



STATE OF NEW YORK  
DEPARTMENT OF AGRICULTURE AND MARKETS

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Eliot Spitzer  
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Commissioner

November 26, 2007

Curt Stiles, Chairman  
Adirondack Park Agency  
PO Box 99  
NYS Route 86  
Ray Brook, NY 12977

Dear Mr. Stiles:

Congratulations on your recent appointment to Chairman of the Adirondack Park Agency. In that capacity, I am seeking your assistance in trying to resolve an issue between Sandy and Barbara Lewis, Town of Essex, Essex County and the Adirondack Park Agency. Mr. and Mrs. Lewis own and operate one of the State's largest certified organic farms. They have vastly improved their landholdings and have removed many of the older homes on the various farms that have been purchased to make up their landholdings. The Lewis' are in the process of constructing farm worker housing on the farm and were of the belief that such housing is exempt from the APA permitting process. The Department of Agriculture and Markets supports the Lewis' efforts in their attempt to provide modern, energy efficient housing for their employees. The Lewis farm is located within Essex County Agricultural District No. 4, a county adopted, State certified, agricultural district.

On August 8, 2007 one of my staff, Robert Somers, Manager of the Department's Farmland Protection Program, met with Mark Sengenberger, John Banta, Anita Deming and others to discuss the APA's treatment of farm worker housing and temporary greenhouses under State Law. Dr. Somers informs me that the APA maintains that the Lewis' must obtain a permit from that agency prior to constructing such housing even though the Agricultural Districts Law is clear that under certain circumstances farm worker housing is an agricultural structure and part of a "farm operation".

AML §301, subd. 11, defines a "farm operation", in part, as "...the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a "commercial horse boarding operation" as defined in subdivision thirteen of this section and "timber processing" as

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defined in subdivision fourteen of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other."

Farm worker housing, including mobile homes (also known as "manufactured homes"), modular or stick built structures, are an integral part of numerous farm operations. Farmers often provide on-farm housing for their farm laborers to, among other things, accommodate the long workday, meet seasonal housing needs and address the shortage of nearby rental housing in rural areas. The use of manufactured or modular homes for farm worker housing is a common farm practice. Manufactured, modular and stick built homes provide a practical and cost effective means for farmers to meet their farm labor housing needs. Farm labor housing used for the on-farm housing of permanent and seasonal employees is part of a farm operation.

The Department's *Guidelines for Review of Local Laws Affecting Farm Worker Housing* (copy enclosed) provides that the term "on-farm buildings" includes housing used as a residence for permanent and seasonal employees. Generally, in evaluating the use of farm labor housing under the AML, the Department considers whether the housing is used for seasonal and/or full-time employees and their families; whether the housing is provided by the farm operator (i.e., the farmer must own the housing); whether the worker is an employee of the farm operator and employed in the farm operation(s); and whether the farm worker is a partner or owner of the farm operation. The Department does not consider the residence of the owner or partner of the farm operation (and their family) to be protected under AML §305-a. The Department has interpreted a seasonal employee to mean migrant workers or workers employed during the season of a crop; i.e., from cultivation to harvest. The Department has not considered part-time employees to be "full-time or seasonal."

Although the Department considers farm worker housing to be part of a farm operation for the purposes of administering AML §305-a, the Department has found that local laws which regulate the health and safety aspects of the construction of farm buildings through provisions to meet local building codes or the State Building Code [unless exempt from the Uniform Code under Building Code §101.2(2) and Fire Code §102.1(5)] and Health Department requirements for potable water and sewage disposal, are not unreasonably restrictive. Requirements for local building permits and certificates of occupancy to ensure that health and safety requirements are met are also generally not unreasonably restrictive.

State Building Code §101.2(2) provides an exemption from the Building Code for "[a]gricultural buildings used solely in the raising, growing or storage of agricultural products by a farmer engaged in a farming operation." State Building Code §202 defines an agricultural building as "[a] structure designed and constructed to house farm implements, hay, grain, poultry, livestock, or other horticultural products. This

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structure shall not be a place of human habitation or a place of employment where agricultural products are processed, treated or packaged, nor shall it be a place used by the public." Therefore, a farm operator must obtain a local building permit for farm worker housing and the housing is subject to the requirements of the State Building Code. It is my understanding that the Lewis farm has obtained the necessary permits from the Town to construct such housing.

The Office of Real Property Services also agrees with the Department's position that housing for farm workers is an agricultural structure. Farm worker housing may qualify for a 10-year real property tax exemption by filing with the local assessor RPT Form RP-483. This is a tax exemption that is applied to newly constructed agricultural and horticultural buildings and structures. I have enclosed the instructions page for the exemption which clearly states that under certain circumstances, farm worker housing is considered an agricultural building.

The Department's position on farm worker housing has been supported by the State's Court of Appeals (Town of Lysander v. Hafner, 98 N.Y.2d 558 [2001]) and pursuant to AML §305, subd. 3, "...it shall be the policy of all State agencies to encourage the maintenance of viable farming in agricultural districts and their administrative regulations and procedures shall be modified to this end..."

I would like to discuss this issue with you further. Please contact me at your earliest convenience.

Sincerely,



Patrick Hooker  
Commissioner of the New York Department  
of Agriculture and Markets

Enclosures