
IN THE MATTER OF
LEWIS FAMILY FARMS, INC.

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The above-referenced matter was held March 13, 2008,
at the Adirondack Park Agency Headquarters in Ray Brook,
New York, before Lisa L. Tennyson, Certified Shorthand
Reporter, Registered Merit Reporter and Notary Public in and
for the State of New York.

- APPEARANCES: CECIL WRAY
FRANK MEZZANO
ELIZABETH LOWE
ARTHUR LUSSI
LANI ULRICH
RICHARD BOOTH
MARK SANGENBERGER
CURTIS STILES
JAMES BANTA
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By: John Privitera, Esq.

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MR. WRAY: Next. Ready, Mr. VanCott?

MR. VANCOTT: I am.

MR. WRAY: The next case to be considered by the enforcement commitment is the matter of Lewis Family Farms. I don't have the file with me here, it is E2007041. This matter has been referred to the enforcement committee by agency staff pursuant to Section 581-2.6D of the agency enforcement regulations.

The committee will hear an oral presentation or argument by the agency's staff and by the respondent and deliberate in executive session and subsequently make a determination as provided in that section of the regulations.

Both parties here are represented by counsel. Paul VanCott, agency's enforcement attorney, appears on behalf of the agency's staff, and John Privitera is here representing Lewis Family Farm. Thank you, sir.

The -- the agency process requires that a notice of apparent violation be sent to the respondent and provides an opportunity for the respondent to reply in writing and the staff and the respondent have fully availed themselves of

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the opportunity to set from their positions on the facts and the law in this case.

The full record was mailed to agency members in abeyance of this meeting and committee members have -- assuming -- reviewed it. The record they received is a public document available for inspection and consists of the notice of apparent violation and respondent's counsel to the notice, a staff notice of request for an enforcement committee determination, which included a number of -- had attached or enclosed a number of documents and exhibits, including several affidavits and memorandum of law.

Document entitled "Right to Farm in the Champlain Valley of New York," dated January 2008 submitted by the respondent's attorney, the staff's reply affirmation by Mr. VanCott attaching correspondence with the State Department of Agriculture and Markets, a reply memorandum of law from the respondent requesting dismissal of the enforcement proceeding, and the staff's reply of memorandum of law to that memorandum.

By way of background, there has been some

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1 court litigation on this matter previously when
2 the respondent brought an action against the
3 agency related to jurisdiction and so forth.
4 That matter has been resolved by the New York
5 State Supreme Court.

6 This case involves construction of three
7 single-family dwellings on the respondent's farm
8 in resource management land use area and the
9 issue in dispute has to do with the requirement
10 as put forth by the staff that they should have
11 required -- that they should have obtained
12 agency permit before doing so.

13 Our procedure -- it will be that
14 Mr. VanCott and Mr. Privitera will each make a
15 statement on the record not to exceed 15
16 minutes, and it's my understanding,
17 Mr. Privitera, that you may be showing a
18 powerpoint or slides. Am I right?

19 MR. PRIVITERA: Yes, just as Mr. VanCott
20 is, sir. Yes.

21 MR. WRAY: Okay. And will be able to --
22 both counsel be able to respond to any questions
23 from the enforcement members. As I believe all
24 of you know, this is not public participation
25 proceeding.

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1 The -- and if it seems appropriate at the
2 end of their presentations to ask for any rely
3 from either counsel, I do so but that's -- would
4 be in -- in our discretion.

5 After the conclusion of this hearing the
6 enforcement committee will meet in executive
7 session to deliberate and make a determination
8 on the matter and the committee decision will
9 first be reported to the respondent and to
10 Mr. VanCott and thereafter, made public.
11 Committee's determination will not be reported
12 to the agency in tomorrow's public session.

13 Mr. Privitera, do you or Mr. VanCott have
14 any questions about anything that I may have
15 left ambiguous?

16 MR. PRIVITERA: No, sir.

17 MR. WRAY: Thank you. Paul? Do you have
18 any question?

19 MR. VANCOTT: No, I don't.

20 MR. WRAY: Mr. VanCott, please proceed.

21 MR. VANCOTT: Thank you. I'd like to begin
22 by referring to certain facts and law that are
23 in our record. This is a photograph of the
24 Lewis farm from a cover of one its documents.
25 The Lewis farm is an incredibly beautiful piece

1 of land, set against the background of
2 Adirondack Mountains. It comprises over a
3 thousand acres. And Lewis Farm is clearly using
4 this land for agricultural use purposes.

5 Section 805(g) of the Adirondack Park
6 Agency Act sets a strong pro-farm policy that
7 encourages farming on resource management lands
8 like these. The agricultural use of resource
9 management lands is listed by law as a primary
10 compatible use and does not require an agency
11 permit. The farming of resource management
12 lands in the Adirondack Park is an open space
13 use that the law strongly favors.

14 Agency staff support this policy and the
15 agricultural use of this beautiful land by the
16 Lewis Farm. The agency and the New York State
17 Agricultural and Markets Department, as sister
18 state agencies, work together to coordinate
19 farming policy in the Adirondacks. Agency staff
20 support and encourage efforts by Lewis Farm and
21 other Adirondack farmers to make agricultural
22 use of their lands.

23 As this picture of the Lewis Farm amply
24 demonstrates, the agricultural use of this land
25 is precisely the sort of open space use desired

1 by the Adirondack Park Agency Act. But that is
2 not why we're here today.

3 The Adirondack Park Agency Act and the Wild
4 Scenic and Recreational Rivers Act, in their
5 implementing regulations are the only
6 requirements of New York State law that are
7 relevant to the question of whether respondent
8 is in violation.

9 Section 809 of the Adirondack Park Agency
10 Act requires permits for land use and
11 development on resource management lands,
12 including subdivision and single-family
13 dwellings. Under the Rivers Act, the
14 implementing regulations that 9NYCRR part 577,
15 permits are required for rivers projects,
16 including subdivision and single-family
17 dwellings.

18 The facts of this matter are equally clear.
19 In December of 2005 senior agency staff told
20 Mr. Lewis that a permit was required for
21 single-family dwellings on his resource
22 management lands even if the dwellings were
23 intended to be used for farmworker housing.
24 Mr. Lewis now claims that he does not recall
25 this discussion.

1 In late 2006 Lewis Farm sought and obtained
2 building permits for its single-family dwellings
3 from the town of Essex and alleged that the town
4 initially told them that no agency permits were
5 required. After installing the foundations for
6 its single-family dwellings, Lewis Farm
7 apparently realized that agency permits were
8 required and applied to the agency for an
9 after-the-fact permit to construct a
10 single-family dwelling.

11 The violations were referred for
12 enforcement action. The record shows that Lewis
13 Farm refused to settle or to pay any penalty or
14 even to agree to undertake an environmental
15 benefit project in order to resolve its
16 violations, despite the efforts of agency staff
17 attorney Sara Reynolds who was assigned to
18 handle this matter.

19 In late June 2007 Lewis Farm resumed
20 construction of its single-family dwellings and
21 continued with that construction even after the
22 issue -- the agency issued a cease-and-desist
23 order, two modular homes were placed prior to
24 the issuance of the cease-and-desist order, one
25 was placed after the cease-and-desist order was

1 issued.

2 Lewis Farm acknowledges making this
3 decision to defy the law for business reasons.
4 Lewis Farms next served the agency with a
5 lawsuit challenging agency jurisdiction over its
6 project. On August 16th, 2007, New York State
7 Supreme Court, Essex County, dismissed the Lewis
8 Farm lawsuit.

9 In that decision acting-Supreme Court
10 Justice Ryan unequivocally stated that the
11 agency had jurisdiction over the Lewis Farm
12 project. Despite this decision and in defiance
13 of agency staff correspondence making clear that
14 the cease-and-desist order remain in effect,
15 Lewis Farm again resumed construction on its
16 single-family dwellings.

17 Lewis Farm continued construction on its
18 single-family dwellings through the fall of
19 2007. In December 2007 agency staff made this
20 request for an enforcement committee
21 determination. In defending against these
22 violations, Lewis Farm argues that the agency
23 must defer to the laws and policies in the New
24 York State Department of Agricultural and
25 markets. Acting-Justice Ryan made clear his

1 opinion on this legal argument in his decision
2 dismissing the Lewis Farm lawsuit.

3 Since the APA does have authority over this
4 building project, the next issue is whether the
5 Ag and Markets Law, Section 305A supersedes the
6 APA authority. It does not. This section has
7 no application to the Executive Law or the
8 regulations promulgated by the APA pursuant to
9 that law.

10 With respect to this legal argument by
11 Lewis Farm, the enforcement committee need look
12 no further. Lewis Farm also argues that a
13 single-family dwellings, not single-family
14 dwellings, as specifically defined in the
15 Adirondack Park Agency act.

16 Instead, according to Lewis Farm, they fall
17 within the more general definition of
18 agricultural use structures. This argument is
19 not consistent with statutory construction. In
20 New York statutory construction favors specific
21 definitions over more general definitions.
22 Terms of art, like single-family dwellings, are
23 supposed to be read to refer to the subject
24 matter about which such terms or phrases --
25 phrases are commonly employed.

1 Furthermore, in the definition of principal
2 building in the Adirondack Park Agency Acts,
3 which specifically refers to farmworker housing,
4 agricultural use structures and single-family
5 dwellings are referred to separately in the same
6 sentence, clearly demonstrating the intent of
7 the law that they are separate and different
8 types of structures for purposes of agency
9 jurisdiction.

10 These two unpersuasive legal arguments are
11 the cornerstone of Lewis Farm's efforts to
12 justify long after the fact its violations.
13 Agency staff addressed Lewis Farms other equally
14 unavailing legal arguments in our memorandum of
15 law. But I would be glad to respond to any
16 questions that you have on any of them.

17 For relief, agency staff asks the
18 enforcement committee to require Lewis Farm to
19 obtain an after-the-fact permit. Agency staff
20 could seek removal of these structures for the --
21 as a relief for these violations. However, that
22 would not be consistent with the position that
23 we've taken in this matter from the outset.

24 We've consistently advised the Lewis Farm
25 that if they had come in for a permit, if they

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1 would go through the permitting process, we
2 would recommend approval of their single-family
3 dwellings, subject to appropriate conditions.

4 Agency staff also asks the enforcement
5 committee to impose a substantial penalty
6 against Lewis Farm for its violations. Staff
7 have not recommended a specific penalty amount
8 but we believe that the facts show that these
9 were knowing and purposeful violations. The
10 facts also show that Lewis Farm purposely and
11 repeatedly defied a lawful cease-and-desist
12 order issued by the agency.

13 These facts justify a substantial penalty
14 in order to deter Lewis Farm from future
15 violations and to deter others from similar
16 unlawful conduct. Thank you.

17 MR. WRAY: Any questions from the members
18 of the committee?

19 MR. LUSSI: Paul, I'm struggling here.
20 Principal building under 50G. 80250G.

21 MR. VANCOTT: Yes.

22 MR. LUSSI: Can you explain your reading of
23 that again? I am reading it as one, all the
24 buildings put together constitute a single
25 principal building.

1 MR. VANCOTT: Okay. My specific point, if
2 you -- if you look at that section, 50G, 52G, if
3 you look at that specific section, it refers in
4 the same sentence to agricultural use structures
5 and single-family dwellings. For purposes of
6 agency jurisdiction have not -- not having to do
7 anything with OIG's with the principal building
8 rights, this makes clear that -- that the APA
9 Act treats these as different types of
10 structures.

11 The single-family dwellings and
12 agricultural uses structures are not the same
13 thing. That single-family dwelling --
14 single-family dwellings are not considered to be
15 agricultural use structures.

16 MR. LUSSI: I -- I get that but it says
17 that they will together constitute and count as
18 a single principal building.

19 MR. VANCOTT: I agree and that's -- that's
20 actually one of the -- the benefits. It doesn't
21 mean they don't need a permit. That's a
22 separate issue. Okay? Under 809 in resource
23 management, they need a permit to building a
24 single-family dwelling. Doesn't matter if it's
25 for farm or for a family, you know, rich or

1 poor, young or old, everybody needs to get a
2 permit if you are building a house in resource
3 management.

4 All that means -- this section -- is that
5 it gives a -- a benefit to buildings, what would
6 otherwise be treated as separate principal
7 buildings for agricultural use. So here,
8 instead of their single-family dwellings, each
9 counting as one principal building and -- and
10 they are using up three principal building
11 rights with these new structures. Instead, the
12 law gives them the benefit of combining them all
13 together and says, we're only going to count it
14 as one principal building for purposes of
15 determining whether you meet the density
16 requirements of the act.

17 Density requirements of the act are
18 separate -- entirely separate from whether or
19 not they need a permit to building the
20 structure. Okay?

21 MR. WRAY: Any others? Thank you,
22 Mr. VanCott. Mr. Privitera.

23 MR. PRIVITERA: Thank you, members of the
24 commission. My name is John Privitera.
25 Mr. Chair, thank you. I'm here on behalf of the

1 Lewis Family Farm. The Lewis Family Farm that
2 is 50 percent owned by Barbara Lewis. Her
3 affidavit in this proceedings been ignored by
4 staff. But that is where the facts are with
5 respect to this farm.

6 I would ask you to stay with me for the
7 next few minutes. I would ask you that you
8 think about the law, the plan, the farm and
9 policy issues today because if this is about a
10 man and not the law, Sandy Lewis, if this is
11 about a man and not the park plan, if this is
12 about a man and not the farm, I think I'll sit
13 silent for the next 15 minutes and you can
14 decide this matter.

15 This is about the park plan. This is about
16 the law, and I ask you to sit not as a grand
17 jury as staff would have you sit. I ask you to
18 sit as fiduciaries of the plan, which is what
19 you are and what you have sworn to do as public
20 servants and I respect that. I ask you to sit
21 because you hold the park's future in your hand
22 in interpreting the plan and because farms are
23 the bedrock of this country, and farms are where
24 we get our food, although many people forget
25 that.

1 What you do about this case today about
2 farms determines a great deal about the future
3 of the park and about open space in the park.
4 So please stay with me as public servants, act
5 in the interest of the future of the park, and
6 then I would like to take you through, if I may,
7 this brief slide show and -- and walk through
8 not only what this farm is about, but what the
9 law's about.

10 That's the Lewis Family Farm. Here we go,
11 maybe it has to be on slide show. Is that it?

12 MR. VANCOTT: No, just -- you have to click
13 on slide show up there.

14 MR. PRIVITERA: I knew that would happen.
15 All right. Regionally, from a regional
16 perspective, the farm's in the great valley. It
17 is in the northern reaches of the great
18 Appalachian Valley and the Champlain Valley.
19 It's in the pink right there. This is American
20 Heritage Farmland.

21 People have been growing food on the Lewis
22 Family Farm for at least 260 years. As you
23 know, the town of Essex is the most historic
24 town in the entire park, I would argue, because
25 of its cluster of pre-Revolutionary farm homes

1 and pre-built Revolutionary village homes. This
2 is indeed in the region of American heritage
3 farmland. It's what it's always been.

4 This is a pretty good shot. It's in our
5 brief of the very little park land inside the
6 park that is protected as agricultural
7 districts. I would ask you to bear this in mind
8 because if you look to the future in the way we
9 are going to grow our food and feed our
10 families, the bread baskets are small and on the
11 edges, you know, the milk jugs are pint sized.

12 There's very little agricultural district
13 lands so what you're talking about here is very
14 precious resource and really part of the glory
15 of open space if you support it today. This is
16 a corner of the Lewis Family Farm that's at
17 issue. The road that came from this west and
18 crossed the river to your left, the bridge is
19 out. It's called the Walker Road.

20 The Walker farm is where these three houses
21 are. At the corner right there -- I don't have
22 a pointer but at the corner of the road, at the
23 bottom is a farmhouse, that's no longer there,
24 that's the Walker farmhouse which is always part
25 of the hamlet of Whallonsburg. A very depressed

1 farm hamlet, I might say. On this very corner,
2 if it was any other hamlet inside the park, it
3 would probably have a Stewart's on it, which
4 would probably be a good thing; that's an outlet
5 for farm products. It's our modern-day dairies.

6 To the north you'll see the farm, barn
7 plaza, this is world-class farm architecture.
8 That barn plaza was designed by a renown
9 landscape architect, Dan Tiley (phonetic), some
10 of whom you might know. Some of you might know
11 him. It's a perfect orthogonal alignment. The
12 farm houses are to the south of that corner and
13 are aligned with it as well.

14 This is a view from the hamlet itself. As
15 I said, there has probably not been a new
16 structure in this depressed farm hamlet for 30
17 years except for one house I could find. The
18 house -- the farmhouse cluster right there is
19 nestled on the edge of the farm and on the edge
20 of the hamlet, perfect cluster planning.

21 The Lewis Family Farm owns two square
22 miles, and they decided to cluster these homes
23 down by the barns, on the edge of the hamlet to
24 leave the open space. There they are all
25 together. You can see the hamlet in the

1 background. Beautiful planning.

2 This is the original plan in 2006. All
3 three homes designed together. These -- this is
4 not a subdivision. I didn't really hear an
5 argument that there is one. This is all part of
6 the Lewis Family Farm. It's -- there has been
7 no subdivision, there are no other lots, they
8 have not been found by the subdivision
9 inspection that Mr. VanCott spoke about because
10 there's no real estate change.

11 They are on a common well, all three
12 houses. They are on a common septic and there's
13 no way you could divide them as a subdivision.
14 You couldn't sell them separately. Some day if
15 they are sold separately, you would have to
16 subdivide and then the -- the department, the
17 agency would have jurisdiction.

18 By the way, if we're able to fill these
19 houses that have been standing empty for a year,
20 they could probably house about 15 people, which
21 would increase the population of the town of
22 Essex by two percent. That's how depressed this
23 area is.

24 This is an illustration. It's not in the
25 record just so you see it from a land use

1 perspective. Across the street. It's
2 non-jurisdictional because it's a hamlet.
3 That's what you could have across the street; a
4 99-unit apartment complex with 15,000 square
5 feet of first floor retail, 175 parking spaces
6 and it would be non-jurisdictional.

7 So it's clustered over there next to a
8 hamlet that could explode if there were enough
9 money to do so. There are the roofs the houses
10 on the edge of the hamlet, looking from the
11 hamlet. There they are again, they match
12 perfectly and an antique house that's to the
13 right of this frame, which is also white
14 clapboard, slate roof. So if you look at it
15 together, it's also perfect regional
16 architecture. It blends in. So, that's the
17 farm.

18 Let's take a look at the law. Now I would
19 say that there are at least 10 or 12 signs along
20 the path, commandments if you will, warning
21 signs that say, this agency should avoid the
22 regulation of farm land. It starts -- and I'm
23 going to go through all of these. And they are
24 all -- you will see by the end, the
25 single-family -- the definition of single-family

1 dwelling fits perfectly with all of the warning
2 signs to not regulate farming.

3 This is what the constitution says. And
4 this provision of the constitution is nestled
5 right next to the clause that says "forever
6 wild," that is so important to this park.

7 This says conserve farmland as it says it's
8 your obligation to encourage the development of
9 farms and improvement of agricultural lands.
10 And encourage the development, that's the
11 constitutional duty of this agency and it's a
12 constitutional right of all. That's the first
13 warning sign. Encourage development, not crush.

14 The next warning sign says that this
15 agency, as all state agencies, are obliged to
16 encourage the maintenance of viable farming. On
17 this record, this farm is not viable without
18 on-farmworker houses. There is nothing that
19 contradicts that.

20 We have the expert opinion of Klaas Martin
21 who has come here today and is sitting in the
22 front row. He says that on-farm housing is
23 critical to this to the viability of this farm,
24 and there is nothing that contradicts it. And
25 that obligation in the statute says that you

1 have to -- that this agency must adjust its
2 procedures to accommodate viable farming. This
3 is the provision that Commissioner Lussi asked
4 about. You know, the entire act is about you as
5 commissioners controlling density. That's what
6 it's all about.

7 This provision says -- and it's a huge
8 warning sign by the legislature -- don't
9 regulate farm housing. And there's a very broad
10 definition of immediate family, by the way.
11 Don't regulate farm housing because it doesn't
12 count. It doesn't matter how many farmhouses
13 are built. It doesn't matter how many farm
14 structures are built. They don't matter.

15 They don't make the farm any more -- the
16 park any more dense. They are supposed to be
17 cultivated, consistent with the constitution.
18 The legislature knew what they were doing.
19 Allow farms to grow, don't regulate them.
20 That's what that says. It's irrelevant to the
21 park.

22 The staff is fighting here about permitting
23 three structures that don't count. This is the
24 open space provision that Mr. VanCott referred
25 to. I would say he gave lip service to. It

1 says it's very important to protect the open
2 space character of the park by encouraging and
3 facilitating farming.

4 Now let's get to the nitty-gritty.
5 Agricultural use structures are not class A
6 projects, as a matter of law. And, as
7 agricultural use structures aren't regulated
8 even if they are over 40-feet tall. How many
9 warning signs do we need from the legislature to
10 stay away from farms?

11 Next in class B -- this is very
12 interesting. Forestry structures and ag
13 structures are included in class A -- or
14 discussed in the class A definitions. When they
15 got to class B the legislature pulled forestry
16 use structures back in. They did not pull
17 agricultural use structures back in. They did
18 not.

19 There is no requirement for a permit for a
20 class B, for an agricultural use structure
21 because agricultural use structures are not
22 listed as class B. And here's another warning
23 sign. Forgive my judge-witical (phonetic)
24 training, but I put a lot of faith in the
25 phrase, bona fide, semper fi is another -- built

1 off of that Latin word for faith. And bona
2 fide -- which is the way I was taught to
3 pronounce it -- means good faith. It means
4 something about honor, something about
5 integrity, and on this record there is no basis
6 upon which you could find that this is not a
7 bona fide farm.

8 And what did the legislature say in the act
9 under 815? Avoid regulation of good faith
10 farming. Now let's get to the definitions. And
11 you have to read them consistent with the entire
12 act. You have to read them as a matter of
13 fundamental statutory construction. Your first
14 definition, agricultural use structure, includes
15 all farm buildings, including structures
16 directly and customarily associated with
17 agricultural use.

18 That's your bedrock general and specific
19 definition. Agricultural use structures are
20 exempt. By the way, I hope you don't mind our
21 silhouettes. That's the guest house, the
22 fully-restored barn, the orchard and the
23 manager's house, Dr. Marco Terko (phonetic) who
24 is also a professor; he came here today as well
25 and I appreciate his support.

1 By the way, that was built in 2006 also and
2 for some reason staff did not require that
3 that -- that a permit be obtained for that. As
4 the Lewis affidavit shows, 15 houses,
5 substandard, falling apart houses and countless
6 outbuildings were taken down, cleaned up and
7 taken away on these two square miles, and now
8 there are six houses on a -- up to you --
9 potentially productive farm.

10 These 1200 acres could have, if you kill
11 this farm, consistent with law, 30-, 40-acre
12 lots with a house on them. And that's what
13 you'll get if you kill the farm.

14 Structure and -- now let me go back.
15 Agricultural use structure includes the word
16 structure, then the legislature defines
17 "structure," all buildings including
18 single-family dwellings. Okay?

19 So a single-family dwelling is an
20 agricultural use structure if it's used for an
21 agricultural use. There's no escaping that.
22 Look at this. Agricultural use structure
23 includes all structures directly and customarily
24 associated with ag use, and structures including
25 single-family dwelling.

1 The affidavit of Klaas Martin, the February
2 1 letter from the commissioner of Ag and
3 Markets, both say that these are farmworker
4 houses and that they are agricultural uses of
5 the land.

6 So, where are we? A single-family dwelling
7 must be an agricultural use structure if it is
8 directly and customarily associated with Ag use,
9 and there's nothing in this record upon which
10 you could say that these houses are for anything
11 other than Ag use.

12 And by the way, the customary use of
13 farmhands in the Adirondack Park is something
14 else. There's been hired hand houses in corners
15 of barns in garages where hired hands slept for
16 centuries inside the park. This is just an
17 effort by some very good people to build nice
18 houses for farmers and suddenly it's treated as
19 a crime.

20 I don't know why that won't go any further.
21 Help. And we know that all agricultural use
22 structures by your own Web site are
23 non-jurisdictional anywhere in the park. No
24 matter how big they are. Anywhere. Another
25 warning sign by legislature to stay away, which

1 you have -- you acknowledged on your Web site.
2 Let's get to the Rivers Act. Legislature did
3 the Rivers Act right after that. Legislature
4 said lands development for the full range of
5 agricultural uses are okay, could be clustered
6 development, and your regs say the following may
7 be undertaking taken without a permit in
8 recreational river areas.

9 Ag use structures. Only limitation is that
10 the Ag use structure has to be 150 feet from the
11 river, ours are about 800 to a thousand feet
12 from the rivers. So somebody's hollering at us
13 from not getting a permit. The law says, and a
14 big firm told Barbara Lewis, not me, but I
15 agree, that they didn't need a permit.

16 Well, I get -- I wonder why. Because the
17 law says that? Now, are these farmhouses?
18 Customarily used for farming? Well, you only
19 have one affidavit by one expert in this case
20 and he says -- third bullet -- first, he said
21 they are important, they are necessary.

22 You should read that Martin affidavit, it's
23 in the spiral bound. He said that this is a
24 showcase farm, that has taught many people,
25 somewhat word renown, high-end soil conservation

1 practices.

2 "In my experience, our farm employee
3 housing is a sound agricultural practice and a
4 foundation stone of a self-sustaining farm." So
5 how can you say that it is not directly and
6 customarily associated with Ag use as the
7 definition of Ag use structure says, when the
8 only expert on the matter says that it's
9 necessary and a foundation stone and a sound
10 agricultural practice?

11 This is how good farms survive with on-farm
12 employee housing, and of course, that is what
13 the Department of Ag and Markets said. I'll
14 finish in a moment if I may. The February 1
15 letter by the commissioner is in the record;
16 it's attached to my reply affidavit and he's
17 made a determination -- could I have the lights
18 please -- that the farm housing on the Lewis
19 Family Farm is indeed agricultural in nature.

20 So what does staff say about that letter?
21 Really nothing. They say, well, that's a policy
22 statement. Well, let me tell you, under 308-4
23 when the commissioner says that, it's a final
24 binding opinion under the Right to Farm Law and
25 if you don't like it, you have to sue on it in

1 an Article 78 proceeding to try and get a judge
2 to change it. So that's not an expression of
3 policy, that is a finding as a matter of law
4 under the Right to Farm Law that these buildings
5 are agricultural in nature so how in the devil
6 do we get outside of the definition of
7 agricultural use structures, what is this about?

8 There is no room in this record to find any
9 other way. I will tell you on page 7 of the
10 final brief by staff they seem to confess error
11 finally. They say, well, okay, probably
12 agricultural use structure or at least an Ag
13 building, and yeah, you don't count this
14 building but, you know, someday it might be
15 converted and it might be subdivided and sold to
16 somebody for a non-farm use. Right on page 7.
17 And because of that, we need to permit it now.

18 That's like saying, somebody's building a
19 15-foot house -- tall house in the hamlet and
20 therefore, we better assert jurisdiction and
21 require a permit for a 15-foot tall house
22 because that guy's son might try to build it
23 more than 40-foot tall someday.

24 That's the basis for jurisdiction today
25 because somebody else might change the land use.

1 Well, if they do, the new program to search the
2 county clerk's office for subdivisions will pick
3 it right up. If they ever figure out a way to
4 chop up the well or build two more. Chop up the
5 septic system, build two more, somehow figure
6 out how to make that into three sites. I don't
7 know how. And then subdivide it and sell it,
8 you will have jurisdiction and then you will
9 have to count it because it won't be an Ag use
10 structure.

11 There's no reason to assert jurisdiction
12 now because somebody might change the structure.
13 We ask for a dismissal of this proceeding and we
14 ask you to do that in the interest of farming,
15 we ask you to do that in the interest of the
16 plan and open space, in the interest of the
17 farming community, in the interest of your
18 constitutional oath and obligations.

19 And I would ask that I -- or be permitted a
20 minute please to just read a short statement by
21 Barbara Lewis and then I'd like to submit to you
22 a proposed order. This is --

23 MR. WRAY: If it's brief since you're over
24 your time, Mr. Privitera.

25 MR. PRIVITERA: Two minutes please.

1 MR. VANCOTT: Mr. Chairman, I would ask for
2 some additional time, too, given the fact we are
3 about 30 minutes into this.

4 MR. PRIVITERA: "You asked for open spaces,
5 we have created them by establishing fields and
6 pasture land where there used to be falling-down
7 houses, barns and outbuilding and debris.

8 "You asked for vistas, we have created them
9 by taking down all telephone poles abutting our
10 land and putting the services underground. You
11 asked for wetlands, we have preserved and
12 enlarged them by building bridges and creating
13 pooling areas. You asked for jurisdiction over
14 a farm's right to build housing for its
15 employees, and all future building activities on
16 its land and by extension all farms in the
17 Adirondack Park.

18 "We say these rights are regulated by and
19 protected by the State of New York. The
20 Department of Ag and Markets and our local
21 zoning laws. We have done and continued to do
22 the right thing by our land and the people of
23 our community. Do not ask for more."

24 And I would ask that this statement be made
25 part of the record. It includes, by the way, a

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1 photograph of where the Lewis family --
2 photograph of where the Lewis family now lives.
3 Fully restored of course. But that's the tender
4 handed work on this farm.

5 I would ask that you acknowledge two things
6 as well in the record, Mr. Chairman, and then I
7 have a courtesy to offer. I would ask that you
8 acknowledge the Farm Bureau letter of February
9 21 asking for dismissal of this proceeding and
10 asking also that you promulgate a farming
11 policy. May I, Mr. Chairman?

12 MR. WRAY: Have you got something to give
13 us?

14 MR. PRIVITERA: Yes.

15 MR. VANCOTT: I have no objection.

16 MR. WRAY: Okay. Thank you.

17 MR. PRIVITERA: I would ask that you
18 include in the record a March 5 letter signed by
19 Mr. Monroe, who sits here, to our governor with
20 a copy to you as the Adirondack Park Agency
21 asking that I promulgate an agricultural policy,
22 and expressing deep concern about this
23 proceeding against the Lewis Family Farm.

24 MR. VANCOTT: I have not seen this but I
25 have no objection.

1 MR. WRAY: Thank you.

2 MR. PRIVITERA: And, finally, I have a
3 courtesy to offer. That is my custom. Most
4 administrative law judges ask for it, many
5 judges ask for it, and I have prepared proposed
6 findings of fact and conclusions of law for you
7 to consider. And a proposed order.

8 MR. WRAY: Thank you.

9 MR. PRIVITERA: That provides for
10 dismissal.

11 MS. ULRICH: Anyone without copies?

12 MR. PRIVITERA: Upon that, Commissioners,
13 thank you. Embrace this farm. It's in the best
14 interest of the park. And when you do, go up
15 there and look around. It's beautiful. It's a
16 spectacular thing that you would never have
17 expected when the -- when the law was first
18 drafted 35 years ago. It's a gift to the
19 people. Let it produce. Thank you.

20 MR. WRAY: Mr. VanCott? You have a minute
21 or two.

22 MR. VANCOTT: Maybe a little bit longer
23 than that. I have a few remarks to respond to
24 but given the fact that we're 30 minutes on, I
25 kept to 15 minutes, I hope you will indulge me.

1 First of all, subdivision -- definition of
2 subdivision in the Adirondack Park Agency Act,
3 as you well know, includes subdivision into
4 sites. And a subdivision into sites occurs
5 whenever there is more than one dwelling placed
6 on the same parcel of land, even if there's an
7 existing parcel on there and even if that
8 existing parcel is intended to be taken away.

9 So that's the basis of the agency's
10 assertion that this is a subdivision. It's a
11 subdivision into sites and in resource
12 management and in a river area a permit is
13 required.

14 Mr. Privitera points out how well situated
15 the farmworker housing is on the property and
16 staff don't disagree with that. I think
17 we've -- we've said and I said in my initial
18 statement that as staff, we thought that these
19 dwellings could be permitted subject to
20 reasonable conditions. We've said that from day
21 one.

22 As he points out, it's hard up against the
23 hamlet of Whallonsburg. It's a good location
24 for what they have done. Mr. Privitera spoke to
25 the constitutional duty of the agency and I -- I

1 couldn't help but think and I was looking at it
2 this morning getting ready for this, the
3 language in the constitution is very close to
4 the language that's already in the APA Act and
5 805G, where it talks about the agency's -- I
6 will read it.

7 "The purposes, policy and objectives. The
8 basic purposes and objectives of resource
9 management areas are to protect the delicate
10 balance of physical and biological resources,
11 encourage proper and economic management of
12 forest, agricultural and recreational resources,
13 and preserve the open spaces that are essential
14 and basic to the unique character of the park."

15 I think the act speaks for itself in terms
16 of our being very consistent with our
17 constitutional duties.

18 I will go back to the question that
19 Commissioner Lussi raised and that John
20 Privitera referred to in his remarks talking
21 about the importance of our density requirements
22 to the APA Act. That's very true. But it's
23 only one of the factors that the agency
24 considers before it can issue a permit.

25 Under 809-10 -- 809-10, agency shall not

1 approve any project unless that project meets
2 the following criteria. That includes that it's
3 consistent with the land use and development
4 plan, that it's consistent with the character,
5 description and purposes of the -- of the area
6 in question, that it's consistent with the
7 overall intensity use -- intensity guidelines.
8 That's the one that Mr. Privitera and
9 Commissioner Lussi referred to. That complies
10 with the shoreline restrictions and that it
11 would not have an undue adverse impact upon the
12 natural, scenic, aesthetic, ecological,
13 wildlife, historic, recreational or open space
14 resources of the park.

15 The agency has jurisdiction over the
16 single-family dwellings because the law provides
17 that permits are required for single-family
18 dwellings that are built on resource management
19 lands.

20 When you make -- when we issue a permit, we
21 make the finding that it's consistent with all
22 intensity guidelines and when that is farmworker
23 housing, we are talking about how all the
24 agricultural use structures and the
25 single-family dwellings used for farmworker

1 housing are considered as one principal building
2 right. But we're also looking at -- and we've a
3 statutory duty to look at -- whether or not a
4 single-family dwelling is going to have an undue
5 adverse impact.

6 We're lucky with this case. We truly
7 believe that a permit might be issued. But,
8 that might not have been the case. We are
9 fortunate where we are but it may have an undue
10 adverse impact. You saw the beautiful vista in
11 the first slide. What if the single-family
12 dwelling were perched out in the middle of that
13 field? Then we might have some trouble making
14 that finding that there's no undue adverse
15 impact. That's what the law gets at.

16 The fourth house -- briefly, we addressed
17 that in our memorandum of law. The fourth house
18 that Mr. Privitera referred to was a replacement
19 of a pre-existing dwelling and the law allows
20 for that. It's in resource management. So all
21 that has to happen is that that house be placed
22 in the same vicinity of the house that it
23 replaces and that's why we found that that house
24 was non-jurisdictional.

25 Mr. Privitera said that Ag and Markets

1 considers it to be an agricultural structure. I
2 don't disagree with that. But it's not their
3 definition. It's the agency's definition. And
4 it's a different term. Agricultural use
5 structures is a term of art in our law. And,
6 you know, if you look at the definition and --
7 and after talking about this case at home, but
8 agricultural use structure means any barn,
9 stable, shed, silo, garage, fruit and vegetable.

10 My wife said, "Where is the horse in these
11 single-family dwellings?" You know, this is a
12 single-family dwelling. There's a specific
13 definition of single-family dwelling in our law.
14 In the definition of principal building it shows
15 that the law intended these to be treated as
16 different. They are different animals.

17 Mr. Privitera said that the other big law
18 firm that his client hired advised his clients
19 that their single families were exempt and
20 that's why they made their business decision to
21 proceed with construction even after the agency
22 issued a cease-and-desist order.

23 But it was their decision, it was the Lewis
24 Farm decision, not the lawyer's decision. And
25 they proceeded with that construction even after

1 a judge in State Supreme Court dismissed their
2 claim that we have no jurisdiction over these
3 single-family dwellings.

4 MR. WRAY: I think you are repeating a lot
5 of the facts by now.

6 MR. VANCOTT: Okay.

7 MR. WRAY: Sort of running out of your
8 time.

9 MR. VANCOTT: I will defer to the
10 committee. Thank you, sir.

11 MR. WRAY: All right.

12 MR. PRIVITERA: May I please have 60
13 seconds?

14 MR. WRAY: Sixty seconds you've got.

15 MR. PRIVITERA: Thank you. Ready, go. You
16 have to take a look at the Court of Appeals
17 case, Lysander. It's in our brief. Court of
18 Appeals said farmworker housing is permitted,
19 and towns can't touch it. Anything. All you
20 have to do is comply with building codes.

21 When they said that, they were working with
22 the definition of farm operations, that just
23 said, on-farm buildings were exempt from town
24 regulations. Court of Appeals said on-farm
25 regulations, on-farm buildings and undefined

1 term, an undefined term, included farmworker
2 housing. They knew what the constitution said
3 and they said stay away from farmworker housing,
4 let the right to farm, stay away from it.

5 MR. WRAY: This APA case?

6 MR. PRIVITERA: No, it's the town of
7 Lysander case but it was construing the
8 definition of on-farm housing, on-farm
9 buildings, undefined. In this case,
10 Mr. Chairman, there's no question that the Court
11 of Appeals would, if they considered it, include
12 farmworker housing in the definition of Ag use
13 structures because it's much broader than the
14 Town of Lysander opinion.

15 MR. WRAY: Okay. Thank you.

16 MR. LUSSI: Your 60 seconds is up.

17 MR. WRAY: I think since that there are
18 several questions. Mr. Mezzano, did you have a
19 question?

20 MR. MEZZANO: Yes. You just began to touch
21 on it. Earlier Paul gave his presentation, he
22 cited the Justice Ryan's opinion, and up until a
23 short while ago you have not addressed -- in
24 fact, you haven't addressed it at all, you went
25 to the Court of Appeals case. Would you care to

1 address Justice Ryan's opinion?

2 MR. PRIVITERA: Yes. Commissioner Mezzano,
3 it's in our brief. Commissioner Ryan's opinion
4 did not apply to this proceeding because he said
5 that it wasn't right for review so he sent it
6 back to this agency to make a final
7 determination. And there's a -- a lot of case
8 law including Court of Appeals case law that we
9 cite that says that when a court says it's not
10 right for a review, and then issues dicta, is
11 what lawyers call it, in doing so dismissing it,
12 it doesn't apply. It's not a prior decision.

13 And now that you have spoken, I might say
14 that I was inspired by your findings as chair of
15 the economic committee when you said there was a
16 housing crisis inside the blue line. I think
17 you have to think about it and everybody that
18 thinks about economic development matters has to
19 think about what we're doing here. These are
20 three housings that are empty.

21 MR. WRAY: Mr. Booth?

22 MR. BOOTH: Mr. VanCott, regarding the
23 definition of principal building, where it talks
24 about all agricultural use structure and
25 single-family dwellings should be counted

1 together as a single principal building, it a
2 fact that principal buildings are counted only
3 where the agency exerts jurisdiction? The
4 definition --

5 MR. VANCOTT: That's correct.

6 MR. BOOTH: -- presumes the agency has
7 jurisdiction. And it distinguishes between
8 single-family dwellings and other buildings that
9 occur on farms.

10 MR. VANCOTT: You're correct, sir.

11 MR. WRAY: Mr. Lussi.

12 MR. LUSSI: First of all, Mr. VanCott,
13 would you classify it redundantly class A or
14 class B?

15 MR. VANCOTT: It is both a class A and a
16 class B project.

17 MR. LUSSI: That's all I need. So with
18 that, Mr. Privitera, if -- if he's arguing it's
19 a class B and you know -- you state you don't --
20 don't concur with that opinion but how do you
21 describe or explain to me the section D of class
22 B that says that all land uses within a quarter
23 mile of a river are jurisdictional?

24 MR. PRIVITERA: Because the Rivers Act is
25 compatible with that. The Rivers Act says that

1 Ag use structure -- well, first of all, class B
2 structures are non -- don't include agricultural
3 use structures. So leaving the Rivers Act
4 aside, Ag use structures can be built anywhere.
5 But because of the Rivers Act they have to be a
6 hundred 50 feet away from the river.

7 MR. LUSSI: But this says all land uses.
8 It doesn't -- it's very broad. It -- it's
9 saying all land uses in development and -- so
10 why -- why aren't these --

11 MR. PRIVITERA: I don't know where you are.
12 I don't know where you are in the Act.

13 MR. LUSSI: It's Section 810D, under
14 resource management. Section 11.

15 MR. WRAY: What page?

16 MR. LUSSI: Page -- Act 33.

17 MR. PRIVITERA: Because this is -- these
18 are agricultural use structures that are
19 non-jurisdictional. The Web site said so.
20 Everyplace you have ever spoken about it, if you
21 find that these are not agricultural use
22 structures, there's lots of ways that you could
23 assert jurisdiction and that would be one of
24 them. But the commissioner of Ag and Markets
25 has found that they are agricultural structure,

1 in a final opinion.

2 MR. LUSSI: So that's not land use.

3 MR. PRIVITERA: Right.

4 MR. LUSSI: I'm fine.

5 MR. WRAY: Mr. Townsend?

6 MR. TOWNSEND: I think I have three
7 questions. One, you just added to my list at
8 the end. The commissioner does not use the term
9 agricultural use structure, he uses agricultural
10 nature. Correct?

11 MR. PRIVITERA: Yes.

12 MR. TOWNSEND: And the Lysander case that
13 you referred to does not say that the town is
14 powerless. It says it has to exercise it --
15 cannot exercise its controls unreasonably.
16 Assumes some opportunity to control.

17 MR. PRIVITERA: Yes and as interpreted by
18 the Department of Ag and Markets, that means
19 complying with building code only.

20 MR. TOWNSEND: There is in essence a
21 compliance in that, right?

22 MR. PRIVITERA: Yes, and in our record we
23 are in compliance.

24 MR. TOWNSEND: And then the third question
25 I have, you haven't appealed Judge Ryan's

1 decisions, is that correct?

2 MR. PRIVITERA: Correct.

3 MR. TOWNSEND: And in it, at page 4 he
4 said, "The Court does not agree with plaintiff's
5 assertion that the APA has no authority over
6 this building project."

7 MR. PRIVITERA: Yes.

8 MR. TOWNSEND: Isn't that a pretty clear
9 statement that he concurred that the agency does
10 have jurisdiction over this?

11 MR. PRIVITERA: That's what he thought.

12 MR. TOWNSEND: And you did not appeal that.

13 MR. PRIVITERA: No. Because it's not
14 binding. As we briefed. It's not binding on
15 this agency.

16 MR. TOWNSEND: Okay.

17 MR. WRAY: Okay. Any other questions?

18 Mr. Monroe?

19 MR. MONROE: Just like to make a comment.
20 This is the type of situation that I believe was
21 discussed when we were talking about civil
22 penalty guidelines. Where there's a good faith
23 dispute as to jurisdiction, and I think our
24 argument on behalf of the review board was in
25 those situations there should not be a fine

1 imposed.

2 As I understand it from reading the
3 documents, there was an offer by Mrs. Lewis to
4 apply for a permit which was rejected because
5 they were told that they had to first pay a
6 \$10,000 fine. So I think this is exactly the
7 kind of situation that could be avoided if we
8 weren't so insistent on fining someone and more
9 focused on the compliance.

10 And also there should be some way to
11 resolve good faith challenges to jurisdiction
12 short of getting into a -- a full-blown
13 enforcement proceeding with threats of million
14 dollar fine, which may result in closing down a
15 very important farm for the economy of this
16 region, and -- and for viability of the
17 community.

18 MR. WRAY: Thank you, Mr. Monroe. There
19 being no other business, Mr. Chairman, I take it
20 there is no other business to come before this
21 committee. I think we have done all our other
22 business. Committee is adjourned. Committee
23 will -- repair to executive session in blue room
24 I assume.

25 MR. STILES: Yes. This will conclude our

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business for today. We will start at 8:00
tomorrow morning.

MR. PRIVITERA: Thank you.

(Whereupon, stenographic record concluded)

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C E R T I F I C A T I O N

I, Lisa L. Tennyson, Certified Shorthand Reporter,
Registered Merit Reporter and Notary Public in and for
the State of New York, hereby certify that the foregoing
47 pages of testimony taken by me to be a true and
complete computer-aided transcript to the best of my
ability.

Lisa L. Tennyson CSR, RMR
Lisa L. Tennyson, C.S.R., R.M.R.

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STATE OF NEW YORK SUPREME COURT
ESSEX COUNTY

LEWIS FAMILY FARM, INC.,

Petitioner,

INDEX No. 315-08

RJI No. 15-1-2008-0109

Justice Richard B. Meyer

v.

NEW YORK STATE ADIRONDACK
PARK AGENCY,

Respondent.

ADIRONDACK PARK AGENCY,

Plaintiff,

v.

INDEX No. 332-08

RJI No. 15-1-2008-0117

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

Defendants.

ADIRONDACK PARK AGENCY RECORD OF PROCEEDING

VOLUME II : ITEMS 3-17
RECORD OF PROCEEDING

- 3) Notice of Apparent Violation (E2007-041), served September 5, 2007
- 4) Lewis Farm's Answer to NAV, dated October 4, 2007
- 5) Staff Notice of Request for Enforcement Committee Determination dated December 17, 2007 including Affirmation of Paul Van Cott dated December 13, 2007
 - Ex. A: Agency's Motion to Dismiss (Index No. 000498-07) dated August 1, 2007;
 - Affirmation of John Banta dated July 23, 2007;
 - Affirmation of Sarah Reynolds dated July 20, 2007