

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ESSEX

TOWN OF ESSEX

and

JAMES Z. MORGAN, Jr., as Superintendent  
of Highways of the Town of Essex,  
Plaintiffs,

-Against-

LEWIS FAMILY FARM, INC.,  
Defendant.

**AFFIDAVIT**

INDEX # 000047-07  
R.J.I.# 15-1-2007-0014  
Date Purchased:  
FEE WAIVED  
January 17, 2007

STATE OF NEW YORK )

) ss.:

COUNTY OF ESSEX )

**JAMES Z. MORGAN, Jr.**, being duly sworn, depose and say that:

1. I am a Plaintiff in the subject action and I am the duly elected Town Highway Superintendent for the Town of Essex.
2. I have been the Town Highway Superintendent for the Town of Essex for more than 15 years.
3. I offer this Affidavit to the Court in support of Plaintiffs' request for an Order to Show Cause and Plaintiffs' request for a Preliminary Injunction and in support of Plaintiffs' Verified Complaint in the subject action.
4. I annually certify the lengths and widths of the traveled portion of the Town Highways to the New York State Department of Transportation pursuant to subdivision 13 and 15 of §10 and §10-C of the Highway Law.<sup>1</sup>

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<sup>1</sup> See Attachment "A" for a copy of the 2006 Certification.

5. Cross Road is a Town Highway. It appears on the Certification with a traveled width of 20 feet and 5 foot shoulders on either side.
6. Upon information and belief, Cross Road became a public highway pursuant to the provisions of §189 of the Highway Law or its prior Highway Law section.
7. The total width of the public highway right of way use area for Cross Road is approximately 80 feet, which width area includes the area that snow is cast by the removal operations and snow storage areas.
8. There is a drainage culvert that passes under Cross Road in the area of Defendant's property that has been in place for far in excess of ten years.
9. Upon information and belief, this drainage culvert and the drainage therefrom is a part of the public highway system of the Town.
10. Drainage has flowed from the low end of the drainage culvert onto adjacent property of Defendant for far in excess of ten years.
11. Upon information and belief, the Town has prescriptive easement rights to continued to have uninterrupted flow of water from the drainage culvert on to adjacent lands of Defendant.
12. From my experience as a Town Highway Superintendent, if the drainage culvert is blocked, water will pool along the public highway thereby creating dangerous conditions for the travelers using Cross Road. Thus, the drainage culvert and the flow therefrom must be kept opened at all times.

13. Upon information and belief, during 2006 Defendant blocked the drainage culvert on both ends.
14. Representatives of Defendant were warned by me that Defendant should not block the drainage culvert.
15. By letter dated December 8, 2006, from Special Counsel to the Town, Defendant was placed on Notice that blocking the drainage culvert violated §319 of the Highway Law and that Defendant must remove such highway obstructions within 48 hours of receipt of the Notice.
16. Upon information and belief, Defendant and/or its representative received the Notice on December 11, 2006.
17. More than 48 hours have passed since receipt of the Notice by Defendant and Defendant has not removed the obstructions to the drainage culvert.
18. Cross Road is elevated from the surrounding area for a large portion thereof as it passes through the lands of Defendant.
19. The toe of the slopes of Cross Road along its elevated sections are approximately 10 to 12 feet from the furthest outside edge of the shoulders of Cross Road.
20. During winter conditions for far in excess of ten, the snow removal operations of the Town Highway Department have cast the snow up to 40 feet from the centerline of Cross Road onto the highway right of way and onto adjacent lands.
21. In the winter months, the availability of the 80 foot wide area is absolutely

necessary for proper maintenance of Cross Road, particular with respect to the snow removal and storage operations.

22. The area adjacent to Cross Road is used for storage of the plowed snow and has been so used for many years.
23. Storage of the plowed snow is necessary so that the snow does not drift back onto Cross Road after it has been once removed therefrom.
24. Drifting snow from elevated terrain areas also cause icing conditions on the public highways, including Cross Road.
25. Drifting snow will cause dangerous conditions for travelers using Cross Road.
26. Upon information and belief, during year 2006 Defendant built elevated private roadways, in part within the highway right of way use area and in part immediately adjacent to the Cross Road right of way use area.<sup>2</sup>
27. Along some areas, the private roadways lie on both sides of Cross Road. As a result, Cross Road lies in a depressed area between the private roadways.<sup>3</sup>
28. The portions of these private roadways within the highway right of way use area will effectively prevent the plowing and storage of snow along Cross Road.
29. This will cause dangerous conditions for travelers using Cross Road.
30. The portions of these private roadways which are obstructions within the highway

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<sup>2</sup> Attachment "B" shows the elevated private roadways in relation to Cross Road.

<sup>3</sup> Attachment "C" shows the elevated private roadway on one side of Cross and the start of construction of another private roadway on the other side of Cross Road.

Defendant has not removed these obstructions to the public highway.

39. The above obstructions to the proper use and maintenance of Cross Road create extremely dangerous conditions for the travelers using Cross Road and pose a danger to persons who depend on Cross Road in emergency situations. Therefore, the obstructions must be immediately removed.

**THEREFORE**, I request that the Court grant the requested Order to Show Cause and that a Preliminary Injunction be granted to the Town so that the immanent dangers from the obstructions can be reduced.

Dated: January 12, 2007

  
JAMES Z. MORGAN, Jr.

STATE OF NEW YORK                   )  
COUNTY OF ESSEX                   ) ss.

On this 12<sup>th</sup> day of January, 2007 before me, the undersigned, a Notary Public in and for said State, personally appeared, JAMES Z. MORGAN, Jr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same in his/her capacity, and that by his/her signature on the instrument the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
NOTARY PUBLIC

LOIS A. SAYWARD  
NOTARY PUBLIC, STATE OF NEW YORK  
REG. NO. 4953812  
QUALIFIED IN ESSEX COUNTY  
MY COMM. EXPIRES 7/31/09

# ATTACHMENT “A”

NEW YORK STATE  
DEPARTMENT OF TRANSPORTATION

ANNUAL CERTIFICATION OF LOCAL HIGHWAY MILEAGE

IDENTIFICATION NO.

0276

NYS DOT USE ONLY

2006

- ☒ Town  
☐ County  
☐ City  
☐ Village

of Essex  
Essex  
County

Attached is the highway listing updated for calendar year 2006 with indicated changes reflecting corrections, additions and deletions including a description (name or number) of the highways owned by this jurisdiction. To permit conformance with Subdivisions 13 and 15 of Section 10 of the Highway Law and with the Transportation Systems Assistance and Financing Act of 1981, as amended, which created the Consolidated Local Street and Highway Improvement Program (CHIPS), I hereby certify that I have reviewed, and updated where necessary, the local highway inventory information contained in this listing, and that it is an accurate representation of such information.

Total centerline miles (XXXX.XX) of  
roads owned by this jurisdiction

26.65

James Z. Mason Jr.  
Signature  
11/29/06  
Date  
Town of Essex Highway Superintendent  
Title

James Z. Mason Jr.  
Local Contact Person (Print or Type)  
(888) 965-5952  
Telephone Number

☐ Map(s) and resolution(s) attached  
(Required for new roads)

NYS DOT Regional Review by

(Please print name or initials)

Date

TP 273 (9/06)

WHITE - M.O.

YELLOW - REGION

PINK - DISTRIBUTION (COUNTY)

GOLD - LOCAL

## New York State Department of Transportation

Date: 08/18/2006

## Local Roads Listing

Page: 29 of 92

REGION 1 JURISDICTION: Town

LOCATION: Town of Essex

ESSEX

COUNTY

Route Road or Street Name	Road #	Start of Section	End of Section	Milepoint		No. of Lanes	One Way or Divided Highway	Pavmt Type	Width	Shldr Width	Median Type	Median Width	Func. Class.	Fed. Aid Sys.
				Start	End									
ABANDONED STATE	0010			0.00	0.78	0.78	2	A	19	2	4	0	9	
ALBEE RD	0020			0.00	0.79	0.79	2	A	18	2	4	0	9	
ALDEN RD	0030			0.00	1.72	1.72	2	A	20	2	4	0	9	
BEG POINT	0040			0.00	0.22	0.22	1	A	18	3	4	0	9	
BROOKFIELD RD	0050			0.00	1.27	1.27	2	A	18	2	4	0	9	
BROOKFIELD RD	0050			1.27	3.55	2.28	2	U	18	2	4	0	9	
CATHOLIC CHURCH	0060			0.00	0.44	0.44	2	A	20	2	4	0	9	
CATHOLIC CHURCH	0060			0.44	1.78	1.32	2	U	19	2	4	0	9	
CHRISTIAN RD	0070			0.00	0.54	0.54	2	U	18	4	4	0	9	
CHRISTIAN RD	0070			0.54	1.34	0.80	2	A	18	4	4	0	9	
CHURCH RD	0080	DANIEL RD	BROOKFIELD RD	0.00	1.06	1.06	2	U	18	2	4	0	9	
CHURCH RD	0085			0.00	0.04	0.04	2	A	20	2	4	0	9	
CLARK RD	0090			0.00	0.92	0.92	2	U	16	2	4	0	9	
CLARK & SAYRE R	0100			0.00	0.48	0.48	2	A	18	5	4	0	9	
COOK RD	0110			0.00	2.80	2.80	2	U	25	1	4	0	9	
COUNTY HOME RD	0120			0.00	0.22	0.22	2	U	16	0	4	0	9	
CROSS RD	0130			0.00	1.46	1.46	2	U	20	5	4	0	9	
DANIEL RD	0140			0.00	1.80	1.80	2	A	20	4	4	0	9	
DOCK ST	0150			0.00	0.03	0.03	2	A	18	4	4	0	9	
FERRIS RD	0160			0.00	0.14	0.14	2	U	16	2	4	0	9	
GLADD	0170			0.00	0.12	0.12	2	U	16	2	4	0	9	
KNAPP RD	0180			0.00	0.44	0.44	2	A	20	4	4	0	9	



# New York State Department of Transportation Local Roads Listing

Date: 08/18/  
Page: 30 of 92

REGION 1 JURISDICTION: Town  
LOCATION: Town of Essex

ESSEX

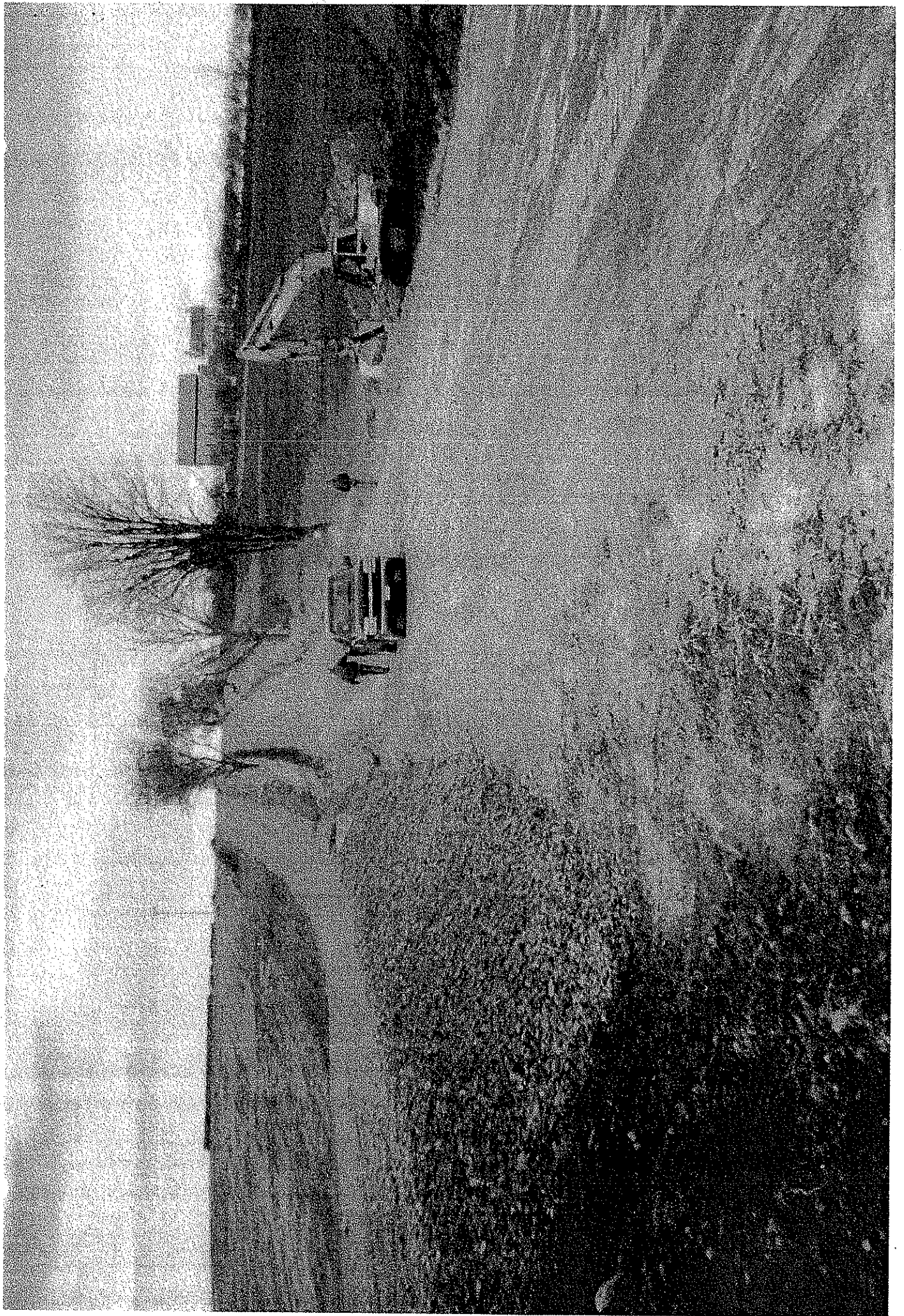
COUNTY

Route Road or Street Name	Road #	Start of Section	End of Section	Milepoint		No. of or Divided Lanes	One Way or Divided Highway	Pmnt Type	Width	Shldr Width	Median Type	Width	Func. Class.	Fed. Aid Sys.
				Start	End									
LEANING RD	0190			0.00	0.90	0.90	2	U	20	2	4	4	0	
LEANING RD	0190			0.90	2.06	1.16	2	A	20	4	4	4	0	
LEGION HILL RD	0210			0.00	0.23	0.23	2	A	20	4	4	4	0	
LOUKES RD	0220			0.00	0.42	0.42	2	U	16	1	4	4	0	
LOWER SHERILL R	0230			0.00	0.07	0.07	2	U	18	2	4	4	0	
MATHER RD	0240			0.00	1.22	1.22	2	A	20	4	4	4	0	
ORCHARD ST	0250			0.00	0.06	0.06	2	A	20	4	4	4	0	
ROSS RD	0255			0.00	0.22	0.22	2	A	22	0	4	4	0	
SANDERS RD	0260			0.00	0.73	0.73	2	A	20	4	4	4	0	
SCHOOL RD	0270			0.00	0.08	0.08	2	A	20	4	4	4	0	
SCHOOL RD	0270			0.08	1.25	1.17	2	U	20	4	4	4	0	
SCHOOL RD	0270			1.25	1.44	0.19	2	A	20	4	4	4	0	
SHERILL RD	0280			0.00	0.11	0.11	2	A	20	4	4	4	0	
WEST RD	0290			0.00	0.42	0.42	2	U	18	3	4	4	0	

Centerline Miles Total: 26.85

Lane Miles Total: 53.08

## **ATTACHMENT “B”**



# ATTACHMENT “C”

