

No. 100960-7

SUPREME COURT OF THE STATE OF WASHINGTON

JEANETTE STOFLETH,

Petitioner,

v.

733 LAKESIDE CONDOMINIUM ASSOCIATION,

Respondent

On Appeal from Division 1, Court of Appeals of the State
of Washington

No. 831836

PETITIONERS' MOTION FOR DISCRETIONARY
REVIEW OF DECISION TERMINATING REVIEW

[Treated as a Petition for Review](#)

HERRMANN LAW GROUP
Anthony Marsh, WSBA #45194
505 5th Ave S., Suite 330
Seattle, WA 98104

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IDENTIFY OF PETITIONERS

Petitioner Jeanette Stofleth, the Petitioner in the Court of Appeals action below, and the Plaintiff in the original Superior Court action, is the party requesting discretionary review.

CITATION TO COURT OF APPEALS DECISION

Petitioner request the Washington State Supreme Court to accept review of the following decision of the Court of Appeals, Division 1, Case No. 831836, entered on April 25, 2022:

(1) Order Denying Petitioner's Appeal

This appeal follows a summary judgment motion in which Respondent/Defendant 733 Lakeside Condominium Association was dismissed as a matter of law.

ISSUES PRESENTED

- (1) Did the Appellate Court conflict with prior precedent in affirming the ruling of the Superior Court?

STATEMENT OF THE CASE

This lawsuit arises from a car versus pedestrian crash that occurred at the 733 Lakeside Condominiums on June 12, 2019. See Appendix A, Declaration of Anthony Marsh with Exhibits at Appendix 0006. Jeanette Stofleth was a resident-renter, who was exiting through the parking lot across a well-known pedestrian egress. *Id.* at 0007.

Defendant Cosgrave was driving a vehicle, heading into the parking lot of the building. *Id.* at 0008. She was a resident of the building. *Id.* at 0010. She hit Plaintiff, causing serious injuries to her leg and hip, needing surgery to fix. *Id.* at 0009. Defendant was traveling less than 10 miles an hour at the time of the crash. *Id.* at 0010. Plaintiff suffered serious emotional distress as a result, and has been diagnosed with PTSD. *Id.* at 0015.

The subject property was constructed around 1968. See Appendix B. The original builders submitted plans to the City of Kirkland and were approved for construction. *Id.* Some changes have been made to the parking garage over the years, including the addition of trash bins that co-exist among the parking spaces in the garage. See Appendix A at Appendix 0013. Some of those are within the parking structure, and some are immediately outside, contemplating pedestrian traffic all throughout the overall structure of the parking garage, inside and out. *Id.* at 0013-0014.

In assessing potential fault of the Defendant, Plaintiff retained expert witness Gary Norris. Gary Norris is a civil engineer with over 40 years of experience in the field. See Appendix C, Declaration of Gary Norris with Exhibits at Appendix 0042-0044. Part of his experience includes reviewing projects such as this one for code compliance

and compliance to general safety guidelines. See Appendix A at Appendix 0018. His report analyzed the subject property and found various elements that failed to meet relevant standards, which he subsequently clarified in his deposition would have been true either by the standards of when the building was built or at the time of his deposition. See Appendix C at Appendix 0046; See *also* Appendix C at Appendix 0037.

The Defendant/Respondent filed a motion for summary judgment asserting, among other things, that it had no duty, that it had not breached that duty, and the Plaintiff had no competent evidence of either. That motion was granted by the Trial Court. The Plaintiff/Respondent brought a motion to enter judgment to facilitate complete review of this decision before a trial on the merits was had.

A panel of Division 1 held that there was no duty owed by Defendant/Respondent 733 to Plaintiff.

ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

RAP 13.4(b)(1) and (2), provides the Supreme Court should accept review of a Court of Appeals decision if:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court;
- (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or

RAP 13.4(b). Each of these factors supports this Court's acceptance of review of the superior court's orders in this case.

I. Standard of Review

1. Appellate Review of Summary Judgment

On an appeal from a summary judgment order, an appellate court engages in the same inquiry as the trial court. *Cary v. Mason County*, 173 Wn.2d 697, 272 P.3d 194 (2012). On appeal from summary judgment, the appellate court considers the same evidence that the trial court considered. *Baechler v. Beaunoux*, 167 Wn. App. 128, 272 P.3d 277 (Div. 3 2012). Because the trial court does not resolve factual disputes, it does not enter findings in relation to a summary judgment. *Walker v. Wenatchee Valley Truck and Auto Outlet, Inc.*, 155 Wn. App. 199, 229 P.3d 871 (Div. 3 2010), *review denied*, 169 Wn.2d 1027, 241 P.3d 413 (2010) Appellate courts "review summary judgment orders de novo, considering the evidence and all reasonable inferences from the evidence in the light most favorable to the nonmoving party". *Keck v. Collins*, 184 Wn.2d 358, 357 P.3d 1080, 1085 (2015).

2. Summary Judgment Generally

Summary judgment is only properly granted when there is "no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of

law.” CR 56(c). “A material fact is one upon which the outcome of the case depends, in whole or in part.” *Dep't of Labor & Indus. of State v. Kaiser Aluminum & Chem. Corp.*, 111 Wn. App. 771, 780, 48 P.3d 324, 330 (2002), as amended on reconsideration (May 30, 2002) (citing *Morris v. McNicol*, 83 Wn.2d 491, 494, 519 P.2d 7 (1974)). “A genuine issue of material fact exists where reasonable minds could differ on the facts controlling the outcome of the litigation.” *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). “In ruling on a motion for summary judgment, the court must consider the material evidence and all reasonable inferences therefrom most favorably for the nonmoving party.” *Jacobsen v. State*, 89 Wn.2d 104, 108, 569 P.2d 1152 (1977). Further, summary judgment is appropriate “only if, from all the evidence, a reasonable person could reach only one conclusion,” *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301, 305 (1998). If undisputed facts are subject to reasonable conflicting inferences, summary judgment is improper. *Kelley v. Tonda*, 198 Wn. App. 303, 393 P.3d 824 (Div. 1 2017) (“[s]ummary judgment procedures are not designed to resolve inferential disputes”) (quoting *Sanders v. Day*, 2 Wn. App. 393, 468 P.2d 452 (Div. 1 1970)). Summary judgment is inappropriate where the existence of a legal duty depends on disputed material facts. *Afoa v. Port of*

Seattle, 176 Wn.2d 460, 296 P.3d 800 (2013). Genuine issue of material fact exists, for summary judgment purposes, where reasonable minds could differ on the facts controlling the outcome of the litigation. *Ranger Ins. Co v. Pierce County*, 164 Wn.2d 545, 192 P.3d 886 (2008). “Summary judgment is ... improper if the issue at bar requires the weighing of competing, apparently competent evidence, in which case this court will reverse and remand for a trial to resolve the factual issues.” *Woods View II, LLC v. Kitsap County*, 188 Wn. App. 1, 352 P.3d 807, 816 (Div. 2 2015). Even where the evidentiary facts are undisputed, if reasonable minds could draw different conclusions from those facts, then summary judgment is not proper. *Security State Bank v. Burk*, 100 Wn. App. 94, 995 P.2d 1272, 1277, 41 U.C.C. Rep. Serv. 2d 319 (Div. 2 2000).

3. Negligence Actions Specifically

Negligence is ordinarily a factual issue, precluding summary judgment. See, e.g., *Brown v. Stevens Pass, Inc.*, 97 Wn. App. 519, 984 P.2d 448 (Div. 1 1999) (whether operator of ski resort was negligent). “Once a duty is established, any issues of fact regarding breach of duty and whether breach was a proximate cause of plaintiff’s injuries are normally left for the fact finder.” *Johnson v. State*, 77 Wn. App. 934, 937, 894 P.2d 1366 (1995). Summary judgment has often been precluded because the

trier of fact needed to determine whether something was reasonable or whether a person acted reasonably. See, e.g., *Van Noy v. State Farm Mut. Auto. Ins. Co.*, 98 Wn. App. 487, 983 P.2d 1129 (Div. 1 1999), *aff'd*, 142 Wn. 2d 784, 16 P.3d 574 (2001).

These deferential standards of review militate toward accepting review; matters of law such as summary judgment motions are not afforded the same deference as findings of fact, assuming review is taken. Further, the transparency afforded by a reviewing court in arriving at conclusions of law makes analysis and correction easier. This allows for an appellate court to reach the correct result.

II. The Division 1 Panel Incorrectly Applied Its Cited Precedent

The panel's opinion is 8 pages, and only about two and a half are dedicated to analyzing the issue. Only two cases are explicitly discussed at length. In the discussion of both cases, the panel applies an incomplete analysis, inconsistent with the cases, which leads to the incorrect result.

Before it discusses any case at length, it makes a very important rule citation.

Lakeside is liable to an invitee if Lakeside: knows or by exercise of reasonable care would discover the

condition and should realize that it involves an unreasonable risk of harm to the invitee; should expect that the invitee will not discover or realize the condition, or will fail to protect themselves against it; and fails exercise reasonable care to protect the invitee from the danger. *Kamla v. Space Needle Corp.*, 147 Wn.2d 114, 125-26, 52 P.3d 472 (2002) (citing RESTATEMENT (SECOND) OF TORTS § 343 (AM. LAW INST. 1965)).

In *Kamla*, the Court was analyzing whether or not a landowner should be responsible for dangers it *should* have been aware of. *Id.* at 126. Specifically, they framed the inquiry as: “[...] whether Space Needle should have anticipated Kamla's harm, despite the obvious hazard posed by the moving elevators.” *Id.* In the case at bar, this precedent was incorrectly applied because it shows that the key inquiry is what the landowner *should* have anticipated, not what they were necessarily actually on notice of. *Id.* In this case, Gary Norris has testified any reasonable civil engineer or property manager *should* have been on notice to the dangers in failing to implement generally accepted standards of practice, including ensuring adequate sight lines, designated pedestrian walkways, and aides such as mirrors. Appendix C at Appendix 0046. Plaintiff/Petitioner was a lay person with zero operating knowledge of these potential dangers, unlike the Plaintiff in *Kamla*.

Next, with respect to *Boeing Co. v. State*, 89 Wn.2d 442, 446, 572 P.2d 8 (1978), the Court completely ignored Petitioner's citation to *Wright v. Kennewick*, 62 Wn.2d 163, 381 P.2d 620 (1963). *Wright* explicitly notes that the actual notice requirement is only a requirement with respect to public entities. *Id.* at 167 (“*The rule is that a city must have (a) notice of a dangerous condition which it did not create, and (b) a reasonable opportunity to correct it before liability arises for negligence from neglect of duty to keep the streets safe.*”) Therefore, it is not merely enough to say that Defendant/Respondent had no actual notice based on a prior event, and therefore, there is no liability. *Kamla* explicitly states that the inquiry is whether the landowner *knew or should have known*. 147 Wn.2d 114. In fact, as Petitioner has shown through her expert, any reasonable property manager and/or civil engineer should have been aware of the hazard. See Appendix C at Appendix 0038

Next, the panel turns to *Ruff v. King County*, 125 Wn.2d 697, 887 P.2d 886 (1995). The very quote cited in the opinion shows the difference with the case at bar. In *Ruff*, the Plaintiff's expert testified that “all roads can be hazardous.” *Ruff*, 125 Wn.2d at 706 n.5. He based that opinion on general standards in the industry. *Id.* Petitioner's expert does not make very general assertions like in *Ruff*. Instead, he identifies specific and articulable

problems that are directly related to issues of pedestrian/vehicle conflict of the kind that gave rise to the injury to Petitioner.

Further, the panel completely disregarded the language in *Ruff* which goes to the sufficiency of a *warning* of the hazardous condition, as a duty independent of a duty to fully remediate a potentially hazardous road. *Id.* at 706.

Next, the Panel cites to the incorrect standard when they seek to analyze whether the location is *inherently* hazardous. That is not the inquiry. As noted above in *Kamla*, the inquiry is whether a landowner knew or should have known that the area posed a danger. Petitioner's experts testified based on specific experience, as well as specifically identifiable problems, that they should have known of the danger. Appendix C at Appendix 0046

Finally, the Court states without further explanation that the opinion is speculative. As Petitioner pointed out in her original briefing, that is not the case. Mr. Norris' opinion is based on specific, articulable deficiencies in the structure, all of which are centered around pedestrian/vehicle conflicts. *Id.* Further, the panel identifies the speculation with respect to identifying the *causation* of the dangerous condition to the incident. That is distinct from the threshold analysis which concerns *duty*. Because this analysis inappropriately mixes various elements of a

negligence claim not directly at issue in this appeal, the Supreme Court should take the case to clearly resolve the dispute.

CONCLUSION

The Division One Panel's analysis is cursory, inconsistent, and incorrect. The Washington Supreme Court should accept review to resolve the inconsistencies in the lower Court's opinion.

I certify the foregoing contains 2210 words in compliance with RAP 18.17(c)(1)

DATED this 24th day of May, 2022

/s/ Anthony Marsh
Anthony Marsh, WSBA# 45194
Attorney for Petitioners

HERRMANN LAW GROUP

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the Washington State, that on 24th day of May 2022, I served a true and correct copy of the PETITIONERS' MOTION FOR DISCRETIONARY REVIEW *and* Appendices A to C, delivering the same to the following attorneys of record, by the method indicated below, addressed as follows:

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nkachatourians@bpmlaw.com		
cdaniel@bmplaw.com		

Matthew M. Kennedy	<input type="checkbox"/>	U.S. Mail
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John Herrmann, Paralegal

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JEANETTE STOFLETH, an)	No. 83183-6-I
individual,)	
)	
Appellant,)	
)	DIVISION ONE
v.)	
)	
KRISTINA COSGRAVE and “JAMIE)	
DOE,” and the marital community)	UNPUBLISHED OPINION
compromised thereof; 733)	
LAKESIDE CONDOMINIUM)	
ASSOCIATION, a non-profit)	
corporation,)	
Respondents.)	
_____)		

MANN, J. — Jeanette Stofleth sued Kristina Cosgrave and the 733 Lakeside Condominium Association (Lakeside) for personal injury resulting from a car/pedestrian crash. Stofleth appeals the trial court’s order granting summary judgment and dismissing Stofleth’s claim against Lakeside. Stofleth contends that the trial court erred in concluding her claim was insufficiently supported by evidence. We affirm.

FACTS

On June 12, 2019, Stofleth left her condominium on the low level of the building to walk to an adjacent city park. The main access to the park is on the street level, Lake

Street S. Stofleth intended to access an adjacent park by cutting through the parking garage and then using a shortcut through an area of foliage and mulch separating the park from the lower level of the parking garage. At the same time, Cosgrave was entering the parking garage and driving down the one-way garage ramps. As Cosgrave rounded a corner, she struck Stofleth causing serious injury to Stofleth's leg and hip.

Stofleth also owns a vehicle and drove it often to and from the parking garage and regularly crossed paths with pedestrians.

Lakeside was constructed around 1968 and the City of Kirkland approved the construction plans. Stofleth hired Gary Norris as an expert witness to assess Lakeside's potential fault. Norris is a civil engineer with over 35 years of experience. His experience includes reviewing projects for code compliance and compliance to general safety guidelines. Norris testified that he visited the property twice, November 20, 2019, and March 25, 2020. Norris did not measure any sight lines, take notes, or draw diagrams during his visits to the property. Norris took four photographs of the parking garage that are included in his written report. Norris's photographs do not include the site of the accident.

It is undisputed that the building did not violate any code requirements related to the parking garage that were in effect when the garage was constructed. Lakeside has had no substantial construction that would require compliance with recent building codes. Norris testified that Lakeside failed to provide a parking lot circulation pattern that would minimize or eliminate conflicts between pedestrians and vehicles. He testified, however, that the garage forces the vehicle traffic to flow in a specific direction by default because of how the building was constructed. Lakeside's expert stated that

vehicle traffic was directed in the parking garage with one-way aisles and ramps leading to and from the street and that nothing is unusual about the layout of the parking and pedestrian access to cars within the lower level of the parking garage.

Norris testified that a pedestrian walkway was required throughout the parking garage to the main building; however, he also testified that this requirement was in the current Kirkland Zoning Code which does not apply to Lakeside. Norris also testified that Lakeside failed to provide mirrors or electronic detection devices for parking garages with "sight distance" constraints. There is no code requirement for using mirrors, electronic detection, or notification devices in a parking garage.

Stofleth filed suit arguing that Lakeside was "negligent in the design, construction, and maintenance" of the garage by (1) failing to provide for adequate sight lines; (2) failing to provide for designated pathways; (3) failing to provide safety measures such as mirrors or electronic detection systems; (4) failing to adequately route traffic in a way safe for pedestrians; (5) failing to construct, maintain, and monitor a parking lot in a reasonably safe condition and manner for ordinary use; (6) failing to inspect the parking garage for unsafe conditions; and (7) by other acts of negligence to be determined in discovery. Lakeside moved for summary judgment arguing that no evidence supported a breach of duty by Lakeside. The trial court granted Lakeside's motion.

Stofleth appeals.

ANALYSIS

We review a ruling on summary judgment de novo. Strauss v. Premera Blue Cross, 194 Wn.2d 296, 300, 449 P.3d 640 (2019). On review, the appellate court engages in the same inquiry as the trial court. Cary v. Mason County, 173 Wn.2d 697, 272 P.3d 194 (2012). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); Ranger Ins. Co. v. Pierce County, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). “A genuine issue of material fact exists where reasonable minds could differ on the facts controlling the outcome of the litigation.” Ranger Ins. Co., 164 Wn.2d at 552.

Stofleth argues that summary judgment was improper because there were sufficient facts to support the notion that Lakeside was negligent in the design, construction, and maintenance of the garage by failing to (1) provide for adequate sight lines, (2) provide for designated pathways, and (3) provide safety measures such as mirrors or electronic detection systems. We disagree.

To establish a claim for negligence, the plaintiff must prove “(1) the existence of a duty owed to the complaining party; (2) a breach thereof; (3) a resulting injury; and (4) a proximate cause between the claimed breach and resulting injury.” Pedroza v. Bryant, 101 Wn.2d 226, 228, 677 P.2d 166 (1984). The moving party may support its motion for summary judgment by challenging the sufficiency of the plaintiff’s evidence on any material issue. Las v. Yellow Front Stores, Inc., 66 Wn. App. 196, 198, 831 P.2d 744 (1992). If the claimant fails to show the existence of an element essential to that party’s case and on which that party will bear the burden of proof at trial, then the moving party

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is entitled to judgment as a matter of law and the trial court should grant the motion.

Young v. Key Pharm., 112 Wn.2d 216, 225, 770 P.2d 182 (1989).

Norris claimed that Lakeside breached its duty of care because it failed to provide for adequate sight lines, provide for designated pathways, and provide safety measures such as mirrors or electronic detection systems. But Stofleth fails to present adequate evidence to establish Lakeside's duty to complete these actions.

First, the building and zoning codes in effect when Lakeside was constructed apply in this case. Lakeside's parking garage complies with the building and zoning codes in effect when it was constructed. Thus, there are no specific sight line, mirror or electronic detection system, or pedestrian crosswalk requirements. Second, Stofleth failed to establish a specific duty for Lakeside to adequately route traffic in the parking garage. Stofleth and Norris explained there was only one route that vehicles could travel in the parking garage. Stofleth herself drove in and out of the garage daily, and Lakeside advised her of the way traffic was routed into and out of the garage. There is no specific duty to route traffic in a different manner.

While our review is de novo, the trial court accurately explained the issue:

But the critical question would be, where does the duty come from to do those things? It's not in the code. There's no evidence in the record that there've ever been a similar incident in the past that would put Lakeside on notice that there was a problem to be addressed that might lead to a duty to correct along the lines that you and Mr. Norris are suggesting. Absent that, where does the duty come from?

An owner of a building has a general duty to provide a safe premises.

Fredrickson v. Bertolino's Tacoma, Inc., 131 Wn. App. 183, 189, 127 P.3d 5 (2005).

The duty of care the possessor or property owes is based on the common law

classification of the person as an invitee, a licensee, or a trespasser. Assuming, without deciding, that Lakeside owed Stofleth the highest duty of care as an invitee, she failed to carry her burden on summary judgment to show that there were disputed issues of material fact. Lakeside is liable to an invitee if Lakeside: knows or by exercise of reasonable care would discover the condition and should realize that it involves an unreasonable risk of harm to the invitee; should expect that the invitee will not discover or realize the condition, or will fail to protect themselves against it; and fails exercise reasonable care to protect the invitee from the danger. Kamla v. Space Needle Corp., 147 Wn.2d 114, 125-26, 52 P.3d 472 (2002) (citing RESTATEMENT (SECOND) OF TORTS § 343 (AM. LAW INST. 1965)).

Stofleth relies on Boeing Co. v. State, 89 Wn.2d 442, 446, 572 P.2d 8 (1978), to argue that there may be a duty to implement technology even if not required by law. In Boeing, the court found that the State had a duty to implement technology to alert drivers that there was insufficient clearance for the vehicles under an underpass. The court explained, “[w]e acknowledge this [lack of duty] to be the general rule. However, there are extraordinary situations which may call for extraordinary measures in the exercise of reasonable care.” Boeing, 89 Wn.2d at 447. The circumstances that created a heightened duty in Boeing are distinguishable. First, the State was operating and maintaining the safety of a public roadway, not a private parking garage. Second, the State was on notice that the underpass was unsafe:

[T]he respondent’s evidence showed a past history of frequent accidents in spite of warning signs posted. It further showed the appellant’s awareness of the need for a more effective warning system and that in other similar circumstances governmental bodies had devised warning systems to meet the problem. This evidence was sufficient to take to the

jury the question whether the appellant exercised reasonable care under the circumstances.

Boeing, 89 Wn.2d at 448.

Unlike Boeing, here, the Lakeside private parking garage existed for 50 years without a single prior accident like this one. Stofleth offers no evidence that Lakeside knew, or with reasonable care would discover the condition, or realize it involved an unreasonable risk to people walking through the garage.

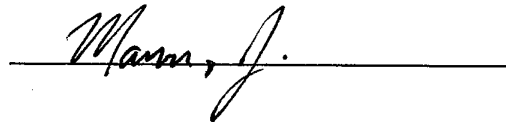
Stofleth also cites Ruff v. King County, 125 Wn.2d 697, 887 P.2d 886 (1995), for the proposition that mirrors or warning signs were necessary. In Ruff, our Supreme Court acknowledged that the duty to maintain a county road in a reasonably safe condition may require the posting of warning signs, but only where the conditions made the road inherently dangerous. 125 Wn.2d at 705. The Supreme Court affirmed the trial court's summary judgment for King County because the plaintiff failed to present evidence that the public roadway was inherently dangerous or deceptive. Ruff, 125 Wn.2d at 706-07. The plaintiff relied instead on expert testimony by a transportation engineering expert, who asserted that the roadway was an "unreasonably dangerous condition '[b]ecause all roadways can be hazardous' . . . [and] based his conclusion on what he stated as 'deficiencies relative to the industry standards.'" Ruff, 125 Wn.2d at 706 n.5. The court disregarded this expert stating that it "cannot find negligence based upon speculation or conjecture." Ruff, 125 Wn.2d at 706.

Like Ruff, Stofleth failed to present evidence to show that the parking garage was inherently dangerous except testimony from her expert, Norris. While Norris contended that the garage could be safer with modifications, he did not claim this area of the

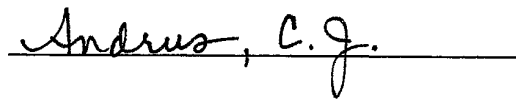
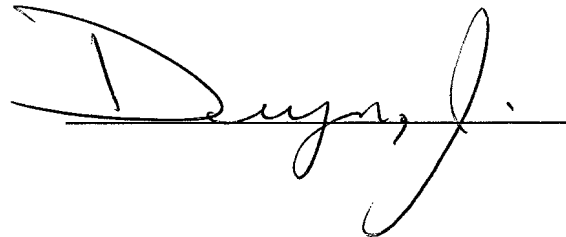
parking garage was inherently dangerous or hazardous. Norris's opinion that the lack of a pedestrian walkway, mirror, or electronic detection system caused her injuries is speculative opinion.

Stofleth failed to present evidence creating a genuine issue of material fact that Lakeside knew, or by exercise of reasonable care would have discovered the dangerous condition and realized that it involved an unreasonable risk of harm. Summary judgment and dismissal of Lakeside was appropriate.

Affirmed.

A handwritten signature in cursive script, appearing to read "Mamm, J.", written over a horizontal line.

WE CONCUR:

A handwritten signature in cursive script, appearing to read "Andrews, C. J.", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Dwyer, J.", written over a horizontal line.

Appendix A

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

JEANETTE STOFLETH, an individual,

Plaintiff,

vs.

KRISTINA COSGRAVE and "**JAMIE
DOE**" **COSGRAVE**, and the marital
community compromised thereof; **733
LAKESIDE CONDOMINIUM
ASSOCIATION**, a non-profit
corporation.

Defendants.

No. 20-2-10139-7 SEA

**DECLARATION OF ANTHONY MARSH
IN SUPPORT OF PLAINTIFFS'
RESPONSE TO DEFENDANT 733'S
MOTION FOR SUMMARY JUDGMENT.**

I, Anthony Marsh, being over the age of 18 and competent to testify to the matters herein, declare as follows:

1. I am the attorney for Plaintiff in the above referenced case.
2. Attached as Exhibit A to my declaration is a true and correct copy of excerpts from the deposition of Jeanette Stofleth
3. Attached as Exhibit B to my declaration is a true and correct copy of excerpts from the deposition of Gary Norris.
4. Attached as Exhibit C to my declaration is a true and correct copy of interrogatory responses from Defendant Cosgrave.

\\
\\

1 DECLARED UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE
2 STATE OF WASHINGTON, DATED this 19th day of July 2021 at Seattle, Washington.

3
4 /s/ Anthony Marsh

5 Anthony Marsh, WSBA 45194
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify under penalty of perjury under the laws of the Washington
3 State, that on 19th day of July 2021, I served a true and correct copy of the foregoing
4 document delivering the same to the following attorneys of record, by the method
5 indicated below, addressed as follows:

6 7 8 9 10 11 12 Natasha A. Khachatourians, WSBA #42685 Attorneys for Defendant 733 Lakeside Condominium Association Betts Patterson Mines One Convention Place, Suite 1400 701 Pike Street Seattle, Washington 98101-3927 (206) 292-9988 nkhachatourians@bpmlaw.com carkins@bpmlaw.com cdaniel@bpmlaw.com	[] U.S. Mail, postage prepaid [] ABC Legal Messengers [] Overnight Mail [] Facsimile [] Hand Delivery [X] Email [X] Electronic Court Filing
13 14 15 16 Matthew M. Kennedy, WSBA #36452 Rainer Legal Advocates, LLC 465 Rainer Blvd. N., Suite C Issaquah, WA 98027 (425) 392-8550 matthew@rainieradvocates.com chris@raineradvocates.com	[] U.S. Mail, postage prepaid [] ABC Legal Messengers [] Overnight Mail [] Facsimile [] Hand Delivery [X] Email [X] Electronic Court Filing

17
18 By: /s/John Herrmann
19 John Herrmann, Paralegal

Exhibit A

1 those all prescribed by the same medical care provider?

2 A Well, the -- the multivitamin isn't prescribed. The D
3 is taken -- my doctor did recommend that, and I don't know
4 if I was prescribed the gabapentin by my primary care
5 physician. That was started when I was hit by a car, but
6 I'm continuing to take it. But the -- but the antianxiety
7 medication was prescribed prior.

8 Q Your primary care provider?

9 A Correct.

10 Q And what's her name, so we can refer to her as other
11 than your primary care doctor?

12 A Dr. Annapoorna Murthy.

13 Q How long have you been a patient of Dr. Murthy's?

14 A I don't remember.

15 Q Since before roughly June of 2019 or afterwards?

16 A Since before that date.

17 Q Okay. And a moment ago you mentioned since you were
18 hit by a car. I assume that we're -- you're referring to
19 the June 11, 2019, collision with my client. Or is there
20 another instance that you've been hit by a car?

21 A It was June 12th, and I've only been hit by a car once.

22 Q Okay. I understand you currently also have a lawsuit
23 pending in federal court. Other than that lawsuit and this
24 lawsuit, have you ever been involved in any other lawsuits?

25 A I became aware of a lawsuit that my stepfather had

1 the back end of that parking garage is a storm door. And
2 when you enter into that storm door, there's two apartments
3 in there, one to the right and one to the left. I'm on the
4 left apartment, so I'm on the water level. My apartment is
5 over the water. And all of the other apartments are above
6 us, so there's only two apartments at that water level. And
7 so you have to go either into the parking garage or up the
8 back stairs to go out of the building, so lots of people
9 walk through the parking garage.

10 Q Did you have kind of a typical path you would use to
11 exit your apartment and get out of the building?

12 A Yes.

13 Q And what was your typical path?

14 A My typical path was, I would exit my apartment, and
15 then I would walk along the two columns to the right, which
16 are along the left side of the cars parked on the right side
17 of the parking garage as you're exiting, and then I would
18 cross the section to where the -- where the elevator is at,
19 and then I would turn left. And then I would go past the
20 wall, and then I would cross there, cross the street there,
21 and then -- which was -- which was crossing the entrance to
22 the parking garage, and then I would go into the dirt and,
23 like, walk up onto the park from there, which is where I saw
24 most people going to the park from there.

25 Q Okay. You mentioned briefly, it sounded like there was

1 Q Can you just please tell me what you recall about the
2 collision?

3 A Do you want me to describe the entire event?

4 Q Basically, start with wherever you're comfortable, and
5 I'll backfill with questions if need be.

6 A Okay. I was walking out of my apartment to go on a
7 walk at the park. And I walked along the right columns, and
8 I walked across the way, and then I turned left. And I was
9 just about to cross the wall which divides the entrance to
10 the parking garage and the -- and the parking garage. I was
11 about to cross that to go around it when I saw a car coming
12 down, and I only had a second. I saw the driver looking
13 down, and I thought to myself, Turn your body or jump over
14 the hood.

15 And so I turned my body in an effort to avoid being hit
16 by the car, because it was about to hit the wall. And I was
17 struck in my pelvis by the driver's side of the front of the
18 vehicle. And when it hit my pelvis, I went flying through
19 the air, and I landed on my right side on the concrete, and
20 then I stood up, because I was in shock. And immediately
21 after I stood up, I fell over. My body gave out, and I fell
22 over onto my left side, and then that's when the pain hit
23 me, and I just started screaming. And then the girl got out
24 of her car, and she said, "Oh, my God. Oh, my God. I
25 didn't even know I hit you. I'm so sorry."

1 the surgery, and I had things wrapped around -- like gauze,
2 like, wrapped around my belly and wrapped around my leg, and
3 I was just, like, "Oh, my God." Like, "What's going on?"

4 And -- and so then the doctor came in and he said, you
5 know, "You sustained some severe injuries, and I did my best
6 to put you back together. Your right hip was severely
7 fractured, and your right femur was also severely fractured,
8 and so we had to insert a rod from your right hip down to
9 your right knee to secure the wounds. And I did the best I
10 could."

11 And so, you know -- and I just -- I was kind of drugged
12 up, you know, so I do -- I do remember that, but, like,
13 everything was fairly fuzzy because of the pain that I was
14 in. Even when they gave me pain medication, it sedated me,
15 but it didn't take away the pain, and so it was -- it was --
16 I remember feeling really helpless and, like, scared and,
17 like, as an athlete just thinking, you know, I don't know if
18 I'll ever be able to walk again or hike again or bike again
19 or -- you know, I didn't know what was happening. I just --
20 I was scared, but I was happy to be alive.

21 And -- and my spouse kept coming and visiting me, and I
22 felt very thankful for that. And my spirit was broken
23 because I was so confused about the "what ifs" and the
24 unknowns, you know.

25 And so I -- so I think that I was in the hospital for

1 this, and she was coming down. So I was probably
2 catty-corner coming around the corner; she was about to hit
3 the wall. I took a step back, which probably allowed her
4 not to roll over me, but it still hit me in my pelvis.

5 Q Okay.

6 A It happened very quickly.

7 Q Okay. Do you know if my client was coming from
8 outside, maybe up on the street, or was -- do you know if
9 she was in the building prior to the collision?

10 A I don't -- I don't know where she was prior to the
11 collision, but I can tell you that most of the time when
12 people are driving down in the building it's because they're
13 parking to go up into their apartment or something. But I
14 don't know for sure.

15 Q Had you ever met my client prior to this collision?

16 A No.

17 Q Have you met her since then?

18 A No.

19 Q Have you ever seen her in the building?

20 A I think so.

21 Q Okay. How fast -- or can you estimate how fast my
22 client's vehicle was traveling when you first saw it?

23 A I'm not an expert, but I can tell you it wasn't -- it
24 wasn't superfast, but if I were to estimate, maybe five to
25 ten miles an hour, at the most.

1 being more than just the boy. So there was, like, the girl
2 holding my head up, which later wasn't holding my head up;
3 she's the one who took off my coat. And then there was the
4 girl I threw my phone at who called my spouse. And then
5 there was, I thought, a boy standing with somebody. And --
6 and then I distinctly remember the police; I thought there
7 were two of them, if I am thinking right. And then I know
8 that with the ambulance, there was at least two people that
9 I interacted with there. And there was -- I was so focused
10 on my pain that I -- that I really wasn't thinking
11 anything -- I think that it made an impression me to see the
12 boy, because I was worried about traumatizing him, you know.
13 And, you know, just kind of like I'm not that type of person
14 who, like, screams and cries, you know. I'm kind of a tough
15 ass, but I was screaming. So, you know -- and I was just
16 like, You know, what are you going to do? So that's what I
17 did.

18 Q Okay. Do you recall where my client was during this
19 time that you were lying on the ground, waiting for
20 assistance?

21 A The only time I remember directly interacting with her
22 was whenever I was first hit and I was laying on my side and
23 she had just gotten out of her car, and she said, "I didn't
24 even know I hit you. I'm so sorry."

25 I don't remember really looking at her face; I remember

1 garage, and because there's that blind spot, there should be
2 a mirror there because -- because there's a blind spot.

3 And -- and because I was walking around the blind spot,
4 and because the driver was coming down into the parking
5 garage and I was walking around that corner, she would've
6 only seen me for a moment. So maybe if there was a mirror
7 there she might've seen me for more than a moment, and --
8 you know, so I -- you know, I don't know anything other than
9 the fact that when I go into parking garages, most of the
10 time I see mirrors when there's blind spots. And so that's
11 my opinion.

12 Q Okay. Do you believe that shortly before this
13 collision that you were in a blind spot created by just the
14 layout of the building and the walls?

15 A In retrospect, yes.

16 Q Were you not at all worried that you were in a blind
17 spot at the time?

18 A I had never even thought about it. I had never even
19 thought about -- you know, because I mentally associated
20 going around that corner as it being a pedestrian area, and
21 knowing that there was a line that was painted outside of
22 that corner, which -- which, you know, here's the wall right
23 here, and I'm -- and so I'm trying to think right. So I'm
24 walking up -- I'm walking this way; I'm coming this way.
25 And right beyond the wall is paint. So, you know, my

1 A I don't recall anything like that.

2 Q Do you recall whether or not there are any warning
3 signs or directional signs within the parking garage?
4 You've kind of mentioned there's poor signage for traffic
5 flow going up and down the ramps. But in the garage area
6 itself, are there any other signs designating things to be
7 warned -- worried about or anything like that? Any other
8 signage?

9 A No. I'm not aware of, really, any signage. And -- and
10 I was also concerned there wasn't a mirror, you know, in the
11 garage entrance.

12 Q Are there any mirrors in the garage, that you're aware
13 of?

14 A Not that I'm aware of. And -- and there should be,
15 because when you go down into the parking garage, the blind
16 spot that's right there behind that wall is a blind spot.
17 And because it's a pedestrian area that people use on a
18 daily basis, it's important, especially because where the
19 garbage is at is in the parking garage. So everybody who
20 lives in the building has to go to that area from either, A,
21 the elevator to take care garbage out; or, B, to walk down
22 into the parking garage from the entrance to the parking
23 garage; or, C, to go down the staircase that is close to my
24 apartment and then walk across the parking garage to get to
25 the garbage cans. So no matter what, you're in the parking

1 garage, and because there's that blind spot, there should be
2 a mirror there because -- because there's a blind spot.

3 And -- and because I was walking around the blind spot,
4 and because the driver was coming down into the parking
5 garage and I was walking around that corner, she would've
6 only seen me for a moment. So maybe if there was a mirror
7 there she might've seen me for more than a moment, and --
8 you know, so I -- you know, I don't know anything other than
9 the fact that when I go into parking garages, most of the
10 time I see mirrors when there's blind spots. And so that's
11 my opinion.

12 Q Okay. Do you believe that shortly before this
13 collision that you were in a blind spot created by just the
14 layout of the building and the walls?

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18 A I had never even thought about it. I had never even
19 thought about -- you know, because I mentally associated
20 going around that corner as it being a pedestrian area, and
21 knowing that there was a line that was painted outside of
22 that corner, which -- which, you know, here's the wall right
23 here, and I'm -- and so I'm trying to think right. So I'm
24 walking up -- I'm walking this way; I'm coming this way.
25 And right beyond the wall is paint. So, you know, my

1 G-I-L-A, Fein, F-E-I-N. Can you help me pronounce their
2 first name?

3 A Gila.

4 Q Thank you.

5 I saw a note in the records from Gila Fein that after
6 about March of this year you were no longer treating for
7 PTSD. Does that sound about right to you?

8 A Yeah. Most of our conversations are around other
9 issues.

10 Q Any of your treatment currently with Gila, is that --
11 any of it related to the collision, in your opinion?

12 A It comes up from time to time, but I would say it's
13 mostly focused around other issues at this time.

14 Q And when you say "it comes up from time to time," can
15 you give me a sense or a feeling how much this collision
16 still plays with your counseling?

17 A With my counseling, I would say it's -- it's rare,
18 because I'm not having those feelings like when I -- you
19 know, I'm not having the same shocking feelings I did
20 after -- right after the incident happened. And I also have
21 a lot of other things going on in my life, so those are
22 taking front and center.

23 Q I saw a brief reference to doing -- or to attending
24 couples counseling with your spouse. Did that ever involve
25 any of the symptoms that you sustained as a result of this

Exhibit B

1 Q. Yes.

2 A. Yes. 90-degree left turns with a concrete
3 wall blocking visibility of what's on the other side of
4 the wall are not typical.

5 Q. On either of your visits, did you drive
6 through the parking lot and make these left turns?

7 A. No, I didn't.

8 Q. Did you have a vehicle with you?

9 A. Yes, I did.

10 Q. Any reason why you didn't drive through and
11 make these turns with the concrete walls, with the
12 walls, to see if these turns were actually radical or
13 if your sight was obstructed while driving?

14 A. I could see that walking through the lot my
15 sight was obstructed.

16 Q. Did you take any photographs of the
17 obstructed views, as you claim there to be, in any of
18 the left turns?

19 A. I don't remember if I did or not. They would
20 be in my photos.

21 Q. So the only photographs that you took are the
22 photographs that are contained in your report; is that
23 correct?

24 A. I believe so. Correct.

25 Q. Okay. So if there's no photograph showing an

1 reviewed parking lots for multifamily residential
2 buildings at all?

3 A. Yes. When I was at the City of Renton, I was
4 doing the same kinds of reviews.

5 Q. So between 1980 and 1990, you did that as
6 well?

7 A. Yes.

8 Q. And how many would you say that you did
9 between 1980 and 1990 for the City of Renton?

10 A. Probably around 500.

11 Q. And similar things that you looked for?

12 A. Same types of things: pedestrian access,
13 bicycle access, driveway connections to the arterial,
14 driveway widths, that kind of thing.

15 Q. And part of your reviews of these lots, what
16 would you do as part of your investigation? Would you
17 just look at plans, or would you go do a site visit?

18 A. Well, these are new development permits, so
19 there would not be any site at that point in time.
20 These would be development plans, what they were
21 proposing for their site.

22 Q. So you would review plans?

23 A. Correct.

24 Q. And you would make suggestions or what?

25 A. I would make requirements.

1 Q. And what would those requirements that you
2 would make be based on?

3 A. The safety and access.

4 Q. Just generally speaking, safety and access,
5 or would you rely on the code provision?

6 A. No, it wasn't necessarily related to a code
7 provision.

8 Q. So you would just --

9 A. It was a site review of the location where
10 the development was proposed for and what kind of
11 measures needed to be employed to provide safe and
12 efficient access for these developments.

13 Q. So just -- but if somebody pushed back, say,
14 and said "On what, you know, are you saying that I need
15 to change this on my plan?" what would your response
16 be? "Just because I said so"? I mean --

17 A. Basically, it's a requirement to be
18 permitted.

19 Q. I find that extremely hard to believe, that
20 you wouldn't have to say that there would be some
21 industry standard that you would have to cite to or a
22 code requirement or, you know, something concrete that
23 you would have to show to a developer or a contractor
24 to say "This is on which I'm saying that you need to do
25 X, Y, or Z and not just because I said so."

Exhibit C

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JEANETTE STOFLETH, an individual,

Plaintiff,

v.

KRISTINA COSGRAVE and “JAMIE DOE”
COSGRAVE, and the marital community
comprised thereof; 733 LAKESIDE
CONDOMINIUM ASSOCIATION, a
non-profit corporation,

Defendants.

No. 20-2-10139-7 SEA

ANSWERS AND OBJECTIONS TO
PLAINTIFF’S FIRST SET OF DISCOVERY
TO KRISTINA COSGRAVE

GENERAL OBJECTIONS

The following general objections may apply to any / all of the First Set of Interrogatories and Requests for Production of Documents (“First Set”) dated on or about June 17, 2020. The general objections, stated below, apply uniformly across all Answers, and a lack of mentioning any objection below is not intended to waive any of these general objections.

This responding party objects to the First Set to the extent they are burdensome, oppressive, and seek disclosure of information that is not relevant to the subject matter of this



1 litigation or reasonably calculated to lead to the discovery of admissible evidence.

2 This responding party objects to the First Set to the extent that they seek disclosure of
3 information that is protected by the attorney-client privilege, is immune from disclosure as
4 attorney work product or trial preparation material, or is protected by any other privilege or
5 immunity.

6 This responding party objects to the First Set as potentially unduly burdensome to the
7 extent that they seek disclosure of information that is already in the requesting party's
8 possession, that is equally obtainable by the requesting party from other sources, or that is not
9 within this responding party's knowledge, possession, custody, or control. To the extent
10 permitted by law, relevant information within the knowledge, possession, custody, or control of
11 third parties may be sought by subpoena to such third parties.

12 This responding party objects to the First Set to the extent that they seek to impose
13 obligations on the responding party that are greater than or inconsistent with the obligations
14 imposed by the Washington Civil Rules, applicable case law, or laws governing the proper scope
15 of discovery. This responding party further objects to each definition and instruction to the extent
16 it is overly broad, unduly burdensome, vague, or ambiguous, and thus likely to lead to a
17 confusing, inaccurate, misleading, unclear, or incomplete answer or response.

18 This responding party objects to the First Set in that they are unduly burdensome,
19 oppressive, and expensive to the extent they purport to require the responding party to review all
20 or substantially all of the documents in its files and to interview all or substantially all of its
21 agents, representatives or employees to determine whether any such document, agent,

1 representative, or employee might have information that might be responsive to one or more of
2 the requests as stated in the First Set.

3 This responding party objects to the First Set to the extent that they purport to define the
4 sources of information that are within the responding party's possession, custody, or control for
5 purposes of CR 33 and CR 34; and objects to the discovery requests to the extent they are not in
6 the responding party's possession, custody, or control.

7 This responding party has not completed its investigation of the facts relating to this
8 litigation, nor has it completed discovery in preparation for trial. This responding party reserves
9 the right to rely on any facts, documents, or other evidence that it may discover or may become
10 available or come to the attention of the respondent herein subsequent hereto. This responding
11 party reserves the right to assert additional objections and to amend its answers and responses to
12 these discovery requests should this responding party discover additional grounds for objection
13 or bases for response.

14 This responding party reserves the right to seasonably supplement these objections and
15 the answers and responses to interrogatories and requests for production as more information
16 becomes available. This responding party provides the following answers and responses subject
17 to and without waiver of the foregoing
18 objections.

19 Without waiving the above general objections, and subject to additional specific
20 objections identified below, this responding party answers as follows below.

21 DATED this 13th day of July 2021, 2020

1
2 INCIDENT

3 INTERROGATORY NO. 12: Describe the **INCIDENT**, including a description of the Location
4 of the **INCIDENT**, where you trip began and your intended destination, the circumstances
5 leading up to the **INCIDENT**, and any facts or circumstances you believe contributed to cause
6 the **INCIDENT**.

7 ANSWER: Please collect full details from USAA
8 Privately owned garage at 733 Lake St, Kirkland WA
9 The garage is on the lake and at the time of incident there was major
sun glare off the lake. There are also blind spots due to the design
of the garage area.
I was leaving home to go to an acupuncture appointment the the late
afternoon. My speed I was driving was no more than 5 mph.

10 INTERROGATORY NO. 13: Do you believe that any weather condition, road condition,
11 lighting or visibility problems, or any other physical characteristic of the **INCIDENT** scene or
12 the conditions that existed at the time of the **INCIDENT** contributed to or caused the
13 **INCIDENT**? If yes, describe each such condition in detail and explain the reason why it
14 contributed to or caused the **INCIDENT**.

15 ANSWER: Yes - The garage is from the lake and there was major sun glare that was impeding
16 my ability to see off the lake in which the garage is located. So as I took the
corner that led to the accident at the time of incident. There are also blind
spots due to the design of the garage area. There were no mirrors in order to see
17 around the corners and thick concrete walls so I could not have possibly seen or
heard the "victim of the incident". She seemed to run out of a dark corner as I
made the turn prior to hitting her.

18 INTERROGATORY NO. 14: At or within five minutes before the **INCIDENT** were you using a
19 cell of mobile telephone? If you answer is "yes", state the name, address, and telephone number
20 of the person to whom you were speaking and indicate when the conversation concluded.

21 ANSWER:

no

1 they are in compliance with CR 26(g).

2 DATED this 16th day of July, 2021.

3 RAINIER LEGAL ADVOCATES, LLC

4
5 
6 Matthew M. Kennedy, WSBA #36452
7 Of Attorneys for Cosgrave

8 **DECLARATION OF RESPONDING PARTY**

9 I declare under the penalty of perjury under the laws of the State of Washington that I am
10 the Plaintiff in this action OR I am the _____ of

11 _____ and am authorized to make the foregoing answers.

12 I declare that I have read the foregoing answers, know the contents thereof, and believe them to
13 be true and correct.

14 Dated this 13 day of July, 2021, 2020 at _____, Washington.

15
16 *Kristina Cosgrave*

17 _____
18 Kristina Cosgrave, Defendant

Appendix B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JEANETTE STOFLETH, an individual,

Plaintiff,

vs.

KRISTINA COSGRAVE and "JAMIE DOE"
COSGRAVE, and the marital community
comprised thereof; 733 LAKESIDE
CONDOMINIUM ASSOCIATION, a non-
profit corporation,

Defendants.

NO. 20-2-10139-7 SEA

DECLARATION OF JEFF HARRIS IN
SUPPORT OF DEFENDANT 733
LAKESIDE CONDOMINIUM
ASSOCIATION'S MOTION FOR
SUMMARY JUDGMENT

I, Jeff Harris, declare and state as follows:

1. I am over the age of 18, competent to testify herein, and have personal knowledge of all matters attested to in this Declaration.

2. I am the owner and principal of Jeff Harris Architectural Forensics, PLCC, which I founded in 2020. My experience involves over 40 years of architectural design and forensic experience. Of that, I spent over 20 years providing architectural design services for residential, commercial, institutional, transportation, parking, and health care facilities. As part of my design experience, I worked with owners to develop designs to meet their requirements and apply the applicable building codes and other related safety standards to those designs. As part of my

DECLARATION OF JEFF HARRIS

- 1 -

Betts
Patterson
Mines
One Convention Place
Suite 1400
701 Pike Street
Seattle, Washington 98101-3927
(206) 292-9988

1 forensic work experience since 2003, I have investigated a wide range of structures and surfaces,
2 ranging from residential and commercial buildings to parking lots and sidewalks, to apply the
3 relevant building codes, safety standards, and federal requirements, including but not limited to
4 the Americans with Disabilities Act, to determine whether any defects or code violations exist.

5 3. I am capable of testifying regarding architectural designs, specifications and
6 drawings of 733 Lakeside Condominium (“Lakeside”) as well as its construction through
7 forensic analysis. I have been qualified as an expert and testified in over 40 mediations,
8 depositions, arbitrations, and trials. I am well-versed in reviewing the plans and details of
9 various commercial and residential projects, whether regarding new construction of the same
10 through architectural details or regarding litigation based on allegations of construction and
11 design defects based on forensic analyses.

12 4. Attached as **Exhibit 1** is a true and correct copy of my curriculum vitae.

13 5. Lakeside retained me as its expert in this matter. I am the lead expert for
14 investigation and analysis of the allegations brought by Plaintiff in this lawsuit. In this regard, it
15 is one of my roles as Lakeside’s expert to assess the allegations made by Plaintiff by comparing
16 them to the information obtained through investigations and review of the work performed to
17 determine whether the work was performed pursuant to the plans, local building codes, industry
18 standards, and in a workmanlike manner, etc. As part of my investigation, I examined each
19 alleged condition in Plaintiff’s Complaint related to the parking garage against my own
20 investigation. I also examined Plaintiff’s expert’s report and deposition testimony, copies of the
21 permits issued by the City of Kirkland related to Lakeside, applicable Kirkland ordinances and
22 codes, applicable building codes, and other information related to Lakeside. I also performed a
23 visual inspection of the Lakeside parking lot.

24 6. Based on the review of these documents and my inspection, I have formed
25 opinions regarding Lakeside’s parking garage.

1 7. Lakeside’s construction was substantially completed in 1969. The plans for the
2 building were submitted to the City of Kirkland in 1968 and approved. Since 1969, except for
3 essential repairs to the pier foundation and the building envelope, Lakeside has not had any
4 substantial construction that would require compliance with recent building codes. Rather,
5 because the building was constructed between 1968 and 1969, the applicable building code
6 requiring Lakeside’s compliance is the 1967 Uniform Building Code. The applicable zoning
7 code at the time of Lakeside’s construction governing the parking was the 1967 City of Kirkland
8 Zoning Code, Comprehensive Zoning Ordinance No. 1076.

9 8. The parking garage layout at Lakeside complied with the applicable building and
10 zoning codes that were in effect at the time of its construction with the exception of the
11 dimensions of a few parking spaces. The dimensions of the parking spaces are not the cause of
12 Plaintiff’s injuries on a more probable than not basis to a reasonable degree of certainty.

13 9. In 1993, the City of Kirkland issued Lakeside a Certificate of Continued Use.
14 This certification severely restricts Lakeside from making any significant changes to the
15 property, including but not limited to expanding the structure, ramps, or parking garage. Rather,
16 Lakeside is substantially limited to the configuration of the structure that was in place at the time
17 it was built in 1968.

18 10. Vehicle traffic was directed in the parking garage with one-way aisles and ramps
19 leading to and from the street. There is nothing unusual about the layout of the parking and
20 pedestrian access to cars within the lower-level of the parking garage at Lakeside.

21 11. There was no requirement in the applicable codes at the time Lakeside was
22 constructed for designated pedestrian walkways within the parking garage. Moreover,
23 pedestrians walking through parking lot aisles and parking spaces in a parking garage is a
24 common, ordinary practice.
25

CERTIFICATE OF SERVICE

I, Cynthia Daniel, declare as follows:

1) I am a citizen of the United States and a resident of the State of Washington. I am over the age of 18 years and not a party to the within entitled cause. I am employed by the law firm of Betts, Patterson & Mines, P.S., whose address is One Convention Place, Suite 1400, 701 Pike Street, Seattle, Washington 98101-3927.

2) By the end of the business day on July 2, 2021, I caused to be served upon counsel of record at the addresses and in the manner described below, the following document(s):

- Declaration of Jeff Harris in Support of Defendant 733 Lakeside Condominium Association’s Motion for Summary Judgment; and
• Certificate of Service.

Counsel for Defendants Kristina Cosgrave and "Jamie Doe"
Cosgrave
Matthew M. Kennedy
Rainier Legal Advocates LLC
465 Rainier Blvd Ste C
Issaquah, WA 98027

- U.S. Mail
Hand Delivery
Facsimile
Overnight
E-mail/ECF

Counsel for Plaintiff Jeanette Stofleth
Anthony R. Marsh
Herrmann Law Group
505 5th Ave S Ste 330
Seattle, WA 98104-3893

- U.S. Mail
Hand Delivery
Facsimile
Overnight
E-mail/ECF

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 2nd day of July 2021.

Cynthia Daniel (handwritten signature)

Cynthia Daniel, Legal Assistant

DECLARATION OF JEFF HARRIS

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Betts
Patterson
Mines
One Convention Place
Suite 1400
701 Pike Street
Seattle, Washington 98101-3927
(206) 292-9988

EXHIBIT 1

JEFF HARRIS, AIA, CXLT

JEFF HARRIS ARCHITECTURAL FORENSICS, PLLC
206 714 5070 | ARCHITECTURAL-FORENSICS@OUTLOOK.COM

SUMMARY

Mr. Harris is a licensed architect in the states of Washington, Colorado and Hawaii who provides forensic investigations of conditions and code compliance related to fires, property damage, and personal injury on behalf of attorneys, insurers, owners and contractors. Most of his forensic investigations concern building components and analyses of applicable building codes and other standards as they relate to both personal injuries and the performance of those building components. He has provided expert testimony in over 40 mediations, depositions, arbitrations, and trials. He also prepares and teaches professional continuing education seminars for attorneys, insurance adjusters, and building envelope specialists on the application of current and historic building codes and related standards.

The subjects of Mr. Harris' investigations include building envelopes (exterior wall and roof assemblies) windows, structures, water damage, lighting, stairways, guard rails, sidewalks, curbs, ramps, parking lots, the profiles of walking surfaces and assessments of their slip resistance using an English XL Tribometer. His forensic analyses include research of requirements in current and historic model building codes such as the UBC, IBC, IFC, and IRC, state and city building code amendments, city ordinances, current and historic zoning codes, in addition to other standards including federal requirements in the ADA, FHA, and ABA to accommodate persons with disabilities.

Prior to joining a forensic engineering firm in 2003, Mr. Harris had over 20 year of experience providing architectural design services for residential, commercial, institutional, transportation, parking and health care facilities. This design experience included working with owners to develop designs to meet their requirements and apply building codes and other related safety standards to those designs, and coordinating the work of consulting civil, structural, electrical, mechanical engineers, and landscape architects.

EDUCATION

University of Utah, Master of Architecture, Salt Lake City, UT, 1985
School of Architecture, Pratt Institute, Attended, Brooklyn, NY, 1977-78
University of Utah, Bachelor of Arts, Anthropology, Salt Lake City, UT, 1973

LICENSES, CERTIFICATIONS AND REGISTRATIONS

Licensed Architect, Colorado, No. 402425
Licensed Architect, Hawaii, No. AR12135
Licensed Architect, Washington, No. 5650
Certification National Council of Architectural Registration Boards, (NCARB) No. 5 5734
Certified User Excel Variable Incidence Tribometers™, CXLT, No. 100659

PROFESSIONAL EXPERIENCE

Jeff Harris Architectural Forensics, PLCC, Edmonds, WA, 2020 – Present; Owner, Architect; Provides forensic analysis of conditions and code compliance related to property damage and personal injury on behalf of attorneys, insurers, owners, developers, and contractors.

JEFF HARRIS ARCHITECTURAL FORENSICS PLCC | 7632 230th SW, APT. A, EDMONDS, WA 98026

JEFF HARRIS, AIA, CXL

Jensen Hughes, CASE Forensics, Schaefer Engineering, (successive firms) Mountlake Terrace, WA, 2003 to 2020 -Senior Architect: Provided forensic analysis of conditions and code compliance related to property damage and personal injury on behalf of attorneys, insurers, owners and contractors.

Jeff Harris, AIA, Architect, Boston, MA, and Seattle, WA, 1988 to 2003 - Architect, sole proprietor: Provided creative and technical design services for owner clients and collaboration with other architects on houses, offices, retail and medical facilities including kidney dialysis centers in Boston and Seattle.

Architects & Associated Designers, Boston, MA, 1988 - Associate Architect: Won competition for contracts to prepare retrofits for 10 subway stations used by the Massachusetts Bay Transit Authority (MBTA) to provide access for persons with disabilities.

Warren Freedendfeld & Associates, Boston, MA, 1985 to 1988- Architectural Intern, Licensed Architect: Prepared designs for owners, and researched zoning and building code requirements for animal hospitals, tenant retail spaces, condominiums with pool enclosures, hotels and office buildings. Prepared competition-winning entry for in-fill house on Boston's historic Beacon Hill. Coordinated work of consulting civil, structural, electrical, and mechanical engineers.

Scott, Louie & Browning Architects and Engineers, Salt Lake City, UT, 1981 to 1985 - Architectural Intern: Prepared designs for churches, elementary schools, a federal government courthouse, ski resort lift ticket and ski patrol facilities at Alta, Utah, and single-family houses.

Battaglia Seckler Architects, New York, NY, 1980 to 1981-Architectural Intern: Prepared designs for owners, researched code requirements for maritime facilities, New York City Houses of Detention, adaptive reuse of industrial marine facilities and historic buildings.

William Petchler, Architect, New Haven, CT, 1979 to 1980 -Architectural Intern: Prepared working drawings for industrial buildings, shopping centers, condominium communities, and single-family houses; researched zoning and building code requirements.

PUBLICATION

Harris, J. (2008). How Mechanical Systems Affect Building Enclosure Failures. *CASE Newsletter*, Summer Edition

PRESENTATIONS

Harris, J (2018) *Hot New Trends in Building Cladding: Code Requirements for Fire Rating Assemblies in Building Envelope*, for the British Columbia Building Envelope Counsel (BCBEC), Victoria, B.C.

Harris, J Lianto, A (2018) *Hot New Trends in Building Cladding: Code Requirements for Fire Rating Assemblies in Building Envelope* for the British Columbia Building Envelope Counsel (BCBEC), Vancouver, B.C.,

Harris, J. (2014). *Rules, Regulations and Regrets*. Puget Sound Adjusters Association (PSAA) Spring Symposium, Tukwila, WA.

Harris, J., Archer, C. (2012). *Slip Resistance, Why Should You Care?* Health and Safety Continuing Education Credit presentation and demonstration for local American Institute of Architects (AIA) chapter, Seattle, WA.

Harris, J., Newbery, T. (2012). *Baby Boomers - Next 20 Years*. Premises Liability Claims in an aging demographic. Washington State Transit Insurance Pool (WSTIP) Annual Conference, Lacey, WA.

Harris, J., Lauderbach, R. (2011). *Navigating the Code Jungle*. CLE Presentation to Foster Pepper Construction Practice Group, PLLC, Seattle, WA.

JEFF HARRIS, AIA, CXLT

Harris, J., Lauderbach, R. (2011). *Navigating the Code Jungle*. CASE Studies Continuing Education CE/CLE Seminar for Adjusters and Attorneys, Mountlake Terrace, WA.

Harris, J. (2009). *Building Code Evaluations Made Easy*. CASE Forensics Internal Employee Training Seminar, Mountlake Terrace, WA.

Harris, J., Lauderbach, R., Thomas, S., Harris, W., Wolfert, W., Jhaddi, A., Trenary, B. (2007). *Manufactured Wood Siding Failure Investigation, a Multidiscipline Team Approach. Wood Rot Fungi – Investigations and Implications*. CASE Studies Continuing Education CE/CLE Seminar for Adjusters and Attorneys, Seattle, WA.

CONTINUING EDUCATION AND TRAINING

- *Fire Safety in Buildings Part I: Fire Behavior and Fire Department Operations*, NCARB Monograph, 2020
- *Why Buildings Fall Down*, NCARB Monograph, 2019
- *Prepared and presented lecture on building envelopes and fire*, BCBEAC, Vancouver, and Victoria, B.C. 2018
- *International Building Code changes from 2015 to 2018 edition – self-study*, 2019
- *Seminars on hygrothermal performance of building envelopes*, 15th Canadian Building Science and Technology Conference (CCBST) Vancouver, B.C. 2017
- *ATC-45 Safety Evaluation of Buildings after Windstorms & Floods*, AIA Seattle, 2009
- *Historic Wood Workshop*, Association for Preservation Technology NW Chapter, 2009
- *HVAC Fundamentals I & II*, CASE Forensics, 2008
- *Trends in Architecture and Engineering Law*, Skellenger Bender, Seattle, 2008
- *Principles of Design-Build Project Delivery*, Design-Build Institute of America, 2008
- *Design-Build Contract and Risk Management*, Design-Build Institute of America, 2008
- *Code Alternates and Interpretations*, AIA Seattle, 2008
- *Building Area and Means of Egress*, AIA Seattle, 2008
- *Inspector / Moisture Analysis, EIFS 3rd Party Inspector Certification*, EDI 2003-2008
- *Building Science Advanced Course*, Joseph Lstiburek and John Straube, Westford, MA, 2007
- *IBC-Updates and Amendments*, AIA Seattle, 2007
- *Washington's Condo Law, One Year Later*, AIA Seattle, 2007
- *Historic Stone Workshop*, Association for Preservation Technology NW Chapter, 2007
- *Building Science 2006 Seminar*, Joseph Lstiburek and John Straube, Seattle, WA, 2006
- *From Research to Reality*, British Columbia Building Envelope Council Conference, 2006
- *Non-Destructive Testing*, Association for Preservation Technology NW Chapter, 2006
- *Mold Claim Prevention Strategies*, Bullivant Houser Bailey PC, 2006
- *Energy versus the Envelope*, British Columbia Building Envelope Council Conference, 2005
- *It's in the Details: Details by Design*, AIA Seattle Chapter, 2005
- *Roofing: Staying on top of Technology and Change*, National Research Council Institute for Research in Construction, 2005
- *Building Code Transitions 1997 UBC to 2003 IBC*, AIA Seattle Chapter, 2004
- *It's in the Details*, AIA Seattle Chapter, 2004
- *Water Intrusion and Mold Problems in Washington*, Lorman Educational Services, 2003
- *It's in the Details: Envelope Wall Design to Avoid Moisture Issues*, AIA Seattle Chapter, 2003
- *Building Code Transitions 1997 UBC to 2003 IBC*, AIA Seattle Chapter, 2003

SOCIETIES AND MEMBERSHIPS

American Institute of Architects (AIA)

Association for Preservation Technology International (APT)

British Columbia Building Envelope Council (BCBEAC)

Appendix C

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

JEANETTE STOFLETH, an individual,

Plaintiff,

vs.

KRISTINA COSGRAVE and **“JAMIE
DOE” COSGRAVE**, and the marital
community compromised thereof; **733
LAKESIDE CONDOMINIUM
ASSOCIATION**, a non-profit corporation.

Defendants.

No. 20-2-10139-7 SEA

**DECLARATION OF GARY NORRIS IN
SUPPORT OF PLAINTIFFS’ RESPONSE
TO DEFENDANT 733’S MOTION FOR
SUMMARY JUDGMENT**

I, Gary A. Norris, being over the age of 18 and competent to testify to the matters herein,
declare as follows:

1. I have been retained by the Plaintiff, Jeanette Stofleth, to provide my opinion regarding the potential negligence in the design and maintenance of the parking structure at 733 Lakeside Condominiums.
2. I have over 45 years of experience in traffic engineering and design. I received a B.S. in Civil and Traffic Engineering in 1973, followed by a Master’s in Civil Engineering and Transportation Planning in 1977, both from the University of Washington. I have received licensure as a professional engineer in eight (8) jurisdictions. I am nationally certified as Professional Traffic Operations Engineer, (PTOE) and Road Safety Professional (RSP)¹. I spent 18 years as a transportation planner/engineer for the cities of Seattle, Bellevue, and Renton and Director of Public Works for the City of

DECLARATION OF GARY A. NORRIS

1 Edgewood. A primary focus of my career has been on the evaluation of safety
2 considerations of our transportation systems.

- 3 3. Attached as Exhibit A to my declaration is a true and correct copy of my curriculum
4 vitae.
- 5 4. I was asked to draft a report of my findings following my investigation of the 733
6 Lakeside Condominiums. A true and correct copy of that report is attached as Exhibit
7 B to my declaration. I incorporate by reference that report into this declaration, making
8 it under penalty of perjury and on a more probable than not basis.
- 9 5. Building codes are not meant to be complete protection against negligent design.
- 10 6. General design principles are not always included in the code. The reviewing engineer
11 should be responsible to apply background knowledge and training to evaluate the
12 safety of specific design configuration and use their discretion to apply those general
13 principles.
- 14 7. A significant amount of discretion is given to engineers in the performance of their
15 duties in reviewing plans for potential buildings.
- 16 8. Different reviewers could reach different conclusions concerning the suitability of a
17 particular project.
- 18 9. As I mentioned in my deposition, I have significant experience reviewing such
19 projects and if this project came to me to review, I would not have approved it, due to
20 the issues identified in my report. This is true if I had been reviewing it applying the
21 standards of 1968 or today.
- 22 10. This building fails to live up to the general design principles that existed in the
23 community of reviewing engineers in 1968 or today.
- 24 11. The facility manager has a duty to conduct an ongoing assessment of vehicular and
25 pedestrian safety on the site. The managers have failed to note these issues and take
26 corrective action.

27
28
DECLARATION OF GARY A. NORRIS

1 12. The specific failures I note include issues around visibility and sight distance, which
2 are consistent with the facts of this incident. The Defendant driver reported she was
3 unable to see the Plaintiff before the impact. Visibility appears to be a significant issue.

4 DECLARED UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE
5 OF WASHINGTON, DATED this 16th day of July 2021 at Preston, Washington.

6
7 /s/ Gary A. Norris
8 Gary A. Norris

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the Washington State, that on 19th day of July 2021, I served a true and correct copy of the foregoing document delivering the same to the following attorneys of record, by the method indicated below, addressed as follows:

Natasha A. Khachatourians, WSBA #42685 Attorneys for Defendant 733 Lakeside Condominium Association Betts Patterson Mines One Convention Place, Suite 1400 701 Pike Street Seattle, Washington 98101-3927 (206) 292-9988 nkachatourians@bpmlaw.com carkins@bpmlaw.com cdaniel@bpmlaw.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> ABC Legal Messengers <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> Electronic Court Filing
Matthew M. Kennedy, WSBA #36452 Rainer Legal Advocates, LLC 465 Rainer Blvd. N., Suite C Issaquah, WA 98027 (425) 392-8550 matthew@rainieradvocates.com chris@raineradvocates.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> ABC Legal Messengers <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> Electronic Court Filing

By: /s/John Herrmann
John Herrmann, Paralegal

Exhibit A

GARY A. NORRIS, P.E., P.T.O.E

Project Manager/Senior Traffic Engineer

Total Professional Experience:

- ◆ 35 years

Education:

- ◆ University of Washington, M.S., Civil Engineering, Transportation Planning, 1977
- ◆ University of Washington, B.S., Civil Engineering, Traffic Engineering, 1973

Professional Registrations and Licenses:

- ◆ Professional Engineer, RI, 2018
- ◆ Professional Engineer, DC, 2013
- ◆ Professional Engineer, VA, 2013
- ◆ Professional Engineer, MD, 2011
- ◆ Professional Traffic Operations Engineer, US, 2004
- ◆ Professional Engineer, ID, 2003
- ◆ Professional Engineer, OR, 1998
- ◆ Professional Engineer, WA, 1980

Professional Societies

- ◆ Fellow, Institute of Transportation Engineers
- ◆ Past President, Washington State Section ITE
- ◆ Member, ITE - Transportation Safety Council
- ◆ Chairman, Washington State Section ITE Safety Committee
- ◆ Member, APWA

Publications

- ◆ Sub Area Transportation Planning: *A Case Study of Bellevue Washington*, Traffic Quarterly, Eno Foundation, 1978.
- ◆ Work Zone Traffic Control: *The Next Generation*. ITE District 6 Annual Meeting Compendiums of Papers, 2002.

Awards

- ◆ FHWA, Highway Safety Scholarship Grant

Brief Summary of Experience:

Gary Norris is a senior engineer with over 35 years of experience in traffic engineering and transportation planning as a consulting engineer and a traffic engineer and planner for local governments. Mr. Norris spent 16 years as a transportation planner and traffic engineer for the Cities of Seattle, Bellevue and Renton, Washington. A major focus of his career has been the evaluation, analysis, and project formulation for the improved multi-modal safety of our

transportation system. He has served on local, regional, and state committees for the improvement of multi-modal traffic safety. He has aggressively pursued the development of and funding for necessary traffic safety projects.

Selected Relevant Projects

Center Parkway at Grade Railway Crossing.

Mr. Norris was retained as an expert witness for the Tri City Railway regarding the WUTC Petition to allow the Cities of Richland and Kennewick to construct an at-grade railway crossing on Center Parkway. Mr. Norris reviewed background documents and presented testimony before the WUTC Administrative Law Judge in regard to the petition.

Assessment of the Transportation Plan for BRAC Recommendation #133 Project Fort Belvoir-Mark Center, Virginia; US Department of Defense – Inspector General’s Office.

As a sub consultant to SAMS, Inc., Mr. Norris prepared an assessment of the Army’s Transportation Plan for the relocated Washington Headquarters Service to Mark Center in Alexandria, Virginia. The work required an assessment of the viability of the Army’s Plan to accommodate the transportation needs of the relocated 7000 employees and defense contractors. The assessment evaluated previous transportation studies and other documentation that was used in the formulation of the Army’s Transportation Plan. The findings of the assessment were summarized in a report submitted to Congress. The project also included presentation of our findings to Congressional review committees on defense funding.

Experience with Highway Safety Improvement

Program (23 CFR 924) As a municipal traffic engineer and planner for the Cities of Bellevue and Renton, WA, Mr. Norris was involved in the development of the State of Washington Model Traffic Records System which included crash information, enforcement activity, signing and channelization in a digital format. This work included the development of a records protocol for collecting, storing, and retrieving data.

As the traffic safety engineer for these Cities, Mr. Norris prepared an annual evaluation of the crash history on City streets with a focus on evaluating data to determine cause of crashes and potential countermeasures. This work resulted in a prioritized list of traffic related safety improvements which were then submitted to the state for potential Hazard Elimination and Traffic Safety grant funding.

As a private consultant to state and local agencies, Mr. Norris has extensive experience in the analysis of crash

histories and development of countermeasures to address the safety deficiencies. Some of these projects include:

Washington State Rail Office – On Call Contract. Conducted a safety evaluation of 15 at grade railway crossings which included documentation of crash history, evaluation of traffic control devices, estimation of future crash potential, and identification of potential counter measures including closure of the crossing. The study process involved the use of data collected consistent with TMS requirements of CFR 500.

King County Department of Transportation – Traffic Safety On-Call Project. Mr. Norris was a member of the consultant team which prepared a safety/crash analysis of 100 major intersections throughout King County, Washington. The purpose of the study was to research the crash history records of roadway segments and intersections in the County and identify a prioritized list of 100 locations for improvement. Additional analysis evaluated each location and identified countermeasures to address the existing roadway or intersection deficiency. This list was further prioritized and included in the agency's Six Year Transportation Improvement Program.

City of Edgewood – Mr. Norris assisted Ms. Southern in the preparation of a pedestrian safety study intended to guide the City in the development projects to support safe and efficient pedestrian circulation in the City following a traffic fatality involving a student waiting for a school bus.

Experience with Statewide Transportation Improvement Program (23 CFR 450.216) and Statewide Transportation Plan (23 CFR 450.214 and 322)

As an Assistant Transportation Planner for the City of Seattle; Transportation Planning Engineer for the City of Bellevue; and Transportation Systems Manager for the City of Renton, Mr. Norris was responsible for the preparation of each agency's six-year transportation improvement program. This project required extensive effort in reviewing traffic related data to identify deficient roadway sections and intersections and determine countermeasures which were formulated into projects to include in the six-year transportation improvement program.

In his positions at the City of Bellevue and Renton, Mr. Norris also served as a technical advisor to the Sub Regional Committee on Transportation for the Puget Sound Regional Council. In this role Mr. Norris established project rating criteria which provided the basis for determining the priority for all projects competing for Federal funds. Through this

process, Mr. Norris worked with the Committee to establish a regional project priority list for submittal to WSDOT and eventual inclusion in the State Transportation Improvement Program.

Through this committee, Mr. Norris also participated in the development of the Statewide Transportation Plan and the Transportation Plan for the Puget Sound metropolitan area prepared by the Puget Sound Regional Council.

As a private consultant, Mr. Norris has extensive experience in the development of local transportation plans based on guidelines of the state and metropolitan area plans including:

Kittitas County 20-Year Transportation Plan/Study; Kittitas County, WA: Lead Engineer for the development of the 20-Year Transportation Plan for Kittitas County. The project included an evaluation of the existing county road system for safety, capacity, and consistency with existing County Road Standards. The consultant collected daily and peak hour traffic counts at 30 intersections throughout the county and estimated turning movement volumes at the remaining arterial/arterial intersections; collected crash data and developed crash rates for each arterial segment and arterial/arterial intersection; evaluated each arterial for consistency with the updated County Roads Standards; development of a traffic forecasting model to estimate 20 year growth in transportation; prepared a 20 year capital facility plan to address the capacity and safety deficiencies; and developed transportation policies to assist in the future development of the county road system.

City of Cle Elum 20 Year Transportation Plan/Study; Cle Elum, WA. Lead Engineer for the development of a 20 Year Transportation Plan for the City of Cle Elum consistent with GMA and State Transportation Plan Objectives. The study conducted an evaluation of existing safety and capacity deficiencies with the City. A new circulation plan was developed to address safety, capacity, and efficient circulation through and around the community.

Experience with Section 402 Highway Safety.

As the City Traffic Engineer for the City of Renton, Mr. Norris served on the Washington State Traffic Safety Commission which was formed under the auspices of Section 402 directives. Through participation in this agency, Mr. Norris worked with other local traffic engineers to develop, implement, and support the Washington State Safety Program.

Experience with Maintenance of Traffic (MoT). Multnomah Boulevard Force main Project. Bureau of Environmental Services, City of Portland,

Portland, Oregon. Mr. Norris was the project lead for the development of the work zone traffic control plans for the construction of the Multnomah Boulevard Force main project. Because of the restricted roadway cross section, traffic detour routes were created to divert all traffic from Multnomah Boulevard to parallel arterials including Vermont Avenue and Garden Home Road. This work includes extensive analysis of diverted traffic and necessary modifications to the existing traffic control signals. DN Traffic collected daily and peak hour turning movement counts at 10 critical intersections. Work zone traffic control plans were developed to implement the detour routing.

Fanno Creek Basin Force main Project. Bureau of Environmental Services, City of Portland, Portland, Oregon. Mr. Norris was the project lead for the development of the work zone traffic control plans for the construction of the Fanno Creek force main. The traffic control plans development is considering lane closures and restricting traffic to a single lane during night time work hours or complete closure of the roadway and detouring traffic to alternatives routes.

Portsmouth Force main Project. Bureau of Environmental Services, City of Portland, Portland, Oregon. Mr. Norris was the project lead for the development of work zone traffic control plans for Segment 1 and Segment 2 of the Portsmouth Force main Project. The traffic control plans included lane closures and time of day restrictions throughout the work zone. Several alternatives were considered to address the heavy peak hour traffic volumes generated from the UPS and other major industrial uses.

Oak B Basin Relief Project. Bureau of Environmental Services, City of Portland, Portland Oregon. Mr. Norris was the project lead for the development of work zone traffic plans for the construction of the Oak B pipeline along Burnside and several intersecting streets. The traffic control plans included lane closures along Burnside Avenue for approximately 12 blocks. This work necessitated signal modifications and extensive signing and traffic channelization along Burnside and Sandy Boulevard, two of the busiest arterial streets in the City of Portland.

Eastside Combined Sewer Outfall Project. Bureau of Environmental Services, City of Portland, Portland, Oregon. Mr. Norris was the project lead for the development of the work zone traffic control plans for the construction of the Eastside CSO project. The project included pump

stations and several miles of underground tunneling. The traffic control includes lane restrictions and lane closures to maintain pedestrian and vehicular circulation during construction.

Westside Combined Sewer Outfall Project. Bureau of Environmental Services, City of Portland, Portland, Oregon. Mr. Norris provided technical review for the development of the work zone traffic control plans for the Westside CSO project. The project included rechannelization of vehicular and pedestrian traffic to support construction of the Westside pipeline. The work included road and lane closures, signal modifications, and time of day restrictions and coordination with the contractor and City staff.

Tanner Creek Interceptor Project. Bureau of Environmental Services, City of Portland, Portland, Oregon. Mr. Norris was the project lead for the preparation of the work zone traffic control plans for the construction of the Tanner Creek interceptor. The work included closure of five blocks of Burnside between 11th Avenue and 15th Avenue. The closure necessitated the conversion of Alder Street a two-lane one-way roadway to a four-lane two-way road. This work included signal modifications, extensive signing and advance warning for pedestrian and vehicular traffic. The results of the work and the process were summarized in a paper presented to the annual meeting of the District Six Institute of Transportation Engineers.

Exhibit B

March 31, 2020

Anthony Marsh, Attorney
Hermann Law Group
505 5th Avenue S., Suite 330
Seattle, WA 98104

Re: Jeanette Stofleth 28275

Dear Mr. Marsh:

The purpose of this report is to document my work on this case and offer my opinions related to traffic engineering issues.

DOCUMENTS PROVIDED AND REVIEWED

I have received and reviewed the documents listed on Attachment 1. In addition, I reviewed Google Maps Street View images available for the location and conducted a site visit on Wednesday, November 20, 2019 and again on Wednesday, March 25, 2020.

It is my understanding that discovery is continuing in this matter. As such, I reserve the right to expand and/or modify my findings and opinions based on any and all additional discovery within my area of expertise. In arriving at my opinions and conclusions, I relied on my training, experience, and expertise, including my prior experience on other similar cases. Please note that all opinions expressed in this report are done so to a reasonable degree of scientific certainty.

QUALIFICATION

I am currently a Senior Engineer/Project Manager for DN Traffic Consultants, Inc.; a Registered Professional Engineer in Washington, Oregon, Idaho, Virginia, Rhode Island, Maryland, and the District of Columbia; and a licensed Professional Traffic Operations Engineer (PTOE) certified through the Institute of Transportation Engineers (ITE). My professional career has included a position with the City of Seattle Department of Transportation as an Assistant Transportation Planner; Long Range Transportation Engineer with the City of Bellevue Washington, Transportation System Manager for the City of Renton, Washington, and Public Works Director for the City of Edgewood, Washington. In each position, I was responsible for reviewing the annual crash history for each jurisdiction; establishing critical crash locations, identifying projects to mitigate safety concerns, and submitting projects for grant funding.

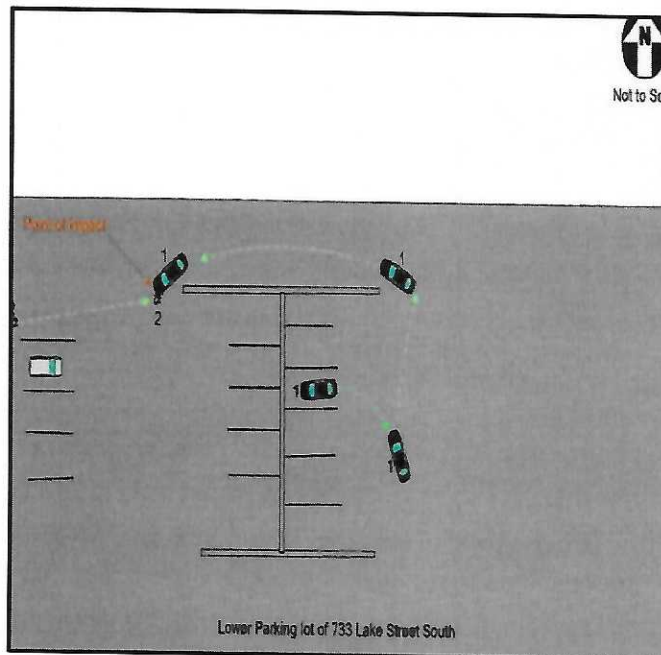
I have a Bachelor of Science in Civil Engineering – Traffic Engineering Emphasis and a Master of Science in Civil Engineering – Transportation Planning Emphasis. I received my master's degree under a Federal Highway scholarship in traffic safety. I have more than 45 years in the field of traffic engineering and safety.

After my time as a public agency official, I worked in the private sector as a project manager and senior engineer leading staff teams in the process of conducting safety reviews, developing transportation plans and formulating projects to address safety issues.

I am a member of the Institute of Transportation Engineers (ITE) and serve on the ITE Safety Council. I am currently the chair of the Washington State Section Safety Committee and responsible for developing the safety program for the annual Section program.

My opinions in this matter relate solely to the actions and/or inactions of the 733 Lake Street Condominiums Management Association.

DESCRIPTION OF CRASH



The subject incident occurred at the 733 Lake Street Condominiums located in the 700 Block of Lake Street South in the city of Kirkland, Washington. The crash occurred on Wednesday, June 12, 2019, at 16:48 PM. The weather at the time of the crash was sunny, with a high temperature in the 90's¹. The pavement surface was "dry".

According to the Police Report², when the Police Officer arrived, "Kristina Cosgrave's vehicle was angled as to make a left turn under the building next to a load bearing concrete wall about 2-3 feet from the corner of the wall. Directly next to the driver's side of the vehicle was Jeanette Stofleth, who was lying on the ground screaming in pain. Stofleth was wearing shorts, and I could

see bruising on her right leg from her hip down her upper leg. Stofleth complained of pain from her hip all the way to her foot on the right side. Stofleth was later transported by Kirkland Fire to Overlake Hospital for her injuries.

Kristina Cosgrave stated she had pulled out of her parking stall that was divided from the main parking area for vehicles to drive thru. Cosgrave stated she made her left turn to prepare to drive through the main area, and was traveling about five (5) mph. Cosgrave stated she began to make the next left turn and did not see Stofleth walking across her vehicle. Cosgrave stated the turn itself was also a blind left turn, and she was also experiencing some glare through her windshield from the sunlight also making it

¹ TimeandDate.com; Past Weather in Kirkland, Washington, USA, June 12, 2019.

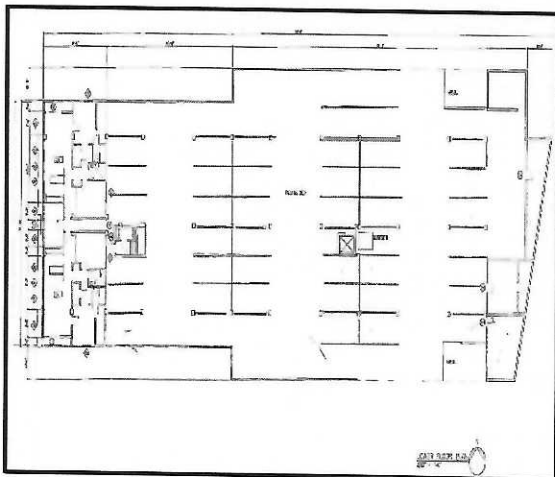
² City of Kirkland Police Department Report #E930038.

difficult for her to see. Cosgrave stated she did not feel her vehicle collide into Stofleth, and suddenly stopped her vehicle when she heard Stofleth scream.

Stofleth stated she was walking from her parking lot level apartment next to the water toward Lake Street South. While she was walking across the area of the lot for vehicles to drive through, she could see Cosgrave in her vehicle about to make a left turn. Stofleth stated she could tell that Cosgrave was not seeing her walking, but could not determine what was causing Cosgrave to be unaware of her presence walking. Stofleth stated by the time she realized that Cosgrave was not stopping, she was unable to avoid getting hit. Stofleth stated, in an attempt to avoid the collision, she spun her left side away from the vehicle, causing her right side to be next to the front driver's side corner of the vehicle. That portion of the vehicle collided into Stofleth's right leg causing her to fall to the ground in extreme pain. Stofleth stated the vehicle stopped immediately.

The crash occurred on private property and there was no negligence or recklessness found in the driving actions of Cosgrave. A Notice of Infraction was not issued, though it was determined that Cosgrave did not grant the right of way to Stofleth as the pedestrian on a private way."

DESCRIPTION OF CRASH LOCATION



The crash occurred at 733 Lake Street South, a lakeside condominium development, in the city of Kirkland, Washington. The crash occurred on the lower level in the parking garage.

The building was permitted for construction by the City of Kirkland on June 27, 1968 and was constructed in 1969. The building includes 38 condominium units on four (4) floors. Although there is no readily available information on the stratification of unit types, i.e. studio, 1 bedroom, and 2 bedrooms, a review of real estate advertisements³ indicates there are at least one bedroom and two-bedroom units included in the complex.

Parking Lot Layout

The major parking facilities serving the site are located on the lower level of the building in a parking garage. There are 41 parking stalls located on the lower level with an additional six (6) undercover parking stalls located on the street level for a total of 47 parking stalls on the site. Current Kirkland Zoning Code⁴ (KZC) parking requirements suggest onsite parking supply for the 733 Lake Street S Condominiums should

³ 733 Lake Street South Condominiums; <https://www.redfin.com/WA/Kirkland/733-Lake-St-S-98033/unit-312/home/34196>

⁴ Kirkland Zoning Code; 20.40.060 Parking Requirements: Studio 1.2 stalls per unit; One bedroom 1.3 stalls per unit; Two bedroom 1.6 stalls per unit.

range between 46 stalls and 61 parking stalls with the lower end of the range (46) representing 100 percent studio apartments and the upper end of the range (61) representing 100 percent two (2) bedroom units. Neither of which represents the actual situation. In addition, according to the KZC⁵, for Medium and High-density residential uses, the development must also provide guest parking equivalent to 10 percent of the required parking spaces. As stated in the KZC:

“A minimum ten (10) percent of the total number of required parking spaces shall be provided for guest parking and located in a common area accessible by guests.”

With the addition of the required guest parking, it is assumed the 733 Lake Street S condominium development should provide between 51 and 68 parking stalls or approximately 59 stalls which is significantly above the actual stalls number of stalls (47) currently provided. Therefore, it is assumed there is insufficient parking onsite to accommodate the demand.



North Side Entrance Driveway

Access to the parking lot, on the lower level, is provided by two (2) access driveways; one located on the north side and one located on the south side of the building. The driveway on the north provides access for vehicles entering the parking facility whereas the driveway on the south provides egress for vehicles exiting the parking facility. A cursory observation of both driveways indicates the grade is in excess of 15 percent. The KZC⁶ requires that driveways serving multi-family developments not exceed a grade of 6 percent in the first 20 feet. As stated in the KZC:

“The slope of vehicular access easements and tracts, and the slope of entrance and exit driveways, except driveways for detached single-family residences, shall not exceed six (6) percent for the first 20 feet from the face of the abutting right-of-way curb.”

⁵ Ibid; 105.20.3a; Number of Parking Spaces; Guest Parking

⁶ Kirkland Zoning Code Section 105.12; Maximum Allowable Grade

South Side Exit Driveway



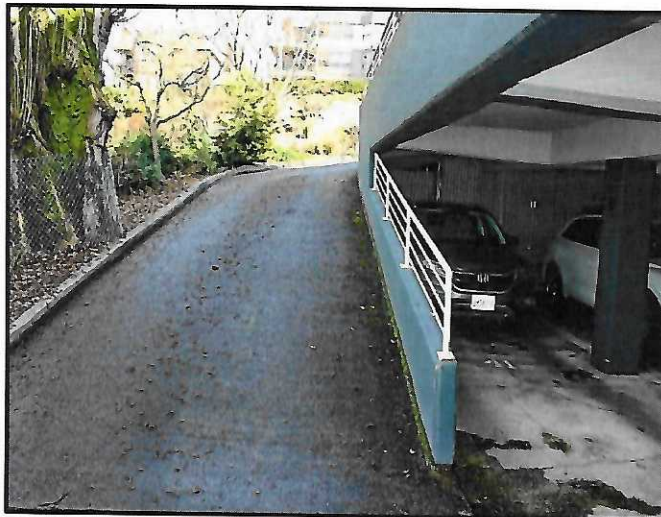
Based on field observation, both the grade of both driveways, north and south accesses, significantly exceed the Code required driveway grade.

Secondly, the site access driveways are required by Code⁷ to be a minimum width of 20 feet. Based on field observations, the driveways were approximately 11 feet wide significantly less than the Code requirements.

Finally, under the current KZC⁸, “all parking lots which contain more than 25 stalls must include pedestrian walkways through the parking lot to the main building”. The existing parking facility has a total of 41 stalls in the main lot and therefore exceeds these criteria and should provide pedestrian walkways.

Finally, under the current KZC⁸, “all parking

North Side Entrance Driveway at Parking lot Level



Kristina Cosgrave was required to exit her parking stall to the north and make three radical left turns with poor sight distance to exit the parking lot. These excessive and dangerous maneuvers were necessary because of the retaining wall which preempted Kristina’s ability to make a single left turn to access the south side exit driveway. This condition was further exacerbated by the fact there were no delineated pedestrian pathways through the parking facility providing a safe space for pedestrians and an expectation to motorists where pedestrians would be.

⁷ Ibid. Section 105.60.(2); Parking Area Design.

⁸ Ibid. Section 105.18(2e). Pedestrian Access



View of Main Parking Aisle

It is noted that the substandard conditions identified above do not imply code violations. Most of these standards were adopted after the permitting and construction of the 733 Lake Street South Condominiums in 1969 and therefore the development was not required to comply. However, the Code provisions identified above, speak to the issues that need to be addressed to provide safe and efficient circulation for all users of the facility.

In summary, the characteristics of the crash site suggest it is not a safe environment for pedestrians or vehicles

FINDINGS

- The 733 Lake Street S Condominium ownership has a duty to design, construct, and maintain safe access for all users of their facilities.
- The design and maintenance of the parking lot and access driveways required Kristina Cosgrave when exiting her parking stall to pass through the parking lot to the north; make a radical left turn to head west; immediately making another radical left turn to head south, passing through the main parking aisle; and then another radical left turn to exit the parking facility via the south side access driveway. She was prevented from exiting her parking stall to the south with a single left turn to the south side exit driveway because of the retaining all along the south side driveway and narrow width of the south side access. Each of the radical left turn created sight distance issues for the pedestrians and vehicles.
- The 733 Lake Street South Condominiums failed to provide designated pedestrian pathways through the parking facilities which pedestrian could use to avoid direct conflict with vehicles entering or exiting the parking facility. The designated pathways would also provide drivers with the expectation of where pedestrians would be when walking through the garage.
- The Condominium Management failed to provide any measures such as mirrors or electronic detection and notification devices to alert drivers of the presence of pedestrians.,
- The Condominium Management failed to recognize the safety issue created by forcing parking lot patrons to make multiple radical left turns with unacceptable sight distance when entering and exiting the parking lot.

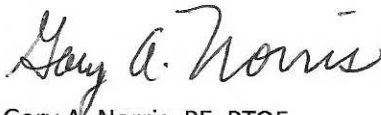
CONCLUSION

In review of the foregoing, it is conclusively apparent the 733 Lake Street South Condominiums Management failed to fulfill its duty to maintain a safe environment for condominium patrons. The basis for this conclusion is as follows:

-
- Lack of pedestrian designated walkways through the parking facility which protected pedestrians from direct vehicle conflicts.
 - Failure to install any equipment which would help alert pedestrians and vehicles about potential conflict between the two modes.
 - Failure to provide a parking lot circulation pattern which would minimize if not eliminate conflicts between pedestrians and vehicle.

Therefore, it is my opinion the 733 Lake Street S Condominium Management failed to exercise its duty to provide a safe environment for pedestrian and vehicles in the design, operation, and maintenance of the parking facilities. This failure led to the pain, suffering, and injuries experienced by Ms. Jeannette Stofleth.

Sincerely,



Gary A. Norris, PE, PTOE
DN Traffic Consultants, Inc

HERRMANN LAW GROUP

May 24, 2022 - 2:52 PM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 83183-6
Appellate Court Case Title: Kristina Cosgrave, Respondents v. Jeanette Stofleth, Appellant

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