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No. 90319-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON


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STEVEN JEWELS,

Petitioner,

v.

CITY OF BELLINGHAM,

Respondent.

**PETITIONER'S ANSWER TO BRIEF OF
AMICI CURIAE WASHINGTON STATE ASSOCIATION
OF MUNICIPAL ATTORNEYS AND
ASSOCIATION OF WASHINGTON CITIES**

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TABLE OF CONTENTS

INTRODUCTION AND SUMMARY 1

ARGUMENT..... 2

 I. The plain meaning of “latent” is “not readily
 apparent to the recreational user,” as *Van Dinter*
 correctly held. 2

 II. Amici’s new definition of “latent” is not supported
 by the very dictionaries they cite. 5

 III. Amici have failed to show why *Van Dinter* should
 be overruled. 6

 IV. The case law—particularly this Court’s decision in
 Ravenscroft—holds that “latent” refers to a
 condition that is not readily apparent to the general
 class of recreational users to which the plaintiff
 belongs. 7

 V. Jewels has created a triable issue on whether the
 asphalt berm was latent. 14

CONCLUSION..... 17

TABLE OF AUTHORITIES

Cases

Camicia v. Howard S. Wright Construction Co.,
179 Wn.2d 684, 317 P.3d 987 (2014) 9, 17

Cashmere Valley Bank v. State, Dep't of Revenue,
— Wn.2d —, 334 P.3d 1100 (2014) 3

City of Auburn v. Gauntt,
174 Wn.2d 321, 274 P.3d 1033 (2012) 3

State ex rel. Corey v. Grenley,
78 Wn. App. 864, 899 P.2d 830 (1995) 16

Cultee v. City of Tacoma,
95 Wn. App. 505, 977 P.2d 15 (1999) 9, 13

Davis v. State,
102 Wn. App. 177, 6 P.3d 1191 (2000), *aff'd*, 144
Wn.2d 612, 30 P.3d 460 (2001).....10, 11, 12

Degel v. Majestic Mobile Manor, Inc.,
129 Wn.2d 43, 914 P.2d 728 (1996) 4

Eubanks v. Brown,
180 Wn.2d 590, 327 P.3d 635 (2014) 3

Frobig v. Gordon,
124 Wn.2d 732, 881 P.2d 226 (1994) 5

Gold Bar Citizens for Good Gov't v. Whalen,
99 Wn.2d 724, 665 P.2d 393 (1983) 7

Jongeward v. BNSF Ry. Co.,
174 Wn.2d 586, 278 P.3d 157 (2012) 3

Kamla v. Space Needle Corp.,
147 Wn.2d 114, 52 P.3d 472 (2002) 4

Key Design Inc. v. Moser,
138 Wn.2d 875, 983 P.2d 653 (1999) 7

<i>Knipschild v. C-J Recreation, Inc.</i> , 74 Wn. App. 212, 872 P.2d 1102 (1994).....	16
<i>State ex rel. Lemon v. Langlie</i> , 45 Wn.2d 82, 273 P.2d 464 (1954).....	6, 10
<i>Pierson v. Hernandez</i> , 149 Wn. App. 297, 202 P.3d 1014 (2009).....	10
<i>Ravenscroft v. Washington Water Power Co.</i> , 136 Wn.2d 911, 969 P.2d 75 (1998).....	7, 8, 9, 15
<i>Satomi Owners Ass'n v. Satomi, LLC</i> , 167 Wn.2d 781, 225 P.3d 213 (2009).....	2
<i>Seattle-First Nat'l Bank v. Shoreline Concrete Co.</i> , 91 Wn.2d 230, 588 P.2d 1308 (1978), <i>superseded on other grounds as stated in Kottler v. State</i> , 136 Wn.2d 437, 963 P.2d 834 (1998).....	16
<i>State v. Gonzalez</i> , 110 Wn.2d 738, 757 P.2d 925 (1988).....	2
<i>State v. Hirschfelder</i> , 170 Wn.2d 536, 242 P.3d 876 (2010).....	2
<i>State v. Lilyblad</i> , 163 Wn.2d 1, 177 P.3d 686 (2008).....	6
<i>State v. Scott</i> , 110 Wn.2d 682, 757 P.2d 492 (1988).....	16
<i>Swinehart v. City of Spokane</i> , 145 Wn. App. 836, 187 P.3d 345 (2008).....	9, 12, 13
<i>Tabak v. State</i> , 73 Wn. App. 691, 870 P.2d 1014 (1994).....	10, 13
<i>Tennyson v. Plum Creek Timber Co.</i> , 73 Wn. App. 550, 872 P.2d 524 (1994).....	10, 11, 12
<i>Thomas v. Hous. Auth. of City of Bremerton</i> , 71 Wn.2d 69, 426 P.2d 836 (1967).....	4, 5

<i>Van Dinter v. City of Kennewick</i> , 121 Wn.2d 38, 846 P.2d 522 (1993)	<i>passim</i>
<i>Widman v. Johnson</i> , 81 Wn. App. 110, 912 P.2d 1095 (1996).....	10, 13, 15
<i>Younger v. United States</i> , 662 F.2d 580 (9th Cir. 1981)	5
Statutes	
RCW 4.24.210(1).....	9
RCW 4.24.210(4)(a)	1
Rules	
ER 407.....	17
Other Authorities	
23 Kenneth W. Graham, Jr., <i>Federal Practice and Procedure</i> (1st ed. 2014)	17
<i>Merriam-Webster's Collegiate Dictionary</i> (10th ed. 1998).....	5
<i>Restatement (Second) of Torts</i> (1965).....	3, 4
<i>Webster's Third New International Dictionary</i> (1961).....	5, 6

INTRODUCTION AND SUMMARY

The Court has long interpreted the term “latent” in the recreational use statute, RCW 4.24.210(4)(a), to mean “not readily apparent to the recreational user.” *Van Dinter v. City of Kennewick*, 121 Wn.2d 38, 45, 846 P.2d 522 (1993). Amici ask the Court to overrule this interpretation in favor of an interpretation found nowhere in Washington case law.¹ Because this issue has been raised only by Amici, and not by the parties, the Court should not reach it.

If the Court does reach the issue, it should reaffirm *Van Dinter*, which followed the plain meaning of “latent.” Amici’s preferred definition, by contrast, defies normal principles of statutory interpretation and is not even supported by the very dictionaries Amici cite. Nor have Amici given any reason why *Van Dinter* should be overruled. And, far from endorsing Amici’s position, existing case law from this Court and the Court of Appeals conflicts with Amici’s new definition.

Under *Van Dinter*’s definition, Jewels’s evidence raises a triable issue of fact on whether the unpainted asphalt berm that caused his injury was latent. The evidence shows that Jewels was injured by a camouflaged asphalt berm that he had no reason to expect and whose invisibility is

¹ The term “Amici” refers to the Washington State Association of Municipal Attorneys and the Association of Washington Cities. Amici’s brief is cited here as “Amici Br.”

bolstered by the City's own words. Amici's unpersuasive arguments for ignoring that evidence or deeming it inadmissible should be rejected. Instead, a jury must decide whether the condition that injured Jewels was latent.

ARGUMENT

I. The plain meaning of "latent" is "not readily apparent to the recreational user," as *Van Dinter* correctly held.

Van Dinter v. City of Kennewick held that the term "latent" under the recreational use law means "not readily apparent to the recreational user." 121 Wn.2d at 45. Amici invite the Court to overturn that earlier interpretation of the act, and to hold instead that "latent" refers to a condition that is physically covered by water or a similar opaque substance. See Amici Br. at 11, 14-16. This invitation should be declined for two reasons: first, the Court normally does not reach issues raised only by amici; second, Amici's interpretation of "latent" is contrary to its plain meaning.

This Court has stated many times that it need not reach issues raised only by amici. See, e.g., *State v. Hirschfelder*, 170 Wn.2d 536, 552, 242 P.3d 876 (2010) ("We need not address issues raised only by amici, and decline to do so here."); *Satomi Owners Ass'n v. Satomi, LLC*, 167 Wn.2d 781, 819, 225 P.3d 213 (2009) (same); *State v. Gonzalez*, 110 Wn.2d 738, 752 n.2, 757 P.2d 925 (1988) (same). The Court need not

revisit the settled meaning of “latent” to decide this case, and should not do so at the sole behest of Amici.

Amici’s interpretation of “latent” is also wrong. In interpreting a statute, the Court looks first and foremost to its plain meaning. Plain meaning, however, is not discerned by “read[ing] words in isolation.” *City of Auburn v. Gauntt*, 174 Wn.2d 321, 330, 274 P.3d 1033 (2012). Instead, plain meaning is discerned by reading statutory terms against their larger legal context, including the legal context against which the statute was enacted. *See, e.g., Jongeward v. BNSF Ry. Co.*, 174 Wn.2d 586, 595, 278 P.3d 157 (2012) (interpreting “trespass” by reference to its common-law meaning). Reading statutory terms against a larger legal context means, for example, that “familiar legal term[s]” are given their “familiar legal meaning.” *Cashmere Valley Bank v. State, Dep’t of Revenue*, — Wn.2d —, 334 P.3d 1100, 1106 (2014); *see also Eubanks v. Brown*, 180 Wn.2d 590, 597, 327 P.3d 635 (2014) (when Legislature uses well-known legal term, the term is given its legal meaning).

The recreational use statute does not define “latent,” but “latent” has a familiar legal meaning in premises-liability law: it means “not obvious to the average person.” Section 343 of the *Restatement (Second) of Torts* provides that an invitee “is entitled to expect” that the possessor will exercise reasonable care to discover “any latent defects” on the land.

Degel v. Majestic Mobile Manor, Inc., 129 Wn.2d 43, 53, 914 P.2d 728 (1996) (quoting *Restatement (Second) of Torts* § 343 cmt. b (1965)). The *Restatement* distinguishes “latent” defects from “open and obvious” defects, for which a landowner is usually not liable. See *Kamla v. Space Needle Corp.*, 147 Wn.2d 114, 126, 52 P.3d 472 (2002) (citing *Restatement (Second) of Torts* § 343A). Under the *Restatement*, then, a “latent” defect is a defect that is not “open and obvious.” *Van Dinter* followed this traditional definition when it defined “latent” as “not readily apparent.”

Premises-liability law also makes it clear that “latent” conditions are not confined to conditions that are physically obstructed from view, but include any condition that is not readily apparent to the average person. For example, the same year that the recreational use statute was enacted, the Court decided a case in which a toddler was injured by excessively hot water. *Thomas v. Hous. Auth. of City of Bremerton*, 71 Wn.2d 69, 426 P.2d 836 (1967). Even though the hot water was not physically obstructed from view, the Court held that a jury could properly find that the water was a “latent” defect for which a landlord could be held liable, because “there is no way for the average person to tell the difference between water of 140 Fahrenheit and water heated to

200 Fahrenheit.” *Id.* at 75. Similarly, in *Younger v. United States*,² the Ninth Circuit, applying Washington law, held that a jury would have to decide whether the absence of a smoke detector was a “latent” defect, because a jury could find that “an average person would not discover” the absence of such a device on a ceiling. 662 F.2d 580, 582 (9th Cir. 1981). *Van Dinter*’s definition of “latent” as “not readily apparent” follows these traditional principles of premises law.

II. Amici’s new definition of “latent” is not supported by the very dictionaries they cite.

To support their new definition of “latent,” Amici cite to two dictionaries, both of which actually support *Van Dinter*’s definition of “latent.” The first dictionary defines “latent,” as, among other things, “existing in hidden . . . form.” *Webster’s Third New International Dictionary* 1275 (1961). “Hidden,” in turn, means “out of sight or off the beaten track.” *Id.* at 1065 (emphasis added). This broad definition is not confined to conditions that are physically blocked from view, but instead embraces anything that is not readily apparent. This definition is consistent with *Van Dinter*. Amici’s second dictionary says that “latent” means, among other things, “not now . . . obvious.” *Merriam-Webster’s Collegiate Dictionary* 657 (10th ed. 1998). Defining “latent” as that which

² This Court later cited *Younger* approvingly in *Frobig v. Gordon*, 124 Wn.2d 732, 735–36, 881 P.2d 226 (1994).

is not “obvious” is consistent not only with *Van Dinter*, but also with the meaning of “latent” in premises-liability law. *See supra* Argument § I.

To be sure, these dictionaries suggest that “latent” can mean other things as well. “Latent” can also be synonymous with “dormant,” “quiescent,” “potential,” and “in abeyance.” *Webster’s Third New International Dictionary, supra*, at 1275. These alternative definitions, however, merely show how unwise it is to blindly follow a “possible meaning[] found in a dictionary” when context dictates otherwise. *State v. Lilyblad*, 163 Wn.2d 1, 9, 177 P.3d 686 (2008). Amici simply cherry-pick from the dictionary to promote the result they prefer. But there is no need to revisit the definition of “latent.” Under controlling Washington law, “latent” means “not readily apparent to the recreational user,” as *Van Dinter* correctly held. 121 Wn.2d at 45.

III. Amici have failed to show why *Van Dinter* should be overruled.

Amici are asking for *Van Dinter* to be overruled, although they do not make that request explicit. Instead, they argue that under their new definition, *Van Dinter* would have come to the same ultimate result on latency. Amici Br. at 9–11. Even if that is true, it would not transform *Van Dinter*’s interpretation of “latent” into dicta. *See State ex rel. Lemon v. Langlie*, 45 Wn.2d 82, 89, 273 P.2d 464 (1954) (rejecting just such a definition of “dicta”). *Van Dinter* centered on the proper interpretation of

“latent,” so its interpretation of that term cannot be dismissed as dicta. *See Gold Bar Citizens for Good Gov’t v. Whalen*, 99 Wn.2d 724, 730, 665 P.2d 393 (1983). That interpretation is one of *Van Dinter*’s core holdings.

For *Van Dinter* to be overruled, Amici must make “a clear showing that [its] rule is incorrect and harmful.” *Key Design Inc. v. Moser*, 138 Wn.2d 875, 882, 983 P.2d 653 (1999). Amici have failed to make that showing. They have not succeeded in showing that *Van Dinter* incorrectly interpreted “latent.” To the contrary, it is *Van Dinter*—not Amici’s results-driven analysis—that comports with traditional principles of statutory interpretation. *See supra* Argument § I. Nor have Amici shown that *Van Dinter*’s rule is difficult to apply. And Amici, finally, have failed to show—indeed, have not even tried to show—that *Van Dinter*’s interpretation of “latent” has harmed recreational landowners. That interpretation should be reaffirmed.

IV. The case law—particularly this Court’s decision in *Ravenscroft*—holds that “latent” refers to a condition that is not readily apparent to the general class of recreational users to which the plaintiff belongs.

Amici suggest that the case law on latent conditions supports their new standard. Amici Br. at 12–16. That suggestion is incorrect. The case law does not merely fail to support Amici’s new interpretation of “latent”—it affirmatively rejects it.

That rejection is demonstrated most clearly by *Ravenscroft v. Washington Water Power Co.*, 136 Wn.2d 911, 969 P.2d 75 (1998). *Ravenscroft* demonstrates two propositions, each in conflict with Amici's new interpretation of "latent."

First, *Ravenscroft* nowhere suggests that a latent condition must be physically covered by water or a similar substance. Rather, *Ravenscroft* applied *Van Dinter*'s interpretation of "latent": "not readily apparent to the recreational user." *Ravenscroft*, 136 Wn.2d at 924 (quoting *Van Dinter*, 121 Wn.2d at 45). In its reasoning, therefore, *Ravenscroft* focused not on the mere fact that the tree stumps were covered by water, but rather on the evidence indicating that boaters could not readily observe the stumps. "In this case," the *Ravenscroft* Court said, "the driver of the boat testified by affidavit that the submerged stumps were not apparent to him. Other witnesses filed affidavits stating that other boats had hit the stumps, indicating that they were not readily apparent." *Id.* at 925. That is a straightforward application of the not-readily-apparent standard.

Ravenscroft's reasoning demonstrates a second point as well: for a condition to be not readily apparent, it must be not "readily apparent to the general class of recreational users" to which the plaintiff belongs. *Id.* at 924. Thus, *Ravenscroft* examined whether the tree stumps were readily apparent to boaters in general. *See id.* at 925. It would not matter if

snorkelers or scuba divers, for example, might readily discern the stumps. What mattered was that boaters could not readily discern the stumps. Amici ignore this aspect of *Ravenscroft* when they argue that if a condition is not latent for one class of recreational users, it is not latent for any class. Amici Br. at 18.³ Nor is *Ravenscroft*'s analysis placed in doubt by *Camicia v. Howard S. Wright Construction Co.*, 179 Wn.2d 684, 317 P.3d 987 (2014). See Amici Br. at 18. Under *Camicia*, whether land is held open "for the purposes of outdoor recreation," RCW 4.24.210(1), does not depend on the plaintiff's activity, because the statutory language refers to the purposes of the landowner, not the intent of the invitee. *Camicia*, 179 Wn.2d at 702. *Camicia* established a threshold test for when the recreational use statute applies at all. It did not address the meaning of "latent."

Like *Ravenscroft*, the case law from the Court of Appeals also applies *Van Dinter*'s latency standard. Every case relied on by Amici follows that standard. See *Swinehart v. City of Spokane*, 145 Wn. App. 836, 848, 187 P.3d 345 (2008); *Cultee v. City of Tacoma*, 95 Wn. App.

³ Amici's reference to recreational users who are "walking" or "skipping" is particularly inapposite. Amici Br. at 18. Bikers like Jewels will typically be traveling at a higher rate of speed than pedestrians, so many conditions that might be apparent to pedestrians will be latent for bikers. This should not be a controversial proposition. The tree stumps in *Ravenscroft* might have been apparent to dog-paddlers, but that did not make the stumps readily apparent to boaters.

505, 521–22, 977 P.2d 15 (1999); *Widman v. Johnson*, 81 Wn. App. 110, 114, 912 P.2d 1095 (1996); *Tabak v. State*, 73 Wn. App. 691, 698, 870 P.2d 1014 (1994); *Tennyson v. Plum Creek Timber Co.*, 73 Wn. App. 550, 555–56, 872 P.2d 524 (1994). Amici take the position that these cases, far from being decided on the standard they explicitly recite, were decided under a different standard—a standard, nowhere expressed in any Washington case, under which a latent condition must be physically covered by water or other opaque substance. This position must be rejected for several different reasons.

To begin with, Amici’s position puts an extraordinary gloss on the statute that goes far beyond the plain meaning rule. If by “latent” the Legislature had meant “physically covered by water or other opaque substance,” it would have said so. It did not.

Amici’s survey of the case law also overlooks *Davis v. State*, 102 Wn. App. 177, 6 P.3d 1191 (2000), *aff’d*, 144 Wn.2d 612, 30 P.3d 460 (2001).⁴ There, the plaintiff had been riding a motorcycle across

⁴ Even though *Davis*’s latency analysis was lengthy, reasoned, and related directly to the facts before the court, Amici argue that that analysis was dicta because the case was decided on another ground. Amici Br. at 14 n.5. That is far too broad a definition of dicta. See *Langlie*, 45 Wn.2d at 89; *Pierson v. Hernandez*, 149 Wn. App. 297, 305, 202 P.3d 1014 (2009). In any event, Amici miss the point when they dismiss *Davis I* as dicta. The gist of Amici’s position is that the state of the law in the Court of Appeals supports their position on what “latent” means. Even if *Davis*’s discussion of latency is dicta, it still remains perfectly good evidence of the state of the law in the Court of Appeals.

tracks left in the sand dunes by other riders when he suddenly went over a drop-off into a bowl-like depression. The Court of Appeals, while conceding that “only Davis and his friends failed to notice the drop-off,” held that Davis had raised a triable issue on latency. *Id.* at 192. Although the drop-off would have been visible if Davis had been coming from a different direction, the court agreed with Davis that “he had no reason to examine the area from different vantage points to check for dangerous conditions,” because “there was nothing to alert a rider” to the possible existence of such conditions. *Id.* at 192–93. So, even though the drop-off was not physically covered, latency was a jury question. As Amici admit, *Davis* conflicts with their new definition of “latent.”

Davis helps to show why *Tennyson*, a case on which Amici heavily rely, is inapposite here. In *Tennyson*, the plaintiff fell after driving his motorcycle up a gravel mound that was excavated on the other side. The Court of Appeals held that the excavation was not latent as a matter of law because the excavation would have been readily apparent to anyone who examined the gravel mound as a whole. *Tennyson*, 73 Wn. App. at 555–56. Notably, the court rejected an analogy to “a pit in a road which cannot be seen by drivers approaching from one side due to a curve in the road.” *Id.* at 556 n.4. A pit in a road would be “a situation where the condition was unexpected,” whereas “Tennyson knew that the gravel pile was

stockpile and that gravel could be removed at any time.” *Id.* Here—as in *Davis*, but unlike in *Tennyson*—the condition was “unexpected.” An elevated asphalt berm is usually marked by warnings, such as contrasting paint. CP 82, 107. The gaps between speed bumps and curbs are normally flat so that cyclists may pass through unharmed. CP 81, CP 91 ¶ 8, CP 107–08. And the unpainted berm here was located in the middle of a curve in the road, *see* CP 21, 99, in a shady portion of the road, *see* Pet’r’s Supplemental of Record, Ex. A. Jewels had no reason to expect a camouflaged berm between the speed bump and the curb. The condition here was therefore latent.

Nor are Amici helped by *Swinehart*. There, the plaintiff was injured after riding down a slide into “a large pit or depression” from which woodchips had been displaced. *Swinehart*, at 145 Wn. App. at 851. This pit was visible, apparently from any angle, simply by comparing the level of the woodchips in the pit with the level of the woodchips nearby. *See id.* at 851–52. Indeed, not even the plaintiff in *Swinehart* argued that the pit *itself* was difficult to see. Rather, his argument was that a user could not be expected to know how deep the wood chips were piled *underneath* the pit. *Id.* at 851. According to the *Swinehart* court, however, this simply amounted to arguing that a user could not appreciate the *danger* associated with the pit—the danger of insufficient padding. *See id.*

at 852–53. Under *Van Dinter*, it is the condition itself—the pit—that must be latent. *See id.* at 853. Here, in contrast to *Swinehart*, the evidence shows that the condition itself—the asphalt berm—was not readily apparent to the general class of recreational users. *E.g.*, Suppl. Br. of Pet’r at 14–16. For that reason, *Swinehart* sheds little light on this case.

Widman is similarly uninformative. There, the condition in question was the intersection of a logging road with a state highway. The plaintiff argued that the intersection was a latent condition. That argument was rightly rejected. There was no evidence (or apparently even argument) that the intersection was camouflaged, difficult to see, or in any way unexpected.⁵ *See Widman*, 81 Wn. App. at 114–15. A camouflaged, difficult to see, and unexpected condition, however, is precisely what this case presents.

Finally, Amici’s reliance on *Tabak* and *Cultee* is fundamentally misplaced. While the conditions in those cases were covered by water, *Tabak* and *Cultee* nowhere suggest that condition *must* be covered by water or some other substance to be considered “latent.”

⁵ According to Amici, the plaintiff in *Widman* contended that he “reasonably did not expect the logging road to intersect with a highway.” Amici Br. at 13. That is simply incorrect. In fact, nowhere in *Widman* is that argument made—probably because it would plainly be wrong. It is hardly an unexpected thing for logging roads to meet up with state highways. Indeed, the plaintiff *himself* turned onto the logging road from a state highway. *See Widman*, 81 Wn. App. at 112.

V. Jewels has created a triable issue on whether the asphalt berm was latent.

As recounted in more detail in his principal briefs, Jewels's evidence creates a triable issue on whether the condition that injured him was "latent." Suppl. Br. of Pet'r at 14–16; Pet. for Review at 18–20; Br. of Appellant at 22–33. That evidence consists principally of (1) Jewels's testimony that the unpainted berm was camouflaged—that it appeared to be "bare, flat pavement," CP 92 ¶ 9; (2) the testimony of Jewels and his two experts that there was no reason to expect an elevated asphalt berm between the speed bump and curb because such gaps are normally flat, CP 81, CP 91 ¶ 8, CP 107–08, and marked by warnings such as contrasting paint, CP 82, 107; and (3) the City's work order to paint the berm, which asked that the "entire speed bump" be made "visible," CP 76.⁶ The Court should reject Amici's request that all of this evidence be ignored.

Jewels's testimony that the pavement appeared to be flat and bare is relevant. In arguing that "what Jewels saw or did not see is legally irrelevant," Amici err. Amici Br. at 17. Jewels's testimony does not go merely to what he saw or did not see—it also goes to what was or was not

⁶ Also supporting latency is the evidence that the unpainted berm was in the middle of a curve in the road and was shaded by trees. *See* CP 21, 99; Pet'r's Supplemental of Record, Ex. A. Amici do not mention this evidence.

readily apparent. Jewels testified not merely that he himself did not notice the berm, but that the berm was not readily apparent because it blended in to the rest of the unpainted pavement. CP 92 ¶ 9. Jewels's testimony, in other words, is that the berm was camouflaged. Such testimony bears directly on the latency question and must be considered. But even if Jewels *had* testified merely that he did not see the unpainted berm, that testimony would not be wholly *irrelevant*. While not "dispositive," *Ravenscroft*, 136 Wn.2d at 924, a recreational user's testimony on what he failed to see and why he failed to see it should be considered in determining latency, *see id.* at 925 (considering the affidavit of "the driver of the boat"). To the extent language in *Widman*, 81 Wn. App. at 114 (cited by Amici Br. at 17), suggests otherwise, it should be disapproved. If the latency inquiry ignores a plaintiff's own testimony, then latency will depend on how many other recreational users had used the area where the plaintiff had been injured. Plaintiffs injured in a seldom-used location must rely heavily on their own testimony to establish latency, since they cannot gather testimony from other recreational users that those users had not noticed the condition. Ignoring the testimony of such plaintiffs will prevent them from trying to prove latency. Latency, however, should turn on whether a condition is readily apparent to the relevant class of

recreational users, not on an arbitrary factor such as the popularity of the area in which the user was injured.

Amici also err when they dismiss lay and expert testimony that bicyclists such as Jewels would have expected the unpainted gap between the speed bump and the curb to be flat.⁷ The more unexpected a camouflaged condition is to a general class of recreational users, the more likely it is that the condition will not be readily apparent to that class. Context matters. Amici's reject that common-sense view only because they also reject *Van Dinter's* latency standard.

Finally, contrary to Amici's suggestion, the City's paint job is admissible. Amici argue that the paint job is inadmissible because latency

⁷ Amici urge the Court to disregard the "unsworn report" of engineer Edward Stevens, one of Jewels's expert witnesses. Amici Br. at 18 n.6. As Jewels has explained, Suppl. Br. of Pet'r at 16 n.5, the City, in front of the trial court, *never raised* the argument that the report was inadmissible because it was unsworn. CP 148–51 (motion to strike). Because the City failed to raise the argument to the trial court, the argument is waived. See, e.g., *Seattle-First Nat'l Bank v. Shoreline Concrete Co.*, 91 Wn.2d 230, 240, 588 P.2d 1308 (1978), *superseded on other grounds as stated in Kottler v. State*, 136 Wn.2d 437, 442–43, 963 P.2d 834 (1998); *State ex rel. Corey v. Grenley*, 78 Wn. App. 864, 869, 899 P.2d 830 (1995); *Knipschild v. C-J Recreation, Inc.*, 74 Wn. App. 212, 216 n.4, 872 P.2d 1102 (1994). This case, in fact, is a good example of why the Court's waiver-of-argument rules promote fairness. If the City had argued in the trial court that Stevens's report was inadmissible because it was unsworn, Jewels could have cured that issue by submitting a corrected report. Because the City never raised the argument, however, Jewels never had a chance to submit such a correction. Allowing the City to raise the argument now would award the City for tactically withholding its argument. Refusing to consider the City's late-raised argument, by contrast, conserves judicial resources by encouraging parties to raise issues early so that they can be addressed. See *State v. Scott*, 110 Wn.2d 682, 685, 757 P.2d 492 (1988) ("The [waiver] rule reflects a policy of encouraging the efficient use of judicial resources. The appellate courts will not sanction a party's failure to point out at trial an error which the trial court, if given the opportunity, might have been able to correct . . .").

is an essential element of Jewels’s claim on which Jewels bears the burden of proof.⁸ But the applicability of ER 407 depends not on who bears the burden on a particular element, but rather on the *nature* of the element. If the element involves the breach of a duty, then ER 407 will bar evidence of subsequent remedial measures. If the element involves something else—for example, the *existence* of a duty—then ER 407 will not bar evidence of remedial measures. *See* 23 Kenneth W. Graham, Jr., *Federal Practice and Procedure* § 5287 (1st ed. 2014) (discussing analogous state and federal rules, and citing cases). At most, latency is relevant to the existence of “a duty to warn of ‘known dangerous artificial latent condition[s].’” *Camicia*, 179 Wn.2d at 702 (quoting RCW 4.24.210(4)(a)); *see* Amici Br. at 19. Establishing latency does not establish that the recreational landowner negligently *breached* that duty, so the evidence of the paint job is admissible under ER 407.

CONCLUSION

The Court should need not reach the issues raised by Amici. If it does, it should reaffirm that “latent” means “not readily apparent to the recreational user.” It should also hold that Jewels has created a genuine issue of fact on whether the condition that caused his injury was latent.

⁸ *But see* Br. of Amicus Wash. State Ass’n for Justice Found. at 11–12 (arguing that the City bears the burden).

Respectfully submitted this January 8, 2015.

KELLER ROHRBACK L.L.P.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury of the laws of the State of Washington that on January 8, 2015, I caused a true and correct copy of the foregoing PETITIONER'S ANSWER TO BRIEF OF AMICI CURIAE to be served on the following via email, pursuant to RAP 18.5(a) and CR 5(b)(7):

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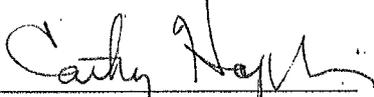
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I also certify under penalty of perjury of the laws of the State of Washington that on January 8, 2015, I caused a true and correct copy of the same to be served on the following via first class mail, postage prepaid:

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Case number: 90319-1

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Thank you.

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