

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,

- VS -

LEWIS FAMILY FARM, INC.,

Defendant.

AFFIDAVIT

Index No. 000047-07

STATE OF NEW YORK)
) ss.:
COUNTY OF ESSEX)

TODD DEYO, being duly sworn, deposes and says that:

1. I have worked as a general contractor in the County of Essex, State of New York, for more than twenty years.
2. I have worked as a general contractor for Defendant Lewis Family Farm, Inc. ("Lewis Family Farm"), for more than eight years.
3. The Lewis Family Farm owns and operates an organic farm (the "Farm") in the Town of Essex, Essex County, State of New York.
4. Cross Road, a Town Highway within the Town of Essex, runs adjacent to portions of the Farm.
5. Plaintiff Town of Essex (the "Town") is responsible for the care and maintenance of Cross Road.
6. I personally oversaw the construction of certain roads on the Farm (the "Farm Roads") that run parallel to Cross Road.

7. The Farm Roads were built to protect the Farm from contamination by Wollastonite that leaches into the Farm's soil after it is spread on Cross Road by the Town.
8. The Farm Roads were built to exacting professional standards that exceed those used by the Town.
9. The rock used in constructing the Farm Roads drains exceptionally well.
10. The Farm Roads lie entirely within the private property of the Lewis Family Farm.
11. No portions of the Farm Roads lie within the Cross Road right-of-way.
12. The Farm Roads are at least twenty-seven feet from the center of Cross Road.
13. The elevation of the Farm Roads is substantially similar to the elevation of other private property adjacent to Cross Road.
14. The elevation of the Farm Roads does not impede the removal of snow from Cross Road by the Town of Essex.
15. There is a drainage culvert that passes under Cross Road in the area of the Farm.
16. During the construction of the Farm Roads, the culvert was maintained and protected, and in no way was the culvert blocked or disabled.
17. The Town has not properly maintained Cross Road or the culvert.
18. Currently, the culvert is approximately one-half full of Wollastonite that has been spread on Cross Road by the Town.
19. When allowed to sit in the culvert, Wollastonite sets up similar to concrete. Therefore, any blockage of the culvert is the direct result of the Town's use of Wollastonite on Cross Road and its failure to maintain the culvert.
20. Until they were recently removed, trees of several years growth were undermining the integrity of Cross Road. The Town knew of these trees as they were of several years growth.

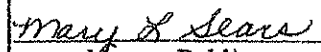
WHEREFORE, deponent respectfully requests the entry of an Order denying Plaintiffs request for a preliminary injunction.

Dated: February 9, 2007
Essex, New York



Todd Deyo

Sworn to before me
February 9, 2007



Notary Public

MARY L. SEARS
Notary Public, State of New York
Clinton Co. #01SE6000338
Commission Expires Dec. 15, 2009