LEMIRE JOHNSON, LLC
Attorneys at Law

2534 Route 9, P.O. Box 2485, Malta, NY 12020
518.899.5700 ~ 518.793.9005
Fax 518.899.5487
www.lemirejohnsonlaw.com

January 9, 2012

VIA ELECTRONIC FILING

Hon. George H. Lowe, U.S.M.J.
U.S.D.C. Northern District of New York
Northern District of New York
Syracuse, New York 13261

Re: ***Yoder, et al. v. Town of Morristown, et al.***
Civil Case No.: 09-cv-0007 (NPM/GHL)

Dear Magistrate Lowe:

We write in response to Plaintiffs' letter dated January 8, 2012 regarding the parties' plans to conduct depositions in the above action.

This suit was commenced by thirteen (13) plaintiffs, one of whom has since died. Notwithstanding the 10 deposition limit imposed by FRCP 30, plaintiffs' counsel agreed to permit defendants to depose all 12 remaining plaintiffs. Counsel did agree to a schedule for depositions which was to begin on January 18, 2012, and conclude in April 2012.

Mr. Hirschhorn's contention (in his letter of January 8, 2012) that our office has been on notice for more than two years that an interpreter would be needed to depose plaintiffs is not correct. In fact, Mr. Hirschhorn's letter of December 12, 2011, submitted to the Court notes specifically in paragraph "2" as follows:

"We have advised defendants' counsel that they will need a Pennsylvania Dutch translator for ***some*** (emphasis added) *of Plaintiffs' depositions. We will inform Defendants' counsel which of our clients need an interpreter no later than December 31, 2011."*

As promised, Proskauer attorney Daniel P. Goldberger, on January 3, 2012, informed our office by the e-mail below that *all* plaintiffs would require an interpreter:

Gregg:

Happy new year. To follow up on our previous conversation, we spoke with our clients and each of them will require an interpreter for their deposition.

Best,

Dan

Daniel P. Goldberger
Attorney at Law | Proskauer
Eleven Times Square
New York, NY 10036-8299
d 212.969.3174
f 212.969.2900
dgoldberger@proskauer.com

First, finding an interpreter qualified to translate the "low German" or Pennsylvania Dutch dialect of the plaintiffs and so-certified by the Court may not be possible. It appears past criminal proceedings in Town court regarding building code citations were interpreted by a local dental hygienist with some fluency in understanding and interpreting the language used by local Amish residents.

Secondly, conducting a deposition with the assistance of an interpreter, no matter the native tongue of the witness, presents practical difficulties. For example, the question/response sequence from lawyer to witness must flow through the interpreter, which makes for a longer deposition and larger transcript, which increases the time and money spent on each witness. More importantly, while the deposition is happening, there is no method by which the lawyer asking the questions can obtain the witness' confirmation that his/her answer has been accurately translated to English by the interpreter as produced in the written record by the stenographer. The worst case scenario is a deposition transcript of no use to the lawyer for any purpose permitted under FRCP 32.

In response to these likely difficulties, and having been informed by Mr. Goldberger in his e-mail on January 3, 2012, that an interpreter would be needed for the depositions of all plaintiffs, our office did propose last Friday (January 6, 2012) that the upcoming deposition schedule be modified and delayed. (It bears noting that most or all of the plaintiffs have had conversations and conducted business with the defendant Town and its code enforcement officer, Kay Davis, without the need for an interpreter). Our proposal to serve interrogatories (FRCP 33) and/or requests for admission (FRCP 36), both proper and permitted within this litigation, was designed to reduce or eliminate wasting time and money on what might be meaningless depositions. To the extent that service of such interrogatories and requests for admission would constitute a "reopening" of written discovery which requires the Court's consent, we respectfully request such permission and contend such limited discovery would serve the useful purpose of limiting the time and expense of deposition and preparing the case for trial.

Our proposed amendment to the deposition schedule was as follows: 1. Within the next thirty (30) days, service upon plaintiffs of Interrogatories (maximum of 50, assuming consent) and/or Notice to Admit; 2. Assuming complete responses to such Interrogatories and Notices within forty-five (45) days; then 3. Commencement of abbreviated (i.e., 3 hours

or less) video depositions of plaintiffs on or about the third week of March, 2012; and 4. Produce defendants for deposition in the order requested by plaintiffs' counsel.

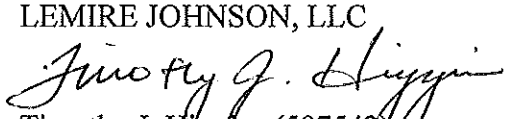
Plaintiffs' counsel has been informed, and has acknowledged, that Kay Davis (due to health issues and ongoing medical treatment) will not be available for deposition, as per the prior schedule, on January 19, 2012. We are agreeable to producing other defendants for deposition out of sequence (before Kay Davis) should it be requested.

The defendants' plan to videotape the deposition testimony of some or all of the plaintiffs is not, as suggested by Mr. Hirschhorn, designed to harass the plaintiffs. Rather, videotape of deposition testimony may provide some visual impeachment evidence in the event the ability of the plaintiffs to understand and respond to questions at the time of trial is demonstrably different than what it was at the time of deposition. Videotaping of deposition testimony, in general, also gives a party the ability to demonstrate to a jury the witness' attitude, tone and demeanor, none of which would typically be reflected in a written transcript.

We agree that it would be appropriate for the Court's assistance at this time in resolving these issues. We are available at the Court's convenience to discuss this matter further, either in person or by telephone.

Respectfully submitted,

LEMIRE JOHNSON, LLC



Timothy J. Higgins (507542)
tjh@lemirejohnsonlaw.com

GTJ/ek
cc: Proskauer Rose LLP