

LEWIS FAMILY FARM, INC.,

Petitioner,

-against-

ADIRONDACK PARK AGENCY,

Respondent.

**REPLY AFFIRMATION IN
SUPPORT OF A FULL STAY
OF RESPONDENT'S
DETERMINATION**

A.D. Docket No. 504626

Essex County Index No. 315-08

JOHN J. PRIVITERA, an attorney at law duly admitted to practice in the courts of the State of New York, swears and affirms under penalty of perjury as follows:

1. I am duly licensed and admitted to practice law in the State of New York, and I am a principal with the law firm of McNamee, Lochner, Titus & Williams, P.C., attorneys for Petitioner Lewis Family Farm, Inc. (hereafter "Lewis Family Farm"). As such, I am fully familiar with the pleadings and proceedings had in this action, and with the matters set forth herein.

2. I make this reply affirmation in further support of the Lewis Family Farm's motion for leave to review for the purpose of modifying and affirming the April 11, 2008 Decision and Order of the Essex County Supreme Court (Hon. Richard B. Meyer) (hereafter "April 11 Decision and Order") pursuant to CPLR § 5701(c) in order to implement a full stay of Petitioner's obligation to abide by Respondent Adirondack Park Agency's Enforcement Committee Decision of March 25, 2008 (hereafter "March 25 Determination") until a final judgment is rendered in the Article 78 proceeding and any appeals thereto.

3. This dispute involves a cluster of three farm worker houses on the Lewis Family Farm. The Agency attempts to cloud the issues on this appeal by claiming that the Lewis Family

Farm misrepresented facts surrounding the septic system currently in place for one of the farm worker houses known as the "Dormitory" (also known as "West House Farmworkers' Residence" or "Structure I"). (See Agency's Memorandum of Law in Opposition, dated May 5, 2008, pp. 20-21). This is not true.

4. The Lewis Family Farm has never represented that the common septic system designed for the three-building farm worker housing cluster is fully installed and operational. It is only operational and compliant for the Dormitory. The fact that the Dormitory is currently connected to portions of a pre-existing septic system is further proof that the Dormitory is a replacement dwelling and therefore, deemed "legal" by the Agency. See Affidavit of Douglas Miller, Agency's Enforcement Officer, sworn to July 20, 2007, paragraph 12, Exhibit "M" to Privitera Affirmation dated April 28, 2008.

5. The Lewis Family Farm has complied with the Order to Show Cause executed by Hon. Leslie E. Stein on April 28, 2008 by submitting proof that the Dormitory's septic system is operational and complies with New York State law. A copy of the Lewis Family Farm's submission is attached hereto as **Exhibit "A"**.

6. Moreover, the Lewis Family Farm has complied with the Order to Show Cause executed by Hon. Leslie E. Stein on April 28, 2008 by paying the sum of \$50,000 to the Essex County Treasurer's Office pursuant to CPLR 5519(a)(2). Copies of the Lewis Family Farm's check to the County of Essex and the accompanying receipt are attached hereto as **Exhibit "B"**.

7. Accordingly, this Court should make permanent the temporary relief granted by Judge Stein in the Order to Show Cause so as to implement a stay of the Agency's March 25 Determination that maintains the status quo by allowing the use of the Dormitory for the farm workers pending a final judgment of this Article 78 proceeding, and any appeals thereto.

8. Finally, in the papers opposing this motion, the Agency also mischaracterizes the procedural history of this dispute. (See Affirmation of Loretta Simon, dated May 5, 2008, ¶ 12; Respondent's Memorandum of Law in Opposition dated May 5, 2008, pp. 4-5). The Agency did not commence its enforcement proceeding until it served a Notice of Apparent Violation on September 5, 2007. See 9 NYCRR § 581-2.6 (declaring that an Agency enforcement proceeding is deemed commenced upon service of the notice of apparent violation). The Agency remains unable to explain why it waited nearly one year after the Lewis Family Farm received a Town of Essex permit and began construction on the farm worker housing before the Agency decided to commence its enforcement proceeding, as noted by Justice Meyer below in granting a partial stay and in finding that the Lewis Family Farm is likely to prevail on the merits of the Article 78 proceeding pending below. (See April 11, 2008 Decision and Order, Ex. A to Privitera Aff. dated April 28, 2008).

I hereby swear and affirm the above under penalty of perjury this 8th day of May, 2008.

/s/ John J. Privitera
John J. Privitera