

**ORIGINAL**STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

*Plaintiff,*

- v -

NEW YORK STATE ADIRONDACK PARK AGENCY,

*Defendant.***AMENDED COMPLAINT****Index No.: 000498-07**

Plaintiff Lewis Family Farm, Inc., ("Lewis Farm"), by its attorneys, Brennan & White, LLP and Nixon Peabody LLP, for its Amended Complaint against defendant New York State Adirondack Park Agency ("APA"), alleges:

### **NATURE OF THE ACTION**

1. This is an action for declaratory judgment and injunctive relief through which Lewis Farm seeks (i) a determination that the Adirondack Park Agency Act, New York State Executive Law, Article 27 ("APAA") does not give the APA jurisdiction over the Lewis Farm project; (ii) a determination that, even if the APAA gave the APA jurisdiction over the Lewis Farm project, the Agriculture and Markets Law precludes APA's interference; and (iii) to enjoin the APA from interfering with such construction and thereby potentially preventing Lewis Farm from obtaining the benefit of certain warranties on its modular homes.

### **PARTIES**

2. Lewis Farm is a domestic corporation with a principal place of business located at 1212 Whallons Bay Road, Essex, Essex County, New York 12936. The activities

on Lewis Farm constitute farm operations within an agricultural district pursuant to New York's Agriculture and Markets Law § 305-a ("§ 305-a").

3. The APA is a New York State agency with a principal office located at 1133 NYS Route 86, Ray Brook, Essex County, New York 12977.

### **JURISDICTION AND VENUE**

4. Venue is proper in this county, pursuant to CPLR § 505(a), because the APA is a public authority with a principal office within Essex County.

### **FACTS**

#### ***Lewis Farm's History and Mission***

5. In or about 1978, the Lewis family purchased the farmstead located at 1212 Whallons Bay Road, Essex County, following a long family association with the Adirondacks dating back to 1951. The farmstead is located within an agricultural district pursuant to the Agriculture and Markets Law article 25-AA (the farmstead shall also be referred to herein as "Lewis Farm").

6. Lewis Farm incorporated in 1985 and is not only a working farm, but one of the largest organic farms in New York State. Lewis Farm's mission is to improve land use methods and the lives of those who live in the vicinity of its operations. Additionally, Lewis Farm seeks to enhance and protect the environment, similar to the stated mission of the APA.

7. Lewis Farm has become a showcase for the Cornell cooperative extension and has, through example, contributed to four neighboring farms having become organic as well.

8. Lewis Farm has a strong reputation which has allowed for students and apprentices, both from the United States and internationally, to work for academic credit in their agricultural programs.

9. Lewis Farm provides employment and education to members of its community and beyond and is highly regarded in both local and non-local agricultural and environmental communities.

10. As evidence of its far-reaching agricultural and environmental reputation, Lewis Farm was recently approached by the government of Nepal to host four Nepali farmers so that they may learn the methods of sustainable, organic farming. The Nepali farmers are scheduled to arrive within the next few months and will need housing upon their arrival.

***The Housing Project***

11. Lewis Farm has expended significant capital investments to its operations in its efforts to remain economically viable. One of the last capital improvement projects Lewis Farm has left is to build staff housing, which was to have been completed by early summer, 2007 (the "Housing Project").

12. Lewis Farm previously removed fifteen housing units from the Lewis Farm land. Since that time, it has only replaced two housing structures. Through the Housing Project, Lewis Farm now seeks to replace only four units.

13. The purpose of the Housing Project is to provide much needed employee housing. Moreover, the Housing Project falls squarely within the APAA definition of "agricultural use structure" in that farm employee housing constitutes a "building or structure directly and customarily associated with agriculture use."

14. Because the Housing Project will provide housing for Lewis Farm employees and interns, it constitutes farm operations within the meaning of § 305-a.

15. The modular housing units for installation in the Housing Project were constructed in Canada and shipped to New York to be placed on the newly built foundations. The housing units are meant to be installed by the Canadian manufacturer, but the manufacturer's laborers are only available through June 30, 2007.

16. After June 30, 2007, Lewis Farm will have to engage another contractor to install the units and is in danger of losing the manufacturer's warranty on the units if they are not installed by the manufacturer.

17. Additionally, there exist certain language barriers should Lewis Farm be forced to use certain other laborers for construction since the manufacturer converses only in French. This could have the effect of certain critical components of the construction being compromised and, in any event, will cause the Housing Project to be less efficiently managed.

18. In addition, the modular units must be weatherized once they are installed on the foundations. If this process is interrupted, the resulting loss of warranty and/or quality of construction is unascertainable.

19. In or about October, 2006, in furtherance of the Housing Project, Mark McKenna, the Housing Project's project manager, obtained building permits from the Town of Essex. At that time the Town's Code Enforcement Officer, David Lansing, told Mr. McKenna that no further permits were necessary since the Housing Project was strictly a farm operation. Lewis Farm relied on this information and, accordingly, did not contact APA.

20. Subsequently, and only after Lewis Farm had expended significant resources on architectural, engineering, and foundation work, did Mr. Lansing, the Code Enforcement Officer travel to the Housing Project and, despite his earlier advisement, suggest that Mr. McKenna contact the APA. Thereafter, Mr. Lansing called the APA with Mr. McKenna and was told that a permit was necessary for the project.

21. In or about January, 2007, Barbara Lewis of Lewis Farm contacted John Quinn, an APA Environmental Programs Specialist to ask him what was needed. Meanwhile, McKenna obtained the APA permitting application. Barbara Lewis, having received the permitting papers, called Mr. Quinn and indicated that she would provide anything necessary to obtain a permit so the project would not be delayed. While completing the application Barbara Lewis called Mr. Quinn a second time with questions about the application only then was she informed that the matter had been referred to the APA enforcement division.

22. The interruption of the Housing Project has caused Lewis Farm significant damage including, without limitation, continuation of payments to the project manager, reputational damage, and Lewis Farm interns having to be housed off site in housing that is insufficient as a long-term solution.

23. The interruption and ensuing delay may also cause Lewis Farm to lose the warranty on the modular units, as well as potentially causing Lewis Farm further irreparable harm in the form of decreased quality and/or decreased warranty resulting should the weatherproofing process be interrupted.

24. On or about May 14, 2007, Lewis Farm received correspondence from the APA enclosing a proposed settlement agreement, a true copy of which is attached hereto as **Exhibit A**. Notably, neither the APA's letter nor proposed settlement agreement in any

way acknowledge that the Housing Project is taking place on a farm in furtherance of farm-related activities. Rather, the APA letter and proposed agreement give the wrongful appearance that what is at issue is some sort of commercial subdivision plan.

25. Nowhere in the APA's May 14, 2007 correspondence does the APA assert that the Housing Project poses any threat to public health or safety or in any way causing damage to the environment. The proposed agreement requests that Lewis Farm pay a penalty of \$10,000. The APA has indicated that, once Lewis Farm paid the penalty, an after-the-fact permit would be issued.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**Injunctive Relief**

26. Lewis Farm repeats and realleges paragraphs 1 through 26 as if fully set forth herein.

27. The improper interference by the APA in the Housing Project has been and is continuing to cause Lewis Farm to suffer irreparable harm in that it risks losing warranty coverage for the modular homes each day that construction has been halted. Moreover, Lewis Farm is at risk of suffering irreparable harm should the weatherproofing process be delayed. The ensuing damages are irreparable because they are virtually impossible to ascertain at this time. Moreover, Lewis Farm interns, who were supposed to have been housed in the completed Housing Project, are in danger of losing their temporary housing with no alternative long-term option available to them.

28. By reason of the foregoing, Lewis Farm is entitled to an injunction enjoining the APA from further interfering with the Housing Project.

29. Lewis Farm has no adequate remedy at law.

**AS AND FOR A SECOND CAUSE OF ACTION**

**Declaratory Judgment**

30. Lewis Farm repeats and realleges paragraphs 1 through 30 as if fully set forth herein.

31. The above described description of the Housing Project and its purpose demonstrates that it is outside of the APA's jurisdiction. The Housing Project involves the construction of agricultural use structures over which the APA has no jurisdiction pursuant to the APA Act, New York State Executive Law, Article 27.

32. The granting of declaratory relief will terminate the controversy as to whether or not the APA may continue to improperly assert its jurisdiction over the Housing Project, which flies in the face of the APAA.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**Declaratory Judgment**

33. Lewis Farm repeats and realleges paragraphs 1 through 33 as if fully set forth herein.

34. The above-described APA interference with the Housing Project constitutes an unreasonable restriction or regulation of farm operations in violation of § 305-a because it is interfering with Lewis Farm's ability to provide housing to its employees and apprentices. Section 305-a specifically restricts the local planning and land use decision-making on New York farmlands such the that APA's assertion of jurisdiction is improper in this instance.

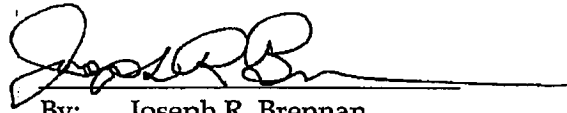
35. The granting of declaratory relief will terminate the controversy as to whether or not the APA may assert its jurisdiction in a manner in which it may interfere with the Housing Project.

**WHEREFORE**, Lewis Farm demands judgment against the defendant as follows:

- a. On the first cause of action, a temporary then permanent injunction enjoining the APA from interfering with the Housing Project and from imposing any penalty on Lewis Farm;
- b. On the second cause of action, judgment in the form of a declaration that the APA does not have jurisdiction over the Housing Project;
- c. On the third cause of action, judgment in the form of a declaration that, even if the APA has jurisdiction over the Housing Project, the APA's interference is improper in this instance because it is in direct conflict with the Agriculture and Markets Law; and
- d. For such other and further relief as this Court may deem just, equitable and proper.

Dated: July \_\_, 2007

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