

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ESSEX

TOWN OF ESSEX, and JAMES Z. MORGAN, JR., as
Superintendent of Highways of the Town of Essex,

Plaintiffs,

- vs -

LEWIS FAMILY FARM, INC.,

Defendant.

AFFIDAVIT

Index No. 000047-07

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

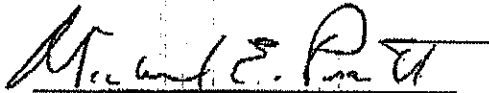
MICHAEL E. PRATT, being duly sworn, deposes and says that:

1. I have lived continuously in Essex County since 1961.
2. I served on the Town Board of the Town of Essex from 1987 to 1998.
3. I am personally familiar with Cross Road, a Town Highway within the Town of Essex, County of Essex, State of New York.
4. Cross Road is a typical road, and is substantially similar to other unpaved roads within the Town of Essex.
5. Plaintiff Town of Essex (the "Town") is responsible for the care and maintenance of Cross Road.
6. I am personally familiar with the Lewis Family Farm (the "Farm"), an organic farm located in the Town and owned by Defendant Lewis Family Farm, Inc.
7. The elevation of roads built on the Farm (the "Farm Roads") is generally similar to the elevation of other private property adjacent to Cross Road.

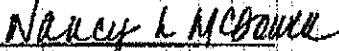
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8. At the top of the hill near the westerly end of Cross Road, the natural elevation of the land adjacent to Cross Road is higher than the elevation of Cross Road.
9. Upon information and belief, the Farm Roads do not impede the removal of snow from Cross Road by the Town.
10. Historically, the Town has employed various methods of snow removal and containment, including snow plows, a front-end loader, a road grader, and snow fences.
11. Historically, the Town used this equipment for snow removal and containment and maintained it for road maintenance.
12. Historically, the Town used this equipment for snow removal and containment in areas where there is less room on the sides of roads for snow storage than there is on portions of Cross Road.
13. The Town has removed or contained snow from Cross Road using one or more of these snow removal methods.

Dated: February 9, 2007
Essex, New York


Michael E. Pratt

Sworn to before me
February 9, 2007


Nancy L. McDowell
Notary Public

NANCY L. McDOWELL
Notary Public, State of New York
Clinton County #01MC8012054
Commission Expires August 17, 2010