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No 63-787-8

IN THE
SUPREME COURT OF THE STATE OF WASHINGTON

THE CITY OF MERCER ISLAND.

Petitioner,

v.

SUSAN CAMICIA,

Respondent.

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PETITION FOR REVIEW

Andrew G. Cooley
Adam L. Rosenberg
Keating, Bucklin & McCormack, Inc., P.S.
800 Fifth Avenue, Suite 4141
Seattle, WA 98104
(206) 623-8861

Counsel for The City of Mercer Island

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I. IDENTITY OF PETITIONER

Petitioner, the City of Mercer Island (“the City”), was the defendant at the trial court level, and respondent in Division I.

II. CITATION TO COURT OF APPEALS DECISION

On June 2, 2009, the Honorable Laura Inveen granted the City’s motion for summary judgment in this negligence action. *See* A-1 through A-7, *infra*. Plaintiff-Respondent, Susan Camicia (“Camicia”), received permission to pursue an interlocutory appeal of the Order. On November 8th, 2010, in *Camicia v. City of Mercer Island*, No. 63787-8-I (Schindler, J.), the trial court’s order was reversed. *See* A-8 through A-22, *infra*. The City sought reconsideration, which was denied on December 27, 2010.

III. INTRODUCTION

Camicia was injured while riding her bicycle on the I-90 bike path when she collided with a large wooden bollard. She brought suit against the City,¹ alleging various negligence theories. Because the I-90 bike path is, by definition, land used for “bicycling”—and thus, explicitly protected by the recreational use immunity statute—summary judgment was granted. Division I reversed, however, and issued an opinion that can only be described as a massive sea-change in Washington law. Contrary to all known precedent, the Court of Appeals concluded that the bike path’s

¹ Camicia also sued construction company, Howard S. Wright. Those claims were stayed by stipulation during the pendency of this appeal.

potential “transportation use” created an issue of fact. This analysis is just plain wrong; no court has ever stripped a landowner of immunity because its bike path had a transportation element—though many have done the opposite. Given that even Camicia’s own evidence demonstrates that recreation is an “important function,” immunity necessarily applies.

Equally surprising, Division I’s opinion was based almost entirely upon a new factual issue, raised *sua sponte* on appeal. Division I took issue with language in the ten year old deed transferring the bike path to the City, and found it dispositive—despite the issue never being raised or ruled upon below. Supplemental briefing was never allowed, and the City never had an opportunity to be heard. This is fundamentally unfair, if not constitutional in nature.

The City now petitions for review.

IV. STATEMENT OF THE CASE

A. Factual Background

1. THE I-90 BIKE TRAIL IS A RECREATIONAL AREA

At the time of the accident, Camicia was riding along a section of the I-90 bicycle trail owned by the City of Mercer Island. CP 4. While the trail generally follows the north side of the I-90 freeway, there are places where it diverges from the streets, and runs through grassy landscapes, such as Luther Burbank and Lid Parks. CP 158.

The bike path was originally built by the Washington Department of Transportation in the mid to late 1980's. CP 157. It was, then, part of I-90's limited access right of way, specifically, the "SR 90 North Mercer Connection." *Id.* This project included design and construction of a "bike path," as it was referred to.² *Id.*

The City acquired the area encompassing the accident site in April, 2000, from the State, by quitclaim deed. CP 610-41 (quitclaim deed and survey). The City—as owner—always considered it recreational. Indeed, the location of Camicia's accident is located with an area designated as part of the City's linear park system. CP 159; CP 688.³

In the City's Comprehensive Park, Recreation, Open Space, Arts & Trail Plan, major park elements are identified. CP 159. It refers to the I-90 trail and Linear Park as "regional parks." *Id.* The Comprehensive Plan reflects that there will be 8 miles of trails in the corridor." CP 159; CP 178. The Mercer Island Parks Guide, too, references this location. CP 160; CP 181-82.⁴

Perhaps more apparent, is that the design of the bike path is

² The original plan sheets also reflect construction of a "bike path." CP 158; CP 161-66. At one point, the contractor specially ordered curb cuts for ramps onto the "bike path." CP 158; CP 170-72. And a local environmental assessment refers to the area as a "bike trail," as did State Department of Transportation plans. CP 158; CP 173-75; CP 167-69.

³ This designation is consistent with planning documents and records dating back to 1973. CP 688.

⁴ By ordinance, the City treated the I-90 bike path differently than its transportation facilities. CP 688. Adult entertainment, for example, would be permissible next to a road or sidewalk, but it must be kept at least 600 feet from the bike trail. CP 688-89.

inconsistent with anything *except* a bike path.⁵ This is the reason that bollards were installed. Bollards are large wooden posts, unique to pathways accommodating bicycle traffic. CP 143-45; CP 158. Because bicycle paths are wider, it is easy for a vehicle to mistake them for a roadway and attempt to enter. *Id.* Bollards serve to distinguish the street system from the pathway. *Id.*

2. CITY OFFICIALS TESTIFIED THAT THE CITY-OWNED PORTION OF THE I-90 BIKE TRAIL IS CONSIDERED RECREATIONAL AND WAS CLOSED DOWN, AS NEEDED

Camicia has consistently claimed that the City “admitted” that it did not “control” the bike path, relying heavily on excerpts from deposition transcripts. Some context is in order.

Steve Lancaster is the Director of Development Services for the City. CP 687. He was designated as the City’s CR 30(b)(6) witness and asked to investigate a finite number of topics. He *was not* asked to research the City’s authority to close off the I-90 trail. CP 581. Nonetheless, at his deposition, that is exactly what he was asked. *Id.* Rather than give uneducated answers in a 30(b)(6) capacity, Mr. Lancaster gave a second deposition based upon his scant personal knowledge. CP 581-82; CP 783-84. Ultimately, Mr. Lancaster testified that the City—not

⁵ The path has a width of 8-10 feet and asphalt construction. CP 158. Had it served some other purpose, this would make no sense. CP 159. Its use by bicyclists, walkers, runners, and other “wheeled users” was specifically anticipated. *Id.* Narrower sidewalks, in contrast, are designed for exclusive use by pedestrians. *Id.*

WSDOT—controlled the bike path. CP 677; CP 680; CP 675-86.⁶

Mr. Yamashita, the City Engineer, has been similarly misquoted. He, like Mr. Lancaster, specifically rejects the suggestion that WSDOT retained some manner of jurisdiction over the accident site. CP 608; CP 645-46. Not only could the City shut down its portion of the bike path without permission, *it had done so* at various times. CP 609.⁷

Judge Inveen criticized Camicia for misquoting these individuals at the trial court level. CP 865. Whether intentionally misleading or not, Camicia's representations—if offered—should be handled with care.

3. THE QUITCLAIM DEED

As noted above, the City received this land from WSDOT by quitclaim deed. Division I took interest in the following language:

It is understood and agreed that the above referenced property is transferred for road/street purposes only, and no other use shall be made of said property without obtaining prior written approval of the grantor.

CP 624. This language reflects the 18th Amendment, which requires that gas tax money be used for those purposes. Division I assumed that this

⁶ Camicia has persistently offered out-of-context snippets, most of which is not even from the "30(b)(6) deposition." For example, Mr. Lancaster was asked whether the City could shut down "the entire" I-90 trail. He responded in the negative. CP 685. This is something very different than being able to shut down the small area where Camicia was injured.

⁷ Mr. Yamashita agreed that the City could not "permanently" shut down the path "[a]ll the way across Mercer Island from the East Channel Bridge to the floating bridge." CP 778. This, again, is a different question than that of the City's authority over the accident site.

was mutually exclusive with recreation. The City never had an opportunity to point out that this was error.

4. CAMICIA'S OWN EVIDENCE DEMONSTRATES THAT THE BIKE PATH WAS RECREATIONAL

The sum total of Camicia's showing is set forth in CP 322-388.

The Exhibits are taken in turn:

DOCUMENT	SUBSTANCE	RECORD
2004 EIS Comments and Responses, I-90 2-Way Transit and HOV Operations	<i>"Recreation is an important function of the path ..."</i>	CP 362 (emphasis added)
WSDOT Report Evaluating I-90 Bicycle and Pedestrian Path as Potential Section 4(f) Resource	<i>"According to the WSDOT Design Manual, the I-90 bicycle and pedestrian path is considered a 'shared-use' path... It is designed and built primarily for use by bicycles..."</i>	CP 365 (emphasis added)
2002 USDOT/FHA letter discussing potential Section 4(f) Resource	<i>"While WSDOT has acknowledged that recreation is an important function of the path ..."</i>	CP 369 (emphasis added)
2004 Final EIS, I-90 2-Way Transit and HOV Operations	<i>"While I-90 shared-use path...is used by bicyclists commuting to and from work and was provided primarily for transportation purposes, it is also used for recreational purposes..."</i>	CP 377 (emphasis added)

It is undisputed that recreation was at least an "important consideration" in the I-90 bike path, which comports with the City's own

belief and use. *See* CP 157-160; 687-689; 606-609; 675-678.

5. THIS ACCIDENT OCCURRED BECAUSE CAMICIA WAS NOT
LOOKING WHERE SHE WAS BICYCLING

On the afternoon of June 19, 2006, Camicia, like many others, was riding recreationally⁸ on the I-90 bike path in Mercer Island. CP 4; CP 566. Unfortunately, she failed to account for the wooden bollard in the middle of the bike path near North Mercer Way. CP 4. She does not claim that the bollard was difficult to see, and concedes that had she looked up, she would have noticed it. CP 567. But instead, she was “focusing on [a construction fence] footing,” placed by the co-defendant, and not looking where she was going. CP 568. Camicia collided with the bollard, and was thrown from her bike. CP 5. She brought suit against the City and Howard S. Wright Construction. CP 3.

B. Procedural Posture

1. JUDGE INVEEN GRANTED SUMMARY JUDGMENT⁹

When the City moved for summary judgment, Camicia opposed on

⁸ Though Camicia has argued that she was a “vocational commuter,” her deposition transcript tells a different story. It is apparent that she road home from work, met a friend, and proceeded to bicycle around Mercer Island for recreational purposes. CP 566. However, for the reasons set forth in this brief, any disagreement about Camicia’s subjective intentions are not material to the outcome of this appeal.

⁹ To be fair, Judge McBroom denied summary judgment originally, for failure of proof. Based upon admissions in the pleadings, the City did not know that Camicia would challenge the City’s ownership of the path. When Camicia did so, Judge McBroom found issues of fact—but acknowledged that it was “without prejudice,” and the question would ultimately have to be resolved before trial. CP 497 (Note 6); RP 53-54; CP 545-46. Judge McBroom then retired, and the case was transferred to Judge Inveen.

two grounds, namely, that the City did not have legal authority to close the trail (CP 713) and the City “viewed” the trail as a public transportation route (CP 716). At no point did she ever argue that *the quitclaim deed* in the record somehow imposed conditions on the City’s ownership. The City’s motion was granted by memorandum opinion. CP 872-79.

2. DIVISION I ISSUED A RULING BASED UPON THE QUITCLAIM DEED

Though Camicia raised a number of new issues on appeal,¹⁰ she *did not* argue that the quitclaim deed imposed any conditions on the City’s use of the land. But Division I *did* raise this issue—and ruled on it—without even permitting supplemental briefing under RAP 12.1. Division I found the deed dispositive. Opinion at 12.¹¹

V. AUTHORITY AND ARGUMENT

A. Division I Incorrectly Applied The Recreational Immunity Statute, In A Way That Deviates From Uniform Precedent

Division I did what no court has ever done: weighed primary and secondary uses of recreational land to find an issue of fact. This is

¹⁰ She argued, for example, that the City “charged a fee” for the path, and therefore could not raise immunity. She also argued that the City owed her a “contractual” duty of care. None of these arguments were accepted by Division I.

¹¹ It reasoned that the analysis came down to WSDOT’s view—as predecessor in interest—and concluded that there was “no evidence” it ever viewed the I-90 path as recreational land. With due respect, this is just plain wrong. As discussed above, the WSDOT findings uniformly acknowledge that recreation is, at minimum, an “important” use. See CP 362 (“Recreation is an important function of the path”); CP 365 (“It is designed and built primarily for use by bicycles...”); CP 369 (“... recreation is an important function of the path...”); CP 377 (“... it is also used for recreational purposes including bicycling...”).

contrary to the decisions of other Divisions as well as this Court.

1. The Recreational Land Use Immunity Statute Applies To Bike Paths, And Should Be Interpreted In Favor Of Its Purpose

The statute provides, in pertinent part, that:

... any public or private landowners or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to... *bicycling*... without charging a fee of any kind therefor, *shall not be liable for unintentional injuries to such users.*

RCW 4.24.210 (emphasis added); *Riksem v. City of Seattle*, 47 Wn. App. 506, 510-11, 736 P.2d 275 (1987) (applying recreational immunity to a regional bike path).¹² The statute is straightforward, and by its own terms, applies to bicycles.¹³ Landowners need not undergo a complex “opening up” or “designation” process, as Camicia argues. The landowner need only “allow members of the public” to use the property, and immunity presumptively applies. *Ibid.*

¹² If a condition is known, dangerous, artificial, and latent, recreational land immunity does not apply. *Van Dinter v. City of Kennewick*, 121 Wn.2d 38, 46, 846 P.2d 522 (1993). Wisely, Camicia has never claimed that the large, wooden bollard was a “latent” condition. *Cf. Gaeta v. Seattle City Light*, 54 Wn. App. 603, 609, 774 P.2d 1255 (1989) (railroad track not latent).

¹³ Camicia has continued to resist this plain language under the guise of “interpreting.” She will likely argue that “immunity represents a departure from the common law,” and RCW 4.24.210 should be interpreted “narrowly.” While perhaps true in a vacuum, Camicia will point to no part of the statute that is actually ambiguous or needs “interpretation.” A clear statute is not “construed.” *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003).

2. In Determining Whether Land Is “Recreational,” Courts Look To The Purpose Of The Landowner

To determine whether the statute applies, courts uniformly view the circumstances from the *standpoint of the landowner*. *Cultee v. City of Tacoma*, 95 Wn. App. 505, 514, 977 P.2d 15 (1999) (emphasis added); *Gaeta v. Seattle City Light*, 54 Wn. App. 603, 608, 774 P.2d 1255 (1989). If a landowner has brought himself within the terms of the statute, it applies. *Id.* The extraneous views of others are by definition irrelevant.¹⁴

Indeed, as a practical matter, this body of law makes a lot of sense. If a landowner is going to voluntarily—and gratuitously—permit the recreating public onto her land, she must be permitted to control her own destiny. The analysis must come down to *the landowner’s* beliefs—and not those of unpredictable third parties. If the law were otherwise—and immunity turned on uncontrollable factors and viewpoints—RCW 4.24 would provide no security or certainty. This defeats the stated purpose of the statute. *See* RCW 4.24.200 (statement of purpose).

3. So Long As A Property Owner Holds Land Open For Recreational Purposes, It Is Not Material That There Are Other Viable Uses

To date, courts have been very consistent. Understanding that a

¹⁴ For all intents and purposes, this analysis is a part of the statute. Where the Legislature refuses to clarify its intent following a judicial interpretation of a statute, acquiescence is presumed. *Buchanan v. Int’l Bhd. of Teamsters*, 94 Wn.2d 508, 511, 617 P.2d 1004 (1980). In such circumstances, the courts should not “change their mind” as to what a statute means. *See Riehl v. Foodmaker, Inc.*, 152 Wn.2d 138, 147, 94 P.3d 930 (2004).

distinction between primary recreation and secondary recreation is contrary to the statute, they have declined to infer one.

In *McCarver v. Manson Park & Rec. Dist.*, 92 Wn.2d 370, 377, 597 P.2d 1362 (1979), the plaintiff was killed following a diving accident at a local park. The estate argued that the statute should not apply because the land was held open “exclusively” for recreational use. *Id.* This court rejected the argument, and clarified the scope of the statute. It held, in no uncertain terms, that recreational immunity does not turn on the “extent” of recreation that can be derived from the land:

We decline to impose a limiting construction upon the statute differentiating land classifications based upon primary and secondary uses where the legislature did not. Arguments to achieve such a result should appropriately be addressed to the legislature.

Id. Consistent with the statute, courts do not determine immunity based upon its “primary” or “secondary” use of the land.

This reasoning has been applied in other Divisions of the Court of Appeals, as well. In *Widman v. Johnson*, 81 Wn. App. 110, 114, 912 P.2d 1095 (1996), the plaintiff was driving along an old logging road intersecting highway SR 407. At the intersection—which was missing a stop sign—she collided with a pickup truck. The plaintiff argued that the site of her accident “was not recreational land within the meaning of the statute.” *Id.* at 114. Citing *McCarver*, Division II rejected the argument,

reasoning that any “other purposes” the road could have been used for “lack[ed] legal significance.” *Id.*

Similarly, in *Chamberlain v. Dept. of Transp.*, 79 Wn. App. 212, 901 P.2d 344 (1995), the plaintiff was hit and killed by a vehicle while sightseeing on Deception Pass Bridge sightseeing. *Id.* at 214-15. The area itself was open to vehicle traffic. *Id.* The plaintiff argued that recreational immunity should not apply to a bridge subject to vehicle traffic. The court disagreed, reasoning that “[t]he fact that ‘highway’ and ‘sidewalk’ are defined elsewhere does not require that they be excluded from the provisions of the recreational use immunity statute.” *Id.* at 218.

The same was true in *Riksem v. City of Seattle*, 47 Wn. App. 506, 736 P.2d 275 (1987). There, the plaintiff was riding on a bike path when injured. *Id.* at 508. He argued that it was unfair to distinguish between “commuters” and “recreational users.” The court disagreed:

The statute applies equally to everyone who enters a recreational area. If an individual is commuting from one point to another, by either walking, running, or bicycling, said individual is at least secondarily gaining the benefits of recreation even though his primary goal may be the actual act of commuting.

Id. at 512 (emphasis added) (citing *McCarver v. Manson Park & Rec.*

Dist., 92 Wn.2d 370, 377, 597 P.2d 1362 (1979)).¹⁵

Applicable case law is uniform.¹⁶ *No court* has denied immunity on account of an alternative “transportation use”—presumably, because nearly *all* recreation *can* have alternative purposes. Snow mobile riding, hang-gliding, and rock climbing are all “transportation.” Hunting and fishing have commercial and practical purposes. Water channels are subject to commercial ferries. As this Court pragmatically—and correctly—held over 30 years ago, RCW 4.24.210 is not subject to a “limiting construction... based upon primary and secondary uses.” *McCarver*, 92 Wn.2d at 377. Perhaps the Legislature will one day create one; it certainly knows how to do so.¹⁷ But, as of now, it has chosen not to take that step.

¹⁵ *Accord Gaeta v. Seattle City Light*, 54 Wn. App. 603, 608-09, 774 P.2d 1255, *rev. denied*, 113 Wn.2d 1020 (1989) (rejecting significance of “commercial purpose” of property user).

¹⁶ *Camicia* will likely point to *Smith v. Southern Pac. Transp. Co. Inc.*, 467 So.2d 70 (La. Ct. App. 1985) and *Nielsen v. Port of Bellingham*, 107 Wn. App. 662, 27 P.3d 1242 (2001). Our case could not be more different. Neither involved a bike path or any other enumerated use in RCW 4.24.210(a). *Smith* involved an entirely different statute and analysis. And *Nielsen* involved a commercial port which charged fees. These cases are inapposite.

¹⁷ The Legislature certainly knows how to delineate its mandates in terms of “primary purposes.” *See, e.g.*, RCW 59.20.030(10) (defining mobile home park in terms of “primary purpose” of income production); RCW 46.04.500 (defining “roadway” in terms of its ordinary use); RCW 19.270.010(1) (defining “advertising” in the Computer Spyware Act by virtue of the primary purpose of the conduct); RCW 31.12.436(8) (defining where credit unions can invest funds by the “primary purpose” of the target organization). It *chose not to do so* in the Recreational Use Immunity Act. When language is used in one instance, but different dissimilar language is used in another, a difference in legislative intent is presumed. *Millay v. Cam*, 135 Wn.2d 193, 202, 955 P.2d 791 (1998).

**4. Review Should Be Granted To Correct Division I's
Deviation From Uniform Precedent And Confirm The
Scope Of Recreational Land Use Immunity**

Division I's reversal of summary judgment is based upon the unstated but faulty premise that "a part of the regional transportation system" cannot have an important recreational use. This was error.

It is undisputed that *everybody* viewed the I-90 bike path as an important recreational resource. *See* CP 362 ("important function of the path"); CP 365 ("designed and built primarily for use by *bicycles*"); CP 369 ("recreation is an important function of the path"); CP 377 ("used for recreational purposes including bicycling ..."). This is consistent with the City's own, undisputed, treatment of the property. *See* CP 159; CP 178; CP 688; CP 160; CP 181-82; CP 688-89; CP 158; CP 143-45.

Accordingly, immunity should apply. As this Court pointed out in rejecting Camicia's earlier motion to transfer:

[The appellate courts] have addressed issues similar or identical to those posed here.... Perhaps this court will have to decide at some point whether the statute applies when the use cannot be considered in any way recreational (say when a logger is driving on a logging road). But it is not clear that the distinction matter here, since Ms. Camicia rode towards her home from work, met a friend on Mercer Island, and then bicycled around the island with her friend.

A-25 through A-26 (Order, February 25, 2010) (collecting cases).

But more significantly, Division I's reasoning has real

consequences. Landowners will no longer be able to avail themselves to the certainty of the statute. RCW 4.24.210 deals in absolutes. That is its beauty. The clarity of the analysis incentivizes landowners to open their property, with the public as the ultimate beneficiary. By contrast, when courts begin finding issues of fact as to “the extent” of recreation, immunity is no longer predictable. It is wholly *uncertain* whether the landowner will be entitled to immunity when it is most needed. Landowners will act rationally and close their land to the detriment of the public.¹⁸

The City would submit that this is an issue of statewide significance, and review should be accepted.

B. The Court of Appeals Also Erred In Ruling Based Upon An Un-Litigated, Un-Developed Factual Issue

Almost as troubling as the outcome, is the way it was reached. Division I issued a *sua sponte* ruling that had never been raised below. This is unfair to all involved, and, of constitutional dimension.

1. When An Appellate Court Raises And Resolves Factual Issues On Appeal, It Does A Disservice To The Parties And Superior Court Judges¹⁹

¹⁸ This destroys the very objective of the statute. See RCW 4.24.200 (“to make [land] available to the public for recreational purposes by limiting their liability”); *Ochampaugh v. City of Seattle*, 91 Wn.2d 514, 523, 588 P.2d 1351 (1979) (noting “greatly expanding need and demand for outdoor recreational opportunities”).

¹⁹ George C. Christie, *Objectivity in the Law*, 78 YALE L.J. 1311, 1329 (1969) (“[T]he primary social purpose of the judicial process is deciding disputes in a manner that will,

The main features of the civil justice system are: (1) neutral and passive decision makers, and (2) party presentation of evidence and arguments.²⁰ Party identification of the issues is at its core.²¹

The court rules are designed to further the due process of law that the Constitution guarantees. *Nelson v. Adams USA, Inc.*, 529 U.S. 460, 465 (2000). And, “[t]he opportunity to present reasons, either in person or in writing, why proposed action should not be taken is a fundamental due process requirement.” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985). This is no less true in Washington. *See State v. Boast*, 87 Wn.2d 447, 451, 553 P.2d 1322 (1976) (noting importance of a complete record before the trial court). This protects the trial court judge, as well as the parties. *Haslund v. City of Seattle*, 86 Wn.2d 607, 614, 547 P.2d 1221 (1976) (“The trial court, in our view, should have had the benefit of vigorous and detailed objections... giving it an opportunity to correct the error, if any.”).²²

upon reflection, permit the loser as well as the winner to feel that he has been fairly treated.”)

²⁰ Stephan Landsman, *Readings On Adversarial Justice: The American Approach To Adjudication*, 2-4 (1988).

²¹ *See* Neal Devins, *Asking the Right Questions: How the Courts Honored the Separation of Powers by Reconsidering Miranda*, 149 U. PA. L. REV. 251, 252 (2000) (“[A] central tenet of our adversarial system is that (save for jurisdictional issues) the parties to a case—not the judges deciding the case—raise the legal arguments.”).

²² RAP 12.1 does allow the appellate courts to reach new issues, to be sure. But those issues must be raised in a specific way—with notice and an opportunity to be heard in briefing. *See* RAP 12.1. And in practice, the appellate typically reaches legal issues,

Thus, if a factual argument is to be made, there is nothing unfair about requiring *a party* to make it at the proper time, namely, to the trial court. Decisions made on an undeveloped record invite unnecessary remands, and at times, unreviewable error.

2. Had The City Been Permitted To Respond, Division I's Error Could Have Been Averted

Division I considered—and believed it resolved—the meaning of the quitclaim deed without any input from the parties. In doing so, it illustrated the very trouble with litigating the un-litigated. This was avoidable error.

The language in the quitclaim deed reflects the 18th Amendment to the Washington State Constitution, which provides that gas tax monies be “placed in a special fund to be used exclusively for *highway purposes*.” Wash. Const. art. II, sec. 40 (emphasis added).

Division I took for granted that a recreational bike path could never be a “highway purpose,” when, in reality, the opposite is true:

For the purposes of this chapter, the establishment of paths and trails and the expenditure of funds as authorized by RCW 47.30.030, as now or hereafter amended, shall be deemed to be for highway, road, and street purposes...

which can—to some extent—be dealt with on a closed record. *See, e.g., City of Seattle v. McCready*, 123 Wn.2d 260, 268, 868 P.2d 134 (1994) (authority of superior court considered for the first time on appeal); *Obert v. Envtl. Research & Dev. Corp.*, 112 Wn.2d 323, 333, 771 P.2d 340 (1989) (“determinative statute” analyzed on appeal).

RCW 47.30.060 (emphasis added); *Northwest Motorcycle Ass'n v. State Interagency Committee for Outdoor Recreation*, 127 Wn. App. 408, 110 P.3d 1196 (2005) (rejecting argument that highway funds could not be used for recreational trails, because gas is expended there as well).²³

Under RCW 47.30.060 bike paths have been a “highway purpose” since 1979. In the interim, the legislature has re-visited Recreational Immunity over a half-dozen times—only expanding it. Had it wanted to exclude areas constructed with “highway funds,” or areas with “road/street purposes,” it would have done so. See *Martin v. Trial*, 121 Wn.2d 135, 148, 847 P.2d 471 (1993) (legislature presumed to have full knowledge of existing laws affecting matters upon which they act). It did not.

The courts, too, have issued uniform precedent on this issue. In *Widman*, the accident occurred on a road—immunity applied. *Widman*, 81 Wn. App. at 218. In *Chamberlain*, the court the accident happened on a statutory street—immunity applied. *Chamberlain* 79 Wn. App. at 218. So long as the area is recreational in nature, and held out for public use without a fee, a “road/street purpose” has no bearing on immunity. That is precisely the case here, and Camicia does not argue otherwise.²⁴

²³ A “‘trail’ or ‘path’ means a public way constructed primarily for and open to pedestrians, equestrians, or bicyclists, or any combination thereof...” RCW 47.30.005.

²⁴ Division I also seemed to doubt the City’s authority to close down the I-90 path. It is true that recreational immunity requires that the landowner have “continuing authority to determine whether the land should be open to the public.” *Tennyson v. Plum Creek*

Finally, and as an aside, Division I wholly ignored the apparent—and undisputed—intent of the parties to the deed. The City and WSDOT have always interpreted the deed’s language to allow for recreation—which has been continuous since the bike path’s construction. There is no evidence of WSDOT exercising rights under the deed, or even wanting to. The opposite is true, however. WSDOT’s representative denied any ability to regulate the bike path. CP 504. The I-90 bike path has been used for recreation since its construction, and any limits to the contrary have long-since been waived. *See Martin v. City of Seattle*, 111 Wn.2d 727, 732-34, 765 P.2d 257 (1988) (“If a forfeiture is not declared within a reasonable time, the power of termination expires.”).

Upon review, it is not difficult to see why Camicia herself did not raise this issue—because it is ultimately without merit. Not only did Division I err in practical fact, but it illustrated the dangers of litigating un-raised issues.

VI. CONCLUSION

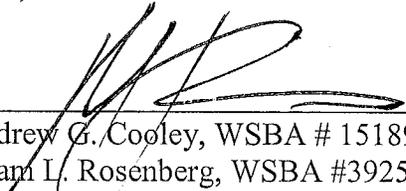
Judge Inveen correctly granted summary judgment—on both the

Timber Co., 73 Wn. App. 550, 557-58, 872 P.2d 524 (1994). In *Tennyson*, the court denied immunity to a contractor, who could not open or close the land, reasoning that “extending immunity... would not further the purpose behind the act.” *Id.* Here, however, it is undisputed that the City could—and did—close the path down from time to time. This authority is grounded in statute, RCW 47.48.010, and not in any way limited by the quitclaim deed’s language. Accordingly, unlike the contractor in *Tennyson* who had no authority to close the land, the objectives of immunity are served by application here.

record in front of her, as well as the issue raised by Division I. Her order should stand, and Camicia may pursue recovery from co-defendant, Howard S. Wright Construction Co., to the extent that her claims are legally and factually colorable. The City of Mercer Island respectfully requests that this Court grant review and reverse Division I's ruling.

DATED this 25th day of January, 2011.

KEATING, BUCKLIN & McCORMACK,
INC., P.S.



Andrew G. Cooley, WSBA # 15189
Adam L. Rosenberg, WSBA #39256
800 Fifth Avenue, Suite 4141
Seattle WA 98104
206-623-8861 / 206-223-9423 FAX
Attorneys for Petitioner

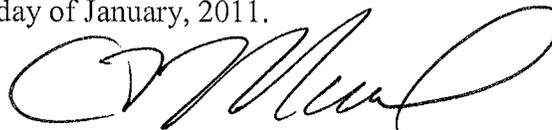
CERTIFICATE OF SERVICE

I, Aimeé L. Muul, hereby certify that on the 25th day of January, 2011, I served a true and accurate copy of the *City of Mercer Island's Petition for Review to the Supreme Court of the State of Washington* via ABC Legal Services messenger upon:

John Budlong
Law Offices of John Budlong
100 Second Avenue South, Suite 200
Edmonds, WA 98020

Roy Umlauf
Forsberg & Umlauf
901 5th Ave. #1700
Seattle, WA 98164

DATED this 25th day of January, 2011.



Aimeé L. Muul, Legal Secretary

Honorable Laura Inveen
Individual Calendar
Date of Hearing: May 29, 2009
10:00 a.m.

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Keating, Bucklin &
McCormack, Inc., P.S.

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

SUSAN CAMICIA,

Plaintiff,

v.

HOWARD S. WRIGHT CONSTRUCTION
COMPANY, a Washington corporation; and
CITY OF MERCER ISLAND, a municipal
corporation,

Defendants.

NO. 07-2-29545-3 SEA
GRANTING
**ORDER DENYING DEFENDANT CITY
OF MERCER ISLAND'S RENEWED
MOTION FOR SUMMARY JUDGMENT
BASED ON RECREATIONAL
IMMUNITY**

This matter having come on for hearing before the Honorable Laura Inveen on defendant City of Mercer Island's renewed motion for summary judgment based on recreational immunity, and the court having reviewed the following documents:

1. Defendant City of Mercer Island's Renewed Motion for Summary Judgment;
2. Declaration and Supplemental Declaration of Patrick Yamashita with exhibits;
3. Declaration and Supplemental Declaration of Steve Lancaster with exhibits;
4. Declaration of Andrew G. Cooley with exhibits;
5. Plaintiff's Memorandum in Opposition to Defendant City of Mercer Island's Renewed Motion for Summary Judgment Based on Recreational Immunity;
6. Declaration of John Budlong with exhibits;
7. Declaration of Edward Stevens;

granting
**ORDER DENYING DEFENDANT CITY OF MERCER
ISLAND'S RENEWED MOTION FOR SUMMARY
JUDGMENT BASED ON RECREATIONAL IMMUNITY- 1**

LAW OFFICES OF
John Budlong
100 SECOND AVENUE SOUTH, SUITE 200
EDMONDS, WASHINGTON 98020
TELEPHONE (425) 673-1944

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- 8. Defendant City of Mercer Island's Reply in Support of Summary Judgment;
- 9. Declaration of Adam Rosenberg
- 10. ~~10.~~
- 11. ~~11.~~
- 12. ~~12.~~

And the court having heard argument of counsel and deeming itself fully advised,
IT IS HEREBY ORDERED that Defendant City of Mercer Island's renewed motion for

summary judgment based on recreational immunity is ~~DENIED~~ *Granted*, pursuant to
the Court's Memorandum Opinion attached.
DONE IN OPEN COURT this 2 day of ~~May~~ *June*, 2009.

Laura Inveen

LAURA INVEEN, JUDGE

Prepared and presented by:
LAW OFFICES OF JOHN BUDLONG

By: *John Budlong*

JOHN BUDLONG, WSBA No. 12594
FAYE J. WONG, WSBA No. 30172

Attorneys for plaintiff Susan Camicia

Approved as to Form; Notice of Presentation Waived:
KEATING, BUCKLIN & MCCORMACK, INC., P.S.

By: _____
ANDREW G. COOLEY, WSBA No. 15189

Attorneys for Defendant City of Mercer Island

granted
ORDER ~~DENIED~~ DEFENDANT CITY OF MERCER
ISLAND'S RENEWED MOTION FOR SUMMARY
JUDGMENT BASED ON RECREATIONAL IMMUNITY- 2
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LAW OFFICES OF
John Budlong
100 SECOND AVENUE SOUTH, SUITE 200
EDMONDS, WASHINGTON 98020
TELEPHONE (425) 673-1944

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Carnicia v. Howard S. Wright Construction Company, et al
07-2-29545-3
Memorandum Opinion of the Court Granting Summary Judgment
June 2, 2009

Background

Defendant City of Mercer Island moves for summary judgment arguing RCW 4.24.210 (commonly referred to as the Recreational Use Immunity statute) prevents liability from attaching to the City for serious injuries sustained by the Plaintiff in a bicycle accident which occurred on a portion of the I-90 shared use trail adjacent to a park and ride facility under construction on the City of Mercer Island.

Mindful that appellate review of the trial court's decision on summary judgment is *de novo*, the intent of this opinion is to give guidance to the parties as to the basis of the decision to grant summary judgment in favor of the City of Mercer Island.

Plaintiff opposes summary judgment, arguing the Recreational Use Immunity statute does not apply on two grounds. The first argument is the city did not open the trail to public recreational use, or have legal authority or control to close it to public transportation. The second ground is based on the argument that the city viewed the trail as a regional public transportation route, rather than a recreational facility. Both arguments fail.

Opening to recreation, ownership and control

Opening to recreation.

When Mercer Island acquired the property in question, it already served as a pedestrian and bike trail. The fact that the city did not open the trail to public recreation use is not fatal to immunity. This very issue was dealt with in Riksem v. City of Seattle, 47 Wn. App 506 (1987), as it related to the city of Seattle's acquisition of the Burke-Gilman trail. Noting it would make no sense to give immunity only to those who originally opened land for recreational purposes, the court wrote: "*The statute clearly states it is an encouragement for owners/possessors in control of land to make them available to the public for recreational purposes by the limiting of their liability...*" 47 Wn. App at 510.

Ownership of the property.

Defendant establishes ownership of the property in question by virtue of a quit claim deed Yamashita's Supplemental Declaration, ex. A. Plaintiff asserts that ownership "*...is contradicted by the Final Environmental Impact Statement for the Park and Ride Project, in which WSDOT and the FTA determined with the City's concurrence that 'Based on the FTA and FHWA criteria, the shared-use pathway located along I-90 is owned by WSDOT.'*" Plaintiff's Memorandum, p.22. Although uncited in Plaintiff's Memorandum, the attributed language is found in the *FEIS to the I-90 Two-Way Transit and HOV Operations*, not the *Final Environmental Impact*

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Statement for the Park and Ride Project. Budlong dec., ex 7. As pointed out hereafter, that project only affected the shared use pathway on the I-90 floating bridge. The language in that FEIS is not such that would create an issue of fact as to the ownership of the portion of the path where Plaintiff's injury occurred. Furthermore, the City operates and maintains the property. Dec. of Yamashita, p. 2.

Control of the property.

Plaintiff argues that deposition testimony of city employees Lancaster and Yamashita stands for the proposition that the city does not have control over the portion of the trail on which Plaintiff's accident occurred. However, a closer reading of that testimony in context does not stand for such. (Note: fn 59 of Plaintiff's Memorandum is cited for Yamashita confirming the City lacked the legal authority to shut off the I-90 Trail permanently across the island without WSDOT's permission, when in fact that portion of Yamashita's testimony relates to the closing of I-90 freeway, not the trail). Furthermore, one queries as to whether either of those individuals has the testimonial capacity or personal knowledge to opine on the issue.

Regional transportation route vs. recreational facility

Plaintiff argues that the portion of the trail in question is a regional transportation route, and thus is not a recreation facility, removing it from the immunity protection of the statute. Plaintiff argues in its brief and oral argument that the I-90 Trail "is a regional, public transportation route which provides the only means of non-motorized travel from the east side of Lake Washington across Mercer Island to Seattle and back." That is incorrect. Although it is the only means of non-motorized travel across the water of Lake Washington, bicycle commuters are quite able to use Mercer Island surface roads to traverse the north end of the island. Furthermore, no legal authority is offered for exempting "regional transportation routes", nor for requiring the property to be a "recreational facility" for immunity to apply.

Plaintiff cites the Louisiana case of Smith v. Southern Pac. Transp. Co., 467 So.2d 70 (La.Ct.App.1985) to support its position "...that recreational immunity does not apply to a roadway built and maintained primarily for a non-recreational purpose that ran through a city park and was used for both commercial and recreational purposes. Plaintiff's Memorandum, p. 19. Smith should be limited to its facts, as noted in Gaeta v. Seattle City Light, 54 W.App 603, (1989). Granting recreational use immunity, the court in Gaeta noted major differences from those in Smith:

1. Plaintiff Smith was a professional truck driver;
2. The road in question was a thoroughfare through downtown New Orleans which "happens" to cut through a park for a portion of its length;
3. The roadway was built and maintained primarily for commercial use;
4. The City was raising the defense of the recreational use statute for the first time on appeal.

The facts at hand are more analogous to those in Riksem v. City of Seattle, 47 Wn. App 506 (1987). Implicitly acknowledging the Burke Gilman bicycle trail to be used both by commuters

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and recreational users, the court discounted Riksem's argument that the equal protection clause would be violated by treating recreational users different than commuters: "If an individual is commuting from one point to another, by either walking, running or bicycling, said individual is at least secondarily gaining the benefits of recreation even though his primary goal maybe the actual act of commuting." 47 Wn. App at 512.

Standpoint of the owner

Plaintiff argues that the city did not view the trail as a recreational "facility" (Plaintiff's term – not one that is used in the statute), and that in any event the landowner's viewpoint is irrelevant. Both arguments fail.

The City of Mercer Island views the trail in question as part of its park system. The 1991 city *Comprehensive Park, Recreation, Open Space, Arts & Trial Plan* identifies it as within one of the City's regional parks: "the I-90 Trails and Linear Park". It is listed in the city's park guide. Yamashita dec., ex. E. Furthermore, it is maintained by the Parks Department, rather than the Streets Department. Lancaster dec., p.2. It is placed in the same category as other parks and recreation facilities for purposes of applying the city's adult entertainment ordinance and the location of social service transitional housing limiting proximity to recreation areas. Lancaster, p. 2-3.

Both Divisions I and II of the Washington Court of Appeals have held that the statute is viewed from the standpoint of the landowner or the occupier of the land. Cultee v. City of Tacoma, 95 Wn. App 505 (Div II, 1998), Gaeta v. Seattle City Light, 54 Wn. App 603 (Div I, 1989). However, Plaintiff argues that Nielsen v. City of Bellingham, 107 Wn. App. 662 (2001) held "that the landowner viewpoint on whether recreational immunity is irrelevant when injuries occur on public transportation routes like the I-90 Trail that are built and maintained primarily for non-recreational use". (sic) Nielsen does not hold as Plaintiff suggests. Plaintiff Nielson was an invited guest of a live aboard boat owner who leased moorage at the Port of Bellingham's commercial marina. The Port argued that since members of the public were allowed to walk on the docks to enjoy the view and look at the boats without paying a fee, the recreational use statute should apply. Concedely, the beginning of the Court's opinion in Nielsen is somewhat perplexing, given the holdings of Gaeta and Cultee. The Nielsen court begins its focus on whether Nielsen was a recreational user at the time of her injury. The analysis of the court then evolves; looking at the use from the Port's "standpoint", from "any reasonably objective measure". In so viewing, the court held the purpose of the marina was commercial - that the reason the float in question existed was to provide moorage for commercial fishing boats and "live aboards" – all paying customers. In concluding its analysis ultimately holding the recreational immunity state did not apply, the court highlighted Plano v City of Renton, 103 Wn. App 910 (2000), indicating that for immunity to attach, the landowner must show that no fees of any kind were charged.

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Federal and state determination.

A substantial portion of Plaintiff's Memorandum focuses on purported classifications of the property in question by state and federal entities. Although no authority is given for the proposition that the determination of those entities carries any weight for purpose of the application of the statute, those entities do not appear to be considering the same criteria in any event.

49 U.S.C. 303 is a transportation funds statute the intent of which is to protect park and recreational land affected by roads to be constructed by federal funds. Administrative review of such projects and lands is commonly referred to as a 4(f) review. Plaintiff argues that state and federal determinations relating to 4(f) review of certain portions of the I-90 trail support a determination that the portion of the trail where Plaintiff's accident occurred is not recreational. However, the evidence cited by Plaintiff relates to portions of the trail across the I-90 floating bridge, *not* the portion crossing Mercer Island. Additionally, 4(f) applies to recreation *areas*, while the state statute only requires a recreation *use*.

Cited excerpts from the 2002 *Evaluation of the I-90 Bicycle and Pedestrian Path as a Potential Section 4(f) Resource*, prepared by the Washington State Department of Transportation (WSDOT) in anticipation of the I-90 Two Way Transit and HOV Operations Project relates only to the path on the I-90 floating bridge:

Project Background

Four of the five build alternatives being evaluated in the Draft Environmental Impact Statement (DEIS) for the Sound Transit Two-way Transit and HOV Project would affect the bicycle pedestrian path on the I-90 floating bridge. The project would not affect the path on Mercer Island. The bicycle and pedestrian path consists of a barrier separated shared-use ten-foot wide path on the north side of the Homer Hadley I-90 bridge.

.....
By providing a means of non-motorized access across Lake Washington, the path permits users to travel between Seattle and Mercer Island and access other areas in the Puget Sound Region. The path, in fact, is the only means for non-motorized access to Mercer Island and across Lake Washington."

(Emphasis added) Dec. Budlong, Ex. 4

Furthermore, Plaintiff cites to a 2002 letter to the WSDOT from the United States Department of Transportation as a determination the portion of the path on Mercer Island is not a significant recreational area. However, closer reading of that letter demonstrates that it relates only to the path across the I-90 bridge:

(Federal agencies) ...have been asked to provide a written determination that your proposed undertaking on the floating bridge would not constitute an impact under ...Section 4(f).

.....
Your agency has jurisdiction of the I-90 shared-use path, and, as noted above, we understand that WSDOT has determined that the primary purpose of the shared-use path on the floating bridge is transportation, and there is not a 'significant recreational area', as that term is used in 23 CFR 771.135. While WSDOT has acknowledged that recreation is an important function of the path, it considers this function secondary to the primary purpose of transportation.

(Emphasis added) Declaration, ex. 5. (Sidenote: It is interesting that this letter acknowledges recreation to be an important function of the path. If it is an important function of the path along the floating bridge, it certainly would be the same across the city. However, as noted previously, the outside agency's analysis is not determinative.)

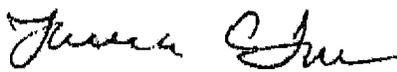
In addition, Plaintiff cites the 2004 *Final Environmental Impact Statement relating to the I-90 Two-Way Transit and HOV Operations*. But again, the page cited refers only to the portion on the bridge: "The shared-use pathway on the *FIMH floating bridge* is considered a transportation facility." Budlong, ex. 6.

It is logical to distinguish between a path alongside of a busy freeway which is the only method of crossing Lake Washington for non-mechanized users, and a path used by bicyclists and pedestrians that winds its way through city parkland adjacent to other streets over which the bikes can travel. This latter analysis is not meant to give deference to the determination of the state and federal government, but rather to point an additional deficiency in Plaintiff's argument.

Conclusion

For the reasons stated above, RCW 4.24.210 as applied to the facts at hand provide that the City of Mercer Island is statutorily immune, and summary judgment shall be issued in favor of the City.

Dated this 2nd day of June, 2009


Judge Laura C. Inveen

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THE SUPREME COURT
STATE OF WASHINGTON

RONALD R. CARPENTER
SUPREME COURT CLERK

SUSAN L. CARLSON
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TEMPLE OF JUSTICE
P.O. BOX 40929
OLYMPIA, WA 98504-0929

(360) 357-2077
e-mail: supreme@courts.wa.gov
www.courts.wa.gov

February 25, 2010

John Budlong
Faye Jew Wong
Law Offices of John Budlong
100 2nd Avenue South, Suite 200
Edmonds, WA 98020-3551

Roy Andrew Umlauf
Forsberg & Umlauf
901 5th Avenue, Suite 1400
Seattle, WA 98164-2047

Andrew George Cooley
Adam Rosenberg
Keating, Bucklin & McCormack Inc., P.S.
800 5th Avenue, Suite 4141
Seattle, WA 98104-3189

Honorable Richard Johnson, Clerk
Division I, Court of Appeals
One Union Square
600 University Street
Seattle, WA 98101

Re: Supreme Court No. 83957-3 - Susan Camicia v. Howard S. Wright Construction & City
of Mercer Island
Court of Appeals No. 63787-8-I

Clerk and Counsel:

Enclosed is a copy of the RULING DENYING MOTION TO TRANSFER signed by the
Supreme Court Commissioner, Steven Goff, on February 25, 2010, in the above entitled cause.

Sincerely,


Ronald R. Carpenter
Supreme Court Clerk

RRC:daf
Enclosure

A-8

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED
FEB 25 12 31 PM
BY
[Signature]

SUSAN CAMICIA,

Appellant,

v.

HOWARD S. WRIGHT
CONSTRUCTION COMPANY, a
Washington corporation; and CITY OF
MERCER ISLAND, a municipal
corporation,

Respondents.

NO. 83957-3

RULING DENYING MOTION TO
TRANSFER

A paved bicycle and pedestrian path or trail runs parallel to Interstate 90 from Seattle to the east side of Lake Washington. It is used for both recreation and commuting. After work on June 19, 2006, Susan Camicia rode her bike from Seattle to Mercer Island, and then bicycled around the island with a friend. While her friend rode ahead Ms. Camicia stopped for traffic at a crossing street and then rode on. On the other side of the intersection a lot had been taken over by a construction company that was working on a park-and-ride lot, and the footing for a chain link fence jutted out several inches onto the sidewalk near the corner curb cut. Several feet beyond were three large wooden bollards or posts used to keep vehicular traffic off the trail. Focusing as she rode on the fence footing, Ms. Camicia hit the center bollard, and sustained severe injuries. She later sued the City of Mercer Island, which owned that part of the trail, and the construction company that put up the fence. The city moved for summary judgment of dismissal, citing the recreational use statute, RCW 4.24.210, which provides that landowners or those in control of lands who without charging a

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fee allow members of the public to use the lands for outdoor recreation "shall not be liable for unintentional injuries to such users." RCW 4.24.210(1). Bicycling is specifically included within the statute's definition of outdoor recreation. The trial court granted the city's motion, and Ms. Camicia appealed to Division One of the Court of Appeals. Apparently, the case against the construction company is stayed pending the appeal. Now Ms. Camicia moves pursuant to RAP 4.4 to transfer her appeal to this court.

The cited rule provides that this court, "to promote the orderly administration of justice," may on motion of a party, transfer an appeal from the Court of Appeals to this court. In determining whether to transfer a case, the court looks to, among other things, whether the case meets any of the direct review criteria of RAP 4.2(a).

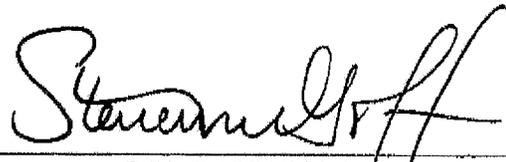
Ms. Camicia posits that her appeal involves novel and important issues of statutory construction meriting this court's direct review. *See* RAP 4.2(a)(4) (fundamental and urgent issue of broad public import which requires prompt and ultimate determination). These seemingly include whether the recreational use statute can apply to this path, since it is used for both recreation and commuting; whether the city sufficiently controlled its land to qualify for statutory immunity; whether the statute applies, given that the city does not own the whole trail and charges the Department of Transportation a fee to maintain the trail, and whether the statute applies only to recreational users or to all users.

I am not convinced that this case involves fundamental and urgent issues requiring this court's prompt and ultimate determination. The Court of Appeals routinely decides cases such as this one. *See, e.g., Riksem v. City of Seattle*, 47 Wn. App. 506, 736 P.2d 275 (1987) (bicyclist injured in collision with jogger on Burke-Gilman trail); *Gaeta v. Seattle City Light*, 54 Wn. App. 603, 774 P.2d 1255 (1989)

(motorcyclist injured on roadway over dam); *Widman v. Johnson*, 81 Wn. App. 110, 912 P.2d 1095 (1996) (motorist injured at intersection of state highway and logging road open to recreational users); *Chamberlain v. Dep't of Transp.*, 79 Wn. App. 212, 901 P.2d 344 (1995) (pedestrian hit by motorist on sidewalk or walkway over Deception Pass Bridge). In so doing it has addressed issues similar or identical to those posed here. See *Riksem*, 47 Wn. App. at 509 (rejecting arguments that statute did not apply to trails and paths, that it did not apply to successors in interest, and that it violated equal protection because it did not apply to commuters); *Gaeta*, 54 Wn. App. at 608 (rejecting argument that statute did not apply because roadway could be put to nonrecreational uses); *Widman*, 81 Wn. App. at 114 (rejecting arguments that statute did not apply because logging road did not provide access to recreational area and also served nonrecreational uses); *Chamberlain*, 79 Wn. App. at 216-19 (rejecting argument that statute did not apply because walkway met statutory definitions of highway and sidewalk). Ms. Camicia relies on *Nielsen v. Port of Bellingham*, 107 Wn. App. 662, 27 P.3d 1242 (2001), where the statute was held not to apply to a slip and fall on a float at a commercial marina owned and operated by a port district, despite the fact that the port district allowed visitors to walk on its floats and docks to enjoy the view and look at the boats without paying for that privilege. The court there held the statute does not apply by its terms if the owner charges a fee of any kind for use of the land. *Id.* at 666-69. While *Gaeta* suggested it did not matter than the motorcyclist there was also crossing the dam to get gas at a resort (a nonrecreational use), *Nielsen* focused on the statute as written, noting that it says that owners shall not be liable for unintentional injuries to "such users." RCW 4.24.210(1). The court in *Nielsen* said it declined to extend its statement in *Gaeta* to the facts of *Nielsen*. Perhaps this court will have to decide at some point whether the statute applies when the use cannot be considered in any way recreational (say when a logger is driving on a logging road).

But it is not clear the distinction matters here, since Ms. Camicia rode towards her home from work, met a friend on Mercer Island, and then bicycled around the island with her friend. Whether Ms. Camicia was a recreational user of the path at the time of her injury is a question the Court of Appeals can readily decide based on the evidence presented to the trial court on summary judgment.

The motion to transfer is denied.



COMMISSIONER

February 25, 2010

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

SUSAN CAMICIA,)	
)	
Appellant,)	No. 63787-8-I
)	
v.)	
)	UNPUBLISHED OPINION
HOWARD S. WRIGHT)	
CONSTRUCTION COMPANY and CITY)	
OF MERCER ISLAND,)	
)	
Respondents.)	FILED: November 8, 2010
_____)	
)	

Schindler, J. — Susan Camicia was seriously injured while riding her bicycle on the I-90 trail near the construction site of a Mercer Island park-and-ride project. Camicia sued the City of Mercer Island and the general contractor Howard S. Wright Construction Company. Camicia contends the court erred in granting summary judgment dismissal of her claims against the City as barred by the recreational land use statute, RCW 4.24.210.¹ The recreational land use statute limits liability for landowners “in lawful possession and control” of land who allow members of the

¹ The court certified the judgment for appeal under CR 54(b) and stayed the claims against general contractor Howard S. Wright.

public to use the land for recreational purposes. Because there are material issues of fact as to whether the City can assert immunity under the recreational land use statute, we reverse and remand for trial.

FACTS

The Washington State Department of Transportation (WSDOT) built the I-90 trail as part of a regional, non-motorized public transportation system with federal and state highway funds. The eight to ten-foot asphalt trail serves as a means of shared-use non-motorized transportation between Seattle, Mercer Island, and Bellevue. WSDOT designed and constructed the trail and installed bollards, or wooden posts, where the I-90 trail intersects with city streets.

On January 28, 1987, the City entered into the "I-90 Turnback and Landscape Maintenance Agreement" with WSDOT. The Agreement is identified as "Phase I" and provides for the "turnback and relinquishment of and/or transfer of ownership" of certain rights-of-way owned by WSDOT. The City also agreed to accept responsibility for maintenance of designated roadways, rights-of-way, and construction easements. In exchange, and WSDOT agreed to pay the City \$68,000 per year. The Turnback and Landscape Maintenance Agreement states, in pertinent part:

1. This Phase I Agreement is intended to cover those areas depicted in color on the attached map The areas include acceptance by the City of the turnback and relinquishment of and/or transfer of ownership by WSDOT of certain rights-of-way, roadways, and slope/construction easements. The areas also include the extra-wide structures which cross over I-90 and also include those irregular pieces of property north of the I-90 major retaining walls and between 76th Avenue SE and East Mercer Way which are currently within WSDOT right-of-way.
2. The City agrees to accept maintenance responsibility for each of the areas

3. City maintenance responsibility will involve all street and landscape maintenance and operation within areas shown . . . however, that WSDOT will remain responsible for structures and structural maintenance of retaining walls and overcrossings within the State right-of-way.

.....

5. WSDOT agrees to reimburse the City in the amount of Sixty-eight thousand dollars (\$68,000.00) per year for maintenance of the areas depicted This payment will be adjusted for inflation annually

In April 2000, WSDOT executed a quitclaim deed conveying title to portions of the I-90 trail. The Quitclaim Deed provides, in pertinent part:

the STATE OF WASHINGTON, for and in accordance with that Agreement of the parties entitled GM 1268, dated the 28th day of January, 1987, hereby conveys and quitclaims unto the CITY OF MERCER ISLAND, a municipal corporation in the State of Washington, all right, title, and interest under the jurisdiction of the Department of Transportation, in and to the following described real property situated in King County, State of Washington:

.....

It is understood and agreed that the above referenced property is transferred for road/street purposes only, and no other use shall be made of said property without obtaining prior written approval of the grantor.

In February 2006, Sound Transit retained Howard S. Wright Construction Company (HSW) as the general contractor to expand the Park-and-Ride located at the north end of Mercer Island. In March, the City issued a permit to HSW to construct a temporary chain link fence around the perimeter of the project. The fence ran south on 81st Avenue SE to the corner of N Mercer Way, and then west on N Mercer Way along the edge of the I-90 trail. The fence footing protruded into the public right-of-way. The wooden posts, or bollards, that separated the I-90 trail from

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the street were located approximately 20 feet west of the chain link fence at the intersection of 81st Avenue SE and N Mercer Way.

On June 19, 2006, Susan Camicia was riding her bicycle westbound on the I-90 trail on Mercer Island. When she reached the Park-and-Ride construction site, Camicia steered to the left to avoid the chain link fence and the fence footings. Camicia collided with the middle wooden bollard at the intersection of 81st Avenue SE and N Mercer Way. Camicia was thrown over the handlebars of her bicycle and landed head first on the asphalt. The fall severed her spinal cord and left Camicia quadriplegic.

In September 2007, Camicia filed a personal injury lawsuit against HSW and the City. Camicia alleged that HSW was negligent in the construction and maintenance of the fence and created a hazardous condition. Camicia alleged that the City was negligent in granting the permit to HSW to construct the fence, that the City breached its duty to maintain the I-90 trail in a reasonably safe manner, and that the City did not comply with applicable safety standards. In answer to the complaint, the City admitted WSDOT designed and constructed the mixed-use I-90 trail and the wooden bollards. The City asserted as an affirmative defense that Camicia's claims were barred under the recreational land use statute, RCW 4.24.210.

In April 2008, the City filed a motion for summary judgment dismissal of Camicia's claims as barred by the recreational land use statute. In support, the City submitted the declaration of City Engineer Patrick Yamashita and the City's designated CR 30(b)(6) witness, Developmental Services Director Steve Lancaster.

The City argued that it was entitled to immunity under the recreational land use statute because the City identifies the I-90 trail as part of its regional park system in the 1991 "Comprehensive Park, Recreation, Open Space, Arts and Trails Plan" (Comprehensive Park Plan) and the City's "Park System Guide."

In his declaration, City Engineer Yamashita testified that the portion of the I-90 trail on Mercer Island that the City operates and maintains connects with the bike path on the I-90 East Channel Bridge and the Floating Bridge. Yamashita testified that the bike path was designed and set aside for recreational use. Yamashita states that the location of Camicia's accident is identified as a bike path in the City's 1991 Comprehensive Park Plan and in the Park System Guide. The 1991 Comprehensive Park Plan provides, in pertinent part:

I-90 Trails and Linear Park

Primarily located along the north side of I-90, a multi-purpose pedestrian/bicycle regional trail will connect the East Channel and Floating bridges in 1992. Spur connections across the lids and overpasses will also be provided, tying together both sides of the 8-lane freeway. In total, there will be 8 miles of trails in the corridor. Both sides of I-90 and portions of the lids and overpasses will be heavily landscaped, and used as park lands. The linear park includes 90.5 acres along the freeway. The major portions of this park will buffer the Central Business District from the freeway.

According to Yamashita, the wooden bollards are located where city streets intersect with the I-90 trail to prevent vehicles from using the trail, and explained the difference between designing a sidewalk and a bike path.

Bicycle paths of this nature are generally much wider than a sidewalk or walking path. Because they are wider, there is the potential that a motorist may believe the bike path is part of the City street system. The bollards prevent vehicles from entering the area set aside exclusively for non-motorized users. In addition, the bollards serve to alert bicyclists that they are leaving the I-90 trail, and entering a public transportation

facility or crossing a street.

.....
The area of the accident is not just a sidewalk but a bike path. Sidewalks are designed for pedestrian use, and are typically five feet wide. They are not designed for shared or mixed use, like the bike path in our Linear Park. Bike paths anticipate mixed use by bicyclists, walkers, runners, and other wheeled users (like in-line skaters). Sidewalks are designed primarily for pedestrians. The bike path where Plaintiff was riding was much wider than most sidewalks, because it is a mixed use path set aside for recreation as part of the Linear Park and regional trail. It is so wide that bollards were installed by WSDOT to keep cars from entering the path.

Lancaster testified that based on his review of City records, "as far back as 1973," the bike path had been designated by the City as a recreational facility and part of its park system.

It is my belief and opinion based upon a review of the institutional records and documents, that the City of Mercer Island has designated the location where Susan Camicia had her accident as a recreational facility which served a mixture of uses.

In my review of records I found that as far back as 1973, planning documents designated the then-proposed I-90 trail as part of a system of parks and open space providing a major cross-Island open space trail link between the east and west sides of Mercer Island. My review of the records and documents indicated that after I-90 and the I-90 trail were constructed, the City designated the area of Camicia's accident as part of a "Linear Park." It made this designation in various versions of comprehensive plans, other planning documents, and parks department documents and maps.

Because the area of Susan Camicia's accident was designated as part of the I-90 Linear Park, and recognized by the City as a recreational facility, that portion of the park facility is maintained by our Parks Department. In contrast, public streets are maintained by a separate department within the City.

In opposition to summary judgment, Camicia argued that the recreational land use statute did not apply because the City did not establish possession and control of the portion of the regional I-90 trail where Camicia was injured, and the City did not

have the authority to “open up” or allow the public to use the land. Camicia submitted excerpts from the 2002 “Evaluation of the I-90 Bicycle and Pedestrian Path as a Potential Section 4(f) Resource” by WSDOT in conjunction with the “I-90 Two-Way and HOV Operations” project. In the evaluation, WSDOT states that it has jurisdiction over the I-90 trail and that the trail is a regional transportation route and not recreational land. Camicia also submitted the 1987 Turnback and Landscape Maintenance Agreement between WSDOT and the City, and portions of the depositions of Lancaster and Yamashita to show the City did not have the authority to close the I-90 trail.

The court denied the motion for summary judgment without prejudice. The court ruled there were material issues “as to whether or not the City has the power to close this transportation corridor, whether the City is actually the owner, and whether this is recreational use land at all.”

After the case was transferred to another judge, the City filed a renewed motion for summary judgment on the grounds that the recreational land use statute barred Camicia’s claims against the City. In support, the City submitted supplemental declarations from Lancaster and Yamashita, a survey, and the Quitclaim Deed between WSDOT and the City. The supplemental declarations clarify that the City “owned and controlled” the site of the accident. Yamashita also testified that the City could “unilaterally ‘shut down’ or limit use of this portion of the I-90 Trail if it desired to do so. If it did, it would not need to seek permission from any other authority since it is owned and controlled by the City.” The survey and the Quitclaim Deed are

attached to Yamashita's declaration.

In opposition, Camicia submitted the declaration of its engineering expert Edward M. Stevens. Stevens testified that the City did not comply with the American Association of State Highway and Transportation Officials (AASHTO) engineering standards or the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) because the City did not conduct "an engineering study to determine the condition or safety of the sidewalk bikeway before it allowed a construction fence to be installed along the edge of the N Mercer Way sidewalk." Stevens testified that in his opinion,

the City's bicycle facilities on the designated N. Mercer Way sidewalk bikeway where this collision occurred did not conform to the applicable AASHTO and MUTCD standards and WSDOT guidelines at the time Susan Camicia was injured. In my professional engineering opinion, the deficient clearances created by the construction fence, the deficient spacing between the unmarked and apparently unnecessary bollard posts, the lack of bright paint and reflectors on the bollard posts, the failure to remove the obstruction created by the middle bollard post, and the lack of envelope striping or other markings on the pavement to warn bicyclists of the middle bollard post made the sidewalk bikeway inherently dangerous and deceptive to a prudent bicyclist.

Camicia argued the City did not meet its burden of proving that the recreational land use statute applied and barred her claims against the City. Camicia asserted that the City did not have the authority to either open or close the I-90 trail for public recreation. Camicia also argued that the evidence did not support the City's claim that the I-90 trail was recreational land, and the supplemental declarations of Lancaster and Yamashita contradicted their earlier testimony.

The court granted the City's motion for summary judgment. The court ruled

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that the Quitclaim Deed established the City had ownership and control of the bicycle path at the location of the accident. The court also concluded the evidence established that the City had designated the I-90 trail on Mercer Island as recreational land. At Camicia's request, the court entered a final judgment under CR 54(b).

ANALYSIS

Camicia argues the trial court erred in dismissing her negligence claims against the City under the recreational land use statute, RCW 4.24.210. Camicia asserts that the City did not show the recreational land use statute bars her claims against the City.² The City asserts that the statute applies because it owns and controls the I-90 trail as part of its recreational parks system.

We review summary judgment de novo and consider the facts and all reasonable inferences in the light most favorable to the nonmoving party. Hearst Commc'ns, Inc. v. Seattle Times, 154 Wn.2d 493, 501, 115 P.3d 262 (2005). Summary judgment is appropriate only if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Bulman v. Safeway, Inc., 144 Wn.2d 335, 351, 27 P.3d 1172 (2001). But, where different competing inferences may be drawn from the evidence, the issue must be resolved by the trier of fact. Johnson v. UBAR, LLC, 150 Wn. App. 533, 537, 210 P.3d 1021 (2009).

The recreational land use statute, RCW 4.24.210, gives immunity to landowners for unintentional injuries to recreational users of the land. The statute

² We do not consider Camicia's arguments raised for the first time on appeal, including the argument that payment by WSDOT to the City under the Turnback Agreement is a fee under RCW 4.24.210(1). RAP 2.5(a).

applies if a landowner who is in lawful possession and control allows the public to use the land for recreational purposes without charging a fee. RCW 4.24.210 provides, in pertinent part:

(1) . . . any public or private landowners or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to . . . bicycling . . . without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users.

. . . .
(4) Nothing in this section shall prevent the liability of a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted.

The purpose of the recreational land use statute is set forth in RCW 4.24.200.

RCW 4.24.200 provides that the purpose of the recreational land use statute is to

encourage owners or others in lawful possession and control of land and water areas or channels to make them available to the public for recreational purposes by limiting their liability toward persons entering thereon and toward persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon.

The recreational land use statute modifies a landowner's common law duty in order "to encourage landowners to open up their lands to the public for recreational purposes." Davis v. State, 144 Wn.2d 612, 616, 30 P.3d 460 (2001). Because the recreational land use statute is in derogation of common law, the statute is strictly construed. Matthews v. Elk Pioneer Days, 64 Wn. App. 433, 437, 824 P.2d 541 (1992).

Under the statute, "possession and control" means that the landowner must have "continuing authority to determine whether the land should be open to the

public.” Tennyson v. Plum Creek Timber Co., 73 Wn. App. 550, 557-58, 872 P.2d 524 (1994).³ In determining whether the statute applies, we also look to the perspective of the landowner. Gaeta v. Seattle City Light, 54 Wn. App. 603, 608-09, 774 P.2d 1255 (1989).

We find the proper approach in deciding whether or not the recreational use act applies is to view it from the standpoint of the landowner or occupier. If he has brought himself within the terms of the statute, then it is not significant that a person coming onto the property may have some commercial purpose in mind. By opening up the lands for recreational use without a fee, City Light has brought itself under the protection of the immunity statute, and it therefore is immaterial that Gaeta may have driven across the dam in search of gasoline at the resort.

Gaeta, 54 Wn. App. at 608-09.

Viewing the evidence in the light most favorable to Camicia, there are material issues of fact as to whether the recreational land use statute applies to the City.

There is no dispute that WSDOT designed and built the I-90 trail using federal and state highway transportation funds as a means of non-motorized regional transportation. There is also no dispute that the City owns the portion of the I-90 trail where the accident occurred.

In April 2000, WSDOT conveyed title to the City for those properties of the I-90 trail on Mercer Island, including the accident site. But the Quitclaim Deed expressly states that the property is transferred to the City “for road/street purposes only, and no other use shall be made of said property without obtaining prior written approval” of WSDOT.

The Quitclaim Deed provides, in pertinent part:

³ Although the parties dispute whether Camicia was using the bike path recreationally at the time of the accident, the issue is not material.

It is understood and agreed that the above referenced property is transferred for road/street purposes only, and no other use shall be made of said property without obtaining prior written approval of the grantor. It is also understood and agreed that the grantee, its successors or assigns, shall not revise either the right of way lines or the access control without prior written approval from the grantor, its successors or assigns. Revenues resulting from any vacation, sale, or rental of this property, or any portion thereof, shall: (1) if the property is disposed of to a government entity for public use, be placed in the grantee's road/street fund and used exclusively for road/street purposes; or (2) if the property is disposed of other than as provided in (1) above, be shared by the grantee and grantor, their successors or assigns in the same proportion as acquisition costs were shared, except that the grantee may deduct the documented direct costs of any such vacation, sale, or rental.

Accordingly, while the City owns the part of the trail where the accident occurred, there are material issues of fact as to whether the City has the authority to designate the I-90 trail as recreational land and assert immunity under RCW 4.24.210. There is no evidence in the record that WSDOT authorized the City to use the I-90 trail for any purpose other than "for road/street purposes." Nor is there any evidence that WSDOT, as the predecessor in interest, ever viewed that I-90 trail as recreational land. To the contrary, the evidence shows that WSDOT always characterized the I-90 trail as part of the regional transportation system and not as recreational land. For instance, in the Evaluation of the I-90 Bicycle and Pedestrian Path as a Potential Section 4(f) Resource, WSDOT states that the I-90 trail is an integral part of the regional transportation system and not recreational land.

As the "officials having jurisdiction over" the I-90 bicycle and pedestrian path, WSDOT has determined that the major purpose of that facility is transportation. The path was built as part of a multi-modal transportation facility, using federal and state highway funds. No funds designated for recreational facilities were used in constructing the path and separate accounts were used to ensure the separation of recreational and transportation funds.

.....
By providing a means of non-motorized access across Lake Washington, the path permits users to travel between Seattle and Mercer Island and access other areas in the Puget Sound Region. The path, in fact, is the only means for non-motorized access to Mercer Island and across Lake Washington. As such, it is an important link in the regional transportation system. While the path can be used for recreational purposes, it was developed and exists primarily for transportation, and serves as an integral part of the local transportation system.

The 2004 assessment for the "Mercer Island Park-and-Ride and Bus Platform Improvement Project," prepared by the Federal Transit Administration in coordination with the City of Mercer Island and City Engineer Yamashita, also states that "[t]he proposed site is not a publicly owned . . . park [or] recreation area" and therefore complies with federal regulations.

The City's reliance on Riksem v. Seattle, 47 Wn. App. 506, 736 P.2d 275 (1987) is misplaced. In Riksem, a bicycle rider collided with a jogger on the Burke-Gilman trail and was injured. Riksem, 47 Wn. App. at 507-08. On appeal, the bicycle rider argued that the recreational land use statute did not apply because the City was not entitled to immunity as a successor in interest and because the statute violated equal protection. Riksem, 47 Wn. App. at 512. This court rejected the bicycle rider's argument that the statute violated equal protection and that the City was not entitled to immunity as a successor in interest.

The statute clearly states it is an encouragement for owners/possessors in control of land to make it available to the public for recreational purposes by the limiting of their liability. It would not make sense to provide immunity to only those owners who originally open up the land for recreational purposes.

Riksem, 47 Wn. App. at 510.

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Here, unlike in Riksem, the original owner WSDOT built the I-90 trail as part of a regional transportation system. Accordingly, the Quitclaim Deed expressly states that the portions of the I-90 trail conveyed to the City are restricted to "road/street purposes only" unless WSDOT gives written approval otherwise.

And unlike here, in Chamberlain v. Dep't of Transp., 79 Wn. App. 212, 901 P.2d 344 (1995), there was no dispute that the landowner had the authority to expressly dedicate the site of the accident to recreational use. Chamberlain, 79 Wn. App at 216.

Because there are material issues of fact as to whether the recreational land use statute applies to the City, we reverse and remand for trial.

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

WE CONCUR:

Spencer, J.

Cox, J.



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RCW 4.24.200

Liability of owners or others in possession of land and water areas for injuries to recreation users — Purpose.

The purpose of RCW [4.24.200](#) and [4.24.210](#) is to encourage owners or others in lawful possession and control of land and water areas or channels to make them available to the public for recreational purposes by limiting their liability toward persons entering thereon and toward persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon.

[1969 ex.s. c 24 § 1; 1967 c 216 § 1.]



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RCW 4.24.210
Liability of owners or others in possession of land and water areas for injuries to recreation users — Limitation.

(1) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowners or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, skateboarding or other nonmotorized wheel-based activities, hanggliding, paragliding, rock climbing, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users.

(2) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowner or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who offer or allow such land to be used for purposes of a fish or wildlife cooperative project, or allow access to such land for cleanup of litter or other solid waste, shall not be liable for unintentional injuries to any volunteer group or to any other users.

(3) Any public or private landowner, or others in lawful possession and control of the land, may charge an administrative fee of up to twenty-five dollars for the cutting, gathering, and removing of firewood from the land.

(4) Nothing in this section shall prevent the liability of a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted. A fixed anchor used in rock climbing and put in place by someone other than a landowner is not a known dangerous artificial latent condition and a landowner under subsection (1) of this section shall not be liable for unintentional injuries resulting from the condition or use of such an anchor. Nothing in RCW 4.24.200 and this section limits or expands in any way the doctrine of attractive nuisance. Usage by members of the public, volunteer groups, or other users is permissive and does not support any claim of adverse possession.

(5) For purposes of this section, the following are not fees:

(a) A license or permit issued for statewide use under authority of chapter [79A.05](#) RCW or Title [77](#) RCW; and

(b) A daily charge not to exceed twenty dollars per person, per day, for access to a publicly owned ORV sports park, as defined in *RCW [46.09.020](#), or other public facility accessed by a highway, street, or nonhighway road for the purposes of off-road vehicle use.

[2006 c 212 § 6. Prior: 2003 c 39 § 2; 2003 c 16 § 2; 1997 c 26 § 1; 1992 c 52 § 1; prior: 1991 c 69 § 1; 1991 c 50 § 1; 1980 c 111 § 1; 1979 c 53 § 1; 1972 ex.s. c 153 § 17; 1969 ex.s. c 24 § 2; 1967 c 216 § 2.]



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Notes:

***Reviser's note:** RCW 46.09.020 was recodified as RCW 46.09.310 pursuant to 2010 c 161 § 1202, effective July 1, 2011.

Finding -- 2003 c 16: "The legislature finds that some property owners in Washington are concerned about the possibility of liability arising when individuals are permitted to engage in potentially dangerous outdoor recreational activities, such as rock climbing. Although RCW 4.24.210 provides property owners with immunity from legal claims for any unintentional injuries suffered by certain individuals recreating on their land, the legislature finds that it is important to the promotion of rock climbing opportunities to specifically include rock climbing as one of the recreational activities that are included in RCW 4.24.210. By including rock climbing in RCW 4.24.210, the legislature intends merely to provide assurance to the owners of property suitable for this type of recreation, and does not intend to limit the application of RCW 4.24.210 to other types of recreation. By providing that a landowner shall not be liable for any unintentional injuries resulting from the condition or use of a fixed anchor used in rock climbing, the legislature recognizes that such fixed anchors are recreational equipment used by climbers for which a landowner has no duty of care." [2003 c 16 § 1.].

Purpose -- 1972 ex.s. c 153: See RCW 79A.35.070.

Off-road and nonhighway vehicles: Chapter 46.09 RCW.

Snowmobiles: Chapter 46.10 RCW.

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