

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 RONALD E. JACKSON 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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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 R O N A L D E . J A C K S O N , having been duly
2 sworn, was examined and testified as follows:

3 EXAMINATION BY

4 MR. BRENNAN:

5 Q Mr. Jackson, would you state your full name
6 and address for the record.

7 A Certainly. Ronald E. Jackson, my address is
8 2538 New York State Route 22, Essex, New York 12936.

9 Q You are presently the supervisor of the Town
10 of Essex; is that correct?

11 A I'm correct. I'm the town --

12 Q That's an elected position?

13 A Yes, it is.

14 Q How long have you held that position?

15 A This is my sixth year.

16 Q How long have you lived in the town of Essex?

17 A All my life, except for about nine months when
18 we first got married; I -- we had an apartment in
19 Willsboro.

20 Q Your age is what, sir?

21 A Fifty-nine and a half. Magic age for the U.S.
22 government.

23 Q Can you tell me what your educational
24 background is.

25 A Certainly. I went to Essex Free School, K through

1 6, Willsboro Central School, 7 through 12, SUNY Maritime
2 four years, graduating with a bachelor's in marine
3 engineering degree in 1970.

4 Q Prior to becoming the supervisor of the town
5 of Essex did you hold any other positions in the local
6 government?

7 A No, sir. Well, yes, sir. That's not quite
8 true. I was elected fire commissioner for two terms.

9 Q But not in the town government or in the
10 county?

11 A No.

12 Q Can you tell me what generally your history of
13 employment is? What type of work you've done?

14 A I can tell you exactly. From when I graduated
15 in 1970 for the next 25 years I worked for Texaco Marine
16 Services out of Port Arthur, Texas, starting out as a
17 third engineer onboard ship, working my way up in little
18 over a half the time, was just chief engineer on various
19 vessels. They got out of the business actually in '74
20 but they -- vacation and stuff ran through -- I mean '90 --
21 '94. But it ran through into '95.

22 I then spent approximately two years working
23 for SUNY Maritime doing energy studies in various state
24 correctional facilities. Then I went back, I worked for
25 SUNY Maritime for about three and a half years on -- as

1 chief engineer of the training ship in fire state 6, and
2 left there in the late spring of -- I have to do the
3 math back, I think it was 2001. And I worked at SUNY
4 Plattsburgh for about six months before I became
5 supervisor for about a month after as -- in charge of
6 the heating plant at SUNY Plattsburgh on shift work for
7 eight hours a day, five days a week.

8 Q During the period of time that you were
9 employed by Texaco, your permanent residence address,
10 however, was in the town of Essex; is that correct?

11 A Yes, sir, except for that nine months,
12 whatever it was, that we were in Willsboro.

13 Q I take it that employment by Texas you were at
14 sea most of the time?

15 A Yes, sir, the majority of it.

16 Q Approximately out of every one given year how
17 many months would you spend at sea annually?

18 A Well, when I first started the rotation was
19 approximately 90 days on and 40 days off. The vacation
20 increased and after about ten years they changed it to a
21 cycle of two months on, two months off. That obviously
22 varied but that's the approximate time.

23 Q Would you just describe generally what your
24 duties are as the supervisor of the Town of Essex?

25 A Quite varied because a combination post, it's --

1 the executive position for the town is also legislative.
2 And along with that, it's legislative for Essex County
3 because we have a board of supervisors as opposed to
4 legislators. So I have to prepare the budget, keep
5 track of what goes on in the town hall, supervise
6 repairs, work with the highway superintendent if he has
7 problems to help make decisions there.

8 We have various buildings that we -- we own,
9 we have the water system, been working to try to get
10 financing for new sewer system, various things like
11 that.

12 Q You've indicated that I assume the part of
13 your duties would be to -- in some respects -- control
14 the highway department activities; is that correct?

15 A No, that's completely incorrect.

16 Q Okay.

17 A Yep. I worked --

18 Q You control the budget?

19 A The only control any town board has on a
20 highway superintendent is budgetary. Jim often -- I
21 have known Jim for a long time, he asked my advice but
22 he didn't have to. I have no control, he doesn't have
23 to follow my advice if -- he asks for -- the only
24 control you have is budgetary.

25 Q And I take it from that then the highway

1 superintendent position in the town of Essex is an
2 elected position?

3 A Yes, sir, that is correct.

4 Q Do you know how many miles of road there are
5 in the town highway system approximately?

6 A I do but I can't give you the number without
7 checking. That's data that we have submitted for
8 evidence. So if you could --

9 Q Are there any agreements or contracts that you
10 know of between the Town of Essex and any other
11 entities -- such as the County of Essex or any other
12 town -- for which the Town of Essex agrees to provide
13 any highway services?

14 A Sure. Let's go back to your first question
15 first. The -- the mileage we have is 26.65.

16 Q That is a town highway?

17 A That is a town highway. We plow, sand and
18 occasionally help with repairs for the county; they hire
19 us as needed basis. For the state we plow and sand, and
20 with all the surrounding towns, it's a mutual agreement
21 where if they are paving, we haul for them; if we are
22 paving, they haul for us. Occasionally we borrow
23 equipment from each other and stuff but that's pretty
24 much informal. Only formal agreements are the county
25 and the state ice and snow contracts, and then the

1 county contracts with us as needed for repairs to county
2 roads.

3 Q And under the terms of those contracts, when
4 you plow and sand highways for the county, are there
5 specified county roads within the Town of Essex on which
6 you provide those services?

7 A Yes, sir, there is.

8 Q Do you know what the length of the county
9 highways are that you provide those services for?

10 A I can check the contracts. I don't have that
11 in memory but I'm going to say it's -- Jim could tell
12 you better. I'm going to say approximately -- if you
13 want to pull the contracts out and I can see.

14 Q When you say "Jim" I presume -- James Morgan
15 is the highway superintendent?

16 A James Morgan, III. Yes.

17 Q How long has Mr. Morgan been the highway
18 superintendent to your knowledge?

19 A To my knowledge -- I'm not certain. Long
20 before me. I think 16 or 18 years. He can tell you but
21 I'm not certain without checking personnel records.

22 Q How many employees are there employed by the
23 Town of Essex?

24 A Well, we -- you're talking for the highway
25 department?

1 Q I'm talking in general.

2 A Okay. Well, let me go through because there's
3 a lot of part-time employees. We have -- normally we
4 have four full-time highway and we -- I assume you are
5 not talking about elected, just hirees?

6 Q I'm talking about people that are employed as
7 hirees.

8 A On the highway department? There's normally
9 four full-time employees, one just resigned to take
10 another position, and we just hired somebody who we --
11 starting the first of the month. So right today there's
12 three. There's a highway superintendent and then
13 there's various amounts of people. Normally three that
14 work as temporary wingman during the winter, two or
15 three, depending on the year, who's available. They
16 come in when needed, on-call basis for plowing.

17 Occasionally we will hire one of those people
18 back to -- somebody else to help if we have a big job,
19 like building the sand pile. Sometimes they will get a
20 retiree or a temporary person to -- to help with that
21 process.

22 Q Do you know how many pieces of equipment are
23 used for plowing that are owned by the Town of Essex?

24 A Yes, sir. I sure do.

25 Q Tell me what they are.

1 A Absolutely. We have three mainline trucks, we
2 have one reserved truck, we have a grader that we use
3 for what they call winging back snowbanks, get them out
4 of the way to make room for the next storm and if it
5 gets really thick, then we have two front-end loaders
6 that we use if there's a blizzard to dig out places as
7 needed.

8 Q The individuals who operate these pieces of
9 equipment in order to remove snow, those individuals are
10 all full-time employees of the Essex highway department?

11 A Pretty much. Occasionally if you have
12 somebody sick, he -- Mr. Morgan has the option of
13 getting a temporary person, but that's a rare occasion.
14 Normally it's one of the full-time employees operating
15 the equipment, other than loaders and stuff, which the
16 wingmen often assist if you have something like that.
17 Basically the full-time employee.

18 Q By "wingman," you mean an individual who rides
19 in the truck that is doing the plowing and controls a
20 wing plow. Is that what you're referring to?

21 A Yes, sir, and they are temporary employees,
22 except for one. We have one employee -- one laborer who
23 operates as a wingman.

24 Q Do you know Sandy Lewis and Barbara Lewis?

25 A Certainly do.

1 Q You're familiar with the Lewis Family Farm,
2 Inc.?

3 A Yes, sir.

4 Q In that area, the land where the farm is
5 located, did you have or your family have any
6 involvement in any portion of that land at any time in
7 the past?

8 A Sure.

9 Q Tell me what the involvement was.

10 A Sure. The piece across from the Lewises'
11 home, I believe it's approximately a hundred acres. It
12 was in the family for many years, they bought it from my
13 mother's cousin five years ago I guess. Something like
14 that.

15 Q Do you know when the Lewises or the Lewis
16 Family Farm -- I will just refer to it as Lewis --
17 acquired the property that they currently own?

18 A Which piece of property? They have had many
19 pieces of property.

20 Q Let me ask you. The first time of a purchase
21 by Lewis, do you know when that was approximately?

22 A Well, I am -- I'm going to say it's -- I don't
23 know, 16 years ago. I'm guessing. It's been quite
24 awhile since they bought the -- where their family house
25 is now and then they bought many additional pieces

1 since.

2 Q You were not obviously, then, the supervisor
3 of the Town of Essex?

4 A No, I was not.

5 Q Correct? When did you first meet either Sandy
6 or Barbara Lewis?

7 A I don't know. It's been quite awhile. I hate
8 to try to put a date on it.

9 Q At any time during the ownership of any of the
10 property with what now constitutes the Lewis Family
11 Farm, did you utilize any portion of that property
12 personally in any fashion?

13 A - Sure. For -- I don't know how many years, off
14 and on we made maple syrup for the Lewis Family Farm.
15 My cousin used to make syrup there and I helped him, and
16 then when Sandy and Barbara bought it, several friends
17 and myself made it for -- I don't know -- three, four
18 years. I'd hate to guess.

19 Q You were personally involved in that?

20 A Yes, sir.

21 Q Are you doing that any longer?

22 A No, sir.

23 Q When did that relationship end?

24 A Well, it kind of -- it was kind of a two-part.
25 It ended initially when they were putting the roads in

1 because it damaged a lot of roots and we decided to not
2 stress the trees by making syrup, so that was two years.
3 And then since then, for various reasons we just -- last
4 year we did not make syrup.

5 Q So you've voluntarily terminated any
6 participation in that activity --

7 A Yes.

8 Q -- on the Lewis Family Farm? Have you ever
9 had occasion to discuss this pending litigation with
10 either Sandy Lewis or Barbara Lewis?

11 A Yes. Sure. Many times. It was with
12 Mr. Lewis. I don't remember discussing it with Barbara
13 but I did with Sandy.

14 Q Did you ever have any discussion with Sandy
15 Lewis in which you indicated to him the reason why this
16 litigation was commenced by the Town of Essex?

17 A Yes, sir.

18 Q When did that conversation take place?

19 A I would be guessing but before the -- long
20 before the lawsuit was filed. So I'm going to say two
21 years ago. More or less.

22 Q Were you referring to one or more
23 conversations?

24 A More than one conversation.

25 Q Can you tell me what the essence of that

1 conversation was. What you stated in general terms and
2 what specifically --

3 A Why the lawsuit was brought?

4 Q Yes.

5 A Yes, sir. I would be very happy to. There
6 are two issues: one was drainage and the other was
7 being able to plow and store snow.

8 Q Did you ever have any conversation with
9 Mr. Lewis concerning the wollastonite on the town
10 highway, Cross Road in particular, which is through the
11 Lewis Family Farm property?

12 A Sure.

13 Q Did you ever have any conversation with
14 Mr. Lewis in which you indicated that litigation had
15 been commenced because you believed that Mr. Lewis was
16 intending to sue the Town of Essex over the use of
17 wollastonite --

18 A No.

19 Q -- on the town road?

20 A No, sir. The -- the litigation was commenced
21 because of the drainage and snow issue. There's no
22 question in my mind that somewhere down the line
23 Mr. Lewis was going to sue the town over wollastonite
24 but those are two separate issues, and then one has
25 nothing to do with the other.

1 Q What did you base that conclusion on?

2 A Conversations Mr. Lewis had.

3 Q Mr. Lewis indicate to you that before this
4 lawsuit was commenced by the Town of Essex that the
5 Lewis Family Farm intended to bring a suit against the
6 Town of Essex?

7 A I don't know if I would use the word
8 "intended." I -- I think the correct word is that he
9 indicated that he thought it was illegal and that there
10 was an -- there was a chance that some day there would
11 be a lawsuit.

12 Q When, to the best of your recollection -- if I
13 can use the term "farm roads" to distinguish them from
14 the public highways -- when were the farm roads first
15 constructed on the Lewis Family Farm?

16 A Well, the -- it's been ongoing. The first
17 place they started was in the sugar bush so that was
18 four years ago I guess. Four or five years ago.
19 Something like that. And then they -- then some other
20 smaller ones but the major construction was started two
21 years ago I believe.

22 Q And on what roads public highways were the
23 farm roads constructed?

24 A Well, the -- there are several roads. There's
25 a county road, which is the Whallons Bay Road, they are

1 along the -- a little farther away but started out being
2 along the Christian Road but those have been kind of
3 removed. They are on -- along Angier Hill Road, there
4 are along the Clark Road, and they are along the Cross
5 Road.

6 Q Prior to the construction of any of those
7 roads, particularly the farm roads adjacent to Cross
8 Road, did you ever have any conversation with Mr. Lewis
9 concerning the construction of those farm roads prior to
10 the time the construction actually began?

11 A General -- general conversation. Mr. Lewis
12 talked many times about how he wanted roads around his
13 property so he could cruise the perimeter to see who was
14 coming and going. He talked about having roads so long
15 that he could use for his equipment for a couple
16 reasons. One, so he wouldn't compact coming and going
17 and, two, he thought it would be a good idea to use his
18 roads rather than town roads for the heavy, slow-moving
19 equipment. Kind of main reasons he talked about having
20 roads.

21 Q Prior to the construction of the farm roads
22 along Cross Road, did you ever have any conversation
23 with Mr. Lewis in which you expressed any concern --

24 A No, sir.

25 Q -- regarding drainage along those roads?

1 A No. Because that's the only place where it
2 was an issue was the Cross Road and properly constructed
3 it wouldn't have been an issue there. The way it was
4 constructed it is an issue. The other roads we have no
5 problem with whatsoever.

6 Q So your only concern is on the farm roads that
7 are located in proximity to Cross Road; is that correct?

8 A Well, and only a small section of that. I'm
9 going to say 400 or 500 feet.

10 Q And you, I take it, have been there and have
11 observed farm roads as they presently exist?

12 A Yes, sir.

13 Q When was the first occasion that you went
14 there after the farm roads were constructed?

15 A I went during the construction.

16 Q Did you ever see Mr. Lewis there at any other
17 location where you discussed with him the --

18 A Yes, sir.

19 Q -- the construction of those roads? On how
20 many occasions?

21 A I don't remember.

22 Q Do you recall where those conversations took
23 place?

24 A I assume over the phone. I don't remember for
25 sure.

1 Q Can you tell me essentially what you said to
2 him and what he said to you during those conversations?

3 A Generally. I -- I certainly can't quote but
4 the conversation was -- I raised the issue when he
5 started that one section that I was very concerned that
6 he was blocking the drainage to which, Mr. Lewis
7 replied, "Well, it's not dropping it now, but perhaps
8 your wollastonite will plug it and then it would flood."
9 I said, "That's a good answer except that's still a
10 major problem, still is going to flood the road." And
11 Miss Slatkin (phonetic) -- Carol Slatkin, who lives on
12 Cross Road, needs that road for coming and going and for
13 emergency services, and his response was, well, I hope
14 it doesn't flood the road. I don't give a damn about
15 Carol Slatkin. She doesn't count. Or something to that
16 effect.

17 Anyway, let me finish. And then we had talked
18 about the snow and he didn't think that would be a
19 problem but he was not concerned with the drainage at
20 all.

21 Q Where did you anticipate the drainage problem
22 would be?

23 A The 400 foot, 500 foot, whatever it is ,
24 section as you travel east on Cross Road when you get to
25 the bottom of the main hill that starts to the road,

1 there is a -- a dip and then the slight, small crest and
2 then a very gradual taper over to the property line with
3 the Slatkin property.

4 And the problem area I anticipated was from
5 the -- almost to the bottom of the main hill to the top
6 of that dip where there's a natural water course or
7 water flowed for as long as I can remember. There's --
8 was kind of a brook, years ago it used to be a ditch
9 that went through the Clark property that when the
10 Lewises took over, they smoothed that out. They
11 improved the fields, that whole field with -- that
12 drainage area was taken away.

13 So after that, instead of being in the
14 specific ditch area, was that whole area that the water
15 would drain down through to what's commonly referred to
16 as Web Royce Swamp.

17 Q And the drainage that you're referring to, is
18 this drainage from the roadway or drainage from the
19 surrounding area?

20 A Both. Both -- anything that comes downhill --
21 water flows downhill and that whole area crosses what
22 used to be the behemoth part of the property, crosses
23 the county road. There's a culvert there and goes up
24 towards the Perry property. That whole area drains down
25 through there, as well as the Cross Road itself.

1 Q Had there ever been any drainage problem along
2 Cross Road prior to the construction of the farm road?

3 A Not that I remember. I mean, occasionally you
4 may have a culvert fill with ice or stuff and have to be
5 cleaned out but nothing of any permanent nature.

6 Q In the area that you are referring to as the
7 area of your concern, 400 to 500 feet area, are there
8 culverts across Cross Road in that area?

9 A Yes, sir.

10 Q How many culverts?

11 A One culvert.

12 Q And where is that culvert located?

13 A At the low spot of that -- that dip. It's a
14 two -- if I remember right, it's a two-foot culvert,
15 water flowing from the north side of the road to the
16 south side of the road.

17 Q The north side of the road, is it a higher
18 elevation?

19 A Slightly, yes.

20 Q Do you know when that culvert was installed?

21 A No. It's been there -- there's been a
22 culvert. Whether that particular culvert, I don't know
23 but there's been a culvert there forever.

24 Q Do you know what that culvert is made of?

25 A Sure. It's metal. Galvanized metal.

1 Q Do you know what the diameter of the culvert
2 is?

3 A I'm going to say two foot. I could be wrong
4 but approximately two foot.

5 Q Do you know what the length of the culvert is?

6 A No, sir. It's whatever the road is. I -- I'm
7 going to say 20 foot but -- 24 foot. I don't know. I'm
8 guessing.

9 Q And you've indicated that Cross Road runs in
10 essentially an east-west direction?

11 A Yes, sir.

12 Q And with regard to the culvert itself, how far
13 does the culvert extend beyond the north end of Cross
14 Road itself? The traveled area.

15 A A foot or two. I don't know.

16 Q How about on the south end?

17 A It used to be the same. Now the farm road
18 comes up and it's basically blocked that in to the
19 culvert.

20 Q When you say "basically blocked that in to the
21 culvert" --

22 A You can see it but it's -- the taper -- the
23 slope of the farm road goes into the actual culvert. So
24 you can see the top part; you can't see the bottom part.

25 Q Have you ever personally inspected that

1 culvert?

2 A Yes, sir. Last year I did.

3 Q When you conducted your inspection what did
4 that inspection consist of?

5 A I looked to see both ends, north end was open,
6 the south end the stones from the farm road, as you
7 refer to, come right down and they partially block it
8 and -- and the end of it.

9 Q When you inspected it did you observe that
10 there was any water that was accumulated on the south
11 end of the culvert?

12 A Not that particular time, no.

13 Q Did you ever go there after there had been a
14 significant rainstorm?

15 A No, sir. But let me expand if I may.

16 Q No. Just please -- no.

17 A If you want my opinion.

18 Q Just answer my question.

19 A Sure. The answer is no.

20 Q Did you ever go there at any time or did you
21 ever receive any information when you observed any
22 flooding onto the surface of Cross Road in that culvert
23 area since the town -- the farm roads were constructed?

24 A I guess my answer is not yet.

25 Q Okay. The answer to my question then, have

1 you ever received any information, the answer is no?

2 A Not yet. Yep. So far, not yet.

3 Q I assume that since the farm roads have been
4 constructed that there have been occasions when you've
5 had very significant rainfalls on occasion in the town
6 of Essex?

7 A Yeah, I guess. We haven't had any big floods.
8 Occasionally you have gully washers that -- we have --
9 we haven't had one of those since that started. Nothing
10 major, but we have had significant rain in each year.

11 Q Have you had any significant snowstorms in the
12 town of Essex where there have been substantial snowfall
13 accumulations since the farm roads were constructed?

14 A Basically we had one storm that was
15 significant I would call. Other than that, they have
16 been relatively small storms.

17 Q When did that storm occur?

18 A That was on Valentine's Day of this year.

19 Q Do you have a recollection of what the total
20 accumulation of snow was --

21 A No.

22 Q -- from that storm?

23 A I would be guessing but I know it was over a
24 foot. Maybe foot and a half but I don't remember.

25 Q Do you know what the total snowfall

1 accumulation during the winter of 2006/2007 was in the
2 town of Essex?

3 A I would have to look; I don't recall.

4 Q Do you have any recollection of during your
5 tenure as the highway superintendent --

6 A I'm not the highway superintendent.

7 Q Excuse me. As the supervisor of the town of
8 Essex, what was the greatest snowfall accumulation any
9 one year total?

10 A No. I don't remember specific numbers. No,
11 sir.

12 Q Do you remember if last year, 2006/2007, that
13 winter was average, above average, below average with
14 regard to total snowfall?

15 A My opinion it was below average.

16 Q Do you have any specific data that is
17 maintained by the Town of Essex with regard --

18 A No.

19 Q -- to that?

20 A National Weather does but we don't keep that
21 type of records.

22 Q Do you know if the highway department or the
23 highway superintendent, Mr. Morgan, if they maintained
24 those types of records?

25 A Not to my knowledge.

1 Q Do you know what the width of the traveled
2 portion of Cross Road is?

3 A I haven't measured it personally but we
4 certainly have that data available but I don't -- I
5 never measured it personally.

6 Q Were there any ditches prior to the
7 construction of the farm road in the 400- to 500-foot
8 area that you have expressed concern about on either
9 side of Cross Road in that area?

10 A Yes, sir.

11 Q Are the ditches still there?

12 A Which ditches are you referring to?

13 Q Either side.

14 A One along the road?

15 Q Along the 400- or 500-foot area.

16 A Well, they were -- it's filled with stone in
17 that area now on the -- on the south side; the north
18 side is still pretty much there.

19 Q Is Cross Road a crowned road?

20 A Slightly, yes. Yep.

21 Q That allows the water to flow off the surface
22 of the road onto either side?

23 A Uh-huh. Yep.

24 Q Has Cross Road ever been closed because of any
25 condition since the construction of the farm roads?

1 A Not yet. To my knowledge.

2 Q Now, you've indicated that Ms. Slatkin lives
3 on that road?

4 A Yes, sir.

5 Q Do you know approximately what the total
6 length of Cross Road is from one end to the other
7 approximately?

8 A Approximately -- I'm going to say two miles.
9 I don't know.

10 Q Do you know how many residences there are on
11 Cross Road?

12 A Well, it's tripled in the last few months.
13 Miss Slatkin and now Mr. Lewis and Mrs. Lewis have got
14 two -- they changed one driveway and built one house so
15 we now have three residences on the road.

16 Q Other than for any residential construction by
17 Lewis, the only other residence on Cross Road is Miss
18 Slatkin?

19 A That is correct.

20 Q Where is Miss Slatkin's residence located with
21 reference to the 400- to 500-foot area on Cross Road?

22 A East -- east of that. Maybe half mile,
23 quarter mile, something like that.

24 Q Is there any other connecting road that would
25 provide access to the Slatkin residence if, for example,

1 Cross Road could not be traveled on?

2 A Well, Cross Road is a -- is a road that goes
3 between Whallons Bay and Clark Road intersection over to
4 Lakeshore Road. So it's not a dead-end road. So, yes,
5 there's two ends to the road.

6 Q Okay. So whatever the road that would lead to
7 the Slatkin residence by traveling west other than on
8 Cross Road, what would that road be, if one went --

9 A I'm not --

10 Q -- if one went to the Slatkin residence, other
11 than by traveling on Cross Road in the area of the 400-
12 to 500-foot section, what road would one travel on?

13 A The Cross Road.

14 Q They would get to the Cross Road from --

15 A From Lakeshore Road.

16 Q -- from Lakeshore Road?

17 A Yep.

18 Q So there is access to that --

19 A Yes.

20 Q -- residence? And emergency vehicles could
21 proceed to the Slatkin residence on this other road?

22 A Certainly. Might take longer to get there,
23 farther to go, but they could certainly get there,
24 assuming that there's no other problems that happened at
25 the same time. Yes.

1 Q How much longer would it take?

2 A I'm going to say from Essex, from here,
3 probably three to four minutes. From Whallonsburg, I'm
4 going say 10 to 12 minutes.

5 Q Okay. And would that be, for example,
6 ambulances? Things of that nature?

7 A Fire truck, ambulance, emergency responders.
8 Yes, sir.

9 Q Now, with regard to Cross Road itself, there
10 are no sidewalks or anything --

11 A No, sir.

12 Q -- along Cross Road, is that correct, for the
13 record? Were there any natural embankments along the
14 road on either side?

15 A Various spots along, yes, sir.

16 Q I assume that from your duties as a supervisor
17 you're essentially familiar with all of the town
18 highways in the town of Essex?

19 A More or less. I'm not an expert. I don't
20 study them but I certainly travel the roads. Yes.

21 Q Are there other roads in the town of Essex
22 other than Cross Road where the areas of land adjacent
23 to the roads are at a higher elevation than the surface
24 of those other roads?

25 A I'm sure there must be but, however, I don't

1 know of any low spots that have it. On hills, on high
2 spots, but drainage areas I know of no other spot than
3 what is now on Cross Road.

4 Q Do you know what the width of the shoulder
5 area is along Cross Road are?

6 A You've got to define the shoulder area. You
7 mean the area between where you drive and the ditch? Or
8 including the ditch and the areas that extend out to the
9 stone walls and stuff?

10 Q I assume as a supervisor you're aware that
11 there have been certifications that have been submitted
12 by the superintendent of highways to the state --

13 A Yes, sir.

14 Q -- with regard to the width of certain roads?

15 A Yep. Yep.

16 Q You're aware of the fact that on those
17 certifications Cross Road has been indicated to be of a
18 width of 20 feet. Correct?

19 A I am -- I would have to look at it. I don't
20 remember that but that's -- sounds about correct.

21 Q You're aware there were certifications on
22 those documents that indicated that the shoulders on
23 each side of Cross Road were five feet in width?

24 A I take your word for it. I haven't looked at
25 it but that sounds about right.

1 Q From your experience in traveling there, did
2 you observe any shoulders?

3 A Once again, depends on what you call
4 shoulders, but yes, there are shoulders. The road does
5 not go all the way out. I consider the shoulders down
6 through. I don't know what the state considers
7 shoulders but, yes, there are some shoulders there. The
8 road tapers down, that's the shoulder.

9 If you have a paved road, there's normally the
10 area beyond the paving, between the paving and the
11 ditch. When you have a dirt road, shouldered roads are
12 kind of -- where one ends and the other starts is --
13 depends on who is doing the measuring I guess.

14 Q What is the surface of Cross Road?

15 A It's a dirt road that is topped with
16 wollastonite tailings.

17 Q For what period of time has wollastonite been
18 used to top Cross Road?

19 A As long as I can remember it. I'm 59 and a
20 half. So --

21 Q Where is that material obtained?

22 A It's obtained from the NYCO plant in
23 Willsboro, New York.

24 Q Which is approximately how far from this area
25 the town hall?

1 A The town hall to NYCO -- let's see. It's five --
2 I'm going to say seven miles.

3 Q Has the town purchased that material from
4 NYCO?

5 A Yes, sir.

6 Q There is a cost associated with it?

7 A Yes, sir.

8 Q Do you know what the chemical composition of
9 wollastonite is?

10 A I'm not a chemist but we have that; I'm
11 familiar with the NYCO report. I got that. We have
12 another lawsuit with Lewis Family Farms over
13 wollastonite so I have that data but I certainly don't
14 have it in memory. I believe that stuff's been filed.
15 You should have that.

16 Q The Town of Essex has never had any analysis
17 or anything performed on wollastonite to determine the
18 chemical composition, have they?

19 A No, sir. New York State Department of
20 Environmental Conservation and NYCO have. Town doesn't
21 have the -- have the ability to do that nor the interest
22 in paying for it.

23 Q Now, has the Town of Essex in this litigation
24 ever indicated that there was a beneficial use
25 determination for the Town of Essex regarding the use of

1 wollastonite on town highways?

2 A D.E.C. has that. I believe you can go -- you
3 can go online. I don't remember the location on DEC's
4 Web site but, yes, there's -- there's two beneficial use
5 determinations by DEC for wollastonite for roads and
6 parking lots.

7 Q Has there ever been a beneficial use
8 determination made by the Department of Environmental
9 Conservation regarding the use of wollastonite in the
10 town of Essex?

11 A Specifically the town of Essex?

12 Q Yes.

13 A Not to my knowledge.

14 Q Has the Town of Essex ever requested such a
15 determination?

16 A No, sir, not to my knowledge. Certainly not
17 since I've been in.

18 Q Now, with regard to the plowing of town
19 highways, the method and determination. Plowing of town
20 highways is made by the highway superintendent; is that
21 correct?

22 A That is correct.

23 Q Are there any places in the town of Essex
24 where snow fences are used?

25 A Used to be; not today.

1 Q What was the purpose of a snow fence?

2 A Okay. How much detail do you want me to go
3 into? An engineer, I could talk for 20 minutes or I can
4 talk for two.

5 Q I would like you to answer my question.

6 A Detail.

7 Q What is your definition of a snow fence?

8 A A snow fence is a fence made out of wood with
9 wires between it. Normally they used to have normally
10 four wires, the wire would go around the wooden slot, be
11 twisted, then another wooden slot. The area between the
12 slots was approximately -- I'm going by memory but a
13 little less than the actual slot but approximately the
14 same. The purpose of it is, as the wind blows the snow,
15 some of it will stop against the wood, some will go over
16 but any that goes through increases in velocity because
17 you have approximately half the area for it to go
18 through. So it increases in velocity.

19 Once it gets through the fence, the velocity
20 drops, decreases, and the snow falls out. So there's
21 little snow piled on the upwind side but most of the
22 snow is on the downwind side of the snow fence.

23 Q The purpose of the snow fence is to prevent
24 the accumulation of snow on the surface of the roadway?

25 A That's correct. As you can take it out of the

1 wind before it gets to the road, it will pile up outside
2 the -- normally 40, 50 feet or more. Some of them are
3 long ways out before the road, on either side, depending
4 on which way the prevailing wind is. Where they thought
5 it was important to have it.

6 Q When did the Town of Essex discontinue the use
7 of snow fences, if the Town of Essex did?

8 A They did long before I was in. I'm going to
9 say 20 years ago but I don't know for sure.

10 Q Do you know why?

11 A Cost. Too much manual labor. The town over
12 the years has decreased the size of the highway
13 department to save money and when you do that, some
14 things have to -- have to change and one of the things
15 you didn't have time and people to put the snow fence
16 up.

17 Q Do you know if there are any written rules or
18 policies or regulations that have ever been promulgated
19 or adopted by the Town of Essex or by the Town of Essex
20 highway department with regard to methodology for
21 snowplowing, snow removal?

22 A Not to my knowledge.

23 Q Are there any areas of the Town of Essex
24 during the winter where snowfall accumulations are
25 removed other than by plowing?

1 A Sidewalks.

2 Q They are removed how?

3 A Shoveling or snowblowing.

4 Q Are there any areas of the town of Essex where
5 front-end loaders, which you've indicated the town of
6 Essex owns, are used to remove snow?

7 A Yes and no. Not during the storm, but if you
8 have a break between, they will clean up around the
9 hamlets and the areas like that where we have limited
10 snow storage so that there's room for the storms later
11 on.

12 Q I take it that when you use the front-end
13 loader they load the snow on the trucks and the snow is
14 hauled to some other location to be deposited?

15 A Correct.

16 Q Was it ever necessary during the winter of
17 2006/2007 to use any front-end loader to remove snow
18 along Cross Road in a 400- to 500-foot area --

19 A Not that I'm aware of.

20 Q -- that you expressed your concern about?

21 A Not that I'm aware of.

22 Q With regard to Cross Road and a 400- to
23 500-foot area, you indicated that there's a hill or a
24 slope in some area adjacent to that?

25 A Yes, sir. The -- there's --

1 Q Would that be east or west of the 400- to
2 500-foot area?

3 A The -- the immediate one is -- well, it's
4 actually both sides. The bigger hill is on the west,
5 the lesser hill is on the east, and then the 400- to
6 500-foot area between the two.

7 Q Could you tell me what the difference in
8 elevation from the crest of the hill area is
9 approximately to the bottom if one travels east
10 approximately? Do you know?

11 A I would be guessing. If you look at a
12 topographical map -- but I'm going to say it's probably --
13 I don't know, 150-foot drop. I'm not -- I'm guessing.

14 Q Over what distance?

15 A Well, that's a good question. I'm going to
16 say it's probably 1500 feet down -- down the hill. I'm
17 guessing again. I would have to look at a topographical
18 map if you want it -- a more definitive answer.

19 Q Are there ditches along that -- both sides of
20 the road?

21 A Yes, sir.

22 Q Now you've indicated that with regard to
23 emergency vehicles and permitting access to emergency
24 vehicles there is a rescue squad or ambulance squad,
25 whatever emergency squad is there in the town of Essex?

1 A Yes, sir.

2 Q Where is that based?

3 A Well, the ambulances themselves are based in
4 the Essex firehouse, we have -- in Whallonsburg
5 firehouse a rescue truck that carries a lot of
6 equipment, including defibrillators, IVs and other --
7 other stuff and there's EMTs in both hamlets and
8 surrounding areas, so the people are all over. The
9 ambulances are in Essex, the rescue truck is in the
10 Whallonsburg hamlet.

11 Q Okay. And both fire companies, Essex provides
12 fire services, do they, to the entire town or are they
13 designated to provide services in certain areas?

14 A Well, the answer is both. The fire district 1
15 is responsible for fires in fire district 1 and fire
16 district 2 is responsible for fire district 2. But
17 having said that, our sirens and response are married.
18 Otherwise, everybody responds to any fire in either
19 parts of the town.

20 Q Now, when is the last time that you were at
21 Cross Road in the area of the 400- to 500 foot area?

22 A I can't remember offhand. I don't -- I don't
23 go that way very often. I guess the last time I
24 specifically remember being there was -- when our expert
25 witness was there. I met with him there. I don't

1 remember being on that road since. May have been but I
2 just don't remember.

3 Q Do you know what the composition of the farm
4 roads are made of?

5 A I told you previously it's a dirt road topped
6 with wollastonite.

7 Q I'm talking about the farm roads.

8 A I'm sorry. They are crushed limestone from
9 Lewis Family Farm over what used to be the Evens
10 property.

11 Q Do you know whether or not the substance of
12 the farm road is permeable material to which water will
13 flow?

14 A My answer to that is, at this time it is.
15 When it gets clogged with dirt, it won't be but at this
16 time it is.

17 Q What do you mean, "when it gets clogged with
18 dirt"?

19 A Leaves and stuff like that get into the holes
20 between the rocks, dirt gets in there, after a while
21 they form an impenetrable barrier and water will no
22 longer go through it.

23 Q What do you base that conclusion on?

24 A Mr. Lewis told me that. So I -- certainly he
25 wouldn't be lying to me. Also, I've seen stones other

1 places get clogged with dirt and stuff. As matter rots
2 and breaks down, sticks get in there, if you don't keep
3 things clean, they clog up and so any -- any stone like
4 that eventually clogs up with matter.

5 Q Now, do you know if there are specific pieces
6 of equipment that are designated until plowing to be
7 used on specific roads in the town of Essex?

8 A Normally, yes. Not firmly but if one of them
9 breaks down, it's different but normally they have
10 certain trucks that plow certain routes.

11 Q There's one culvert in this 400- to 500-foot
12 area that you've referred to?

13 A One town culvert, yes, sir. Mr. Lewis has a
14 culvert for subsurface drain, one town culvert.

15 Q Is there any type of a maintenance program or
16 cleaning program that the Town of Essex has to maintain
17 a those culverts?

18 A They get inspected and if there's any problem,
19 they look at it and you can flush it out. In the winter
20 if they freeze with ice, they have a Steam Jenny we used
21 for thawing out.

22 Q Do you know if there are any records
23 concerning that type of cleaning inspection or
24 maintenance that are maintained by the highway
25 department?

1 A Not to my knowledge.

2 Q With regard to the trucks that are used to
3 plow, what type of plows are there on the front of the
4 truck? I don't mean the manufacturer. Would you
5 describe what the plows look like.

6 A Well, they are -- they are a blade, a curved
7 blade that rolls the snow to the side and then you have
8 a wing that is outside that to push the snow farther
9 back.

10 Q Do the plows as they proceed down a highway,
11 do they move snow both directions, from to the left and
12 right?

13 A No, sir. -- No, sir, one direction only. Years
14 ago -- and we have some pictures of that I believe that
15 have been submitted -- used to be both ways but now all
16 the plows we have only plow to the right.

17 Q Do you know how wide an area with the plows
18 that the town has on its vehicles, how wide an area that
19 will plow with one pass?

20 A One -- with one pass? I'm going to guess that
21 probably the front blade is probably 8 foot and probably
22 the wing is -- I don't know, 10, 12, but they are angled
23 so I'm going to say a little less than that. Let's say
24 16 feet maybe on a pass. On a single pass.

25 Q So if Cross Road -- if we assume that the

1 travelled portion is 20-feet wide, by making one pass in
2 each direction using the wing, that can clear the
3 roadway of snow accumulation?

4 A Depending on the amount of snow, yes. The
5 more snow, the less distance you move it back and you
6 have to make more -- and if you have really heavy snow
7 and then you have to come through -- the easiest way is
8 with a grader to wing it back even farther to clear it
9 out and get ready for the next snow.

10 Q At any time since the construction of the farm
11 roads along Cross Road, had there ever been an occasion
12 of which you're aware where in fact the plows could not
13 move the snowfall off the surface Cross Road, the public
14 highway, to its intended width of travel?

15 A Not yet, no.

16 Q In fact, isn't it true that on those occasions
17 during the periods of winters since the construction of
18 the farm roads that in fact a snowfall was removed
19 completely and there was sufficient distance between the
20 road and the toe of the farm road in order for the snow
21 not to reach the farm road?

22 A I don't think that's a true statement. When
23 you plow --

24 Q What part of it would you --

25 A When you plow it goes up onto the -- the farm

1 road has a taper to it. And certainly the snow goes up
2 in the bank because it -- taper comes down to the road.
3 So --

4 Q Okay.

5 A And last year was the only year that that has
6 been there. And in my opinion was less than average so --
7 but it was certainly onto the bank of the farm road, but
8 it was up or not -- I don't know, I didn't travel it
9 down, I didn't observe but it certainly had to be up on
10 to the shoulder of it.

11 Q No problem was ever brought to your attention
12 that required you to travel there --

13 A Not this past year.

14 Q -- to make that observation; is that correct?

15 A No.

16 Q Do you know what the -- along the 400- to
17 500-foot area, what the difference in elevation between
18 the top of the farm road and the surface of Cross Road
19 was?

20 A I'm going to say six -- maybe seven feet at
21 the most. It tapers down to about a foot, foot and a
22 half at both ends. That's a guess; I didn't measure it.

23 Q Now, prior to the construction of the farm
24 roads, you had been occasioned to be on Cross Road in
25 the winter when plowing was done?

1 A I don't ever remember being there when
2 plowing's done.

3 Q How about after?

4 A I've been there afterwards.

5 Q After the plowing was done?

6 A Yes, sir.

7 Q What's your recollection as the maximum
8 distance that you could observe prior to the
9 construction of the farm road that snow from the public
10 highway of Cross Road was moved off the traveled
11 portion?

12 A This goes way, way back. When you plow the
13 snow, the momentum carries it, you get over the bank
14 40, 50, 60 feet. I don't know, I never measured it but
15 it goes a long way back.

16 Q Do you have any idea of what the recommended
17 speed of a truck for plowing is?

18 A No, I sure don't. I don't have expertise in
19 that area.

20 Q Do you know if there's any policy of the
21 highway department of the Town of Essex with regard to
22 that?

23 A Not to my knowledge. But I don't have the
24 knowledge of all their policies so --

25 Q You've indicated that the Lewis Family Farm

1 had a culvert in that area?

2 A Yes, sir.

3 Q What do you mean by "the Lewis Family Farm
4 culvert"?

5 A They have the below-ground drainage. I don't
6 know the size of it but it's a substantial culvert that
7 goes from up -- I believe to -- up by the border of the
8 Perry property down underneath Whallons Bay Road,
9 through there, all the way across their fields,
10 terminating in a pond near where the Web Royce Swamp is.
11 I won't even guess the distance.

12 Q Does that run parallel to the farm road?

13 A No. Perpendicular.

14 Q Perpendicular to the farm road?

15 A More or less, yes.

16 Q That fairly characterizes a drain rather than
17 a culvert?

18 A Yeah, it's -- it's surface drainage. It's --

19 Q Okay.

20 A Yep.

21 Q On occasion during the winter you've indicated
22 that steam -- you used some type a steam device on
23 occasion because that liquid that accumulates in the
24 culvert may freeze. Correct?

25 A That's correct.

1 Q And, therefore, obstruct anything passing
2 through it?

3 A Yes, sir.

4 Q Now, at any time this year after the winter
5 season ended, has there ever been an occasion where
6 there has been any flooding that you're aware of of the
7 surface of Cross Road in that area?

8 A Not that I'm aware of, no. Not this year.

9 Q Has there in the past been flooding of Cross
10 Road that you recall?

11 A I think so. But I'm not positive.

12 Q In documents that have been submitted on
13 behalf of the Town of Essex in this litigation it's been
14 indicated that the width of the traveled portion of
15 Cross Road is 20 feet, shoulders are 5 feet each in
16 width, and then there's an area of 10 to 12 feet beyond
17 the shoulder before reaching the toe of the farm road.
18 Are you aware of that?

19 A The farm road is the road that Mr. Lewis
20 constructed?

21 Q That's correct.

22 A Certainly not in that area. The toe of the
23 farm road comes right up to our drainage culvert and the
24 shoulder of our road that -- they meet together.

25 Q Would 10 to 12 feet area between the shoulder

1 and farm road be sufficient to store snow that was
2 plowed from the surface?

3 A Depends on the location but generally I would
4 say that would hold most of it. Depending on the height
5 of the road. If the farm road is low, it's not a
6 problem because you can get the snow up on it. The
7 Lewises don't plow those roads so it's not a problem. If
8 they plowed it, then it would be a problem because then
9 you wouldn't have anyplace to put it but if it's
10 relatively low, same height as the road or a foot or
11 two, you can work around that. Yes. That wouldn't be a
12 problem.

13 Q-- If snow accumulated between the shoulder and
14 the toe of the farm road -- if I can use that term --

15 A Sure.

16 Q -- snow in that area could be removed by using
17 a front-end loader, couldn't it?

18 A Sure it could. Additional time and expense.

19 Q And loaded into trucks? Is that moved to a
20 different location?

21 A Correct. It could.

22 Q There are also other methods of plowing other
23 than using a front-end loader by which snow could be
24 removed in that area, is it not?

25 A Not that the town has. The only other method

1 is the grader that we use to wing back but certainly in
2 that area that road's too high; you couldn't wing back
3 there. But for -- that road isn't -- if the road was
4 lower, you do that.

5 Q Have you ever received any reports that the
6 culvert under Cross Road in a location of the 400- to
7 500-foot area contains a substantial accumulation of
8 wollastonite?

9 A Mr. Deyoe at a preliminary hearing mentioned
10 that was.

11 Q After receiving that information do you know
12 if there was any inspection conducted of the culvert to
13 determine whether that's true?

14 A I -- only time I looked at that was when I was
15 there with our consultant and there was a -- a
16 relatively small layer around the bottom couple inches.
17 It didn't look like there was a substantial amount in
18 there. If it had been cleaned out from the north end,
19 which is the only you could, I don't know. But when I
20 was there, it was -- basically appeared empty as far as
21 I could see. It was -- I didn't have a strong
22 flashlight but as far as I could see, it looked like it
23 was not a lot of wollastonite in there.

24 Q To the best of your knowledge the culvert
25 underneath Cross Road at that location is not in any way

1 blocked?

2 A Except by the stones on the south end. It's
3 the toe of the farm road.

4 Q Are there any culverts in the town of Essex on
5 other roads that you're aware of or blocked by
6 wollastonite?

7 A No. If it does, it gets washed out or cleaned
8 out.

9 Q What's the reason for the use of wollastonite?

10 A Available, cheap and it's a good road surface.

11 Q What is the purpose of its use?

12 A It forms the -- the top of the road. It packs
13 well, makes a good driving surface.

14 Q What percentage of the town roads in the town
15 of Essex are not paved roads?

16 A Well, I wouldn't guess at number but I can
17 tell you which ones. Most of the Clark Road and the
18 Cross Road except for the very ends. The Block House
19 Road, I think there's still a small section of Brook
20 Field and because of the construction of the quarry on
21 Angier Hill Road, the heavy trucks going back and forth
22 destroyed part of that road and that's now a dirt road.
23 So those are the ones. I guess altogether -- and this
24 is strictly a guess -- 12 miles.

25 Q Has Mr. Lewis ever indicated to you in the

1 conversations that you have had with him that the
2 wollastonite has had a negative effect on the farm
3 capability of the area in proximity to Cross Road?

4 A He has told me that's his opinion, yes.

5 Q Have you ever gone there to take a look to see
6 what the effect, if any, has been on the fields of the
7 Lewis Family Farm wollastonite?

8 A Other than right along the very edge where he is,
9 like on the Clark Road where he took -- where we used to
10 have ditches, and that's now part of the field, right
11 along that edge that's no longer a problem because his
12 farm road there, he's clarified it. There's no longer
13 that -- that area with his farm roads, I don't see any --
14 any problem. No, I don't.

15 Q Did Mr. Lewis ever indicate to you what the
16 reason was that the farm roads were elevated to the
17 height that they presently exist along Cross Road?

18 A The only time you mentioned it was when our
19 last conversation -- I'm going to say three weeks ago.
20 He told me that they elevated it that way to make it
21 more inexpensive installation of the power lines they
22 buried there. So they could use the same type of
23 burying lines because he said the power company did not
24 want to have it in the wet area and that is certainly a
25 wet area there. That's the first time he's mentioned

1 that.

2 Q Now, with regard to the elevation of the farm
3 roads, did you ever make any observation as to whether
4 or not the elevation of the farm road in that area
5 creates a barrier that in fact prevents or lessens any
6 drifting of snow on Cross Road?

7 A My opinion I think is just opposite of that.
8 It will act like that snow fence we were talking about.
9 As the snow goes over, it will tend to go into that
10 basin created and fill the basin. You see that along
11 rivers and brooks where there's low areas and ditches
12 that the snow goes over and drops in. So I think it
13 will create more of a situation instead of less,
14 depending on the direction of the wind, of course.

15 Q Are there farm roads on both sides of Cross
16 Road running parallel?

17 A Yes and no. The one on the south side is --
18 is pretty much constructed, appears to be pretty much
19 finished. The one on the north side certainly is not
20 finished. There's -- nothing has been done in the last --
21 I'm going to say close to year. There's piles of stones
22 and certainly not finished, certainly not useable
23 condition at this time.

24 Q Have you ever had conversations outside of
25 this litigation with Mr. Morgan concerning the

1 construction of the farm roads?

2 A I'm not sure what you mean.

3 Q Did you ever discuss the construction of the
4 farm roads or the location or elevation along Cross Road
5 with Mr. Morgan at any time before this litigation was
6 commenced?

7 A Well, obviously we didn't just pull it out of
8 the air. When the -- when the construction started, he
9 came to me with his concerns, up until that section was
10 being constructed. We had no concerns, that's the only
11 area so once that construction started, yes. That's
12 when we started talking about it. Up until then, we
13 didn't talk about it.

14 Q Had you and Mr. Morgan ever contacted
15 Mr. Lewis to discuss that with him?

16 A Yes, sir.

17 Q When was that?

18 A I don't remember the date but from when --
19 after the construction started year and a half ago I
20 guess.

21 Q Did Mr. Morgan accompany you?

22 A Not at that time. No, I never discussed it
23 with Mr. Morgan and Mr. Lewis at the same time.

24 Q Did Mr. Morgan ever indicate to you his
25 concerns about the construction of the farm roads in

1 writing?

2 A I don't remember it in writing. I think it
3 was verbal.

4 Q After the storm that you had, the major storm
5 I believe Valentine's Day you indicated, February 14th
6 of 2007, did you ever go out there to take a look at and
7 see what the effect was on the Cross Road snow
8 accumulation because of the farm road?

9 A Yes, sir, I did. And -- and we were very
10 fortunate from the direction of the wind that was --
11 there was no snow, very little snow accumulation in that
12 area at all. If I can expand farther, I would. It's up
13 to you.

14 Q Did you ever ask Mr. Lewis at any time to
15 supply rock to be used instead of the tailings?

16 A When before the litigation was filed I had
17 many discussions in many ways with Mr. Lewis and ways to
18 correct the two problems that the town considers have
19 been created. And that was one area that we discussed,
20 bringing up the town road up to the height of the farm
21 road. So then there wouldn't be the problem using rock
22 from his quarry that he had there.

23 Q But Mr. Lewis had a quarry on property?

24 A Yes, sir. On part that used to be the
25 Ralph -- Jerry Evens' property.

1 Q The two concerns that you expressed that you
2 just indicated to Mr. Lewis were what?

3 A Drainage and snow removal being the low spot
4 and my concern is that dirt, leaves and twigs will --
5 will block the drainage and create a pond in that area.
6 And the other one is the snow problem, that if you get
7 wind, a major storm from the north or south, that that
8 area would drift in with snow and be very difficult to
9 remove, other than with a front-end loader, which is
10 time consuming.

11 Q What was Mr. Lewis' response to your
12 expression of concern?

13 A He didn't seem to feel that it was his
14 responsibility to provide stone for that project.

15 Q Did Mr. Lewis ask you to put your request of
16 him in writing?

17 A Yes. Well, I can't remember the exact
18 wording, something to that effect. Yes.

19 Q What was your response to that request?

20 A I said that if he wanted it in writing, then I
21 would have to have a lawyer do it, knowing Mr. Lewis'
22 litigious history, I certainly would not attempt to draw
23 up any type of an agreement with him at this time . Or
24 anytime.

25 Q What do you mean by -- with regard to

1 Mr. Lewis' history?

2 A He has talked many times about different
3 lawsuits he's filed and said -- including many over in
4 Maine and been -- threatened many others, so --

5 Q Did you ever indicate to Mr. Lewis intention
6 to pave Cross Road?

7 A I told him if -- if he supplied the stone and
8 we rebuilt that road, I was quite sure that Mr. Morgan
9 would pave it and then that would be a final road we
10 would no longer have any -- any problem with that at
11 all.

12 Q You indicated to Mr. Lewis that paving that
13 road would resolve all the problems?

14 A No, sir, not unless it was filled with stone
15 first. You've got to get it up to the same height if
16 that road was -- was filled with stone or whatever, and
17 then paved and approximately the same height as the farm
18 road and the drainage was repaired. However, there's
19 many ways the drainage could be restored.

20 If any of those methods were taken, if
21 drainage was restored and the road was built up that
22 400- or 500-foot area, approximately the same height as
23 the farm roads, then that would certainly solve the snow
24 removal. But the drainage would have to be dealt with
25 separately to the building the road up, you still have

1 to do something with the drainage.

2 Q Mr. Jackson, did Mr. Lewis ever indicate to
3 you that one of the purposes of the farm road was to
4 create a barrier to protect the farm's soil from
5 wollastonite runoff of the area of Cross Road?

6 A That -- later on, yes; not initially.

7 Q When did he tell you that?

8 A I don't remember. Back about when the
9 litigation was started I would say.

10 Q I show you what has been marked here for
11 identification as Deposition Exhibits 1 and 2. Would
12 you take a look at those.

13 A Certainly.

14 Q I believe those photographs have been provided
15 by the Town of Essex.

16 MR. HARP: Yes.

17 A I believe you are correct.

18 Q Do you know when those photographs were taken?

19 A Well, since they are wearing jackets, I'm
20 going to say fall.

21 Q Do you know when? What year?

22 A Or spring. I don't see mud so I'm going to
23 say fall and I believe it was last year. Probably
24 around this time more or less, I can't remember exactly
25 when it was built, but it's approximately a year ago I

1 would guess.

2 MR. HARP: I do know they were taken in the
3 spring.

4 A Okay. Spring.

5 Q Do you know who took the photographs?

6 A I believe the highway department. I don't
7 know who in the highway department.

8 Q Do you know if there had been any photographs
9 taken on behalf of the Town of Essex with regard to the
10 same area during the winter of 2006/2007?

11 A I don't remember any. There may have been but
12 I don't remember.

13 Q Do those photographs fairly and accurately
14 depict the area along Cross Road and the farm road in
15 the area that you have expressed concern about?

16 A Yes, sir. Between the two they seem to cover
17 that whole area. You can see the backhoe, so this one
18 is going the west, and then one is going east and the
19 backhoe is -- so I think that covers both of them.

20 Q That doesn't show up very well on the record
21 as to "this" and "that."

22 A Okay. There is a backhoe in both; one is
23 facing west, one is facing east. So, unless the backhoe
24 has been moved, then it depicts the entire area between
25 the two pictures.

1 Q Deposition Exhibit No. 1, the top
2 photograph --

3 A Yes, sir.

4 Q -- the camera is facing in which direction?

5 A West.

6 Q In Deposition Exhibit No. 2, what you observed
7 it appears that the camera is facing east; is that
8 correct?

9 A Yes, sir.

10 Q Now, is the area that you previously indicated
11 you estimate to be 400 to 500 feet in length indicated
12 on Deposition Exhibit No. 1?

13 A No, sir. Part of it is. Part of it is in
14 number two, between the two they cover that whole area.

15 Q Deposition Exhibit No. 1, if I can hold it up
16 to you, where would the start of the area that you have
17 expressed concern about, where would that be?

18 A Well, hold it here.

19 MR. HARP: Do you want him to mark it on
20 here?

21 Q I want him to tell me first.

22 A I'm going to say right about where the --
23 where the -- where the shoulder disappears and the road
24 comes up to it, right about in this area here.

25 Q All right.

1 A Basically right before the bottom, when the
2 farm road starts to rise above the town road.

3 Q Would you just mark the area where you
4 indicated you believed the beginning of the area of
5 concern to you is with the letter "A"?

6 A Okay. Which side do you want me -- on this
7 side with an arrow?

8 Q Why don't you just put it out toward the road,
9 just show it here.

10 A Put the "A" here and the arrow back?

11 Q Put the "A" on this side of the farm road.

12 A Right in this area.

13 Q Yes.

14 A Okay.

15 Q Draw an arrow to where you feel the area of
16 concern starts.

17 A Okay. I want to say right about here
18 (indicating).

19 Q Okay. Now, to the west of where you placed
20 the letter "A" on Deposition Exhibit No. 1, it appears
21 from the photograph that the farm road, which is on the
22 left side of the photograph, is on what elevation
23 relative to the surface of Cross Road? Is the farm road
24 above that elevation?

25 A I'm going to say about a foot.

1 Q A foot or so?

2 A Yeah.

3 Q How about on the other side of the road? The
4 north side of the road?

5 A It doesn't show it there because this is
6 before it's constructed but approximately the same.

7 Q If one goes from the letter "A" on Deposition
8 Exhibit No. 1 down toward the bottom of the photograph,
9 the entire area depicted there is an area of concern to
10 you --

11 A Yes, sir.

12 Q -- correct? And the shoulder area is not very
13 well defined.

14 A No, sir.

15 Q You don't know what the distance is from the
16 north side of the road where the piece of equipment is
17 located over to the toe of the farm road? You don't
18 know what that distance is?

19 A I would be guessing.

20 Q You have never measured any of that?

21 A No, sir. I have not, personally.

22 Q Even though it does not appear to be visible
23 in that photograph, would you have knowledge of
24 approximately where the culvert is that crosses
25 underneath Cross Road?

1 A Well, I'm going to guess. I do know is very
2 close to where that -- that cement drainage pile is, it
3 appears as though if you look right by whoever is
4 wearing that green jacket by the pickup truck, there's a
5 black spot, that seems to be just about the end of the
6 culvert. The other side you can't see so I would be
7 guessing.

8 Q At any time when you have been on Cross Road
9 have you ever seen any indication where water was
10 pooling along the side of Cross Road although not on the
11 road surface itself?

12 A I have seen water in the ditch, if that's what
13 you're asking.

14 Q Are there ditches depicted in Deposition
15 Exhibit No. 1?

16 A Yes. You can see it's basically right to the --
17 to the toe. The toe is kind of going into the ditch,
18 but it's -- but you can kind of see where it is. You
19 can see it better in this other picture but --

20 Q Was the ditch that was there, was that a
21 naturally-occurring ditch or was that something that was
22 created by the Town of Essex highway department?

23 A Been there my whole life. So I'm going to
24 guess it was created by the highway department long
25 before I was born.

1 Q At any time during your tenure as the town
2 supervisor has the town highway department ever done any
3 ditching or excavating work?

4 A Yes.

5 Q There?

6 A There? I don't know -- they don't report to
7 me. I -- I would -- I wouldn't know.

8 Q Mr. Morgan would know that --

9 A Mr. Morgan would know.

10 Q -- correct? Are you aware of any other roads
11 in the town of Essex where there are embankments on both
12 sides of the road that are elevated above the surface of
13 the public highway?

14 A Well, there may be. Not that close and
15 certainly not in any low areas but there may be some out
16 back of the brook field area but -- I can't remember any
17 specifically.

18 Q Now, Cross Road is not a dedicated highway; is
19 that correct?

20 A I'm not familiar with the term "dedicated
21 highway," so I don't know.

22 Q Does the town -- of your knowledge -- have a
23 deed showing --

24 A No, sir.

25 Q -- ownership of that road?

1 A Not to my knowledge.

2 Q To the best of your knowledge is that what is
3 generally known as a highway by use?

4 A I guess. I'm not -- once again, I'm not
5 familiar with the terms but I guess that's -- sounds
6 like it would be a reasonable term for it.

7 Q Do you have knowledge of what the width of a
8 highway by use is?

9 A My understanding is that type of road, I'm not
10 familiar with the term highway of use, but roads that
11 you don't have a deed for are defined by New York State
12 as the area that they have. So that includes drainage,
13 snow storage, plowing areas, the whole -- in addition to
14 the ditch and the -- and the driving area.

15 MR. HARP: Off the record.

16 (Discussion held off the record)

17 (Following off-the-record discussion)

18 BY MR. BRENNAN:

19 Q Mr. Jackson, in Deposition Exhibit No. 2, that
20 photograph, from your knowledge of being there, it
21 appears in that photograph, does it not, that the
22 elevation at the toe of the farm road on the right side
23 of that photograph appears to be an elevation below the
24 level of the surface of the farm road --

25 A Yes, sir.

1 Q -- of the public Cross Road?

2 A It does appear that way. To my knowledge, it
3 certainly is. You can see where water has flowed along
4 that way, so that's certainly --

5 Q Do you have a recollection from your
6 observation at the scene as to how much below the level
7 of the surface of Cross Road it is to the level of the
8 toe of the farm road?

9 A It varies. Different spots it's different but --

10 Q It appears in Deposition Exhibit 2 that there
11 are areas where the toe of the farm road is several feet
12 below the level of the surface of Cross Road.

13 A I wouldn't say several. I don't think you
14 find it more than a foot and a half anyway, but --
15 certainly it is close, close to that. It varies, see
16 like in here (indicating) it's a little more.

17 At the bottom of the picture, on the
18 right-hand side of the -- between the farm road and the
19 town road, seems to be more. And then where you get up
20 here in the picture 2, where the people are standing,
21 it's obviously a lot less and you can see the toe of the
22 road is much closer to the -- to the town road. That's
23 in the area of that cement drainage thing where our --
24 our culvert is approximately located.

25 Q The area you marked on Deposition Exhibit No.

1 1 with the letter "A," the area to the west that starts
2 the area that you considered to be of concern, correct?

3 A Uh-huh.

4 Q Is the area that shows the other end the east
5 end of the area that you considered to be of concern, is
6 that shown in Deposition Exhibit No. 2?

7 A It does appear to be, yes.

8 Q Could you mark that with a letter "B."

9 A Sure. That's right at the -- basically it's
10 the height of the ground. If you look at the road
11 here -- just verbally and then I'll put it on -- it's
12 right where the road disappears because it's going over
13 the hill. So right to the -- basically to the top of
14 that hill.

15 Q Would you just --

16 A Is where the problem is.

17 Q Just mark that with a letter "B".

18 A Sure I'll put the "B" over here on the farm
19 road and an arrow back.

20 Q Yes.

21 A Okay.

22 MR. HARP: Go off the record.

23 (Discussion held off the record)

24 (Following off-the-record discussion)

25 BY MR. BRENNAN:

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1 Q Did you at any time in any conversation with
2 Mr. Lewis tell him that the town had decided to commence
3 litigation to protect itself from litigation by Mr. Lewis?

4 A No, sir.

5 Q Now, Mr. Harp has provided to me the
6 plaintiffs' response, what is titled Plaintiffs'
7 Response to Discovery and Inspection Demands dated
8 September 6th, 2007. Do you see that? The date on the
9 upper portion on the left?

10 A Okay. I -- I see a date but I don't know what
11 it's in relationship to. But --

12 Q Well, attached to that there are certain
13 photographs.

14 A Yep. I can see that.

15 Q Two of the photographs of that we have already
16 marked as Deposition Exhibits 1 and 2.

17 A That's part of that. Okay.

18 Q Okay?

19 A I'm familiar with the -- with the photos.

20 MR. BRENNAN: Do you mind if I mark these?

21 MR. HARP: I'm going to give you another
22 one.

23 MR. BRENNAN: Okay. Give me those.

24 MR. HARP: Tell me what ones you want.

25 MR. BRENNAN: The other photographs, there

1 appear to be four or five photographs.

2 (Whereupon, break taken, 11:05 A.M.)

3 (Whereupon, testimony resumed following
4 testimony of Eugene Benway)

5 BY MR. BRENNAN:

6 Q Mr. Jackson, I show you what's been marked,
7 produced by Mr. Harp and marked as Exhibit No. 3. Can
8 you tell me what that is.

9 A Yep. That's a snowplow back in -- I'm not
10 sure of the year, but it was when Lloyd was highway
11 commissioner, I believe it was '85 and six. Could have
12 been '86/'87. I don't remember without looking it up,
13 but coming up that -- the hill that's as shown in
14 Exhibit Deposition No. 1. Coming up over the top of the
15 hill.

16 Q How do you know when this photograph was
17 taken?

18 A Because it came from Lloyd -- my mind just
19 left me. Sharrow. Lloyd Sharrow's wife gave that to
20 the town historian. That's when Lloyd was highway
21 commissioner. That's back when they used to have the
22 snowplows that plowed both ways.

23 Q You have no personal knowledge where that
24 photograph was taken, do you?

25 A Yes, I sure do.

1 Q How do you know?

2 A From the mountains in the background.

3 Q You can tell what specific road that is?

4 A Yes, sir.

5 Q Can you also tell what year it was taken --

6 A No, sir.

7 Q -- from that?

8 A I know that it's awhile ago because we haven't

9 had that type of snowplow for 10, 15 years anyway.

10 Q Do you know when it was taken?

11 A Wintertime.

12 Q Do you know what month?

13 A No, sir, I sure don't.

14 Q And Mr. Sharrow is --

15 A Lost.

16 Q Deceased?

17 A Yes, he is. Yep. His wife is still alive,

18 lives on Angier Hill Road and friend of the Lewis

19 family.

20 Q You have obtained these photographs from the
21 town historian?

22 A Yes.

23 Q You assume you knew Mr. Sharrow?

24 A Yes, I did.

25 Q You never talked to him at any time about

1 these photographs prior to his death --

2 A No.

3 Q -- did you?

4 A No.

5 Q Deposition Exhibit No. 4 and No. 5 --

6 A Okay. Yep. Four here.

7 Q Is it your testimony you can identify from
8 those photographs where those photographs were taken?

9 A Uh-huh. Yes, sir. From the woods back there,
10 that's that little piece of Lewis Family Farm woods that
11 -- if you look on the -- going back to Deposition
12 Exhibit 2, that's the woods on the top left-hand side
13 above and to the left of the "B."

14 Q How do you identify those specific woods?

15 A I'm familiar with the -- with those woods and
16 familiar with that road.

17 Q You can tell from those woods specifically
18 where that photograph was taken?

19 A Yes, sir.

20 Q Where did that photograph depict to you?

21 A It's depicting the area -- if you look on this
22 one, above the "B," towards the turn, from the low spot
23 towards the turn. The road turns right above the "B"
24 and heads up towards that farmhouse on Exhibit 2.

25 Q That merely looks like the road without plows,

1 right?

2 A It hadn't been plowed there yet, no.

3 Q Do you have any idea of what the total
4 snowfall accumulation was?

5 A I don't know when that was they were taken, so
6 I --

7 Q Okay.

8 A I assume that this year. But I don't know. I
9 don't know, I'm guessing.

10 Q Are you sure this year?

11 A This past year. I don't know. Can't tell
12 from the photo.

13 Q Who took these photos?

14 A It wasn't me, sir. I don't know but it looks
15 like this --

16 Q These photographs don't have anything to do
17 with Mr. Sharrow?

18 A No.

19 Q Where did these photographs come from?

20 A I have no idea. I don't know where they come
21 from.

22 MR. HARP: You gave them to me from town
23 historian.

24 THE WITNESS: Well, maybe they are then. I
25 don't know. I can't -- I can't tell from that

1 when they were taken or where.

2 BY MR. BRENNAN:

3 Q You can't tell what year they were taken,
4 right?

5 A No, sir, not from that.

6 Q And Deposition Exhibit No. 6 --

7 A Yep. That's a very good photo. I like that
8 photo.

9 Q Do you know where that photo came from?

10 A Yes, sir. That's the same -- that came from
11 Mr. Sharrow. I don't know if this one did or not. I
12 suspect this one did not because it's colored; these are
13 black and white. But this is the same time period when
14 Mr. Sharrow I would assume the same storm but I don't
15 know.

16 You can see, if you look at this, it's kind of
17 interesting because you got the plow here going, if you
18 look in the back here's the grader winging back,
19 remember I talked about how they wing back to make room
20 for the next storm. The very, very nice photo. I like
21 that. And you can also see the old place up there in
22 Grand View, kind of a night photo.

23 Q You don't know anything about this storm,
24 correct?

25 A All I know is it was when Mr. Sharrow was --

1 was road commissioner back in the '80s.

2 Q It appears in that photograph in the
3 right-hand portion, upper third of it, that it looks
4 like you can see the ground with no snow on it.
5 Correct?

6 A Yep. Wind has drifted it into the road
7 there.

8 Q Is there -- in any way you can identify it --
9 approximately the age of the vehicle that's depicted in
10 that?

11 A It's mid-'80s, same as the other photo there,
12 mid-'80's that's our old grader that was back -- we had
13 back in that time but I can't anymore than that. Other
14 than Mrs. Sharrow's, Mrs. Lewis will testify, pretty
15 good woman and if she said it was when her husband was
16 road commissioner, I fully believe her. Certainly it
17 was 10, 15 years ago, maybe 20, 30 years ago. But --

18 MR. BRENNAN: No further questions.

19 (Discussion held off the record)

20 (Following off-the-record discussion)

21 BY MR. HARP:

22 Q Do you maintain files relative to actions of
23 the town board?

24 A Yes, we do. You're required to have all your
25 town board minutes filed, yes, sir.

1 Q Did I ask you to search your town board
2 minutes to see if you could ascertain an indication of
3 what was the town highway system at any time?

4 A Yes, sir. You asked me to go back when they --
5 when they first measured the town roads and find both
6 the mileage and if I could and the minutes, any
7 reference to that.

8 (Exhibit 11, marked for identification)

9 Q Did you retrieve Exhibit No. 11 from town
10 files.

11 A Yes, sir, I did.

12 Q What does it indicate relative to date, et cetera?

13 A It said it was 6th day of November, 1963.

14 Q Is there anything on the town board action
15 there relative to --

16 A Yes, adopt resolution concerning town highways
17 but unfortunately, doesn't have their actual resolution
18 attached. But that was the same time period that they
19 started measuring the roads and turning it over to the
20 town to keep how many miles the town has of highways.

21 Q Did I also ask you to search your files to see
22 if the records contain anything relative to any
23 geological survey, any other maps?

24 A Yes, sir, you did. You asked me to look for
25 topographical maps.

1 MR. HARP: I only have one copy but I do
2 have copies of this. I'd like to have those
3 marked -- one sheet -- and a portion of it --
4 before the questions. Okay? There's the
5 original.

6 (Exhibit 12, marked for identification)

7 Q Did you find any?

8 A Yes, sir.

9 Q What is the date that's indicated on --

10 A The date is 1980.

11 Q Here is the entire map. I want you to go to
12 page 2 and indicate and tell me whether or not what is
13 shown on page 2 contains Cross Road?

14 A Yes, sir, it does.

15 Q Is it labeled on the map?

16 A I don't believe so, not on this part.

17 Q Okay. How do you know it's Cross Road?

18 A Well, you can -- as you can see Whallonsburg,
19 Whallon Bay Road, Cross Road and Clark Road and Middle
20 Road and landing strip up on Christian Road are all
21 familiar on there. I'm familiar with the area.

22 Q Does the portion of this map that is in
23 Exhibit 12 show Cross Road?

24 A Yes, sir, it does.

25 Q Does it show other roads?

1 A Yes, it does. It shows --

2 Q You don't have to tell me what they are, just --

3 A Yes, it does.

4 Q Does it show an area called Wells Royce Swamp?

5 A Web Royce Swamp. Yes, sir.

6 Q Where is that?

7 A It's in the lower right-hand corner of Exhibit
8 12, page 2.

9 Q Does it show any drainage culverts underneath
10 Cross Road that you can see?

11 A It doesn't show the culvert but you can
12 certainly point out where it would be located. Doesn't
13 show the actual culvert.

14 Q Why would a culvert be located there?

15 A Well, you can see it's a low area, and it was --
16 shows you how this area is higher, so the elevation of
17 the water would drain down through this area across road
18 on the -- cross the Cross Road, on the way to Web Royce
19 Swamp and only way it could get across the road is
20 through the culvert.

21 Q Did the defendant's lawyers make a freedom of
22 information demand to the town relative to any materials
23 concerning the wollastonite?

24 A Yes, sir, they did.

25 Q Did you furnish them?

1 A Yes, sir, I did. To the best of my ability.

2 Q Okay. You do have a copy? You don't have a
3 copy?

4 MR. BRENNAN: I'm not saying that.

5 Mr. Cook may have copies of it.

6 MR. HARP: Do you want me to give you a
7 copy?

8 MR. BRENNAN: No.

9 THE WITNESS: I sent it to your office.
10 Both your office and Mr. Cook's office applied
11 separately and both responded to by the town
12 court.

13 MR. HARP: If you need it, I will get you
14 another copy.

15 (Exhibit 13, marked for identification)

16 BY MR. HARP:

17 Q Can you look at Exhibit 13?

18 A Yes, sir.

19 Q Do you recognize --

20 A Yes. Let me finish looking -- first two, yes,
21 I do.

22 MR. BRENNAN: I'd like to clarify,
23 Mr. Harp. It's my understanding that this
24 deposition is not being used for purpose of
25 preserving his testimony at trial.

1 MR. HARP: That's correct.

2 MR. BRENNAN: I mean, he's going to be --

3 THE WITNESS: Unless I have a heart attack.

4 MR. BRENNAN: He's going to be there.

5 MR. HARP: Yes.

6 MR. BRENNAN: We're not stipulating to have
7 this deposition used at trial.

8 MR. HARP: That's correct.

9 THE WITNESS: Unless I have a heart attack
10 and die. Get run over by a Greyhound bus.

11 MR. BRENNAN: Then we will excuse you.

12 THE WITNESS: Something like -- along those --

13 MR. HARP: Appear with the death
14 certificate, that's what my law school professor
15 used to tell us.

16 BY MR. HARP:

17 Q Do you recognize that as one of the documents
18 that you furnished to defendant's lawyers?

19 A Yes, sir.

20 Q What's the date of the letter?

21 A August 5th, 2000.

22 Q What's the subject of the letter?

23 A It was from the Nancy Hatch, questioning
24 wollastonite, it was sent to several people and the
25 response from DEC to Mrs. Hatch.

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1 Q Okay.

2 A One letter was to DEC and one was to Fred Buck
3 who was the Essex County Department of Public Works
4 superintendent.

5 MR. HARP: I'd like to mark 14.

6 MR. BRENNAN: I'm sure you understand we're
7 not stipulating to any of this material as
8 admissible at trial.

9 MR. HARP: That's correct.

10 THE WITNESS: Multiple copies of it. It
11 looks like it's all the same.

12 MR. HARP: There you are.

13 THE WITNESS: I'm sorry. Is this separate
14 then?

15 MR. HARP: No. It's all part of one
16 document.

17 THE WITNESS: All part of one document.
18 Because it's different sources. This is DEC,
19 this is NYCO. Doesn't matter to me.

20 MR. HARP: Mark them.

21 MR. BRENNAN: I didn't realize that.

22 (Discussion held off the record)

23 (Following off-the-record discussion)

24 BY MR. HARP:

25 Q Exhibit No. 14?

1 A Yes, sir.

2 Q Do you recognize that?

3 A Yes, sir.

4 Q Is that one of the documents that was
5 furnished --

6 A Yes, sir.

7 Q -- to defendant's attorneys?

8 A Yes, sir.

9 Q Could you identify what it is.

10 A Yes, sir. I got this off the DEC Web site,
11 it's their beneficial use determinations and it lists
12 the tailings from the NYCO mines, the wollastonite
13 tailings, and it's recommended as a beneficial use for
14 stabilization material on dirt roads and parking lots.
15 And it's based for paved roads, two separate ones.

16 MR. BRENNAN: Can I see that? You
17 neglected to mention it says for Willsboro,
18 doesn't it?

19 THE WITNESS: That's where the company is
20 located. It doesn't say for Willsboro.
21 That's -- that's -- that's where the plant is
22 located.

23 BY MR. BRENNAN:

24 Q Is there anything on that there that indicates
25 that this was ever sent to the Town of Essex?

1 A I don't know whether it was or wasn't, but
2 it's online for everybody to get.

3 Q You obtained it off a Web site --

4 A Yes, sir.

5 Q Okay. You didn't --

6 A DEC web --

7 Q You didn't obtain it from the town records?

8 A No, sir.

9 MR. BRENNAN: Okay. That's all.

10 BY MR. HARP:

11 Q Didn't you obtain it off the Web site and put
12 it in the town records?

13 A It's now in the town records for this case.

14 Q So that you furnished it to the defendant's
15 attorney --

16 A Yes, sir.

17 Q -- on their request? Exhibit 15?

18 A Yes, sir.

19 Q Do you recognize that?

20 A Yes, sir. This is -- also came offline, this
21 was off the NYCO website, and it's materials safety data
22 sheet for the tailings, the wollastonite tailings.

23 Q What's the date on that?

24 A October -- reviewed October 6th, 2005.

25 Approximately a year -- two years ago.

1 MR. HARP: I will be writing you letter.
2 We're going to object to any testimony relative
3 to wollastonite and its effect on the farm.

4 MR. BRENNAN: You can do whatever you --

5 MR. HARP: I'm just --

6 MR. BRENNAN: You can do whatever you
7 intend to do at a trial.

8 MR. HARP: And we did not furnished a
9 complete set of the FOIL records but if you're
10 going to and the judge permits you to introduce
11 that, we will go back to the FOIL records.
12 Okay?

13 MR. BRENNAN: You do whatever you think is
14 appropriate, Mr. Harp. You can take that up
15 with the judge. We're not stipulating to
16 anything.

17 MR. HARP: I know that. I'm just informing
18 you, okay?

19 MR. BRENNAN: I'm informing you it's going
20 to be up to the judge to decide. That's the way
21 it usually works.

22 MR. HARP: I don't have any further
23 questions.

24 MR. BRENNAN: Nor do I.

25 (Whereupon, stenographic record concluded)

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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. *

RONALD E. JACKSON, having been duly
sworn, states he has read the foregoing transcript of
testimony given in the pending matter and knows the same
to be true.

RONALD E. JACKSON

Subscribed and Sworn to before me

this _____ day of _____

Notary Public

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

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

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

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