

REFERENCE SLIDES

For consideration in signing a

Written Notice to the Berne Superintendent of Highways & Town Clerk

Information Compiled by

Joel Willsey

January 2020

Long term unprotected drop-offs & inadequate shoulder cross slopes are a public safety hazard

The left photos are of the current **Stage Road** project. This one lift overlay was placed on Oct 21st 2019 and the excessive, unprotected drop-offs remain to date (January 27, 2020). The overlay placement and shoulder placement should be coordinated so that the time period that the drop-off hazard exists is very minimal. An Engineer should make recommendations regarding drop-off protection. A licensed Engineer's interpretation of table 619-3 of the NYSDOT Standard Specs, and his or her sign recommendations based on section 619 and interpretation of the MUTCD would make these operations much safer and significantly reduce the Town's exposure to liability due to negligence and maladministration.

File info

File name

no shoulders IMG_8917

Date taken

October	24	2019
4	57	PM

Size

3.6 MB

Dimensions

3024 x 4032

Shot

1/800 sec. f/2.2 4.15mm

ISO

25

Device

iPhone 6s

Folder path

C:\Users\Joel Willsey\Pictures\Stage Rd 2019

Source

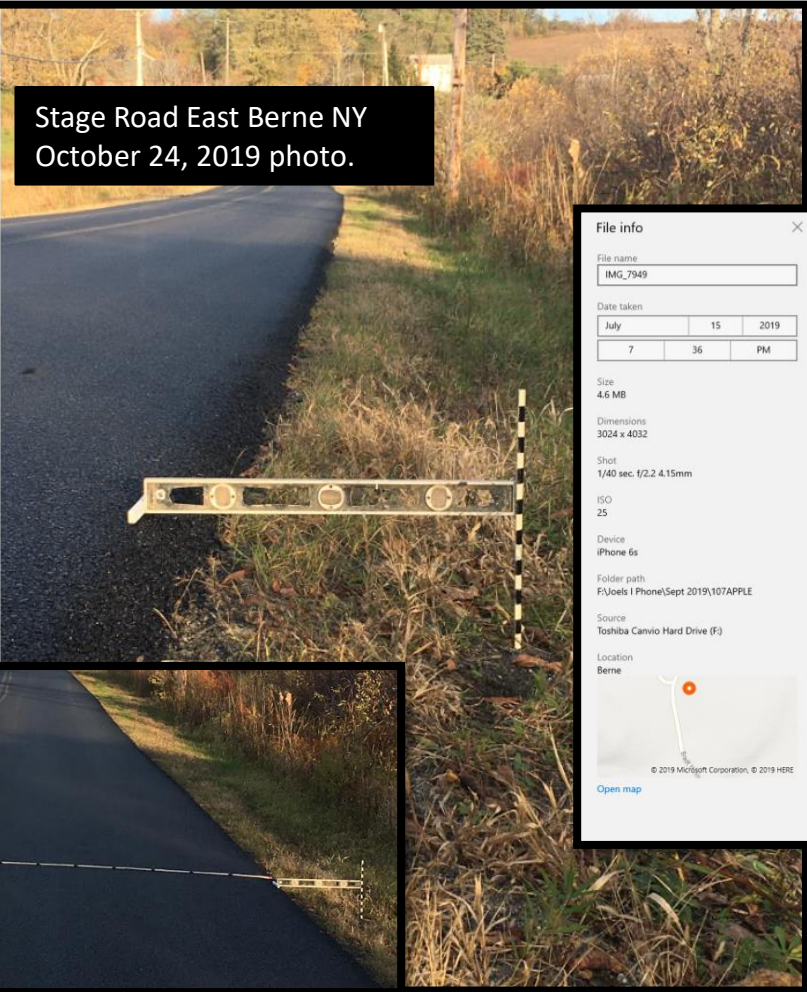
This PC

Location

Berne

The rope below is marked at 1 ft intervals. The asphalt is 20 ft wide. The support for the 2 ft level is marked at 1 inch intervals.

According to Exhibit 2-7 of the NYSDOT highway design manual, it appears Standard lane width is 10 ft & standard shoulder width is 2 ft. In this segment, side slopes to support a 2 ft shoulder with usable cross slopes would widen the road significantly – probably off the Right of Way while filling the existing ditches in some places.



Stage Road East Berne NY
October 24, 2019 photo.

File info

File name

IMG_7949

Date taken

July	15	2019
7	36	PM

Size

4.6 MB

Dimensions

3024 x 4032

Shot

1/40 sec. f/2.2 4.15mm

ISO

25

Device

iPhone 6s

Folder path

F:\Joels iPhone\Sept 2019\107APPLE

Source

Toshiba Canvio Hard Drive (F)

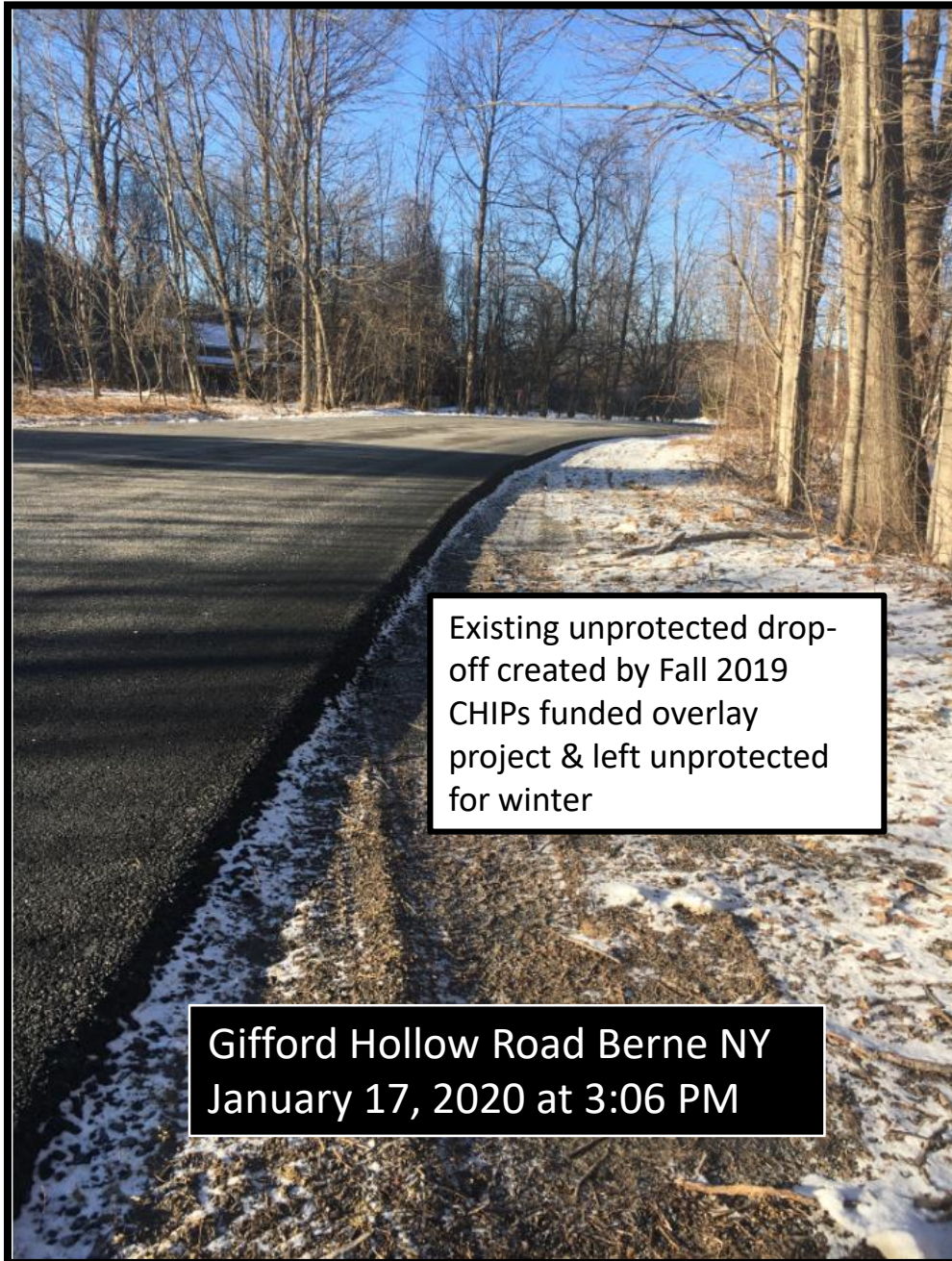
Location

Berne

The other option is To ignore the issue and provide a dangerous cross slope at the shoulder. This cross-slope is not functional. It will likely destabilize vehicles and draw them off the highway to potentially roll over and/or strike fixed objects.



Inadequate shoulder cross slope resulting from 2017
CHIPS overlay.
Bratt Hollow Road Berne NY
July 2019 photo.



Existing unprotected drop-off created by Fall 2019
CHIPs funded overlay
project & left unprotected
for winter

Gifford Hollow Road Berne NY
January 17, 2020 at 3:06 PM



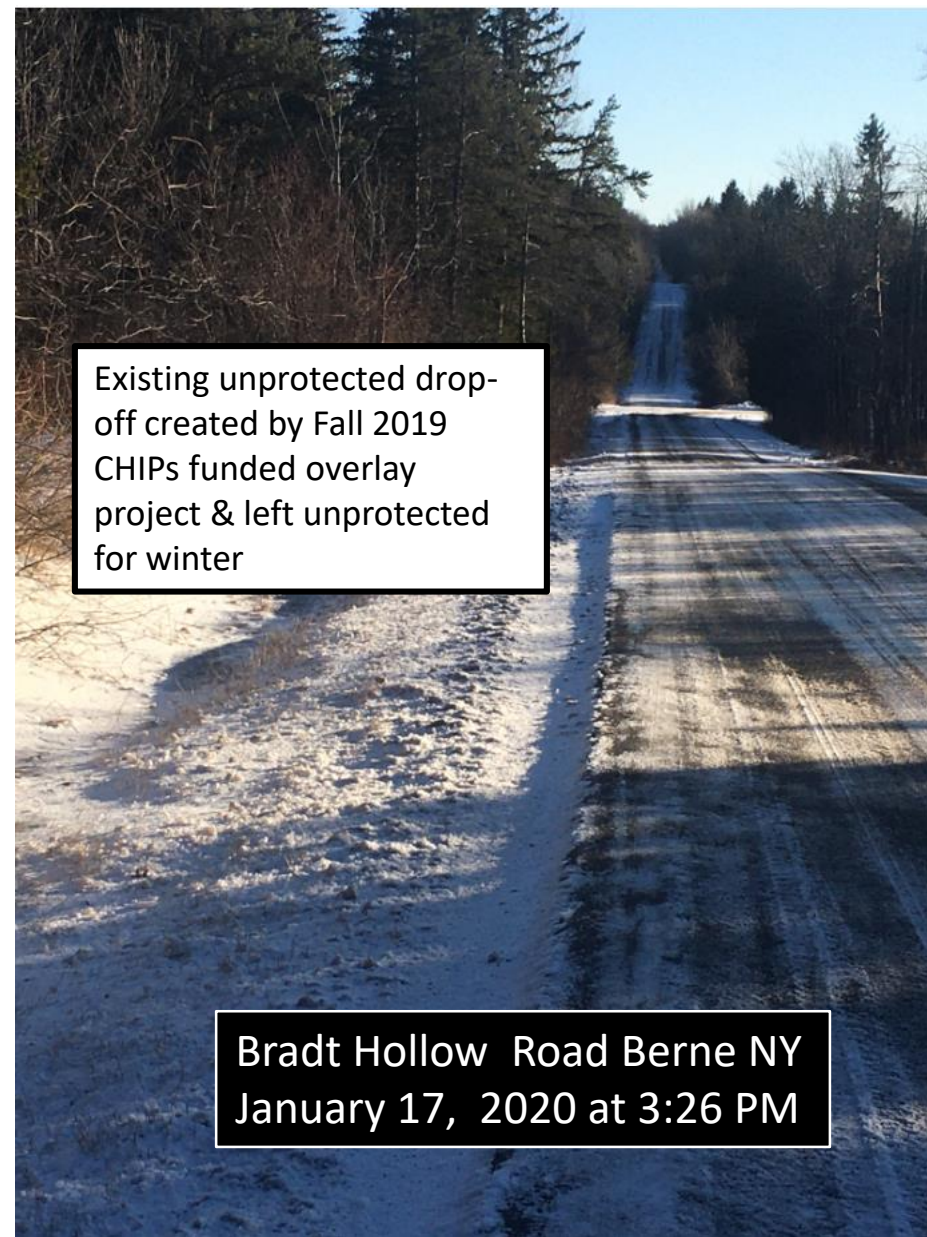
Existing unprotected drop-off created by Fall 2019
CHIPs funded overlay
project & left unprotected
for winter

Stage Road East Berne NY
January 5, 2020 at 2:12 PM



Existing unprotected drop-off created by Fall 2019
CHIPs funded overlay
project & left unprotected
for winter

Irish Hill Road Berne NY
January 17, 2020 at 3:47 PM



Existing unprotected drop-off created by Fall 2019
CHIPs funded overlay
project & left unprotected
for winter

Bradt Hollow Road Berne NY
January 17, 2020 at 3:26 PM

This is an excerpt from information to be provided to consultant Engineer for evaluation. It is well outside acceptable industry practice to leave unprotected drop-offs, particularly long term. Leaving them in winter conditions is just absurdly dangerous.

Recommendations for Work Zone Traffic Control in overlay projects: Issue A

1. *Please recommend a frequency of devices and signs assuming 2 to 8 in. drop offs at the edges of a theoretical 20 ft wide overlay on the subject highways.*
2. *Do CHIPs/PAVENY funds require that any particular Work Zone Traffic Control & Safety Standards apply?*
3. *Do NYS Vehicle and Traffic Law work zone standards 1680 (MUTCD & Supplement) apply?*
4. *Does NYS Standard Specifications 619 apply?*
5. *Do any other work zone standards apply?*

This situation should be evaluated by a professional Engineer, but based on my interpretation of Table 619-3 of the NYSDOT Standard specifications, our situation for Drop-off heights in the first column often exceeds 6 in and our drop off is clearly within 4 ft of the travel lane (see following slides). Our situation is reflected in the "2 -6 in" and "6-24 in" row. In the second column, at the 2-6 in row, white lines at the edge of the travel lanes reduces the number of drums or panels needed significantly. White lines improve safety in this situation by marking the location of the drop-off, but when leaving such drop-offs in winter, white lines are clearly not effective. The lines and the drop offs are not visible in snow. In the 3rd column, "yes" indicates this situation is considered a "shoulder closure". The 4th & 5th columns indicate the recommended frequency of drums or panels to channelize traffic. An engineer may consider 20 ft excessive given the situation, particularly if the shoulders are to be placed within a couple days. But as the photos indicate, Berne uses no drums or panels at all and leaves the unprotected drop offs for months and in winter conditions. The tubular markers and tall cones in columns 6 and 7 are not considered acceptable for this situation as indicated by the word "no" in those columns. Finally, column 8 indicates that the appropriate sign for our situation is "NO SHOULDER" because we are technically closing the shoulders. There is clearly no usable shoulder with these drop-offs.

[illegible]

This slide documents the fact that leaving unprotected high drop-offs long term and in winter conditions is common practice in Berne
CHIPs funded projects

File info

File name

IMG_3968

Date taken

January	26	2018
11	27	AM

Size

6.7 MB

Dimensions

4032 x 3024

Shot

1/1000 sec. f/2.2 4.15mm

ISO

25

Device

iPhone 6s

Folder path

F:\Joels I Phone\I Phone 2017 & 18\103APPLE

Source

Toshiba Canvio Hard Drive (F:)

Location

Berne



© 2019 Microsoft Corporation, © 2019 HERE

Open map



Filkins Hill Road East Berne NY January 2018 photo. These 8 to 10 inch unprotected drop-offs were left over the winter from the Fall 2017 CHIPs overlay project. There is no room to provide standard 2 ft shoulders with a safe cross slope unless the ditches are filled.

This slide documents the fact that leaving unprotected high drop-offs long term and in winter conditions is common practice in Berne CHIPs funded projects

File info

File name

IMG_3947

Date taken

January	26	2018
10	57	AM

Size

6.6 MB

Dimensions

3024 x 4032

Shot

1/640 sec. f/2.2 4.15mm

ISO

25

Device

iPhone 6s

Folder path


F:\Joels I Phone\I Phone 2017 & 18\103APPLE

Source

Toshiba Canvio Hard Drive (F:)

Location


Berne



© 2019 Microsoft Corporation, © 2019 HERE

Open map

Bradt Hollow Road Berne NY January 26, 2018 at 10:57 AM.
High unprotected Drop-offs from the Fall 2017 CHIPs funded overlay were left over the winter.



PRACTICE OF LONG-TERM UNPROTECTED DROP OFFS DATES BACK TO 2015

This September 21, 2015 photo at 3:13 PM is from the 2015 Stage Road (west) project. This one lift overlay was placed in summer 2015 and the excessive, unprotected drop-offs were left long term. There is an issue with the administration and coordination of construction operations in Berne. Clearly, if a dangerous condition must remain in place long term to accommodate a proposed operation, a different option must be considered for that operation (shoulder placement). This photo provides historical context. Here on September 21st 2015 unprotected, excessive drop-offs were left long term with the knowledge that a large event (wedding) was taking place there weeks in advance. The practice of just leaving high, unprotected drop-offs is acknowledged in the **2015** clipping by the Superintendent of Highways. There certainly appears to be a conscious decision to continue this dangerous practice through 2020. An Engineer's recommendation regarding how Work Zone Traffic control would be theoretically set up for the subject overlay projects would be very instructive to the Highway Department.

File info

File name
IMG_3885

Date taken
September 21, 2015
3:13 PM

Size
4.2 MB

Dimensions
2448 x 3264

Shot
1/800 sec. f/2.4 4.28mm

ISO
50

Device
iPhone 4S

Folder path
F:\Joels iPhone\Photos
2015\858HDJES

Source
Toshiba Canvio Hard

Location
Berne


Open map

This statement in the Enterprise is simply not true and that is not unusual.

Note dates of photo and the Superintendent's claim. The wedding was the 19th

dirt road was paved. We got it done before the wedding.

He also said the road was paved on Aug. 31 and the shoulders were put in on Sept. 17. "We did it with the county," Bashwinger said, and the work had to be done when the county's schedule allowed; the combined town and county



Drop-offs unprotected in 2015

Driveway provided for wedding parking by resident. 150 guests had to negotiate 5 to 8 inch steps at the edges of travel lanes. The Superintendent ignored requests to address this for weeks prior to the event. Parking and walking would not have been an issue if shoulders had been provided.

The Berne Town Supervisor requested “Road Widening Services” from Albany County in a Nov 7, 2019 memo of agreement weeks after the October 2019 Chips Funded overlays were placed. ***This agreement was signed by the Town Supervisor weeks after the overlays were placed. So there was no construction schedule or coordination to ensure shoulders were provided in a timely manner and the drop-offs were just left un-protected for the winter creating a long-term hazard. There is no way to know where those drop-offs are in snow and with on-coming traffic at night, particularly in rain.***

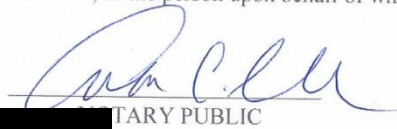
Highways should not be “widened” without due consideration for the provision of standard lane and shoulder widths and cross slopes. A lot of CHIPS money is being spent and dangerous conditions can result when licensed engineers are not consulted and there are no plans, no coordination and no construction scheduling.

MEMORANDUM OF AGREEMENT
BETWEEN THE COUNTY OF ALBANY
AND
THE TOWN OF BERNE
FOR ROAD WIDENING SERVICES IN THE
TOWN OF BERNE

This Memorandum of Agreement entered into as of the 7 day of November 2019, by and between the County of Albany, a municipal corporation duly organized under the state of New York, acting by and through its Department of Public Works), having a principal place of business in the County of Albany (hereinafter, the “County”) and the Town of Berne, a municipal corporation (hereinafter, the “Town”). The County

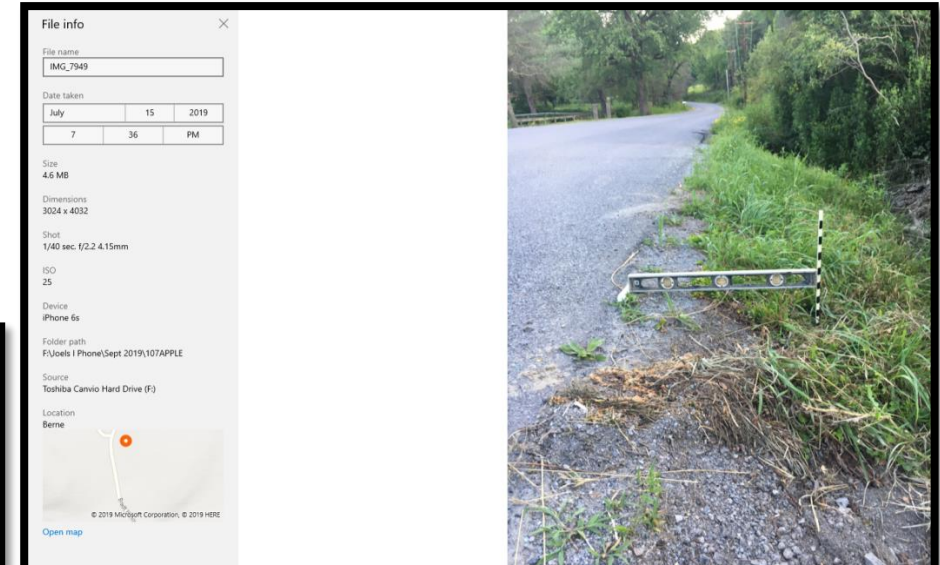
STATE OF NEW YORK)
COUNTY OF ALBANY) SS.:

On the 7th day of November, 2019, before me, the undersigned, a notary public in and for the state, personally appeared Sean S. Lyons, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the attached instrument and acknowledged to me that s/he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

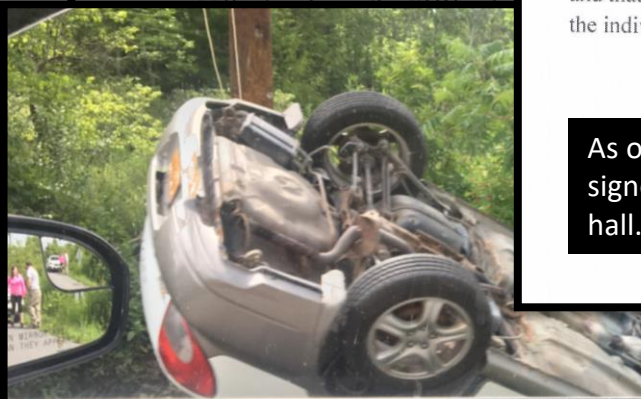

TARY PUBLIC

As of January 26, 2020, no agreement signed by the county is filed at the town hall.

ANITA C. CLAYTON
Notary Public, State of New York
Qualified in Albany County
Reg. No. 01CL6125520
Commission Expires April 18, 2021



Bradt Hollow Road Berne NY July 2019 photo. This dangerous “no shoulder” condition resulted from 2017 CHIPS funded overlay. This is the site of a 2019 roll-over accident. This portion was widened without consideration for standard shoulder widths. An adequate shoulder cannot be provided here. There is no room for guide rails in many situations where they are necessary in this project. **Traffic is encouraged to drive faster on the smooth new, wider (standard width) travel lanes, but there is no room for a shoulder or guide rail to accommodate the faster traffic.**



Bradt Hollow Road Berne NY July 2019 photo.

The Supervisor's misleading statements regarding support for Engineer's evaluation are politically driven

Sean Lyons <berne.ny.supv@gmail.com>

Jan 31, 2018, 6:34 AM



to me, Dennis, Dawn, karen

Good Morning,

Joel, I have not questioned your experience in this area, and I do find you and that experience a value to our team and town. Also, I am not disagreeing that engineering support and consultation is a good thing. In my line of work electrical, mechanical, chemical and safety engineers are required daily and as an industrial Facility Maintenance and Safety Manager I would be lost without their support. These engineers know the value of field experience and common sense and will work with the technical staff beyond the manual to develop safe working environments.

I would be in favor of having or hiring an engineering firm or consultant to work with Randy so together they can develop safe, sound procedures for our Highway Departments town road repairs and shop maintenance and also be able to address safety concerns prior to them becoming an issue.

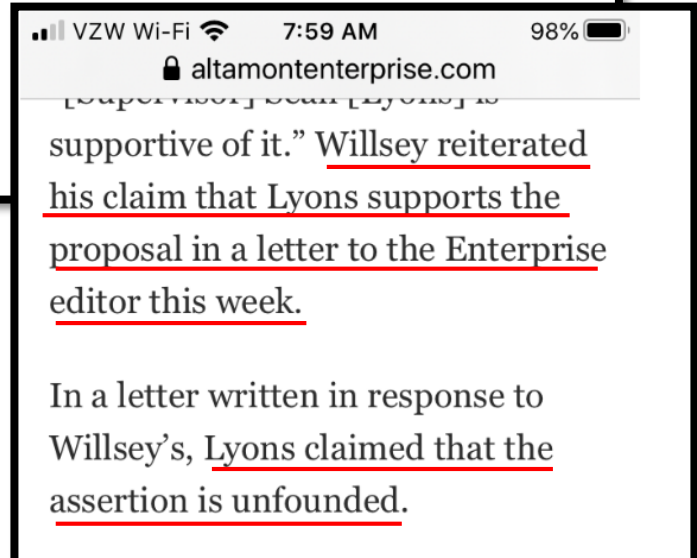
And as its been said Randy is ambitious, he is already been out rectifying many of these issues and documenting many of the roadways dimensions and drop offs, this data will be a big help to any engineer or highway consultant we bring in to assist Randy.

The public and their safety is the priority of us all, that is a reason why we or at least I chose to serve. I would not put my friendship with Randy or anyone else above my Oath and commitment to the Town and people of Berne.

I will be in my office today (every Wednesday) from Noon to 330/4 and Saturdays 9 to noon if anyone ever wants to stop in and talk.

Have an awesome day and thanks!

An Engineer's evaluation is clearly an objective and reasonable way to assess Highway Department practices. The Supervisor was objective and supportive of a consultant Engineer in this email because it is a logical, objective and reasonable idea. The Superintendent / GOP Chairman and Deputy Supervisor feel a logical, reasonable and objective evaluation to address public safety issues is not politically advantageous to the GOP implying such an evaluation would cost hundreds of thousands before any estimate has been documented. This could explain the Supervisor's contradictory misleading statements – politics first public safety last.



Noncompliance with NY Vehicle & Traffic Law results in hazards for the traveling public?

It appears the Manual on Uniform Traffic Control Devices, adopted by NY V & T Law 1680, is ignored in road closure operations in Berne and an Engineers evaluation would provide guidance (certified and stamped by a licensed professional engineer) to help ensure the safety of the traveling public.

In preparation for the **Bridge Road** CHIPs funded overlay project, a large excavation was dug across the highway and there is no evidence the highway was barricaded at the work site or “point of closure” as the Manual on Uniform Traffic Control requires. R11-2 closure signs and barricades were not provided at the work site. Had a worker been in the excavation, the vehicle could have crushed him or her. If a gas line had been damaged on the vehicle undercarriage, the catalytic converter could have sparked a fire. According to the driver, the emergency rescue took about an hour. The driver claimed she went unnoticed in the excavation for ten minutes. Fire is a distinct possibility here and another potentially fatal outcome. ***The Superintendent blamed the driver and said she admitted it was her fault. She denies his claim in an Altamont Enterprise interview. An Engineer’s recommendation regarding how the Bridge Rd Work Zone Traffic Control would have been theoretically set up would be very instructive to the Highway Department, but the 2019 board approved Engineer’s evaluation was overturned.***

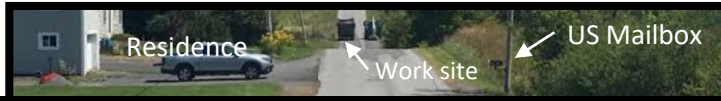
The accident report mentions no barricades or closure signs at the excavation site and shows no barricades or closure signs there in the schematic. There are no barricades visible at the work site in the incident photo. Flaggers were not on site (as documented by an email to the Board from the Superintendent). It appears no signs for flaggers were erected either. The Highway Dept. failed to respond to board questions about the use of barricades, what signs were used and the configuration of those signs. There was no indication of where to stop at the work site (and the vehicle clearly did not stop). There is no evidence at all that the road was actually closed at the work site or “point of closure” as required by NY Vehicle & Traffic Law.

Type III barricades with R11-2 “ROAD CLOSED” signs are light weight plastic tube with aluminum sign panels and could be easily moved and put back in place by the machine operator at the work site to allow the dump truck to come and go while keeping the road closed at the actual point of closure. This needs to be made clear to the Highway Department and would have been addressed in the Engineer’s evaluation.

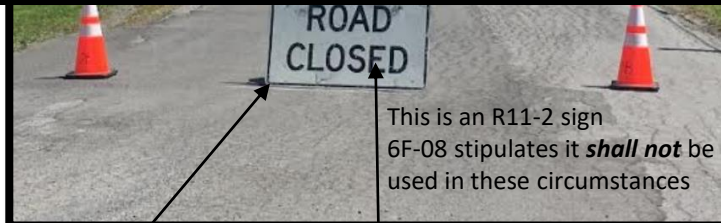
(The Superintendents statements are simply NOT true)



It appears that MUTCD work zone standards for road closure, adopted by NY Vehicle and Traffic Law 1680, are ignored by the Berne Highway Superintendent



Note here that the work site is well beyond the residence with no signs or barricades there – this is how the Bridge road incident happened. The highway was simply **NOT** closed at the worksite



This is an R11-2 sign
6F-08 stipulates it **shall not** be used in these circumstances

Standard: (6F-08) (User flow must be maintained here to access mailbox and property. V & T Law: this sign **SHALL NOT** be used here)

The ROAD (STREET) CLOSED sign shall not be used where road user flow is maintained or where the actual closure is some distance beyond the sign.

Guidance:

The ROAD (STREET) CLOSED sign should be installed at or near the center of the roadway on or above a Type III barricade that closes the roadway (see Section 6F.60).

Standard: (No barricade used, sign not used at work site & R11-2 sign is used instead of R11-3a at intersection)

Signs mounted on barricades, or other portable supports, shall be no less than 0.3 m (1 ft) above the traveled way.

(Sign sits on pavement- no barricade or sign at work site beyond)

Figure 6F-5. Regulatory Signs in Temporary Traffic Control Zones



OR



R11-3a
1500 x 750 mm
(60 x 30 in)

(R11 – 2 sign used at intersection instead & in violation of MUTCD)

This was the culvert replacement at Stage Rd in anticipation of the CHIPs funded 2019 overlay. As illustrated, multiple violations of the MUTCD standards appear evident here. The set ups at intersections are not handled in a uniform manner and are not consistent with NY Vehicle & Traffic Law standards in Berne. Uniformity for safety is the goal of the Manual on Uniform Traffic Control Devices and the reason it was adopted as part of NY V & T Law 1680.

Property owners have the right to access their property and mail delivery must be accommodated by law. Clearly road user flow beyond the R11-2 sign is necessary in this case as there is a residence and mailbox beyond the intersection. The work site is far beyond the residence and that is where the road closed signs and barricades belong according to V & T law. Note there is a mailbox beyond the intersection blockade and the lanes are inappropriately blocked with cones. This work zone was on Stage Rd on August 14 two weeks **after** the incident on Bridge Rd. Blocking access to the mail box violates Federal Law 18 US Code 1701 (see next slide)

Section 6F.09 Local Traffic Only Signs (R11-3a, R11-4)

Guidance:

(R11 – 2 sign improperly used instead)

The Local Traffic Only signs (see Figure 6F-5) should be used where road users need detours to avoid a closure some distance beyond the sign, but where local road users can use the roadway to the point of closure. These signs should be accompanied by appropriate warning and detour signing.

* (Rural applications are covered in MUTCD contrary to the Superintendents repeated published opinion)

In rural applications, the Local Traffic Only sign should have the legend ROAD CLOSED XX KM (MILES) AHEAD, LOCAL TRAFFIC ONLY (R11-3a).

Option:

(No distance to point of closure is provided in Berne road closures)

In urban areas, the legend ROAD (STREET) CLOSED TO THRU TRAFFIC (R11-4) or ROAD CLOSED, LOCAL TRAFFIC ONLY may be used.

The words BRIDGE OUT (or BRIDGE CLOSED) may be substituted for the words ROAD (STREET) CLOSED on the R11-3a or R11-4 sign where applicable.

Section 6F.60 Type I, II, or III Barricades

Support:

(No barricades used – sign is not on or above a type III barricade and this is the wrong sign for the intersection – this sign belongs at the work site or “point of Closure”)

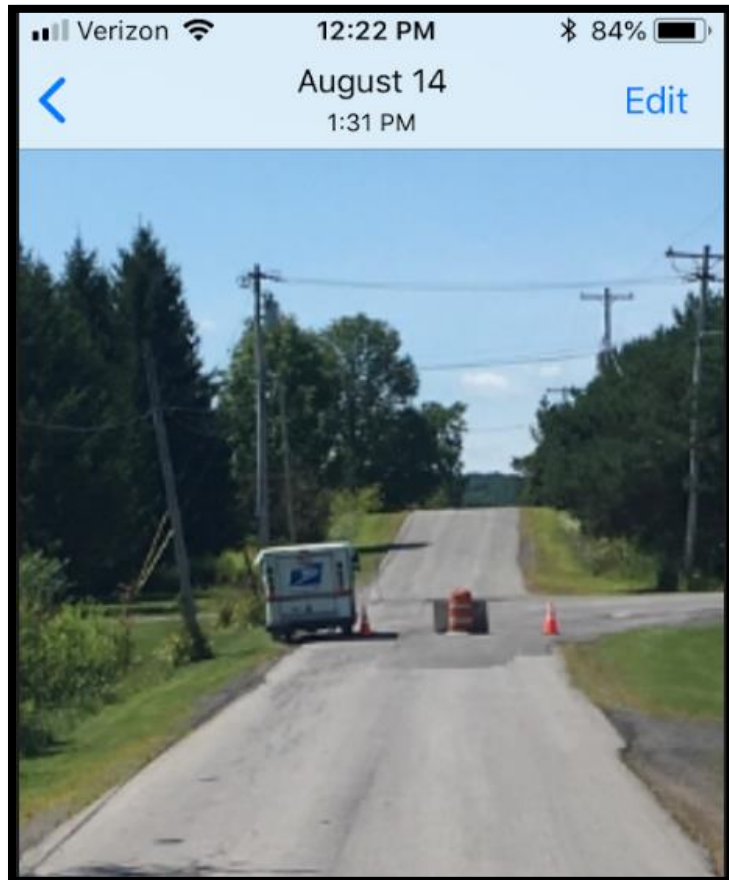
A barricade is a portable or fixed device having from one to three rails with appropriate markings and is used to control road users by closing, restricting, or delineating all or a portion of the right-of-way.

As shown in Figure 6F-14, Sheet 2, barricades are classified as either Type I, Type II, or Type III.

* Bashwinger said that state roads follow different rules than town roads, like Bridge Road, and asserted that everything was done properly. He added that other municipalities, like the city of Albany, close off roads with just a sign.

Mailbox and property access rights are ignored by the Superintendent

It appears to be a violation of NYS Vehicle and Traffic Law 1680 and apparently 18 US Code 1701 when the R11-2 “ROAD CLOSED” sign is used at an intersection, the travel lanes are blocked and the work site is beyond. Property and mailbox access is necessary between the intersection and the worksite. This was at the intersection of Stage and Saw Mill Rds on August 14 about 2 weeks *after* the Bridge Road incident. A similar practice was used again.



It appears that technically the use of the R11-2 “ROAD CLOSED” sign restricted access beyond the point where it was posted and the cones, which are actually delineating devices, were used instead to block access to the travel lanes.

This obstructed access to a US mailbox. This US Mail truck had to leave the travel lanes and use the wrong side of the road for delivery to the mailbox. It certainly appears this unsafe work zone was inconsistent with NY V & T law and 18 US 1701



About 17,200,000 results (0.78 seconds)

18 U.S. Code § 1701. Obstruction of mails generally. Whoever knowingly and willfully obstructs or retards the passage of the mail, or any carrier or conveyance carrying the mail, shall be fined under this title or imprisoned not more than six months, or both.

[18 U.S. Code § 1701 - Obstruction of mails generally | U.S. ...](#)

<https://www.law.cornell.edu/uscode/text/18/1701>

This is the cover page for information for 2019 Board approved consultant Engineers evaluation that was recently overturned. This information must be provided to the Engineer who performs the evaluation and provides recommendations.

INFORMATION FOR ENGINEER'S RECOMMENDATIONS FOR:
HIGHWAY WORK ZONE PRACTICES IN CHIPS OVERLAY PROJECTS,
THE INTERPRETATION OF STANDARDS,
&
THE IDENTIFICATION AND EVALUATION OF
PROBLEMATIC LOCAL RURAL HIGHWAY SEGMENTS
IN CHIPS OVERLAY PROJECTS

BERNE NY

Provided by
Joel Willsey
Berne Town Board Member
December 2019