knowledge or information sufficient to form a belief as to the remaining allegations set forth in paragraph 43 of the Complaint.

44. Defendant admits the allegations set forth in paragraph 44 of the Complaint.

45. Defendant admits that the Agency's Enforcement Committee issued a determination on March 25, 2008, but to the degree that the allegations of paragraph 45 of the Complaint seek to interpret that decision, Defendant leaves to the Court the resolution of those matters, and denies the remaining allegations therein.

46. Defendant admits the allegations set forth in paragraph 46 of the Complaint.

47. Defendant admits the allegations set forth in paragraph 47 of the Complaint.

48. Defendant admits that the Agency issued a purported "correct determination" on April 18, 2008, but denies that this document has any legal effect and denies the remaining allegations set forth in paragraph 48 of the Complaint.

FIRST CAUSE OF ACTION

(Failure to obtain an Agency permit for construction of three new single family dwellings under the APA Act)

49. To the degree that the allegations of paragraph 49 of the Complaint refer to a principle of law or recite statutory authority, the Defendant leaves to the Court the resolution of those matters, and denies the remaining allegations therein.

50. Defendant denies the allegations set forth in paragraph 50 of the Complaint.

SECOND CAUSE OF ACTION

(Failure to obtain Agency permits for construction of three new single family dwellings under the Rivers Act)

51. To the degree that the allegations of paragraph 51 of the Complaint refer to a principle of law or recite statutory authority, the Defendant leaves to the Court the resolution of those matters, and denies the remaining allegations therein.

52. Defendant denies the allegations set forth in paragraph 52 of the Complaint.

THIRD CAUSE OF ACTION

(Failure to obtain an Agency permit for subdivision of land under the APA Act)

53. To the degree that the allegations of paragraph 53 of the Complaint refer to a principle of law or recite statutory authority, the Defendant leaves to the Court the resolution of those matters, and denies the remaining allegations therein.

54. Defendant denies the allegations set forth in paragraph 54 of the Complaint.

FOURTH CAUSE OF ACTION

(Failure to obtain an Agency permit for subdivision of land under the Rivers Act)

55. To the degree that the allegations of paragraph 55 of the Complaint refer to a principle of law or recite statutory authority, the Defendant leaves to the Court the resolution of those matters, and denies the remaining allegations therein.

56. Defendant denies the allegations set forth in paragraph 56 of the Complaint.

FIFTH CAUSE OF ACTION

(compliance with Agency determination as amended April 18, 2008)

57. Defendant admits the allegations set forth in paragraph 57 of the Complaint.

58. Defendant admits that the Agency's Enforcement Committee issued a determination on March 25, 2008, but to the degree that the allegations of paragraph 58 of the Complaint seek to interpret that decision, Defendant leaves to the Court the resolution of those matters, and denies the remaining allegations therein.

59. Defendant admits that the Agency issued a purported "correct determination" on April 18, 2008, but denies that this document has any legal effect and denies the remaining allegations set forth in paragraph 59 of the Complaint.

60. Defendant denies that it has knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 60 of the Complaint.

61. Defendant denies that plaintiff Adirondack Park Agency is entitled to the relief sought in the WHEREFORE clause of the Complaint or any relief whatsoever.

FIRST AFFIRMATIVE DEFENSE

62. The Complaint fails to state a cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

63. The Complaint is premature, not ripe, and fails to plead conditions precedent.

THIRD AFFIRMATIVE DEFENSE

64. The Agency's March 25, 2008 Determination was improperly rendered and this enforcement case violates New York law because the Agency has not fulfilled its constitutional duty to encourage the development and improvement of agricultural lands pursuant to Section 4 of Article 14 of the New York State Constitution.

FOURTH AFFIRMATIVE DEFENSE

65. The Agency's March 25, 2008 Determination was improperly rendered and this enforcement case violates New York law because the Agency has not fulfilled its statutory duty to modify its administrative procedures and regulations to encourage the maintenance of viable farming in agricultural districts pursuant to Section 305 of the Agriculture and Markets Law.

FIFTH AFFIRMATIVE DEFENSE

66. The Agency's March 25, 2008 Determination was improperly rendered and this enforcement case violates New York law because the Agency failed to adhere to the Court of Appeals' teachings of Town of Lysander v. Hafner, 96 N.Y.2d 558 (2001), by unreasonably restricting and/or regulating farm operations within agricultural districts.

SIXTH AFFIRMATIVE DEFENSE

67. The Agency's March 25, 2008 Determination is *ultra vires* and beyond the Agency's jurisdiction and this enforcement case violates New York law because the Agency has no delegated authority to regulate farm worker housing and other agricultural use structures under the Adirondack Park Agency Act or the Wild, Scenic and Recreational River System Act.

SEVENTH AFFIRMATIVE DEFENSE

68. The Agency's March 25, 2008 Determination is *ultra vires* and beyond the Agency's jurisdiction and this enforcement case violates New York law because the Lewis Family Farm did not subdivide its land under either the Adirondack Park Agency Act or the Wild, Scenic and Recreational River System Act.

EIGHTH AFFIRMATIVE DEFENSE

69. The Agency's March 25, 2008 Determination is *ultra vires* and beyond the Agency's jurisdiction and this enforcement case violates New York law because the Agency has no delegated authority to regulate farm worker housing and other agricultural use structures on Resource Management lands that are more than 150 feet from the mean high water mark of a recreational river under the under the Wild, Scenic and Recreational River System Act.

NINTH AFFIRMATIVE DEFENSE

70. The Agency's March 25, 2008 Determination is improper and this enforcement case violates New York law because the Agency failed to consider the March 4, 2008 Resolution of the Adirondack Park Local Government Review Board.

TENTH AFFIRMATIVE DEFENSE

71. This enforcement action is barred by the doctrine of *res judicata* because, as pleaded in the Complaint, the allegations were resolved administratively on March 25, 2008.

ELEVENTH AFFIRMATIVE DEFENSE

72. The effort to amend the March 25, 2008 Determination violates SAPA and the defendant's rights to due process.

WHEREFORE, Defendant Lewis Family Farm, Inc. demands judgment dismissing the Complaint herein as against Defendant, together with an award of attorneys' fees, costs and disbursements of this action, and for such other and further relief as to this Court may seem just and proper.

Dated: July 30, 2008
Albany, New York

McNAMEE, LOCHNER, TITUS & WILLIAMS, P.C.

By:  _____

John J. Privitera, Esq.

Jacob F. Lamme, Esq.

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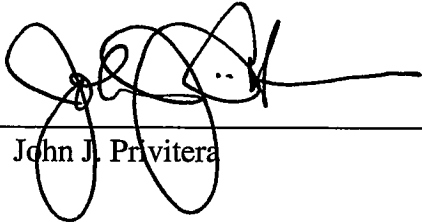
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VERIFICATION

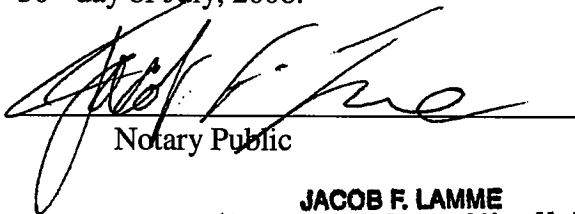
STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

JOHN J. PRIVITERA, being duly sworn, states that he is the attorney for defendant, LEWIS FAMILY FARM, INC. in this action; that he believes the matters set forth herein to be true; and that the reason why this verification is not made by defendant is that defendant does not have an office in the County of Albany wherein your deponent maintains his office.



John J. Privitera

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



Notary Public

JACOB F. LAMME
Notary Public, State of New York
Qualified in Albany County
No. 02LA6150759
Commission Expires Aug. 7, 2010