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SUPREME COURT OF THE STATE OF WASHINGTON

GUY WUTHRICH,

Petitioner,

v.

KING COUNTY AND CHRISTA GILLAND,

Respondents.

RESPONDENT KING COUNTY'S SUPPLEMENTAL BRIEF

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 ORIGINAL

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I. INTRODUCTION

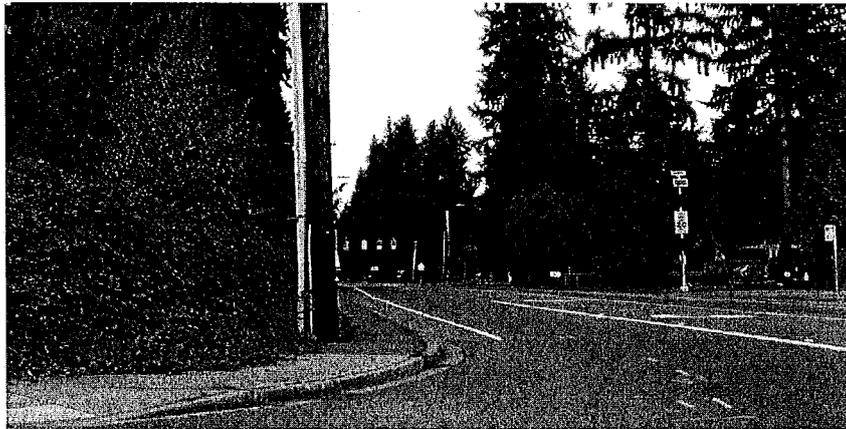
A municipality's duty, although it does not vary for negligent or non-negligent drivers, is "to build and maintain its roadways in a condition that is reasonably safe for ordinary travel." *Keller v. City of Spokane*, 146 Wn. 2d 237, 249, 44 P.3d 845 (2002). Here, the undisputed, *material* facts demonstrate that King County satisfied this duty by providing a *safe* intersection where an ordinary driver – following well-established rules of the road – could see a clear stretch of the road from a point 10 feet back from the fog line before turning left from 159th Street onto Avondale Road (the Intersection). Consistent with 72 years of precedent from this Court, King County had no duty to provide *additional* sight lines farther back from the fog line by clearing transient brambles outside the road corridor, nor are such brambles an "inherent defect" in our Evergreen State. Because municipalities are "not insurers against accidents nor the guarantors of public safety," *Keller*, 146 Wn. 2d at 252, summary judgment in favor of King County should be affirmed. Petitioner's relief lies solely against the driver who ran into him, not against the municipality that provided a safe intersection.

II. THE MATERIAL AND UNDISPUTED FACTS

Although the record contains over 1800 pages of Clerk's Papers (CP), the following facts represent the universe of what is material to

evaluating King County's summary judgment motion:

- The far edge of the stop line at the Intersection is placed 15.5 feet back from the fog line of Avondale. CP 544. The stop line requires cars to come to a complete stop several feet prior to an unmarked crosswalk¹ that is delineated by yellow cut-out ramps incorporated into the corner sidewalks. CP 1244, 153.
- After stopping at the stop line to ensure the absence of pedestrians, the Intersection as built and maintained allows drivers to proceed forward to a point ten feet back from the fog line where a driver may view a clear stretch of the road in either direction. CP 544, 177-79. At this point, the front of a driver's car would be about one to two feet behind the fog line. *Id.*
- On the day of the accident, a driver who was positioned 10 feet behind the fog line would be able to see 730 feet distant without any obstructions. CP 178. The picture shows this clear view:



CP 226, 234, 551. As indicated in the picture, vegetation exists behind the telephone pole beyond the road corridor.² *Id.* Wuthrich

¹ Under RCW 46.04.160, crosswalks exist at every intersection regardless of formal crosswalk markings. A municipality's duty to pedestrians is well recognized and the stop line serves this duty. *See Millson v. City of Lynden*, 174 Wn. App. 303, 306, 298 P.3d 141, 142 (2013)(discussing duty to pedestrians).

² When considering summary judgment, a court is not required to credit factual allegations that are contrary to documentary evidence like photos

made no allegation below, nor does the record support, that telephone pole placement violated applicable standards. *See* CP 1-5 (complaint).

- The redesign of the Intersection (due to rear end accidents on Avondale) was completed on May 2, 2005. CP 177-78. At the time of the 2005 redesign, King County followed the 1993 King County Road Standards, which were adopted by the King County Council on December 20, 1993 under Ordinance No. 11187. *Id.* at 178. These standards required 685 feet of unobstructed view when measured 10 feet back from the fog line. *Id.* The sightline at the Intersection exceeds these specifications. CP 177-79, 544. At the time of the May 2005 redesign, neither the effective version of WAC 468-95-220, nor the effective version of the Manual on Uniform Traffic Control Devices (MUTCD) imposed any separate or additional sight line requirements for stop lines. CP 596, 682, 686 (prior versions of WAC and MUTCD).³
- After its redesign in May 2005, CP 177-79, the Intersection was particularly safe. Out of the 15-20 million cars that traversed the Intersection, there was only one accident, which represents a per car accident rate of .00000005 - .00000067 percent. CP 194, 15. The driver in this single accident acknowledged fault and did not claim any sight line issues. CP 201.

Under these material and undisputed facts, King County is entitled to judgment as a matter of law.

III. ISSUES

A. Does a municipality breach its duty “to build and maintain its roadways in a condition that is reasonably safe for ordinary travel” when an intersection provides a safe vantage point ten feet back from the

or videos. *Scott v. Harris*, 550 U.S. 372, 380, 127 S.Ct. 1769, 167 L.Ed.2d 686 (2007)(discussing Fed. R. Civ. P. 56).

³ Wuthrich cites a version of the WAC and MUTCD that was not adopted until *after* the May 2005 redesign. *See* WSR 05-23-003 (amending WAC 468-95-220 to adopt updated MUTCD; effective December 4, 2005).

fog line where sight lines exceed all applicable standards? No.

B. Does a municipality have a duty to clear transient brambles to provide an *additional* sight line farther back from the road in a safe intersection, or is the failure to clear such brambles an inherent defect? No.

C. Does legal proximate cause exist to hold a municipality liable when an intersection is designed and maintained in accord with standards adopted by the municipality's highest legislative authority and there is no direct notice that the intersection is otherwise unsafe? No.

D. Did the Court of Appeals abuse its discretion by declining to consider an alleged general duty for landowners adjacent to roads to regularly clear brambles when (1) petitioner Wuthrich abandoned this argument below, and (2) the real party in interest is not before this Court? No.

IV. STANDARD OF REVIEW

An order granting or denying summary judgment is reviewed de novo. *Lowman v. Wilbur*, 178 Wn. 2d 165, 168, 309 P.3d 387 (2013). It is well established that “an appellate court may affirm a grant of summary judgment on an issue not decided by the trial court provided that it is supported by the record and is within the pleadings and proof.” *Otis Hous. Ass'n, Inc. v. Ha*, 165 Wn.2d 582, 587, 201 P.3d 309 (2009).

Summary judgment is properly granted when there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Id.*; CR 56(c).

V. LEGAL ARGUMENT

A. **KING COUNTY SATISFIED ITS DUTY TO “TO BUILD AND MAINTAIN ITS ROADWAYS IN A CONDITION REASONABLY SAFE FOR ORDINARY TRAVEL” BECAUSE ITS INTERSECTION PROVIDES A CLEAR LINE OF SIGHT FROM TEN FEET BEHIND THE FOG LINE**

A municipality has a duty to build and maintain its roads so that they are reasonably safe for ordinary travel. *Keller v. City of Spokane*, 146 Wn.2d 237, 249, 44 P.3d 845 (2002). In *Keller*, this Court clarified that a municipality’s duty is the same regardless of the driver’s own negligence. This principle was well-illustrated by *Lowman*, where a municipality and a utility violated their duty by placing a utility pole too close to the roadway in violation of road standards. 178 Wn.2d at 168. In assessing breach of the duty to provide a road that was reasonably safe for ordinary travel, it was immaterial whether the poorly placed pole was struck by a negligent or non-negligent driver. *Id.* at 169-70.

Wuthrich cites *Keller* for the remarkable position that a municipality’s duty extends beyond “ordinary travel” to include the negligent travel of “imperfect” drivers. Pet. for Rev. at 6. However, the inclusion of negligent drivers within the class of persons protected by a

municipality's duty to provide reasonably safe roads for *ordinary travel* does not mean that *Keller* expanded the duty itself to one where a municipality must provide reasonably safe roads for *negligent travel* – even if such a thing were possible. As recognized in *Keller*, an analysis of duty implicates the separate questions of “to whom the duty is owed, and what is the nature of the duty owed.” 146 Wn. 2d at 243. Although the Court in *Keller* clarified that negligent drivers were always within the class of persons to whom a duty was owed, the nature of that duty remained “reasonably safe” roads for “ordinary travel.”⁴

Wuthrich's invitation to extend a municipality's duty beyond provisions for ordinary travel should be rejected. First, ordinary travel is a well-understood term that implicates both the need to provide proper roads and the obligation to use them properly. The word “ordinary” is defined as “[r]egular; usual; normal; common; often recurring; according to established order; settled; customary; reasonable; not characterized by peculiar or unusual circumstances; belonging to, exercised by, or characteristic of, the normal or average individual.” Black's Law Dictionary, at 989 (Fifth Ed. 1979). By definition, this requires the provision of roads where a driver is substantially compliant with traffic

⁴ The *Lowman* majority did not purport to change or expand this holding from *Keller*. Indeed, the facts of that case did not provide occasion to visit the definition of “ordinary travel,” because a pole placed in violation of standards was unsafe for any kind of traveler.

codes and duties of ordinary care.

This meaning of “ordinary travel” flows from the common sense realization that it is neither practical nor feasible for municipalities to design roadways to be reasonably safe for negligent (extraordinary) travel. Even though it is arguably “foreseeable” that an inattentive driver *could* collide with a pedestrian at a crosswalk, or that a driver *could* run a stop sign and collide with another car, crosswalks and stop signs cannot reasonably be designed to prevent such negligent conduct.⁵ The assignment of impossible duties is outside the proper bounds of tort law. *See Gritzner v. Michael R.*, 235 Wis.2d 781, 794-95, 611 N.W.2d 906 (2000).

The expansion of ordinary travel to include negligent travel would violate the principle that municipalities are not insurers against accidents, and are not required to anticipate and protect against all imaginable acts of negligent drivers. *See Keller*, 146 Wn.2d at 252. Municipalities are required only to make roadways reasonably safe for *ordinary* travel, not *all* conceivable travel. *See Keller*, 146 Wn.2d at 253-54.

Ordinary travel necessarily implies basic adherence to the rules of the road. In this case, both statute and longstanding common law requires

⁵ For example, a municipality cannot be reasonably expected to build a roadway lined with airbags, nor could it build sidewalks with protective pillars that elevate when pedestrians are present (while somehow protecting negligent drivers that would run into the protective barriers).

drivers to enter intersections carefully from a vantage point where it is possible to view approaching traffic.⁶ This is known as the “clear stretch of the road” doctrine and it mandates that drivers approaching an obstructed intersection make their observations from a point where they can clearly observe traffic, not from a point back from the intersection where their view is materially impaired. *See* RCW 46.61.190(2); *Sanders v. Crimmins*, 63 Wn.2d 702, 706, 388 P.2d 913 (1964). On the record before this Court, both Officer Gilland and Wuthrich's accident reconstructionist agreed that Washington's rules-of-the-road require motorists, *after* stopping at a stop sign or stop bar, to move forward slowly to a new stopping point where it is possible to confirm that the roadway is clear of on-coming motorists *before* proceeding into an intersection. CP 243, 247, 281 and 283.

King County satisfied its duties in this case because the Intersection supported ordinary travel by providing a safe vantage point ten feet back from the fog line with an unobstructed view down Avondale Road. Under RCW 36.86.080, King County is required to adopt uniform road design standards for all new road construction. The 1993 King County Road Standards in effect when the Intersection was redesigned in

⁶ The obligation to look from a clear vantage point prior to entering an intersection recognizes the impossibility of designing intersections where drivers could safely enter without first looking for other vehicles.

2005 mandated an entering sight line of 685 feet of visibility, when measured at a point ten feet back from the traveled way (*i.e.* fog line). CP 643-44. It is undisputed on the record that Intersection exceeded those requirements. CP 178. Thus, as a matter of law, King County satisfied its duty to provide a reasonably safe road for ordinary travel because the Intersection provided every driver with the opportunity to view a clear stretch of the road before turning onto Avondale Road.

Wuthrich tries to expand King County's duty by claiming that the sight lines were obscured at the stop line, but the existence of sight lines at the stop line is immaterial. First, under the clear stretch of the road doctrine, the stop line is merely a *stop* line, not a *start* line. A driver is required to stop at the stop line to ensure that the crosswalk is not occupied by pedestrians. After this initial stop, the record is uncontroverted that the rules of the road require drivers to then proceed to a clear vantage point where it is possible to view traffic before entering the Intersection.⁷ CP 243, 247, 281 and 283. *See also Angelo v. Lawson*, 26 Wn.2d 198, 200-201, 173 P.2d 124 (1946) (fact that disfavored driver stopped at stop sign before driving into intersection did not excuse him

⁷ Any dispute as to where Officer Gilland *actually* stopped on 159th Street is also immaterial. King County's duty to provide a reasonably safe road for ordinary travel was satisfied by the available sight line 10 feet back from the fog line and does not vary with Officer Gilland's possible failure to avail herself of that available sight line.

from having to stop again and look from a position where he could see approaching traffic).

Second, the record is also undisputed that the King County road standards in place at the time of the 2005 redesign required no particular sight lines from the stop line. The relevant sight line under the standards was at a point ten feet back from the fog line, where the sight lines *exceeded* the necessary sight distances. Because sight lines from the stop bar are immaterial to King County's duty and any breach of that duty, no facts about the stop line were material and summary judgment should be affirmed.⁸

B. KING COUNTY HAS NO DUTY TO CLEAR TRANSIENT BRAMBLES TO PROVIDE AN *ADDITIONAL* SITE LINE FARTHER BACK FROM THE ROAD IN A SAFE INTERSECTION, NOR IS THE FAILURE TO CLEAR SUCH BRAMBLES "AN INHERENT DEFECT"

It has long been the rule under Washington common law that "[w]here a road itself is reasonably safe for public travel, it is not rendered inherently dangerous to travelers exercising reasonable care, solely because a municipality fails to remove vegetation located off the road, which tends to obstruct the view." *Rathbun v. Stevens County*, 46 Wn.2d 352, 356, 281 P.2d 853 (1955) (citing *Barton v. King County*, 18 Wn.2d

⁸ King County maintains its argument that Wuthrich has failed to provide proof that sightlines were a cause in fact of his injuries. *See King County's Response Brief* at 45-49.

573, 577, 139 P.2d 1019 (1943). In the 72 years since *Barton*, neither this Court nor the Washington Legislature has acted to change this duty by amending statutory law, overturning the *Barton* line of cases, or otherwise altering Washington public policy. Because these cases hold that a municipality has no duty to clear transient vegetation beyond the road corridor, Wuthrich's theory that a municipality can be liable "because of overgrown vegetation" blocking a sightline is untenable. CP 2 (complaint).

The facts in *Barton* are remarkably similar to the current case. Plaintiff, who was riding his bicycle north through an intersection, was struck by a driver proceeding west through the intersection. *Barton*, 18 Wn. 2d at 574. Plaintiff sued King County, alleging that the County was negligent because "at the southeast corner of the intersection there was a heavy growth of weeds and vegetation so high as to obscure the vision of persons traveling on each highway." *Id.* The question answered by this Court was "whether the county was negligent in failing to keep the natural growth on the unimproved portions of the highways cut down so that it would not obscure the vision of travelers approaching the intersection." *Id.* at 575.

This Court found plaintiff's theory of liability "untenable" because it would "hold, literally, that thousands of county road intersections are

inherently dangerous” and “impose an imponderable responsibility upon counties.” *Id.* at 576. It held that King County “was not negligent in failing to remove [the] vegetation which obscured the vision of the rider of the bicycle and the driver of the truck,” and that such condition “was not inherently dangerous or of such a character as to mislead a traveler exercising reasonable care.” *Id.* at 577. Fourteen years later, in *Rathbun v. Stevens Cnty.*, 46 Wn. 2d 352, 352, 281 P.2d 853 (1955), this Court affirmed the principle that vegetation located off the road is neither negligence, nor an inherently dangerous condition.

Recognizing the undistinguishable facts of *Barton*, Wuthrich instead attempts to argue that *Barton* and *Rathbun* “are no longer good law after the waiver of sovereign immunity.”⁹ Pet. for Review at 14. But sovereign immunity had nothing to do with the holding of either case. Long before the 1961 waiver of sovereign immunity, this Court recognized that Washington municipalities are “obligated to exercise ordinary care to keep its public ways in a reasonably safe condition for persons using such ways in a proper manner and exercising due care for their own safety.” *E.g. Berglund v. Spokane Cnty.*, 4 Wn. 2d 309, 313,

⁹ Wuthrich also argues that King County should not be allowed to rely on *Barton* because he failed to obtain review on his separate summary judgment motion addressed to the general duty of an adjacent landowner to maintain his property for safe roads. However, as the Court of Appeals recognized, the *Barton* case is about a municipality’s liability, not a general landowner’s liability. Slip op. at 8. n.7.

103 P.2d 355 (1940). Sovereign immunity has never been a factor in Washington for municipal road cases. *See Sutton v. City of Snohomish*, 11 Wash. 2d, 39 P. 273 (1895)(rejecting application of sovereign immunity in municipal road cases).

Because Wuthrich cannot distinguish *Barton* and his sovereign immunity argument fails, this Court should affirm summary judgment for King County.¹⁰

C. KING COUNTY IS NOT THE LEGAL PROXIMATE CAUSE OF WUTHRICH'S ACCIDENT BECAUSE IT DESIGNED AND MAINTAINED THE INTERSECTION IN ACCORD WITH STANDARDS ADOPTED BY THE KING COUNTY COUNCIL AND HAD NO NOTICE THAT THE INTERSECTION WAS OTHERWISE UNSAFE

In accord with its minimal accident history, the Intersection was reasonably safe for ordinary travel at the time the redesign was completed in May 2005. Petitioner Wuthrich's position is that the Intersection became unsafe over time due to the growth of vegetation off the road corridor that allegedly obstructed sight distances at the stop line. Even if this Court rejects King County's duty arguments and overrules *Barton*,

¹⁰ Wuthrich makes no request to overrule *Barton*, which would violate *stare decisis*. *See City of Fed. Way v. Koenig*, 167 Wn. 2d 341, 346, 217 P.3d 1172, 1174 (2009)(*Stare decisis* "requires a clear showing that an established rule is incorrect and harmful before it is abandoned."). This Court should refuse to expand a municipality's duty to include the clearing of vegetation for additional sight lines. *See Bishop v. Micha*, 137 Wn. 2d 518, 529, 973 P.2d 465, 470 (1999) (refusing to overrule precedent where Legislature did not enact statutes contrary to opinion).

this Court should nonetheless affirm summary judgment because King County was not given notice of the hazardous condition and therefore was not the legal proximate cause of Wuthrich's injury.

Proximate cause contains two separate elements – cause in fact and legal causation. *Hartley v. State*, 103 Wn.2d 768, 777, 698 P.2d 77 (1985). Legal causation rests on policy considerations as to how far the consequences of a defendant's acts should extend, and it involves a determination of whether liability should attach as a matter of law given the existence of the cause in fact. *Hartley*, 103 Wn.2d at 776.

Because municipalities are alone in the construction and maintenance of roadways, this Court has recognized that nothing in the sovereign immunity waiver statute “alters the State's common law defenses regarding highways, which are unique to the State and not shared by private parties.” *McCluskey v. Handorff-Sherman*, 125 Wn. 2d 1, 9, 882 P.2d 157 (1994). Whether viewed as an element of duty or a limitation of legal proximate cause, one important limitation is that a municipality must have notice of a dangerous roadway condition which it did not create, and a reasonable opportunity to correct it before liability arises for negligence in failing to keep its streets reasonably safe for ordinary travel. *Nibarger v. City of Seattle*, 53 Wn.2d 228, 229, 332 P.2d 463 (1958); *Bennett v. King County*, 188 Wash. 196, 61 P.2d 1316 (1936);

Nguyen v. City of Seattle, 179 Wn. App. 155, 165, 317 P.3d 518 (2014).

The requirement of notice arises out of the principle that a municipality has no duty to make a safe road safer. As recognized in *Ruff v. Cnty. of King*, 125 Wn.2d 697, 703, 887 P.2d 886 (1995), there is no duty “to update every road and roadway structure to present-day standards,” and a municipality is not required to anticipate “all imaginable acts of negligent drivers.” *Id.* at 705. Notice to a municipality as a condition precedent to liability ensures that municipalities will act to correct unsafe road conditions that are apparent from accident history (or other appropriate sources), while precluding any duty to redesign intersections where a lack of accident history demonstrates a reasonably safe road for ordinary travel.

The requirement of notice as a condition precedent to liability is especially important in this case, where the Intersection was built to *legally mandated road standards*, which required only a clear vantage point ten feet back from the fog line. Per RCW 36.86.080, road standards are adopted by a municipality’s highest legislative body. This Court has long recognized that discretionary immunity applies to such discretionary decisions by high level county policy makers. *Taggart v. State*, 118 Wn.2d 195, 214–15, 822 P.2d 243 (1992). It is necessary to afford immunity because “it is not a tort for government to govern.” *Evangelical*

United Brethren Church of Adna v. State, 67 Wn.2d 246, 440, 407 P.2d 440 (1965).

A notice requirement is consistent with these principles of discretionary immunity by requiring plaintiffs to demonstrate that an intersection is hazardous due to a condition in the intersection that has proven hazardous even though it was built in accord with legally adopted road standards. The requirement of notice ensures that Wuthrich's case is focused on the failure to remedy a known and demonstrated hazard in an intersection rather than allowing him to proceed based on a general tort challenge to legislated road standards.¹¹

Here, prior to Wuthrich's lone accident, the record is undisputed that King County was not on notice that transient brambles outside the road corridor caused a dangerous condition to users of the Intersection. To the contrary, the Intersection proved remarkably safe in the three-plus year period between the May 2005 redesign and Wuthrich's June 2008 accident, with only one other dissimilar accident. CP 192-222.

Wuthrich's expert witness agreed that King County had no notice that the

¹¹ The reference in Judge Bjorgen's dissenting opinion, slip op. at 16, to the idea that a municipality "is no more entitled to one free accident than a dog is entitled to one free bite" misses the crucial point that municipalities, unlike dog owners, are not subject to a strict liability standard. *See* RCW 16.08.040(imposing strict liability for dog bites). A strict liability standard would make municipalities a general insurer for all use of its roadways, which an untenable position under this Court's precedent. *See Keller*, 146 Wn.2d at 252.

Intersection was inherently dangerous or contained a misleading condition.¹² CP 298.

D. THE COURT SHOULD DECLINE TO ADOPT A GENERAL DUTY FOR LANDOWNERS ADJACENT TO ROADS TO CLEAR TRANSIENT BRAMBLES BECAUSE WUTHRICH ABANDONED THIS ISSUE AND NO ADJACENT LANDOWNER IS BEFORE THE COURT TO DEFEND HER INTERESTS

Wuthrich argues that this Court should expand his appeal beyond what was considered below to impose a general duty on landowners to maintain property adjacent to a roadway in a manner that is safe for ordinary travel. Wuthrich acknowledges that he “drop[ped] the issue of a landowners duty from his appeal.” Pet. for Review at 13. For a myriad of reasons, this Court should hold that the Court of Appeals’ did not abuse its discretion by declining to resurrect an issue previously abandoned by Wuthrich.

First, Wuthrich abandoned the general property owner issue when he failed to seek review of the decision by the Court of Appeals Commissioner denying review. Under RAP 17.7, a party may move to modify the decision of a Commissioner denying review, and if dissatisfied with the result, seek further review from the Supreme Court under RAP 13.3(a)(2)(i). By failing to file a motion to modify before the Court of

¹² Independent of notice, legal proximate cause is absent under the facts of this case. See Response Brief at 45-46.

Appeals panel, Wuthrich abandoned any chance of including the general property owner duty issue in this appeal. Under RAP 13.3(e), the Supreme Court is barred from directly reviewing a decision by a Court of Appeals Commissioner: “A ruling by a commissioner . . . of the Court of Appeals is not subject to review by the Supreme Court.” In other words, Wuthrich’s failure to move to modify the original decision of the Court of Appeals Commissioner denying review precludes his current effort to insert an additional issue into this appeal.

Second, Wuthrich cannot properly insert the general duty of a landowner into this appeal because this issue was not decided below by the trial court. After Wuthrich filed a summary judgment motion seeking to hold King County liable as a general landowner, King County filed a CR 56(f) affidavit indicating the need for additional discovery on the question of who owned the property where the offending brambles were located. *See* CP 1169-73. The record does not reflect the owner of the land because the property line goes through the bramble mass.¹³ The trial court denied summary judgment because ownership of the property was disputed in the record and it was possible that the true owner was not before the court:

¹³ The claim by Wuthrich and Amicus WSAJ that the County owned the land where the bramble were located mis-states the record. As Wuthrich’s counsel acknowledged below, the County did not admit its ownership of the land. VRP 8/24/2012 at 21.

But one of the problems I have, if [King County is] not the owner, then the real owner should have the opportunity to argue this issue. They're calling a declaratory judgment – a declaratory statement of the law against someone who is not here with an opportunity to speak for themselves would be a breach of due process, and a big time. Wouldn't be small; it would be major. I can't do that.

VRP 8/24/2012 at 23. It was not an abuse of discretion for the Court of Appeals to refuse to insert the general duties of an adjacent landowner into this appeal because the issue was not decided below and it would be improper to decide the issue without the adjacent landowner before the court. *See Anderson & Middleton Lumber Co. v. Quinault Indian Nation*, 79 Wn. App. 221, 228, 901 P.2d 1060 (1995), *aff'd*, 130 Wn.2d 862, 929 P.2d 379 (1996)(All “owners of an interest in property are presumably indispensable parties to an action involving that property.”).

Finally, even if this Court were to consider Wuthrich's injected issue, the result would be the same. A municipality's “duty to persons using public roads derives from its status as a municipality, not as a landowner.” *Nguyen v. City of Seattle*, 179 Wn. App. 155, 172, 317 P.3d 518, 526 (2014). Thus, even if Wutrich were allowed to resurrect this abandoned issue, he still cannot avoid the holding of *Barton* and *Rathbun*. The Court of Appeals did not abuse its discretion when it declined to address this issue.

VI. CONCLUSION

For the foregoing reasons, the Court should affirm the grant of summary judgment for King County. The decisions of the trial court and the Court of Appeals should be affirmed.

RESPECTFULLY SUBMITTED this 6th day of October, 2015.

DANIEL T. SATTERBERG
Prosecuting Attorney

By:



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CERTIFICATE OF FILING AND SERVICE

On the 6th day of October, 2015, I filed the foregoing via email to supreme@courts.wa.gov and served the same via email per an e-service agreement as follows:

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



Maggie Flickinger, Legal Secretary
Done in Seattle, Washington

10/6/2015

Date

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Good afternoon,

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Case Name: Guy Wuthrich v. King County and Christa Gilland
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Thank you,

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