

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : THIRD DEPARTMENT

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LEWIS FAMILY FARM, INC.,  
Plaintiff-Appellant,

v.

NEW YORK STATE ADIRONDACK  
PARK AGENCY,  
Defendant-Respondent.

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AFFIRMATION IN LIMITED  
OPPOSITION TO MOTION TO  
EXTEND TIME TO PERFECT  
UPON JOINT RECORD AND  
BRIEFS

AD Docket No. 504696  
Essex County  
Index No. 498-07

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : THIRD DEPARTMENT

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LEWIS FAMILY FARM, INC.,  
Petitioner,

v.

NEW YORK STATE ADIRONDACK  
PARK AGENCY,  
Respondent.

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AD Docket No. 504626  
Essex County  
Index No. 315-08

ADIRONDACK PARK AGENCY,  
Plaintiff,

v.

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

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Essex County  
Index No. 332-08

Pursuant to CPLR § 2106, Loretta Simon, an attorney  
duly admitted to practice in the courts of the State of New York,  
hereby affirms the following under penalty of perjury:

1. I serve as an Assistant Attorney General in the Environmental Protection Bureau of the Office of the New York State Attorney General and am counsel to the Adirondack Park Agency ("the APA") in Lewis Family Farm, Inc. v. NYS Adirondack Park Agency, (Sup. Ct., Essex Co. Index No. 498-07) ("Lewis Farm I") and in the subsequent CPLR article 78 proceeding, in Matter of Lewis Family Farm, Inc. v. APA, (Sup. Ct., Essex Co. Index No. 315-08) ("Lewis Farm II"). I also represent the APA in its enforcement action, APA v. Lewis Family Farm, Inc., Salim B. Lewis, and Barbara Lewis, (Sup. Ct., Essex Co. Index No. 332-08) ("Lewis Farm III"), which was consolidated below with Lewis Farm II. Accordingly, I am familiar with the underlying facts and the litigation among the parties.

2. I submit this affirmation in limited opposition to Lewis Family Farm, Inc.'s ("Lewis Farm's") Motion to extend its time to perfect its appeal in Lewis Farm I and for an order requiring the appeals in these cases to be perfected upon a joint record, prepared by the APA, and briefs.

3. The APA conditionally consents to Lewis Farm's request to having the following three appeals perfected upon a joint record and briefs: (1) Lewis Farm's appeal of the Decision and Order dated August 16, 2007 in Lewis Farm I (Ryan, Acting J.S.C.); (2) the APA's appeal of the Decision and Order dated November 19, 2008 and the Judgment dated November 21, 2008 in

Affirmation In Limited Opposition to Motion  
to Extend Time to Perfect and for an Order  
to Perfect Upon Joint Record and Briefs

Lewis Farm II and III (Meyer, Acting J.S.C.); and (3) the APA's appeal of the Decision and Order dated July 2, 2009 in Lewis Farm III.

4. Each of the above-mentioned cases arises from Lewis Family Farm Inc.'s construction of three single-family dwellings in the Adirondack Park, within 1/4 mile of the Boquet River, without permits from the APA pursuant to the Adirondack Park Agency Act (Executive Law § 801 et. seq., "APA Act") and the Wild, Scenic and Recreational Rivers System Act (Environmental Conservation Law ["ECL"] § 15-2701 et. seq. "Rivers Act").

5. In Lewis Farm I, the Supreme Court (Ryan, Acting J.S.C.) issued a Decision and Order dated August 16, 2007, that rejected Lewis Farm's claim that the APA lacks jurisdiction over the single-family dwellings under the APA Act and the Rivers Act, rejected Lewis Farm's argument that the structures are "agricultural use structures," and concluded that Section 305-a of the Agriculture and Markets Law did not supersede APA's authority. Justice Ryan therefore denied a restraining order Lewis Farm sought against the APA. See Affirmation of Jacob F. Lamme dated December 23, 2008, Exhibit A (Decision and Order of Justice Kevin K. Ryan, Lewis Family Farm, Inc. v. APA, Index No. 498-07 Sup. Ct. Essex Co., dated August 16, 2007).

6. Lewis Farm appealed the Lewis Farm I Decision and Order on or about September 26, 2007. Pursuant to 22 NYCRR § 800.12,

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that appeal would have been deemed abandoned on June 26, 2008. Asking for its first extension of time on May 8, 2008 to perfect its appeal, Lewis Farm has since sought and obtained three additional extensions of time to perfect its appeal, which currently must be perfected by January 26, 2009. Lewis Farm's pending motion for an extension of time is its fifth request for an extension.

7. Lewis Farm raised the same jurisdictional issues it had raised in Lewis Farm I again in its article 78 proceeding, Lewis Farm II, challenging the APA's determination dated March 25, 2008. The APA's determination found Lewis Farm in violation of the APA Act and the Rivers Act for failing to obtain a permit in advance of construction and fined Lewis Farm \$50,000. In Lewis Farm II petitioners also alleged that the APA Act was superceded by Agriculture and Markets Law § 305-a, that the APA was obligated to defer to an opinion of the State Department of Agriculture and Markets issued pursuant to Agriculture and Markets Law § 308; that the APA failed to consider a March 4, 2008 Resolution of the Adirondack Park Local Government Review Board in its determination; that the APA determination was made in violation of its due process rights; and that the APA has not encouraged the maintenance of farming pursuant to the New York State Constitution Article IV § 4, and pursuant to Agriculture and Markets Law § 305(3).

8. On April 11, 2008, the APA filed an enforcement action, Lewis Farm III, against Lewis Family Farm Inc., and its principals, alleging violations of the APA Act and the Rivers Act. The Agency amended its complaint on May 15, 2008 alleging their failure to comply with the terms and conditions of the APA's March 25, 2008 administrative determination. Supreme Court consolidated Lewis Farm II and Lewis Farm III.

9. On July 2, 2008 Supreme Court issued a Decision and Order in Lewis Farm III granting Lewis Farm's motion to dismiss the complaint as against the individual principals, and awarding costs. See Affirmation of Jacob F. Lamme dated December 23, 2008, Exhibit C (Decision and Order of Justice Richard B. Meyer, Lewis Family Farm II and Lewis Farm III (Index Nos. 315-08 and 332-07 Sup. Ct. Essex Co., dated July 2, 2008)).

10. The APA appealed the July 2, 2008 Decision and Order on or about August 1, 2008. See Exhibit A. That appeal remains pending.

11. On November 19, 2008, Supreme Court issued a Decision and Order in Lewis Farm II and Lewis Farm III annulling the APA's March 25, 2008 determination on the ground that the Agency lacked jurisdiction over the single-family dwellings. In a Judgment dated November 21, 2008, Justice Meyer granted Lewis Farm's Amended Petition and dismissed the APA's Amended Complaint.

12. On December 18, 2008, the APA filed and served by regular mail a notice of appeal of the Decision and Order dated November 19, 2008 and the Judgment dated November 21, 2008 in Lewis Farm II and Lewis Farm III.

13. Less than one week later, on Christmas Eve, Lewis Farm served the APA with its motion to consolidate and to compel immediate perfection, with APA filing the joint record for Lewis Farm's appeal in Lewis Farm I as well as the APA's appeals in Lewis Farm II and Lewis Farm III, even though Lewis Farm had not perfected its appeal for a year and three months and now seeks its fifth extension.

14. For the convenience of the Court, the APA conditionally consents to Lewis Farm's motion for an order perfecting these three appeals on a single joint record and briefs, upon a reasonable schedule. The APA also agrees to file the single joint record on the condition that Lewis Farm's counsel transmits the originals of the record in Lewis Farm I to the Office of the Attorney General within ten days of the Court's order on this motion, and that Lewis Farm pay the cost of reproduction to the State of that portion of the joint record on appeal that relates to Lewis Farm I, at \$2.37 per page regardless of the number of copies (up to 40 copies), pursuant to the policy of the Finance Office of the Department of Law.

15. In addition, in the interest of resolving this matter before another growing season passes, the APA requests the following joint briefing schedule and argument in the Court's term at the end of May or in June, 2009:

Joint Record and APA's Appellant's Brief  
due March 2, 2009

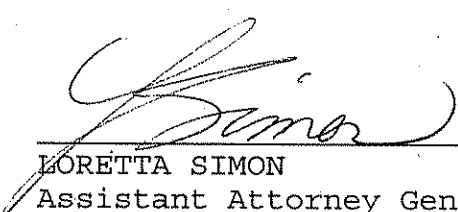
Lewis Farm's Respondents and Cross-Appellant's Brief  
due April 1, 2009

APA's Reply and Cross-Respondent's Brief  
due April 28, 2009

Lewis Farm's Reply Brief  
due May 8, 2009

16. The APA further requests that if a brief is not served personally on the date due, that it also be served electronically by 5:00 pm on the date due so that there is no delay in receipt by the opposing party.

Dated: Albany, New York  
January 2, 2009



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