

STATE OF NEW YORK

COUNTY OF ESSEX

SUPREME COURT

TOWN OF ESSEX and JAMES Z. MORGAN, JR., as *

SUPERINTENDENT OF HIGHWAYS OF THE TOWN OF ESSEX, *

Plaintiffs, *

-v- *

LEWIS FAMILY FARMS, INC., *

Defendant. *

Examination Before Trial of JAMES Z. MORGAN, JR.,
regarding the above-referenced matter was held September 18,
2007, in Essex Town Hall, Essex, New York, before Lisa L.
Tennyson, Certified Shorthand Reporter, Registered Merit
Reporter and Notary Public in and for the State of New York;
pursuant to usual stipulations.

APPEARANCES: DARRELL W. HARP, ESQ.
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Clifton Park, New York 12065

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Attorneys for Defendant
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Queensbury, New York 12804
By: Joseph R. Brennan, Esq.

COPY

S T I P U L A T I O N S

It is hereby stipulated and agreed by and between
the attorneys between the respective parties hereto;

that the signing and filing of the Notary's oath be
waived;

that the formal filing of the transcript of
testimony in the office of the County Clerk be waived;

that the examining party will furnish the examined
party one copy of the testimony as taken, without
charge;

that all objections, except as to the form of the
question, be specifically reserved for the time of the
trial;

that the testimony, when transcribed, may be read
by the witness and sworn to by him/her before any Notary
Public or other officer authorized to administer oaths.

* * * * *

1 J A M E S M O R G A N, J R., having been duly
2 sworn, was examined and testified as follows:

3 MR. HARP: He will not be available for
4 the trial on the 16th of October. So the
5 understanding is that we will do complete on
6 him, both sides, so that his testimony can be
7 entered into the case. We have discussed that
8 in front of the judge and like that. That it
9 appears to be acceptable. Okay?

10 MR. BRENNAN: If that's what was agreed
11 to, that was what was agreed to.

12 MR. HARP: Well, David would not
13 stipulate to it but the judge said I expect
14 that's what's going to happen. I thought.
15 All right.

16 MR. BRENNAN: As you know, I wasn't party
17 to that conversation.

18 MR. HARP: That's correct.

19 EXAMINATION BY

20 MR. BRENNAN:

21 Q Mr. Morgan, where do you live, sir?

22 A I live at Whallonsburg on Route 22, 1538.

23 Q You are the highway superintendent of the Town
24 of Essex correct, sir?

25 A Yes.

1 Q And that's an elected position?

2 A Yes.

3 Q How long have you held that position?

4 A This is my 16th year.

5 Q How long have you been employed in total by
6 the Town of Essex?

7 A In, like, '74 and '75 I worked part time wing
8 man with the highway department, and I was employed in
9 1986 to do the water for the town of Essex, water
10 district. I worked --

11 Q What do you mean by "to do the water district"?

12 A I was a water superintendent.

13 Q Okay.

14 A For the water district and in the town.

15 Q Okay.

16 A From '86 to '90 -- well, I was 20 years so --

17 Q You were first elected in --

18 A 1991.

19 Q 1991?

20 A Yes.

21 Q Other than the part-time employment you had as
22 a wing man back in 1974 or whatever it was, you were not
23 employed in the highway department of the Town of Essex
24 until you were elected to highway superintendent?

25 A I went back in '78, I got laid off at NYCO I

1 went back for the winter of '78, just for a couple
2 months.

3 Q Can you tell me what your educational
4 background is, sir.

5 A I have a high school diploma from Willsboro
6 Central School.

7 Q What year did you graduate?

8 A 1971.

9 Q How old are you?

10 A I'm 56.

11 Q Beyond high school have you had any formal
12 education?

13 A For the water -- for the water district.

14 Q What did your education consist of?

15 A I went up to -- I went up to North Country
16 Community College, I think -- the one in Plattsburgh.

17 Q Clinton?

18 A Clinton. I'm sorry, Clinton Community College
19 and I got my degree in -- for water; it's a grade 2A
20 water filtration -- filtration plant operator.

21 Q Was that an associate's degree --

22 A No.

23 Q -- that you received?

24 A No.

25 Q You received some kind of a certificate?

1 A A certificate.

2 Q For completing that course?

3 A Right. That's all that was.

4 Q Have you had any formal educational or
5 technical training with regard to highway construction,
6 maintenance, anything of that nature?

7 A No, just what I was -- picked up with from the
8 county.

9 Q You indicated that you at one time were
10 employed by NYCO?

11 A Yes.

12 Q That's NYCO Minerals in Willsboro, is it?

13 A Yes.

14 Q What did you do there?

15 A I was a beneficiation operator for the plant.

16 Q How long did you work there?

17 A Sixteen years.

18 Q Then you left that and then were elected to --

19 A I was elected. Yes.

20 Q -- to highway superintendent?

21 A Yes.

22 Q Now, would you just describe in general terms
23 what your duties and responsibilities are as a highway
24 superintendent of the Town of Essex.

25 A I'm to maintain all the town highway roads, to

1 maintain their equipment, and I have four employees and
2 I -- I -- I assign them to different duties.

3 Q Do you have a deputy highway superintendent?

4 A Yes.

5 Q Who is that?

6 A Gerry Pierce. Gerald Pierce.

7 Q How long has Mr. Pierce held that position?

8 A For 16 years.

9 Q Is he included in the four employees?

10 A Yes. Yes.

11 Q The other three employees, can you tell me
12 what their names are.

13 A Eugene Benway, Don Christian, Gerry Pierce I
14 have already told you, and Eric Holland; he starts the
15 1st of October.

16 Q He's just starting?

17 A Yes.

18 Q He's filling a vacancy?

19 A Yes.

20 Q Someone left --

21 A Yes.

22 Q -- the position? Who was the individual who
23 left?

24 A David Mercury.

25 Q I understand the duties of your deputy

1 superintendent. The other three gentlemen, do they have
2 any specific roles or they just do general work within
3 the highway department?

4 A No. Don Christian is a laborer, and Eugene
5 Benway and -- Gerry Pierce are both HEOs, heavy
6 equipment operators.

7 Q That would include being truck drivers?

8 A Yes.

9 Q Do you have any employee of the highway
10 department -- any mechanic?

11 A No. Not classified as a mechanic. They --

12 Q Some do some mechanical work?

13 A Yes, they do their own mechanical work.
14 Unless it's too complicated.

15 Q What individuals are the individuals who
16 primarily do the plowing on the town highways in the
17 winter?

18 A The HEOs, the -- Eugene Benway and Gerry
19 Pierce and now Eric Holland.

20 Q How long has Eugene Benway been employed by
21 the Town of Essex?

22 A This is his third year.

23 Q Are they assigned specific areas of the town
24 in which they're responsible for the plowing --

25 A Yes.

1 Q -- specific roads?

2 A Yes.

3 Q If you know, what's the total mileage of town
4 highways in the town of Essex?

5 A 26.5 miles.

6 Q The town highway department is responsible for
7 the entire 26.5 miles?

8 A Yes.

9 Q We understand from Mr. Jackson who testified
10 here that the town highway department also does some
11 plowing I believe on county and state roads within the
12 town of Essex?

13 A Yes.

14 Q Do you know how much mileage of county roads
15 that the Town of Essex employees provide plowing
16 services for?

17 A Approximately 22 miles.

18 Q How about state roads?

19 A Approximately 8.5 miles.

20 Q So the total is somewhere around 56 or 57
21 miles of town, county and state highway?

22 A Yes.

23 Q Now, you're familiar with Cross Road?

24 A Yes.

25 Q That has been a town highway during your

1 entire tenure. Correct?

2 A Yes.

3 Q Is that what is, if you know, what is referred
4 to as a highway by use?

5 A Yes.

6 Q Other than plowing, what type of work has been
7 performed on Cross Road in the form of maintenance or
8 construction?

9 A We have graded it and we -- we put a couple
10 new culverts in over there.

11 Q The surface of Cross Road is what?

12 A Wollastonite.

13 Q There's no paving material on that road,
14 correct?

15 A Just in the beginning on each end.

16 Q Are all of the town highways that you maintain
17 as the superintendent, are they all two-lane highways?

18 A Yes.

19 Q What about the county and state highways that
20 you plow? Are they all two-lane roads or are some of
21 them more than two-lane roads?

22 A Two-lane roads.

23 Q With regard to Cross Road, annually you
24 certify or have certified certain roads as being town
25 highways. Correct?

1 A Yes.

2 Q You submit that certification to the State of
3 New York?

4 A State of New York.

5 Q What agency of the state do you submit that
6 to?

7 A Department of Transportation.

8 Q On the certification that you submit you have
9 to set forth the width of the highway, the shoulder,
10 et cetera; is that correct?

11 A Yes.

12 Q With regard to responses that we've received
13 from the Town of Essex, it's indicated that Cross Road,
14 the travelled portion of the road, has a width of 20
15 feet. Correct?

16 A Yes.

17 Q Since it's not a paved road there are no
18 pavement markings on that road. Correct?

19 A Yes.

20 Q How do you determine the 20-foot width?

21 A I just measure from shoulder to shoulder.

22 Q Did you do that personally or did someone else
23 within the department do that?

24 A I did that.

25 Q The 20-foot width of the road would be for the

1 two lanes of travel on that road, correct?

2 A Yes.

3 Q That road I understand runs essentially in an
4 east-west direction?

5 A Yes.

6 Q Ten feet for each direction. Correct?

7 A Yes.

8 Q Then the certification that you have submitted
9 indicates that there is a shoulder along each side of
10 that road of five-foot width, correct?

11 A Yes.

12 Q That is based upon a measurement that you
13 took?

14 A Yes.

15 Q And then at the location -- if I can call them
16 the Lewis Farm Road, you're familiar where they are
17 located?

18 A Yes.

19 Q There are farm roads both on the north and
20 south sides of Cross Road, correct?

21 A Yes.

22 Q Do you know what the width of the surface of
23 the farm road in that area is?

24 A No.

25 Q Never measured it?

1 A No.

2 Q The farm road is at some point at an elevation
3 higher than the surface of Cross Road, correct?

4 A Yes.

5 Q Did you ever take any measurement to determine
6 what the difference in elevation is between the surface
7 of the farm road and the surface of Cross Road? And
8 when I say that, I mean the farm road located on the
9 south side of Cross Road.

10 A Yes.

11 Q Do you measure the difference in elevation?

12 A Just with a tape, measuring tape.

13 Q Does that difference in elevation vary from
14 point to point along the farm road?

15 A Yes.

16 Q What did you find from those measurements to
17 be the difference in elevation?

18 A Approximately 5 feet when I measured it with a
19 tape.

20 Q You've indicated previously, I believe, sir,
21 that from the edge of the shoulder to the toe of the
22 farm road ranges from 10 to 12 feet; is that correct?

23 A Yes.

24 Q So from the center line of Cross Road to the
25 toe of the farm road, would be 10 feet for the traveled

1 portion of the road plus five feet for the shoulder plus
2 10 to 12 feet to reach the toe of the farm road; is that
3 correct?

4 A No. I don't think so. But --

5 Q What is wrong with that?

6 A I think it's closer than that but --

7 Q Well, what I was referring to, Mr. Morgan, is
8 I believe you provided an affidavit previously in this
9 case; is that correct?

10 A Yes.

11 Q I show you what purports to be an affidavit,
12 Mr. Morgan, in this litigation that's dated January 12th,
13 2007. Do you see that?

14 A Uh-huh.

15 Q On page 6 of that deposition there appears to
16 be a signature of James E. Morgan, Jr., correct?

17 A Yes.

18 Q Is that your signature, sir?

19 A Yes.

20 Q Is that an affidavit that you signed that was
21 submitted in this lawsuit?

22 A Yes.

23 Q What I would invite your attention to --

24 MR. HARP: Off the record.

25 (Discussion held off the record)

1 (Following off-the-record discussion)

2 BY MR. BRENNAN:

3 Q If you have a copy of that before you, I would
4 invite your attention to paragraph 19 on page 3,
5 Mr. Morgan. Did you have a chance to look at that?

6 A Yes.

7 Q That states the toe of the slopes of Cross
8 Road along its elevated sections are approximately 10 to
9 12 feet from the furthest outside edge of the shoulders
10 of Cross Road. Is that correct?

11 A Yes.

12 Q You mean to say the toe of the farm road?

13 A Yes.

14 Q That's what I understood that to mean. So if
15 you take 10 feet plus 5 feet plus 10 to 12 feet from the
16 toe of the farm road to the center of the road, would be
17 somewhere between 25 and 27 feet. Correct?

18 A Yes.

19 Q That would also be true on the north side?

20 A Yes.

21 Q Going from the center line north to the farm
22 road on the north side of Cross Road?

23 A Yes.

24 Q Are you familiar with the term "dedicated
25 highway"? Are you familiar with that term at all,

1 Mr. Morgan?

2 A Somewhat, yes.

3 Q Is that a highway by which the town receives
4 the road by deed?

5 A Yes. I -- I think so. I'm not sure.

6 Q Dedicated highway do you know has a width of
7 50 feet?

8 A Yes.

9 Q Correct? And the area of this Cross Road is
10 not a dedicated highway; is that correct? To the best
11 of your understanding?

12 A Yes.

13 Q It's a highway by use?

14 A Yes.

15 Q From the center of Cross Road to the toe of
16 the farm road is 25 to 27 feet on each side of the
17 center line. Correct?

18 A Yes.

19 Q For both directions that would be a total of
20 somewhere between 50 and 54 feet, correct?

21 A Yes. For both directions.

22 Q We have marked these photographs as Deposition
23 Exhibits 1 and 2. Do those photographs fairly and
24 accurately depict the area of Cross Road that we're
25 dealing with in this litigation?

1 A Yes.

2 Q On Deposition Exhibit No. 1 the farm road is
3 located on the left side of the photograph, correct?

4 A Yes.

5 Q And Deposition 2 the camera is facing in the
6 opposite direction and the farm road is indicated in
7 that photograph toward the right side of the photograph,
8 correct?

9 A Yes.

10 Q And Cross Road, the surface of Cross Road is
11 apparent in both photographs in Deposition Exhibit No. 1.
12 and No. 2. Correct?

13 A Yes.

14 Q The area of concern, there's an area of
15 concern of the Town of Essex with regard to some section
16 of the farm road. Is that correct?

17 A Yes.

18 Q Is primarily the farm road located on the
19 south side of Cross Road or the farm road on the north
20 side of Cross Road?

21 A On both sides.

22 Q Both sides of the road? How about the
23 elevation? Is the completed farm road located on the
24 north side of the road depicted in either Deposition
25 Exhibit 1 or 2?

1 A I don't fully understand. What --

2 Q Well, you see the farm road which appears to
3 be elevated in Deposition Exhibit No. 1. Correct?

4 A Yes.

5 Q The farm road that is located on the south
6 side of Cross Road. Correct?

7 A Yes.

8 Q Do either of those photographs depict the farm
9 road that has been constructed on the north side of
10 Cross Road?

11 A It's the same on the north side as the south
12 side.

13 Q Same elevation, differential between the
14 elevation of the farm road and the evaluation of the --

15 A Yes.

16 Q -- Cross Road itself? At the same distance
17 from the road?

18 A Yes.

19 Q Cross Road? And with the same --

20 A Approximately I would say, yes.

21 Q Approximately the same slope down to the toe
22 from the top of the farm road --

23 A Yes.

24 Q -- to the base? Okay. Would you be able to,
25 on Deposition Exhibit No. 1, show me what area along

1 Cross Road if it's depicted, there is an area of concern
2 to the Town of Essex?

3 A Down in here by the -- by that catch basin
4 there. (Indicating). There's a culvert that goes
5 across underneath the road that --

6 Q Is that the area of concern where the culvert
7 is located?

8 A Yes.

9 Q What length of area along Cross Road from your
10 observation is, for you as the highway superintendent,
11 an area of concern?

12 A The -- the length of the culvert.

13 Q Right where the culvert is?

14 A Yes.

15 Q Any area in either direction away from the
16 culvert?

17 A Well, yes. I would say 20 to 30 feet.

18 Q Twenty to thirty feet east and west of the
19 culvert?

20 A Yes.

21 Q Those would be the only areas that you would
22 be concerned about with regard to the farm roads as they
23 had been presently constructed?

24 A Yeah. Right -- right now, yes.

25 Q What is the concern that you as the highway

1 superintendent have with regard to the farm roads in the
2 area of the culvert?

3 A There is -- it's too -- it's higher than the
4 Cross Road for one thing. And -- and if we get a lot of
5 snow there, I can't push it over top of that to get --
6 it's just going to build up of snow and I'm not going to
7 be able to move it.

8 Q Now, there has been no flooding of Cross Road
9 in that area. Correct?

10 A Not there -- there has been but not -- not
11 within the last year, no.

12 Q When was there flooding at that location?

13 A Approximately five, six years ago.

14 Q What caused the flooding?

15 A We had a -- a big snow amount with the rain
16 and water couldn't -- couldn't even go through that
17 culvert as it was fast enough.

18 Q Okay. And that's because the culvert could
19 not handle the capacity of the water; is that correct?

20 A It -- it could but it didn't -- it couldn't at
21 that time. It was just --

22 Q When you're talking about flooding, that is
23 before the farm roads on the Lewis Family Farm were
24 constructed, correct?

25 A Yes. We've had water run across the top of

1 that.

2 Q Do you know when the Lewis Family Farm roads
3 were constructed?

4 A Well, last year.

5 Q Has there been any flooding on Cross Road
6 since the Lewis Family Farm roads were constructed?

7 A No.

8 Q Have you made any inspections of the culvert
9 in the area underneath Cross Road that you pointed to?

10 A Yes.

11 Q When did you make that inspection?

12 A I made it two or three times. A couple times,
13 I -- a couple weeks ago I was over there.

14 Q If the area of the culvert you're referring to
15 is depicted in either Exhibit 1 or Exhibit 2, would you
16 be able to mark its location on either of those
17 photographs with the letter "C"?

18 A Approximately.

19 Q Yes.

20 A You want me to mark it now?

21 Q Yes, if you could.

22 A (Indicating). Right down in here. Both
23 sides?

24 Q Yes.

25 A (Indicating).

1 Q So that culvert that you're referring to runs
2 from the north side of Cross Road to the south side of
3 Cross Road, correct, underneath the road?

4 A Yes.

5 Q What would be the approximate length of the
6 culvert from one end to the other?

7 A Approximately 45 feet.

8 Q That's a metal culvert?

9 A Yes.

10 Q Do you know what the diameter is?

11 A Twenty-four inch.

12 Q Now, to the surface of that road, the
13 substance wollastonite has been added on occasion,
14 correct?

15 A Yes.

16 Q Is that something that's done annually?

17 A Yes.

18 Q Is it done more than once a year?

19 A No.

20 Q When is it done?

21 A Usually in the spring, we grade it up and then
22 I fill in all the low spots and all the way through.

23 Q What does wollastonite look like when it's
24 being added to the surface of the road?

25 A It looks like a fine dirt.

1 Q And that I understand is obtained from the
2 NYCO plant in Willsboro?

3 A Yes.

4 Q Is that correct? And what do you do? Apply
5 it to the surface of the road and then use a grader to
6 spread it?

7 A Yes.

8 Q Is there some compaction or packing of the
9 material in the surface of the road?

10 A Just with the grader.

11 Q Why is it necessary to do that annually,
12 Mr. Morgan?

13 A Because throughout the winter we lose a lot of
14 the material from plowing.

15 Q As a result of the plowing and scraping away
16 the surface?

17 A Yes.

18 Q Is there any uniform depth of material that
19 the wollastonite that you customarily place on Cross
20 Road in the spring?

21 A Anywhere from two to six inches we put down.

22 Q Is that done every year?

23 A Usually. Some years it's not but usually we
24 put --

25 Q How many years has that been used -- that

1 substance been used on Cross Road?

2 A I've used it for -- well, this is my 16th
3 year, so -- I don't know how long before that.

4 Q But you have used it during your entire
5 16-year tenure?

6 A Yes.

7 Q Does the addition of that material to the
8 surface of the road annually change the elevation of
9 Cross Road?

10 A Yes. Not much but, yes.

11 Q What would you estimate the effect is of
12 adding it and then compacting it to change the
13 elevation?

14 A It would just be inches.

15 Q And I assume you spread it over the entire
16 length of the road and the entire width of the traveled
17 portion of the road?

18 A Yes.

19 Q Now, it appears if you look at Deposition
20 Exhibit No. 2 that there is a difference in elevation
21 between the edge of the paved portion of the road and
22 the toe of the slope on the Lewis Family Farm road.

23 A Yes.

24 Q It appears that the surface of Cross Road is
25 higher; is that correct?

1 A I guess by that but I -- yes, I guess.

2 Q You've been there on occasion as the highway
3 superintendent?

4 A Yes.

5 Q Do you have a recollection as to how much
6 higher the surface of the road is to the toe of the
7 Lewis Family Farm road in the area depicted in
8 Deposition Exhibit No. 2?

9 A It's probably a couple feet I would think.

10 Q So is the surface of Cross Road intentionally
11 a crowned road?

12 A Yes.

13 Q That is so that water, et cetera, will flow
14 off the road?

15 A Yes.

16 Q Because of the downward slope I presume it
17 flows into that area off the shoulder on both the south
18 side and the north side of the road into that -- if I
19 can call it a ditch area?

20 A Yes.

21 Q Is that ditch area a naturally-occurring thing
22 or was that a ditch that was caused by excavation by the
23 Town of Essex?

24 A The whole ditch along the Cross Road?

25 Q Yes.

1 A Yes, we -- we put that ditch there.

2 Q You put that ditch in?

3 A Yes.

4 Q How did you go about putting the ditch in?

5 A With a grade-all and -- first of all, I would
6 go through with the grader and I'll cut the ditch out.

7 Q Cut the ditch down with the slope?

8 A Yes. And pull the shoulders out, and then we
9 will go back through with the grade-all and clean
10 everything.

11 Q Clean it down to a depth. Is there a certain
12 uniformed depth of the ditch that you intend to achieve?

13 A Usually about two feet.

14 Q Two feet?

15 A Usually, yes.

16 Q What is the width of the ditch?

17 A It would be approximately three feet.

18 Q Have you found that sufficient to handle the
19 water runoff in that area?

20 A Yes.

21 Q Has that also been true this spring as far as
22 handling the water runoff after the construction of the
23 Lewis Family Farm road?

24 A Yes.

25 Q With regard to the culverts, you indicated you

1 inspect the culverts?

2 A Yes.

3 Q Have you inspected the culvert under Cross
4 Road recently?

5 A Yes.

6 Q When did you last inspect it?

7 A Two weeks ago.

8 Q Did you actually get down and look into the
9 culvert?

10 A Yes.

11 Q Were you able to see along the entire length
12 of the culverts from north to south?

13 A No. I couldn't see the end of it, I could see
14 inside it, yes, as far as I could see. I didn't put a
15 flashlight in there.

16 Q You looked at it from the north end?

17 A Yes.

18 Q Did you observe whether or not there was any
19 blocking of that culvert over the length of the culvert
20 or as far as you could see into the culvert?

21 A No.

22 Q Was there any accumulation of wollastonite in
23 the culvert?

24 A This is all the north end. You couldn't see
25 out of the south end?

1 Q Was there any accumulation of wollastonite as
2 far as you could see in the culvert?

3 A No.

4 Q Have you had occasions --

5 A Just minor stuff. It wasn't --

6 Q -- in your career as a highway superintendent
7 where you in fact have had to clean wollastonite out of
8 culverts in the town in other locations?

9 A Yes.

10 Q Has this culvert under Cross Road been cleaned
11 out by action of the highway department during your
12 tenure as the highway superintendent?

13 A Yes.

14 Q When was the last time it was cleaned?

15 A Probably last year. We didn't have -- we
16 didn't do anything with it this year.

17 Q Do you keep any records of the inspections and
18 cleaning of those culverts?

19 A Just on our daily work forms; I don't have any
20 actual forms that we fill out.

21 Q Other than for the application of wollastonite
22 and the taking care of the ditches along Cross Road and
23 plowing Cross Road, are there other routine maintenance
24 things that are done along Cross Road on an annual
25 basis?

1 A Just cleaning, clean the culverts and --

2 Q Now, with regard to -- Cross Road is one of
3 the roads that is plowed by the town highway department.
4 Correct?

5 A Yes.

6 Q It was plowed during the winter of 2006/2007?

7 A Yes.

8 Q Is there a specific employee who ordinarily is
9 charged with the responsibility of plowing Cross Road?

10 A Yes.

11 Q Who is that individual?

12 A Eugene Benway is in charge of that road.

13 Q When he plows that road is there a specific
14 piece of equipment that Mr. Benway used to plow the
15 road?

16 A Just a plow and truck.

17 Q Was there a specific truck that he is assigned
18 to use --

19 A Yes.

20 Q -- to do that in?

21 A Yes.

22 Q And that truck is equipped in the winter with
23 a plow?

24 A Yes.

25 Q How big a truck is that?

1 A The one that was -- we used last year was a
2 single axle.

3 Q I assume it has a dump box of some sort which
4 is weighted?

5 A Yes.

6 Q What type of plow is mounted on that truck?

7 A A Viking plow. One-wing Viking plow.

8 Q What do you mean by a "one-way plow"?

9 A Just pushes it -- when you're going down
10 through plowing, it just pushes it off to the right.

11 Q Off to one side?

12 A Yes.

13 Q Is Mr. Benway, when he operates that
14 particular truck to plow on Cross Road, is he
15 accompanied by a wing man?

16 A Yes.

17 Q There's a wing plow on it?

18 A Yes.

19 Q The wing man operates that plow, correct?

20 A Yes.

21 Q Is there a recommended speed for plowing on
22 town highways?

23 A Yeah. We are recommended 5 to 15 miles an
24 hour.

25 Q That is a policy of your department which the

1 employees are informed about?

2 A Yes.

3 Q When you plow at -- when you say 5 to 15 miles
4 an hour, is the speed determined by the amount of snow
5 that has accumulated on the road?

6 A Well, yes.

7 Q Do you try to plow it 15 miles an hour if the
8 conditions will permit it?

9 A Yes.

10 Q And only at a lower speed if the snow
11 accumulation requires it to be at a lower speed?

12 A Yes.

13 Q Do you have a policy with regard to how much
14 snow has to fall before you begin plowing activities?

15 A No.

16 Q How much snow would there be when you would
17 order plowing to start? Would it be just a trace or
18 would it require some significant snowfall?

19 A It would require at least two inches before
20 they start plowing. We usually sand it before that.

21 Q Sand the roads first?

22 A We -- we -- when it first starts snowing, when
23 it starts getting slippery we usually go out and throw
24 some sand down.

25 Q And the determination with regard to when to

1 start plowing is made by you, Mr. Morgan?

2 A No.

3 Q Who makes that determination?

4 A The operator.

5 Q The operator? Now, on Cross Road, is the
6 width of Cross Road and the size of the plow and the
7 wing plow sufficient that the gentleman operating the
8 truck can clear that road -- the entire traveled portion
9 of it -- by making one pass in each direction?

10 A Yes.

11 Q Last winter, how many significant snowfalls
12 did you have?

13 A I think we had -- three probably. Significant
14 is six inches or more. Is that what you mean?

15 Q If that's how you're answering, you consider
16 six inches or more to be significant?

17 A Yes.

18 Q What was the most snowfall you ever had in one
19 storm last winter?

20 A I think it was three feet. Possibly three
21 feet they said we got.

22 Q Do you know when that occurred?

23 A Yeah, February.

24 Q Do you keep records in the highway department
25 as to the total snowfall accumulation the dates of

1 snowfall --

2 A No.

3 Q -- during the winter?

4 A No.

5 Q With regard to that storm in which you
6 received in the town of Essex about three feet of snow,
7 do you know what the length of duration of that storm
8 was time-wise?

9 A I think it was over a couple days; I'm not
10 positive.

11 Q I assume you and your personnel were plowing
12 pretty much through that entire time period?

13 A Yes.

14 Q During that storm, would that type of an
15 accumulation, on how many occasions would the truck on
16 Cross Road have to have cleared snowfall from Cross
17 Road? In other words, how many trips would he have had
18 to make up and down that road?

19 A He would make four or five.

20 Q Was there any difficulty during that storm in
21 removing snow from Cross Road?

22 A Did we have any difficulty?

23 Q Yes.

24 A I think we got -- yes. Yes, we did.

25 Q What was the difficulty?

1 A We went in the ditch, trucks slid off the
2 road, as you come around the corner and started down
3 Cross Road you slipped off and went into the ditch.

4 Q Went into the ditch? Let me rephrase that.
5 Was there any difficulty in removing snow during that
6 storm from Cross Road because of the construction of the
7 Lewis Farm roads?

8 A No.

9 Q When we got into the spring and we had melting
10 of the snow, there was no flooding caused onto the
11 surface of Cross Road in the vicinity of the farm roads
12 because of the accumulation of snow, was there?

13 A No.

14 Q When you plow with the truck being used by
15 Mr. Benway -- and I presume you've had the experience of
16 plowing yourself?

17 A I've been a wing man, I haven't --

18 Q You have not actually plowed?

19 A No.

20 Q In the area of Cross Road where the farm road
21 is elevated above the surface of Cross Road, if a truck
22 is being operated at 15 miles an hour removing snow from
23 the surface of the road, the snow will be thrown off --
24 if you were going east it would be off the right side of
25 the road, correct? On the right or south side of the

1 road?

2 A Yes.

3 Q Would the plow throw the snow up onto the
4 Lewis Family Farm road?

5 A Yes. On the side of it.

6 Q Would it throw it --

7 A It would actually be the wing. The plow
8 pushes it and it goes onto the wing and then --

9 Q At 15 miles an hour would the wing actually
10 push the snow up onto the top of the farm road?

11 A Yeah, because it -- there would be -- it goes --
12 the more snow you got, the higher it's going to push up
13 itself.

14 Q You also, I understand, have some front-end
15 loaders that you use to remove snow from some locations?

16 A Yes.

17 Q Are there other roads in the town of Essex
18 where the area of land adjacent to the roads is at an
19 elevation higher than the surface of the road?

20 A Yes.

21 Q Are there areas where the elevation of the
22 natural conditions along the roads are several feet
23 above the surface of these other roads?

24 A Not several feet, no.

25 Q What would be the maximum difference in

1 elevation that you're aware of?

2 A Maybe a foot maybe. In places, not many.

3 Q There are no different types or methods of
4 plowing along Cross Road that are required because of
5 the presence of the farm road, is there, during last
6 winter?

7 A No.

8 Q If you got a snowstorm in which, like you had
9 in February, three feet of snow, I presume your
10 operators just continue plowing all the roads and keep
11 going back and forth over them until the storm stops?

12 A Yes, unless it's really long then I --

13 Q Give them a break?

14 A Yes.

15 Q Before the Lewis Family Farm roads were
16 created along Cross Road, did you ever have occasion to
17 observe how far the wing would throw the snow off the
18 surface of the road before the farm roads were built?

19 A It was always the same.

20 Q What would that distance be, approximately?

21 A That it went back?

22 Q Yes. If an individual is plowing a road at a
23 speed of 15 miles an hour, has a wing man and wing, is
24 using that plow, as it plows how far will the snow be
25 thrown off the surface of the road? How far to the

1 right?

2 A Approximately ten feet.

3 Q Ten feet? That would also be true on Cross
4 Road before the Family Farm roads were constructed,
5 correct?

6 A Yes.

7 Q During last winter the truck that was being
8 used to plow was able to -- with the wing plow -- throw
9 the snow off Cross Road the ten feet distance that
10 existed between the shoulder and the toe of the farm
11 road. Correct?

12 A Yes.

13 Q Did the presence of the farm road along Cross
14 Road on the Lewis Family Farm, did they in any way
15 reduce the amount of drifting of snow at any time during
16 the winter on the surface of Cross Road?

17 A Reduce the amount?

18 Q Yes.

19 A I don't think it reduced it.

20 Q Would those farms roads, being at an elevation
21 high above the surface of Cross Road, act as a barrier
22 from both the north and the south with regard to the
23 blowing or drifting of snow on the surface of Cross
24 Road?

25 A It might for a little while but then after --

1 if it built up, it wouldn't.

2 Q Well, if it built up beyond the level of the
3 farm road, it would not. Correct?

4 A It would blow over into --

5 Q Blow it over the top of it?

6 A Right. Into the town road.

7 Q That would occur if the farm roads were not
8 there also, correct?

9 A Yes.

10 Q Are you aware at any time of -- since the
11 construction of the farm roads -- that any type of
12 emergency vehicle or ambulance or fire truck or anything
13 has been unable to travel in the area depicted on
14 Exhibits 1 and 2 through that area and Cross Road
15 because of any flooding or accumulation of snow?

16 A No.

17 Q You're aware of a lady who lives on Cross
18 Road?

19 A Yes.

20 Q Miss Slatkin I believe the name is?

21 A Yes.

22 Q You know where she lives?

23 A Yes.

24 Q There are methods of access to her residence
25 on other roads other than by traveling on Cross Road in

1 any event, aren't there?

2 A Yes.

3 (Exhibits 3 through 6, marked for
4 identification)

5 Q Mr. Morgan, I show you what has been marked
6 as Deposition Exhibits 3, 4 and 5 and I would ask you
7 have you ever seen those before?

8 A Just -- just the other day I was shown them.

9 Q Three through six. My apologies. Who showed
10 them to you?

11 A Ron Jackson.

12 Q Do you recognize what's depicted in any of
13 those photographs?

14 A Well -- what do you mean?

15 Q Do you recognize what is shown in those
16 photographs?

17 A Yes.

18 Q Can you identify where and when those
19 photographs were taken?

20 A No.

21 Q Do you know who took them?

22 A I was told Lloyd Sharrow took them.

23 Q Who is Lloyd Sharrow?

24 A He was a highway superintendent on -- I don't
25 know -- I forget what years.

1 Q Who told you that Mr. Sharrow took those
2 photographs?

3 A Ron Jackson.

4 Q Does Mr. Sharrow still reside in Essex?

5 A No, he's -- he died.

6 Q Do you know where those photographs came from?

7 A No.

8 Q Can you look at those photographs and tell
9 whether those photographs depict Cross Road?

10 A No. I -- I can't. But they -- they -- I was
11 told they were. I -- I don't know.

12 Q But --

13 A Not really I can't.

14 Q You can't tell from the photographs where they
15 were taken or when they were taken, can you?

16 A No.

17 Q Since the construction of the Lewis farm
18 roads, have the farm roads in any way caused any
19 accumulation of ice on the surface of Cross Road that
20 you're aware of?

21 A No.

22 Q In your customary practice is the accumulation
23 of ice, freezing rain or anything of that nature, your
24 customary practice is to sand?

25 A Yes.

- 1 Q You use actual sand on the road surfaces,
2 correct?
- 3 A Yes.
- 4 Q Do you use salt?
- 5 A Yes.
- 6 Q Do you use a combination of the two?
- 7 A Yes.
- 8 Q You do not use wollastonite for the surface of
9 the road for purposes of sanding because of ice or snow,
10 do you?
- 11 A No.
- 12 Q In the south end of the culvert, is the south
13 end of the culvert underneath Cross Road, is that
14 observable from looking down from the surface of the
15 road as it exists today?
- 16 A No.
- 17 Q How far underneath the surface of the road is
18 the top of the culvert?
- 19 A Approximately a foot and a half.
- 20 Q Do culverts freeze in the winter?
- 21 A Yes.
- 22 Q Is there anything obstructing the south end of
23 that culvert underneath Cross Road?
- 24 A Yes.
- 25 Q What is obstructing it?

1 A Stone.

2 Q Stone from what?

3 A From the Lewis Family Farm.

4 Q Have you observed water flowing through that
5 culvert from north to south?

6 A No.

7 Q What is the type of stone that makes up the
8 Lewis Family Farm road?

9 A I don't know what kind of stone it is. It's
10 just regular rock that was crushed.

11 Q Will water flow through it?

12 A It will.

13 Q Now, have you had any conversations with
14 Mr. Sandy Lewis at any time about the farm roads?

15 A Yes.

16 Q When did you first speak with him? Was it
17 prior to the construction of the farm roads?

18 A It was when he had the south side of the farm
19 road down over on Cross Road.

20 Q Where did that conversation take place?

21 A Over on the Cross Road.

22 Q On the road? On the Cross Road itself?

23 A Yes.

24 Q All right. Can you tell me as best you recall
25 what that conversation was with Mr. Lewis.

1 A I asked him how the water was going to go
2 through that culvert with that road on the south side.

3 Q What was his response?

4 A He said water will filter through stone.

5 Q Did you indicate to him at any time any
6 disagreement with that?

7 A Yes.

8 Q Do you know whether or not the base of the
9 Lewis Family Farm road is stone below the level of the
10 end of the culvert?

11 A I don't know.

12 Q Have you done any excavation work at the end
13 of the south end of that culvert in order to open it up?

14 A No.

15 Q Has water flowed through the culvert from
16 north to south since the farm roads have been
17 constructed?

18 A I'm assuming it has but I haven't -- I haven't
19 seen it.

20 Q But you haven't had any difficulty with any
21 flooding or accumulation of water at the location on the
22 south end of the culvert adjacent to Cross Road, have
23 you?

24 A No.

25 Q Did you ever have any conversation with Mr.

1 Lewis other than the one you've just described?

2 A Yes.

3 Q What other conversations have you had with
4 him?

5 A I've had numerous ones with him.

6 Q About this particular matter involving the
7 farm roads on the elevation?

8 A No.

9 Q Were you ever present with Mr. Jackson when
10 Mr. Jackson and Mr. Lewis had any discussion concerning
11 the farm road?

12 A No.

13 Q During your tenure as a highway superintendent
14 have you had a storm that there was more snowfall than
15 the three feet on the snowstorm during February of 2007?

16 A We had a blizzard '93 but I can't remember
17 exactly the snowfall. But we had an awful winter.

18 Q Do you think the snowfall accumulation during
19 that storm was more than three feet?

20 A No -- maybe not the total accumulation but
21 wherever the wind blew it was, yeah.

22 Q Are there other roads in the town of Essex
23 that are prone to drifting caused by blowing snow?

24 A Yes.

25 Q Is Cross Road one of the significant roads

1 that that happens on or are there other roads where it
2 happens more frequently?

3 A No. Cross Road it happens.

4 Q Is drifting of snow during your tenure on
5 Cross Road been in the area where the farm road?

6 A Yes.

7 Q If that area around the south end of the
8 culvert was changed in some fashion, would that resolve
9 any potential problem with regard to the drainage in
10 your opinion?

11 A No. If it was changed, no.

12 Q If it was changed, it would take care of the
13 problem?

14 A Yes.

15 Q Potential problem?

16 A Yes.

17 Q You haven't actually had a problem as of yet,
18 correct?

19 A Correct.

20 Q How would you recommend that it be changed?

21 A Well, he -- there's a culvert that he has
22 there. I don't know why we couldn't just take town
23 culvert and pipe it into -- catch basin that he has.

24 Q If that was done, that would resolve the
25 problem?

1 A Oh, yes.

2 Q With regard to the water, snow and everything,
3 correct?

4 A Yes.

5 MR. BRENNAN: I will take about five
6 minutes. I don't -- off the record.

7 (Discussion held off the record)

8 (Following off-the-record discussion)

9 (Exhibits 7 and 8, marked for
10 identification)

11 BY MR. BRENNAN:

12 Q Mr. Morgan, I show you what have been marked
13 as Deposition Exhibits No. 7 and 8. Can you tell me
14 what is depicted in those photographs?

15 A I took a picture of this when they were
16 actually --

17 MR. HARP: Let him know what number.

18 Q No. 7?

19 A Yes, that was 7.

20 Q What is depicted in that photograph?

21 A The -- I took a -- when they were actually
22 constructing the roads.

23 Q Okay. And that is just to show the
24 construction taking place?

25 A Yes.

1 Q Is there anything else depicted in that
2 photograph that other than to show that it's being
3 constructed?

4 A No.

5 Q Is the culvert on the north end, the north end
6 of the culvert blocked in any fashion?

7 A No.

8 Q Deposition Exhibit No. 8, can you tell me what
9 that is.

10 A I was just -- I took a picture of the -- them
11 using the excavator there, and the elevation and stuff
12 over on the -- on the south side.

13 Q And that's only for that purpose, to show the
14 actual construction taking place with the excavator?

15 A Yes.

16 MR. BRENNAN: Can I take about a
17 five-minute break and I think I'm not going to
18 have much more for Mr. Morgan. I'm sure he
19 will be happy with that.

20 THE WITNESS: Yes.

21 MR. BRENNAN: Give me about five minutes,
22 okay?

23 (Whereupon, break taken)

24 (Following break)

25 MR. BRENNAN: I have nothing further,

1 Mr. Harp.

2 EXAMINATION BY

3 MR. HARP:

4 Q As I say, since we are going to use this
5 deposition in trial, I have to go through and clarify a
6 few things and also put some exhibits in. Okay? You
7 indicated that you make annual certifications of the
8 highway mileage of the town; is that correct?

9 A Yes.

10 MR. HARP: Would you please mark this as

11 9.

12 (Exhibit 9, marked for identification)

13 BY MR. HARP:

14 Q Can you identify that?

15 A This?

16 Q Yes.

17 A Yes. It's -- it's what I fill out every year.

18 Q What year was that --

19 A This?

20 Q -- particular report for?

21 A 2006.

22 Q Does it have a date on it when you submitted
23 it?

24 A Yes.

25 Q Who do you submit it to?

1 A New York State Department of Transportation.

2 Q Does the report indicate the total mileage of
3 town highway system?

4 A Yes.

5 Q What is that?

6 A 26.5.

7 Q Does the report indicate Cross Road as a town
8 highway?

9 A Yes.

10 Q Would you please look at it?

11 A (Witness complies). Do you want me to show it
12 to you?

13 Q No. On page 2, correct?

14 A Yes.

15 Q Would you please go to Cross Road.

16 A (Witness complies). I didn't bring my
17 glasses.

18 Q You didn't bring your glasses. Can you tell
19 what the mileage is or do you want me to read it?

20 A Sorry. I don't have my glasses; I should have
21 brought them but I don't. But I have whatever here is --

22 Q In the fourth column there's a number 1.46.
23 Do you believe that that is the mileage of Cross Road?

24 A Yes.

25 Q In the -- I think it's the eighth column it

1 indicates 20, number 20. And above it it indicates the --
2 which would be the width of the pavement or whatever you
3 want to call it. Is that correct?

4 A Yes.

5 Q You measured it?

6 A Yes.

7 Q And the next column over, I think it's the
8 ninth column, shows a shoulder width of 5 feet.

9 A Yes.

10 Q And you measured that?

11 A Yes.

12 Q Do you measure them every year?

13 A Yes.

14 Q Now, when you say on the report five feet, you
15 mean five feet on either side, correct?

16 A Yes. When -- I just measure the start of the
17 road. I don't actually go through the whole road.

18 MR. HARP: Can I mark this as 10.

19 (Exhibit 10, marked for identification)

20 Q Is that a town highway mileage report that you
21 made?

22 A Yes.

23 Q Can you tell what year it was made?

24 A 1994.

25 Q Does Cross Road appear on that?

1 A Yes.

2 Q On page 2 of the report, correct?

3 A Yes.

4 Q Can you verify what the distances and other
5 measurements that you made?

6 A I can but -- I don't have my glasses but it's
7 right there.

8 Q It indicates --

9 MR. HARP: Joe, can I read it off for
10 him?

11 MR. BRENNAN: Yes.

12 Q 1.46 miles in length, 20-foot wide pavement
13 area driving area and a 5-foot shoulder?

14 A Yes.

15 Q So it's consistent between the 1994 report and
16 the 2006 report; is that correct?

17 A Yes.

18 Q Now, I want to go to these exhibits. Exhibit
19 1 shows a completed record on the right side and I
20 believe it's been indicated that's on the south side of
21 the road, correct?

22 A Yes.

23 Q As shown in this picture, is the road on the
24 north side or the right side -- on the right side of the
25 road, is that completed?

1 A No. Where the excavator is?

2 Q Yes.

3 A No.

4 Q It was under construction at the time,
5 correct?

6 A Yes.

7 Q Is the north side completed today?

8 A I would say no because -- still has piles on
9 the top of it.

10 Q You indicated I believe relative to the
11 drainage that you are concerned about 20 feet of either
12 side of the -- where the culvert is. What is the
13 concern relative or the length of concern relative to
14 Cross Road? Do you have any idea?

15 A For the whole road?

16 Q Yes. No. I don't want -- the whole road is
17 not a concern, right?

18 A No.

19 Q It was up here. It's level with the highway,
20 correct?

21 A Yes.

22 Q What area of concern do you have relative to
23 the farm roads and Cross Road?

24 A Concern from where the culvert is and where
25 the -- the wind blows the snow and stuff. And it drifts

1 right in this area, well, where you would -- you can see
2 it drift in there.

3 Q We're not getting any distances out of this or
4 anything. Can you identify -- and you never measured
5 it, correct?

6 A No, I haven't.

7 Q Can you estimate from your experience about
8 how long of an area is involved?

9 MR. BRENNAN: I object to the form of the
10 question. He's already testified there's been
11 no drifting along there caused by the farm
12 roads so I don't know how he can estimate the
13 distance.

14 MR. HARP: I'm asking him for the area of
15 concern.

16 MR. BRENNAN: That's what the basis for
17 his concern, he's already said it hasn't
18 occurred.

19 MR. HARP: It didn't occur last year but
20 it doesn't mean it won't occur in the future.

21 MR. BRENNAN: Then he can't estimate
22 something that doesn't exist.

23 MR. HARP: The roads exist.

24 MR. BRENNAN: I'm well aware of that and
25 there's been nothing --

1 BY MR. HARP:

2 Q Can you estimate the distance where the
3 elevation of Cross Road is lower than the distance --
4 than the height of the farm roads on the south or north
5 side?

6 A I would say approximately 200 feet I would
7 think.

8 Q About 200 feet? Okay.

9 A It would be the full length of what -- where
10 the stone is.

11 Q In Exhibit 1, do you see -- this road is
12 complete, right? And was complete when you took the
13 picture?

14 A As far as I know. I don't know what -- what
15 Mr. Lewis intends to do but as far as I know.

16 Q Now, does this picture show any drainage
17 alongside of Cross Road on the south side?

18 A Yes. We have a ditch there.

19 Q Can you point out where the ditch is?

20 A Well, it's down through here (indicating).
21 Sort of a ditch. It will be a ditch.

22 Q Where is the toe of the slope in relationship
23 to the Cross Road as it existed before Cross Road,
24 before the farm roads were built? Can you point it out?

25 A I don't understand what you're -- what do you

1 mean?

2 Q The Cross Road has slopes, correct?

3 A Yes.

4 Q The farm road has slopes?

5 A Yes.

6 Q All right? Were the slopes of Cross Road ever
7 covered by the slopes of the farm roads?

8 A I would say it would -- probably a foot, foot
9 over this way, yes. (Indicating). And where our actual
10 ditch was.

11 Q On Exhibit No. 8 is there a ditch shown
12 relative to Cross Road?

13 A Yes.

14 Q Is that the ditch that the highway department
15 dug out at some time?

16 A Yes.

17 Q How frequently do you dig out your ditches?

18 A We -- it always depends, you know, how bad of
19 a winter we got. I would say every two years.

20 Q Do you know when you last dug out the ditch
21 along Cross Road on the north side?

22 A A couple years ago. We cleaned it from the
23 top right down through.

24 Q Have you done any ditching work along the area
25 of concern, whatever length it is, 200 feet, 300 feet,

1 whatever it is, this particular year?

2 A No. I haven't done anything.

3 Q On either the north or the south side; is that
4 correct?

5 A As far as ditches, no.

6 Q Did you ever have any conversation with anyone
7 other than Mr. Lewis relative to the construction of the
8 farm road?

9 A Yes.

10 Q Could you indicate what it was, if you can?

11 MR. BRENNAN: I won't object to this
12 witness testifying to anything that would
13 constitute hearsay, if you're tending to use
14 this deposition as a trial. I don't have any
15 objection in talking about conversations that
16 Mr. Morgan had with Mr. Lewis or Mrs. Lewis,
17 but anyone else it's absolutely hearsay and I
18 do object to it. I will object to it at the
19 trial.

20 BY MR. HARP:

21 Q Did you have conversation with anyone else?

22 A Yes.

23 Q Does this picture show the person that you had
24 a conversation with?

25 A I was -- the day I took the picture I talked

1 to this fella.

2 Q We have to assume that Mr. Jackson will be
3 able to identify those pictures, okay?

4 MR. BRENNAN: Yes.

5 BY MR. HARP:

6 Q All right. Assuming that Mr. Jackson
7 identifies the pictures and from his knowledge where
8 they were taken, can you tell me what type of equipment
9 that is there?

10 A That's a "V" plow on a --

11 Q Do you use "V" plows presently?

12 A No.

13 Q Again, assuming that Mr. Jackson can identify
14 this picture is in the area of concern, is there
15 anything that you can see from Exhibit No. 4?

16 A What would you like me to tell you?

17 Q Well, what do you see in there that --

18 A I see a swale.

19 Q A swale?

20 A Yeah. With snow on it. I don't know.

21 MR. HARP: Would you mark that? Maybe
22 with a --

23 MR. BRENNAN: I object to this as to this
24 witness testifying to what this is. Whether
25 or not Mr. Jackson can identify the

1 photograph, I'm going to object to this
2 witness testifying to what the contents of the
3 photograph. The photograph shows whatever the
4 photograph shows, if it is relevant in this
5 matter.

6 BY MR. HARP:

7 Q This is a picture of equipment. Is this the
8 type of equipment that you use presently?

9 A Yes, but that -- I don't know what that truck
10 is. I don't know.

11 Q You don't know what the particular truck is?

12 A No.

13 Q But is that the type of plow arrangement you
14 have in the front?

15 A Yes.

16 Q Wings off --

17 A Yes.

18 Q -- to the right?

19 A Yes.

20 Q All right. Can you identify what type of
21 vehicle that is in the back?

22 A That's a grader.

23 Q What does that grader do in snowstorms?

24 A That pushes -- that pushes the snow back, it
25 has a wing on it.

1 Q So if there is heavy snow, does the plow,
2 et cetera -- to clean the snow off, you use a regular
3 plow with a wing. Correct?

4 A Yes.

5 Q And then you may have to use additional
6 equipment?

7 A Yes.

8 Q This is the type of equipment that you use?

9 A We use a grader and plus the loader. And the
10 drifts get real high, we take a loader and clean the
11 snow out in the loader.

12 Q How far out would this combination of
13 equipment push snow?

14 A That will push snow 20, 25 feet from the ditch.

15 Q From the ditch area?

16 A Yes. Our grader has an extension on it and I
17 can push the wing out.

18 Q How far out can it go?

19 A It will go out like 15 feet.

20 Q Did you use wollastonite on Cross Road during
21 1997?

22 A '97?

23 Q Yes, this year. Excuse me. 2007.

24 A No. I didn't put any wollastonite.

25 Q When is the last time you put any wollastonite

1 on Cross Road that you recall?

2 A 2006.

3 Q 2006?

4 A (Witness nods head).

5 Q Did you indicate that the south side or the
6 outlet to the culvert is covered or have stones in it?

7 A Yes.

8 Q Okay.

9 A From what I --

10 MR. BRENNAN: I object to "covered." He
11 didn't say it was covered.

12 Q Does it have stones in it?

13 A Yes.

14 Q Can you see it, physically see any part of it?

15 A Of the culvert on the south side?

16 Q On the south side, yes.

17 A No.

18 Q During 2007 have you undertaken any efforts to
19 try to open that up?

20 A No.

21 Q When the culvert ices up, do you use any kind
22 of equipment to free it up?

23 A Yes.

24 Q What type of equipment do you use?

25 A We have a Steam Jenny and we have pipes --

1 pipe to it with hot water.

2 Q At any time do you drive any emergency
3 equipment for the town?

4 A Yes.

5 Q We'll use the person that -- there's a letter
6 that indicates Mrs. Slatkin. If she needed emergency
7 services and Cross Road was not available, would it take
8 any longer for the emergency equipment to get to her?

9 A Yes. If it wasn't available.

10 Q How much longer would it take, in your
11 estimation?

12 A Ten -- ten -- 10 to 12 minutes, 15 minutes
13 maybe. Ten minutes.

14 Q But you haven't driven it, have you? The
15 alternate route?

16 A No.

17 MR. HARP: I don't have any further
18 questions.

19 MR. BRENNAN: Nothing further, Mr. Morgan.

20 (Whereupon, stenographic record concluded)

21 * * * * *

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TENNYSON COURT REPORTING
Lisa L. Tennyson, CSR, RMR, RPR
(518) 494-7897

1 STATE OF NEW YORK

2 COUNTY OF ESSEX

SUPREME COURT

3 *****

4 TOWN OF ESSEX and JAMES Z. MORGAN, JR., as *

5 SUPERINTENDENT OF HIGHWAYS OF THE TOWN OF ESSEX, *

6 Plaintiffs, *

7 -v- *

8 LEWIS FAMILY FARMS, INC., *

9 Defendant. *

10 *****

11
12 J A M E S Z. M O R G A N, J R., having been duly
13 sworn, states he has read the foregoing transcript of
14 testimony given in the pending matter and knows the same
15 to be true.

16
17 _____
18 JAMES Z. MORGAN, JR.

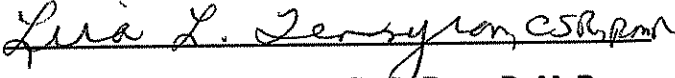
19
20 Subscribed and Sworn to before me

21 this _____ day of _____

22
23 _____
24 Notary Public
25

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
62 pages of testimony taken by me to be a true and
complete computer-aided transcript to the best of my
ability.


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

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