No. 1034164

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 85015-6-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

GREGORY RYAN and NEREYDA RYAN,

Petitioners,

v.

CITY OF RENTON and DANIEL WIITANEN,

Respondents.

AMENDED PETITION FOR REVIEW

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I. IDENTITY OF PETITIONERS

Petitioners Gregory Ryan and Nereyda Ryan (Ryans) seek review of the decisions identified in part II.

II. COURT OF APPEALS DECISION

On June 10, 2024, the Court of Appeals, Division I, denied Ryans' appeal seeking reversal of the trial court's summary judgment dismissal of City of Renton (Renton). Appendix A. On July 29, 2024, the Court of Appeals denied Ryans' motion for reconsideration. Appendix B.

III. INTRODUCTION

This Court should accept review because the Court of Appeals' decision erred on four fundamental issues: two regarding summary judgment and two regarding municipal immunity for dangerous roads. Each error conflicts with Supreme Court and Court of Appeals decisions. RAP 13.4(b)(1)-(2). Each deprived Ryans their Const. art. I, § 21, right to trial. RAP 13.4(b)(3). And each are of substantial public interest, as the errors imperil all civil litigants. RAP 13.4(b)(4).

IV. ISSUES PRESENTED FOR REVIEW

A. After repeatedly striking Ryans' 30(b)(6) deposition of Renton for 4 ½ months without tenable grounds, the trial court permitted it with a much-narrowed scope, just a week before Ryans' summary judgment response was due. Renton's witnesses admitted not preparing and admitted Renton withheld material road maintenance, complaints, collisions, and notice evidence. Did the Court of Appeals err by upholding the trial court's denial of Ryans' CR 56(f) motion for continuance to conduct additional discovery?

B. Ryans presented the trial court 11 genuine issues of material fact barring Renton's summary judgment dismissal, including expert testimony that the road was dangerous and deceptive; raised pavement markers (RPMs) were missing; the road was mismarked in violation of required city, state, and federal standards; and Renton had prior notice but failed to correct the road. Did the Court of Appeals err by upholding the trial court's CR 56(c) summary judgment dismissal of Renton?

C. *Ruff v. King County*, 125 Wn.2d 697, 887 P.2d 886 (1995), was narrowly decided on specific facts, none of which present here. Here, the road *was* mismarked; RPMs *were* missing; a *$22* approach line *was* required and updating *was* required; and Ryans' expert testified the road *was* dangerous and deceptive, but an approach line *would have* prevented injury. Did the Court of Appeals err by upholding Renton's summary judgment dismissal based on *Ruff*?

D. Washington prohibited passing on the road before Renton annexed it in 1978. Renton required a no-passing approach line since 2004. The federal MUTCD required marking the road uniformly with correctly-marked South 55th Street since 2009. Despite claiming regular inspections prior to the 2016 collision, Renton negligently kept the road dangerously mismarked. Renton *had* actual or constructive notice, though caselaw requires neither here. Did the Court of Appeals err by upholding Renton's summary judgment dismissal based on lack of notice?

V. STATEMENT OF THE CASE

A. The Collision

Daniel Wiitanen (Wiitanen) struck Gregory Ryan early morning, March 13, 2016, on Renton's Talbot Road South (Talbot). CP 595. It was pitch-black and raining. CP 595, 603. Ryan sustained serious injuries, including many broken bones, multiple surgeries, and permanent limitations. CP 5-6, 388-92.

Wiitanen was driving southbound on Talbot. CP 597. Ryan had just turned northbound on Talbot from South 55th Street (55th). CP 388-92, 597. Wiitanen angled over the single skip (passing allowed) centerline, south of the gore point (where the center turn lane ends and northbound and southbound Talbot converge). CP 388-92, 595, 658. He crashed into Ryan 50 feet north of the intersection. *Id.*; CP 600-01, 603.

At the scene, Wiitanen told police "he was tired and was clearing his eyes just prior to the collision." CP 597. Wiitanen never suggested he had fallen asleep, nor did police determine this as a contributing factor of the collision. CP 595, box 27.

B. The Road

Talbot is a north/south arterial posted at 35 mph with no stop sign, stop light, or warning lights. CP 580-81, 587-88. 55th has a stop sign at the intersection with Talbot. CP 584, 598, 603. The gore point was 184 feet north of the north edge of 55th (CP 587), and approximately150 feet north of the north curb return of Talbot with 55th. CP 695:2-10.

Between the gore point and the intersection, Talbot was marked with a single skip centerline comprised solely of RPMs. CP 581-83, 588, 598, 609-12, 696:7-19. Renton defined an approach line (a "solid" double row of RPMs prohibiting passing) as "the centerline when you're approaching an intersection" (CP 689:5-7) or a gore point. CP 689:8-9.

In contrast, Renton correctly marked 55th with an approach line (CP 581-82, 607; Ryans' July 1, 2024, motion for reconsideration, Ex 2) over 400 feet long (CP 694:6-695:1) prior to June 2010 (CP 605; Ryans' July 1, 2024, motion for reconsideration, Ex 1), even though Talbot was more heavily

traveled than 55th. CP 692:13-19. 55th complied with Renton's Channelization Markers Detail Standard Plan 109 of April 2004. CP 609-12. Appendix C.

Single skip centerline RPMs were missing on Talbot from south of the gore point to the intersection. CP 582-83, 585, 587, 627 (patrol car video capture showing missing RPMs on March 13, 2016); Court of Appeals' decision, 11 ("[W]e assume that some RPMs were missing on Talbot Road S. at the time of the collision.") (Appendix A).

C. Road History, Maintenance, and Notice

Renton annexed Talbot from King County in 1978 and bore responsibility for its upkeep since 1978. CP 690:5-691:7.

In response to what changes were made to Talbot, including "installation of raised pavement markers ("RPMs"), Renton answered "The accident location has remained in substantially the same condition between 2002 and the present." CP 723. Renton produced no maintenance, inspection, repair, or RPM replacement information or documents for Talbot in

response to Ryans' interrogatories and requests for production. CP 737.

Renton claimed, without producing any documentation, that Talbot was inspected by the Sign and Marking Supervisor every year (CP 724) and by the Transportation Manager every three years. *Id.*; *contra* CP 585-86, 667, 685 (Renton employees visited Talbot on September 23, 2015, in response to a July 28, 2015, citizen complaint of southbound Talbot vehicles passing at the intersection with 55th).

D. Ryans Denied Timely 30(b)(6) Deposition of Renton

Ryans set and timely served notice of Renton's deposition for Monday, June 6, 2022 (CP 219-31), but the trial court struck it on Friday afternoon, June 3, 2022. CP 965:14-16; RP 119:14-16.

The court also forbade Ryans from deposing Renton until Ryans had been deposed (*id.*), but gave no justification. Ryans had made themselves available for deposition weeks earlier (RP

105:10-11; 110:10-13) as well as after June 6, 2022, discovery cutoff (RP 106:9-11), but Renton never deposed the Ryans.

The court denied Ryans' September 16, 2022 (CP 65-85), motion to change the trial date. The court then struck Ryans' deposition of Renton set for October 7, 2022. CP 264-77. The court repeatedly made Ryans narrow their list of deposition topics, even two days for the eventual deposition on October 21, 2022. CP 951,

E. Renton Unprepared and Withheld Evidence

Renton's designated witnesses came unprepared. CP 550-54. Both witnesses were not prepared to answer topics listed and approved for deposition. The witnesses acknowledged that discovery relevant to notice, standards, and studies had existed but had not been produced back in June 2022. *Id.*

F. Ryans' Response Opposing Summary Judgment

Ryans asked the trial court to strike Renton's motion for summary judgment under CR 56(f) because Renton's witnesses were not prepared to respond to Ryans' deposition topics and

acknowledged that material discovery documents had been withheld. CP 552-54, 563-65.

Ryans' response articulated 11 genuine issues of material fact for the jury that barred summary judgment. CP 557-63. Attached was a detailed expert report by Ryans' traffic engineer expert William Neuman, PE, who detailed multiple ways Talbot was "unusually dangerous and deceptive at the time of this accident and that Renton had multiple opportunities and time to notice and install the proper markings prior to this accident but they never did." CP 591 (CP 550-764, generally).

G. Continuance Denied, Summary Judgment Granted

At the November 21, 2022, summary judgment oral argument, Ryans explained why the court should enter a CR 56(f) continuance. RP 168:4-176:18. Ryans detailed how they diligently pursued discovery, but the court resisted their efforts. *Id. See also* CP 550-764 (detailing why continuance required).

Ryans reminded the court that it had prohibited Ryans from deposing Renton until Renton first deposed Ryans, which

it never did. RP 153:2-9 (*see* RP 119:14-16). Ryans understood the court clearly on June 3, 2022, as did Renton. RP 171:23-172:5.

Also, the court had sanctioned Ryans over $4,900 in April 2022 for seeking a CR 26(c) protective order which they understood they were CR 37(a)(4)-justified seeking (CP 968-69, 976-78), so Ryans dared not risk even larger CR 37 sanctions if the court denied their motion. RP 172:9-174:14.

Finally, Ryans pointed out that they had brought the matters to the court's attention repeatedly, by way of other motions and notifications. RP 150:13-152:18; 174:15-175:18. Though the court said it "doesn't address discovery motions in an email" (RP 152:7-9), email was how the court addressed Ryans' 30(b)(6) deposition topics. *See, e.g.*, CP 951-52.

Ryans also argued that many CR 56(c) genuine issues of material fact existed that barred summary judgment. RP 144:9-12. First, Ryans addressed that there were missing RPMs at the time of the collision (RP 144:12-147:3) which were required to

be in place by Renton's Channelization Markers Detail Standard Plan Channelization Standard Plan 109 (Ex G (CP 608-12)). RP 147:6-149:6. Ryans addressed the court's question "how would those RPMs have made a difference with respect to this accident?" (RP 147:9-10) by describing how the required approach line (Ex G (CP 608-12)) would have visually alerted Wiitanen (RP 149:8-9); acted as a sort of rumble strip (RP 158:25-160:19; 163:8-166:18); and met the MUTCD standard of uniformity in marking (with 55th) (RP 160:20-162:21).

H. Renton Granted Summary Judgment Dismissal

The trial court denied Ryans' motion for CR 56(f) summary judgment denial or continuance to allow Ryans' discovery. CP 941-44.

I. Court Denied Ryans' Motion for Reconsideration

Ryans motioned the court to reconsider Renton's summary judgment dismissal (CP 853-88, 896-928), pointing out that Renton's Eric Cutshall testified that RPMs can have a rumble strip effect (CP 782:6-783:25) and Renton's Chris

Barnes testified that "buttons [RPMs] make noise." CP 788:13-14. Also, Ryans pointed out that Neuman made clear that "When the only traffic control devises present are RPMs **they are clearly not Supplemental.**" (CP 581) (emphasis in original), contrary to the court's ruling that the RPMs were discretionary and supplemental in this case. CP 948.

Ryans further distinguished the speculative expert testimony in *Miller v. Likins*, 109 Wn. App. 140, 145, 34 P.3d 835 (2001), and *Stofleth v. Cosgrave*, No. 83183-64 (April 25, 2022) (unpublished) (CP 949), arguing that the court assumed all facts and reasonable inferences *against* Ryans, rather than *for* Ryans. CP 863.

The court denied Ryans' motion for reconsideration (CP 933-34), so Ryans appealed to the Court of Appeals, Division I.

VI. STANDARDS OF REVIEW

A trial court's denial of a CR 56(f) motion for continuance is reviewed for abuse of discretion. *Qwest Corp. v. City of Bellevue*, 161 Wn.2d 353, 358, 166 P.3d 667 (2007). A

trial court's grant of CR 56(c) summary judgment is reviewed de novo. *Id.* "The process of applying the law to the facts … is a question of law and is subject to de novo review." *Tapper v. Employment Security Dep't*, 122 Wn.2d 397, 403, 858 P.2d 494 (1993). "The existence of a duty is a question of law." *Folsom v. Burger King*, 135 Wn.2d 658, 671, 958 P. 2d 301 (1998). "Questions of law and conclusions of law are reviewed de novo." *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003).

VII. ARGUMENT

A. The Court of Appeals' Decision Conflicts with Court of Appeals and Supreme Court Decisions Permitting a Party to Make the Record Complete before Ruling on Summary Judgment

The trial court abused its discretion by preventing Ryans from deposing Renton for 4 ½ months. Ryans could not prosecute their case and defend summary judgment. The affirming Court of Appeals' decision conflicts with *In re Estate of Fitzgerald*, 172 Wn. App. 437, 448, 294 P.3d 720 (2012)

("where good reasons are established as to why [discovery] cannot be timely obtained, the trial court must "accord the parties a reasonable opportunity to make the record complete before ruling on a motion for summary judgment." (quoting *Lewis v. Bell*, 45 Wn. App. 192, 196, 724 P.2d 425 (1986))).

The trial court abused its discretion by forbidding Ryans from deposing Renton until and unless Renton deposed Ryans (for which Ryans made themselves available before and after June 3, 2022). The Ryans were in a no-win situation. "A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons." *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997).

The trial court then repeatedly narrowed and delayed Ryans' deposition of Renton such that discovery closed 11 days before the deposition finally occurred on October 21, 2022. CP 956. This was just seven days before Ryans' response to summary judgment was due. CP 63, 962.

1. Witnesses unprepared, discovery withheld

Ryans presented the trial court enormous evidence that Renton's witnesses came unprepared to answer Ryans' List of Topics, and Renton had withheld material evidence to defend summary judgment. CP 550-69. Cutshall did not know many times he replaced RPMs on Talbot prior to the collision. CP 784:25-785:5. Barnes never searched for photos, videos, drawings, reports, and studies showing the condition of the collision vicinity other than the few zoomed-out Google Earth photos Renton produced. CP 560, 709:6-17. He never conducted a search of contract plans or work orders for Talbot (CP 553, 704:10-16), despite work orders kept forever. CP 553, 679:1-4.

Barnes never conducted a search of other claims of damages in the collision vicinity. CP 553, 704:18-705:9. He testified he could not answer whether or when Talbot was repaved, refreshed (in terms or marking or overlay), overlaid, or why approach lines were not added when bike lanes were added

to Talbot, as he had only been with Renton since 2007 and overlaying was a different department. CP 553-54, 707:1-708:9.

Barnes testified he had no information regarding traffic deviations for Talbot. CP 554, 697:18-699:16. He testified that Renton had no standard for maintaining RPMs. CP 554, 700:16-703:6. All of these topics were listed on Ryans' CR 30(b)(6) List of Topics deposition notice for October 21, 2022 (CP 541-49), allowed by the court (CP 951), and provided to Renton originally five months earlier. CP 219-31.

Barnes confirmed that Renton possessed responsive discovery it did not produce, including a map, photographs taken at 5 minute intervals, an AASHTO table, and a NACTO design guide regarding the July 28, 2015, citizen complaint leading to a visit and study of Talbot on September 23, 2015. CP 552, 682:19-683:9. He also testified that Renton never produced another citizen complaint. CP 552-53, 684:19-685:5.

Barnes admitted that Renton never produced traffic counts made of Talbot (CP 553, 685:6-687:25) nor three

collision reports. CP 553, 688:9-21. Most shocking was when Barnes testified that Renton annexed Talbot in 1978, not 2007 as Renton maintained up until that moment. CP 553, 690:5-691:7.

2. Court of Appeals decision conflicts with caselaw

The trial court abused its discretion by barring Ryans from prosecuting their case and defending summary judgment. The trial court's decision, and the Court of Appeals' decision affirming it, conflicts with *In re Estate of Fitzgerald*, 172 Wn. App. 437, 448, 294 P.3d 720 (2012), which holds "where good reasons are established as to why [discovery] cannot be timely obtained, the trial court must "accord the parties a reasonable opportunity to make the record complete before ruling on a motion for summary judgment." (quoting *Lewis v. Bell*, 45 Wn. App. 192, 196, 724 P.2d 425 (1986)).

Ryans presented the court convincing evidence that Renton's witnesses came unprepared to answer the List of Topics and that Renton had withheld material evidence to

defend summary judgment. CP 550-69. Most telling was that only near the end of the deposition did Renton reveal that it annexed Talbot in 1978 (CP 553, 690:5-691:7), not in 2007 as Renton had declared four months earlier in its discovery responses. CP 723. Ryans were substantially prejudiced in preparing for trial, preparing for and conducting the deposition, and defending summary judgment. It was an abuse of discretion not to continue the hearing to permit Ryans more discovery.

Ryans met the three elements of *Fitzgerald* to merit a continuance, as Ryans offered a good reason for the delay (which included the court's prohibition on deposing Renton), established the evidence they needed (repeatedly articulated in Ryans' deposition Lists of Topics and propounded interrogatories and requests for production), and the desired evidence went directly to genuine issues of material fact. *Id.*, 172 Wn. App. at 448 (citing *Lewis*, 45 Wn. App. at 196).

Moreover, Ryans repeatedly informed the trial court that Renton had not answered written discovery completely. Ryans

motioned the court to change the trial date (CP 65-85), explaining that "Defense counsel are slow-walking their discovery and motions until time runs out." CP 67:9-10. On October 20, 2022, Ryans motioned the court to extend time to respond to summary judgment due to financial constraints and Renton's ongoing refusal to answer written discovery. CP 870-72.

The Court of Appeals erred by failing to apply the key points of *Magaña v. Hyundai Motor America*, 167 Wn.2d 570, 220 P.3d 191 (2009), which make clear that defendants should not benefit from discovery abuse by prejudicing plaintiffs in preparing for trial and that plaintiffs need not motion to compel defendants to answer discovery timely and fully:

> The discovery requested should have been given to Magaña in a timely manner. Magaña need not have continually requested more discovery and updates on existing requests. Additionally Magaña should not have needed to file a motion for an order to compel Hyundai to produce the documents Hyundai was required to produce by the discovery requests themselves, nor does this opinion rest on the existence of a discovery order.

Magaña, 167 Wn.2d 570 at ¶ 33.

The Court should extend *Magaña* from its CR 37(d) sanction-against-discovery-violator setting to this CR 56(f) continuance-for-discovery-violatee setting. Granting a CR 56(f) continuance is a less extreme remedy than entering a CR 37(d) default judgment.

B. The Court of Appeals' Decision Conflicts with Every Washington Case Involving CR 56(c) Summary Judgment Denial for Any Genuine Issue of Material Fact

Washington adopted summary judgment in 1955. Philip A. Trautman, *Motions for Summary Judgment: Their Use and Effect in Washington*, 45 WASH. L. REV. 1 n.3 (1970). Every Supreme Court and Court of Appeals decision since has applied the same standard:

> In ruling on a motion for summary judgment, the court must consider the material evidence and all reasonable inferences therefrom most favorably to the nonmovant party and, when so considered, if reasonable men might reach different conclusions, the motion should be denied because a genuine issue as to a material fact is presented.

Wood v. City of Seattle, 57 Wn.2d 469, 473, 358 P.2d 140 (1960) (en banc).

> Under the Washington Constitution, "[t]he right of trial by jury shall remain inviolate." Wash. const, art. I, § 21. "The term 'inviolate' connotes deserving of the highest protection" and "indicates that the right must remain the essential component of our legal system that it has always been." *Sofie v. Fibreboard Corp.*, 112 Wash.2d 636, 656, 771 P.2d 711, 780 P.2d 260 (1989). The right "must not diminish over time and must be protected from all assaults to its essential guaranties." *Id.* At its core, the right of trial by jury guarantees litigants the right to have a jury resolve questions of disputed material facts.

Davis v. Cox, 183 Wn. 2d 269, 288-89, 351 P.3d 862 (2015).

The Court of Appeals' decision upholds a radical departure from this standard and must be overruled. Ryans have been wrongly denied their constitutional right to trial.

Ryans' summary judgment response (CP 550-764) detailed 11 genuine issues of material fact for the jury that barred summary judgment. CP 557-63. These disputed *questions of fact* for the jury included whether:

1. RPMs were missing at the time of the collision (CP 558);

2. Renton breached its duty to maintain a safe roadway by maintaining a passing lane between the gore point and the intersection (CP 558-59);

3. Wiitanen was awake—not asleep—when he crossed into Ryan's northbound lane (CP 559);

4. Renton breached its duty to maintain a safe roadway by failing to exercise engineering judgment (CP 559-61);

5. Renton breached its duty to maintain a safe roadway by failing to replace missing RPMs (CP 561);

6. Renton breached its duty to maintain a safe roadway by failing to utilize its standard approach line (Ex G) (CP 561);

7. Renton breached its duty to maintain a safe roadway by failing to implement a reasonable inspection program (CP 561-62);

8. Renton breached its duty to maintain a safe roadway by failing to act after repeated notices (CP 562);

9. Renton breached its duty to maintain a safe roadway by failing to respond to increased traffic on Talbot Road South (CP 562);

10. Renton breached its duty to maintain a safe roadway by failing to exercise engineering judgment—as required by the MUTCD (CP 563); and

11. "[W]hether a dangerous condition exist[ed] at [the] roadway and whether [Renton] breached its duty to maintain [the] roadway in a safe condition" is for the jury to decide (CP 563).

Neuman's expert opinion (CP 576-674), based on evidence, scholarship, governmental standards, and experience, is sufficient to defeat Renton's grant of summary judgment. *Lamon v. McDonnell Douglas Corp.*, 91 Wn.2d 345, 352, 588 P. 2d 1346 (1979) ("[A]n affidavit containing expert opinion on an ultimate issue of fact was sufficient to create a genuine issue of fact which would preclude summary judgment.").

The Court should preserve the right of jury trial on disputed questions of fact and reverse the Court of Appeals' decision.

C. The Court of Appeals' Decision Conflicts with Court of Appeals and Supreme Court Decisions on Road Municipal Immunity and Erroneously Expands *Ruff* Beyond its Narrow Scope

The Court of Appeals erroneously expanded the scope and application of *Ruff* to this case. *Ruff* is not controlling in this case for many reasons and must not be allowed to serve as a basis for denying Ryans' right to trial.

First, in *Ruff*, "[t]he striping along the roadway was clearly visible." *Id.*, 125 Wn.2d at 704. Here, RPMs were missing, which were a proximate cause of the crash. CP 583, 625.

Second, in *Ruff*, Ruff's expert testified that the "double yellow line in the center of the road [was] in good condition." 125 Wn.2d at 701. Here, a poorly maintained single skip

(passing) line was present instead of the required double "solid" (no-passing) line. CP 581-84.

Third, in *Ruff*, the double yellow center no-passing line had reflective RPMs. *Id.* Here, the single skip (passing) line had missing RPMs. CP 583, 625.

Fourth, in *Ruff*, no expert testified that having a guardrail off the roadway would have prevented injury. 125 Wn.2d at 702, 707. Here, Neuman testified that having the required approach line would have prevented the crash and injury. CP 584.

Fifth, in *Ruff*, Ruff cited no ordinance or statute requiring the installation of off-road barriers. 125 Wn.2d at 705. Here, Neuman declared that Renton violated (CP 581-82) its own required Standard Markers Plan (Ex G, CP 608-612); violated the MUTCD uniform marking requirement (CP 582); and failed to maintain its improper single skip (passing) line. CP 583. Ryans assert that Renton violated RMC 9-7-1, -5 (Appendix D), and 2009 MUTCD Introduction ¶¶ 20, 22-23 (Appendix E)

(requiring that traffic control devices be updated to current code when replaced).

Sixth, in *Ruff*, Ruff cited no guidelines ordinance or statute requiring "that roadways be retrofitted with new design structures." 125 Wn.2d at 705. Here, Ryans assert that Renton RMC 9-7-1, -5, and 2009 MUTCD Introduction ¶¶ 20, 22-23, required Renton to replace the dangerous and deceptive skip line RPMs with a double no-passing approach line.

Seventh, in *Ruff*, "[n]one of the experts testified that the roadway was inherently dangerous or deceptive." 125 Wn.2d at 706. Here, Neuman testified that Talbot was dangerous and deceptive. CP 582, 591.

Eighth, in *Ruff*, installing a guardrail was taking years to occur and would have been cost prohibitive. 125 Wn.2d at 702, 706. Here, Renton could have installed the approach line when it went to replace skip line road RPMs. At $0.22 per RPM (CP 735), with 2 RPMs side by side every 3 feet longitudinally, and the road being 150 feet from the north curb return of Talbot to

the gore point (CP 587), the cost of making Talbot safe for ordinary travel would come to only $22.

If municipalities cannot financially or timely make a dangerous or deceptive road safe for ordinary travel (e.g., a structurally deficient bridge), then municipalities must at least post signs and other warnings (e.g., load limit signs). *Ruff*, 125 Wn.2d at 705. Here, the cost of an approach line would be less than the cost of a sign, but Renton posted no sign or warning.

"Whether the roadway was reasonably safe for ordinary travel is, in this case, a material *question of fact*. The question of whether the bridge and its surroundings present an inherently dangerous situation requiring appropriate warning to users of the highway is a *question of fact*." *Tanguma v. Yakima County*, 18 Wn. App. 555, 560, 569 P.2d 1225 (1977) (emphasis added).

"Whether the roadway was reasonably safe for ordinary travel is, in this case, a material *question of fact*…. Similarly, whether a condition is inherently dangerous or misleading is generally a *question of fact*." *Owen v. Burlington N. Santa Fe*

R.R. Co., 153 Wn.2d 780, 788, 108 P.3d 1220 (2005) (emphasis added).

Whether a dangerous condition existed on Talbot from the gore point to the intersection is a *question of fact* for a jury to decide "based on the totality of the relevant surrounding circumstances, regardless of whether there is proof that a defective physical characteristic in the roadway rendered the roadway inherently dangerous or inherently misleading." *Xiao Ping Chen v. City of Seattle*, 153 Wn. App. 890, 909, 223 P.3d 1230 (2009).

The Court should expressly limit *Ruff* to its narrow facts and reverse the Court of Appeals' erroneous application of *Ruff* in this case.

D. The Court of Appeals' Decision Requiring Notice Conflicts with the Cases it Cites, and Notice is Not Required Because Renton Created the Unsafe Condition

Renton bore responsibility for Talbot since December 13, 1978. CP 690-91. Renton states it conducted one- and three-

year rolling inspections. CP 724. Two of Neuman's Google Earth images from 6/11/2010 (CP 605) and 4/19/2015 (CP 607) (which Renton likewise produced (CP 723)) show that Renton *reconstructed* portions of Talbot (cut and repaved northbound lane prior to 6/11/2010); *repainted* fog lines on Talbot and painted stop bars on 55th and S. 192nd Street (after 6/11/2010 and before 4/19/2015); and *resurfaced* Talbot by sealing cracks, including through the skip lines (after 6/11/2010 and before 4/19/2015). Renton also inspected and studied Talbot in detail on September 23, 2015. CP 585-86, 667, 685.

Washington outlawed passing within 100 feet of an intersection since before 1978. RCW 46.61.125(1)(b) (Appendix F). Renton's many visits gave it actual notice of the dangerous and deceptive skip (passing) line and opportunities to replace it with Renton's required approach (no-passing) line. CP 609-12. Therefore, Ryans did not need to give notice of the dangerous condition to Renton. "[I]f the government entity created the unsafe condition either directly through its

negligence or if it was a condition that the governmental entity should have anticipated, the plaintiff need not prove notice." *Nguyen v. City of Seattle*, 179 Wn. App. 155, 165, 317 P.3d 518 (2014).

Nevertheless, "[c]onstructive notice arises if the condition existed for a period of time so that the municipality should have discovered its existence through the exercise of reasonable care." *Ogier v. City of Bellevue*, 12 Wn. App. 2d 550, 555, 459 P.3d 368 (2020). "Whether one charged with negligence has exercised reasonable care is ordinarily a *question of fact* for the trier of fact." *Bodin v. City of Stanwood*, 130 Wn.2d 726, 735, 927 P.2d 240 (1996) (emphasis added).

The present Court of Appeals' lack-of-notice decision conflicts with *Tanguma*:

> Defendant contends since it had no notice of the defective condition, it cannot be held liable. Defendant states in its brief that "The only way that such notice could be imparted to Yakima County is by knowledge of prior accidents at the same location." Defendant is no more entitled to

> one free accident than a dog is entitled to one free bite.
>
> ....
>
> ... The fact of, or absence of, prior accidents may be weighed in determining whether the situation was inherently dangerous, but it is only one element in the total equation — not the sine qua non of liability. It is "at most grist for the jury's mill." *Simpson Timber Co. v. Parks*, 1966 A.M.C. 1081, 1085 (1965), *aff'd in part*, 390 F.2d 353 (9th Cir.1968). When negligent conduct produces a foreseeable risk of injury, the actor may not find refuge in a "long history of good fortune." *Butler v. L. Sonneborn Sons, Inc.*, 296 F.2d 623, 626 (2d Cir.1961).

Tanguma, 18 Wn. App. at 562-63.

The Court of Appeals' decision erroneously created first-crash-free municipal immunity if plaintiffs cannot produce recent complaints or collision reports specific to a road defect. *Contra Tanguma*; *Xiao; Keller v. City of Spokane*, 146 Wn.2d 237, 242-43, 44 P.3d 845 (2002) (municipalities held to same negligence standards as private parties).

The Court should reject first-crash-free municipal immunity. Lack of notice must not exempt municipalities' duty to eliminate inherently dangerous or misleading conditions

(*Owen*, 153 Wn.2d at 788) and quash plaintiffs' right to jury trial.

VIII. CONCLUSION

The Court should accept review.

This document contains 4,995 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED at Seattle, Washington, on August 30, 2024.

By 

s/ Jonathan R. Rappaport, WSBA # 20028
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Attorney for Petitioners

DECLARATION OF JONATHAN R. RAPPAPORT

I, Jonathan R. Rappaport, declare under penalty of perjury under the law of the State of Washington the following:

1. I am the attorney for petitioners Ryan. I am over the age of 18. I have personal knowledge of all the facts contained in

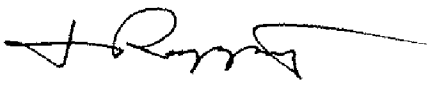
this declaration. I am competent to testify as a witness to these facts.

2. The facts contained in this document and declaration are true and correct, to the best of my knowledge.

3. Today, this document is being eFiled with the Washington Supreme Court via the Washington State Appellate Courts Filing Portal and contemporaneously eServed today via the same Filing Web Portal upon CITY OF RENTON's attorney Gregory Jackson and DANIEL WIITANEN's attorney Paul Crowley.

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

DATED at Seattle, Washington, on August 30, 2024.

By 

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Appendix A

FILED
6/10/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

GREGORY RYAN, husband, and NEREYDA RYAN, wife, individually, and on behalf of their marital community, Appellants, v. CITY OF RENTON, a government entity; and DANIEL WIITANEN, Respondents.	No. 85015-6-I DIVISION ONE UNPUBLISHED OPINION

MANN, J. — This case arises from an automobile collision that occurred in the City of Renton (City) when Daniel Wiitanen crossed the center line of Talbot Road S. and crashed into Gregory Ryan causing Ryan injury. Gregory and Nereyda Ryan (Ryans) sued the City and Wiitanen for negligence. The Ryans contend the City was negligent in its design and maintenance of the road where the collision occurred because of missing or deficient traffic control devices. The Ryans appeal summary judgment dismissal of their claims against the City. Because the Ryans failed to present evidence that the City breached its duty to design and maintain the road in a condition that is reasonably safe for ordinary travel, we affirm.

I

In the early morning hours of March 13, 2016, Wiitanen was driving on Talbot Road S. when he crossed into the oncoming lane near the intersection with S. 55th Street and collided with a vehicle driven by Ryan. Ryan suffered injuries and was taken to a hospital for treatment. Wiitanen told responding officers of the Renton Police Department that he was tired and clearing his eyes right before the collision. Later, in an affidavit, Wiitanen stated that he fell asleep while driving and awoke to honking at the moment of the collision.

Talbot Road S. was annexed by the City from King County sometime between 1978 and 2007 and was under the control of the City at the time of the collision. The portion of Talbot Road S. at issue contained a skip/broken yellow center line of raised pavement markers (RPMs) and did not have a double yellow approach line. The lines on Talbot Road S. were designed and installed by King County. At the time of the collision, the road was in substantially the same condition as it had been since 2002.

For maintenance, the City conducted a rolling inspection of roadways every year and otherwise relied on the public and public employees to report conditions. At the time, the City used RPMs as a visual guide for channelization rather than for a "rumble strip effect" or auditory warning. Generally, RPMs were replaced every other year in the spring or summer and not until 50 percent of the RPMs were missing. The road was last inspected in winter or spring 2016.

No other known collisions occurred at the location where Wiitanen collided with Ryan. One complaint was made for Talbot Road S. related to roadway width and traffic backup issues at certain times of day because of the lack of a left turn lane. The

collision history of the intersection of Talbot Road S. and S. 55th Street provided by the City showed five incidents before the Ryan and Wiitanen collision; all of which were because of inattention, speeding, or improper turns.

In March 2019, the Ryans sued Wiitanen and the City for damages. In response, the City denied liability and asserted that its actions were a reasonable exercise of judgment and discretion by authorized public officials made in the exercise of governmental authority. After disputes over protective orders and discovery, a trial was set for November 2022 with a discovery cut off of October 10, 2022.

On September 23, 2022, the City moved for summary judgment asserting that the Ryans failed to present evidence of breach of duty and proximate cause. In response, the Ryans asked the trial court to strike summary judgment under CR 56(f) because the City failed to produce complete discovery. The Ryans also asserted summary judgment was improper under CR 56(c) because genuine issues of material fact existed as to negligence and proximate cause. The Ryans relied on an expert report prepared by traffic engineer William Neuman, PE.

On November 21, 2022, the trial court denied the Ryans' motion to continue under CR 56(f), and granted the City's motion for summary judgment dismissing the Ryans' claims against the City.

The Ryans appeal.

II

The Ryans argue that the trial court erred by failing to continue the City's motion for summary judgment under CR 56(f).[1] We disagree.

CR 56(f) provides that the trial court may grant a continuance to permit the nonmoving party time to complete discovery. When the nonmoving party establishes a good reason why the discovery cannot be timely obtained, the trial court may allow "'a reasonable opportunity to make the record complete before ruling on a motion for summary judgment.'" In re Estate of Fitzgerald, 172 Wn. App. 437, 448, 294 P.3d 720 (2012) (citing Lewis v. Bell, 45 Wn. App. 192, 196, 724 P.2d 425 (1986)). Such a continuance is properly denied where "(1) the requesting party does not offer a good reason for the delay in obtaining the desired evidence, (2) the requesting party does not state what evidence would be established through the additional discovery, or (3) the desired evidence will not raise a genuine issue of material fact." Fitzgerald, 172 Wn. App. at 448 (citing Lewis, 45 Wn. App. at 196).

We review a trial court's decision on a continuance in a summary judgment proceeding under CR 56(f) for an abuse of discretion. Fitzgerald, 172 Wn. App. at 448. "A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons." In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). "A court's decision is manifestly unreasonable if it is

[1] The Ryans assign error to seven orders, including the order granting summary judgment, an order denying reconsideration, several discovery orders, and an order denying a change in the trial date. The Ryans only provide argument addressing the denial of a continuance under CR 56(f) and the order granting summary judgment. The Ryans failed to support the other assignments of error with argument or citations to authority as required by RAP 10.3(a)(5) and we do not consider them. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard." Littlefield, 133 Wn.2d at 47.

The trial court did not abuse its discretion. While the Ryans claimed that they needed more discovery, they failed to provide a good reason for the delay in obtaining desired evidence, failed to state what evidence would be established through more discovery, and failed to state that the desired evidence would raise a genuine issue of material fact.

Rather than address the requirements for a continuance under CR 56(f), the Ryans instead cite Magaña v. Hyundai Motor Am., 167 Wn.2d 570, 220 P.3d 191 (2009), and argue that they were repeatedly denied discovery from early June 2022 through November 2022. But Magaña does not address CR 56(f). Instead, in Magaña, the court addressed prejudice under a CR 37 sanction analysis because Hyundai improperly denied discovery related to evidence of seat back failures—the alleged proximate cause of Magaña's injury. Here, sanctions were not at issue. Instead, at issue was the Ryans' request for a CR 56(f) continuance in an already protracted lawsuit.

The trial court addressed the Ryans' concerns over discovery in its order:

> Most prominently, Plaintiffs lack a good reason for the protracted delay in their obtaining the evidence they now seek. This case was filed in March of 2019. It was stayed pending an interlocutory appeal by Plaintiffs arising from the Court's denial of their requested protective order. That appeal

became final in May 2021. A new case schedule issued in July 2021, setting a new trial date one year from then (July 2022).

In March 2022, Plaintiffs sought a further continuance. In denying that motion, the Court ruled:

> [T]his case has been pending for more than three years. If Plaintiffs intend to prosecute this case, it is imperative for them to comply with the Court rules and prior rulings of this Court and move the case forward.

On June 3, 2022, the Court held a pretrial conference. When it became apparent at the pretrial conference that the case would not be ready for trial the following month, the Court granted an additional four-month continuance to allow the parties to finish discovery.

So far as the Court can tell, Plaintiffs propounded their first written discovery to the City in May 2022, with responses due in early June 2022. The City timely responded, and provided supplemental responses on July 1, 2022.

At no time have the Plaintiffs ever moved to compel discovery of any kind from either defendant. Instead, in September 2022, Plaintiffs moved for another continuance of the trial date. Plaintiffs suggested in that motion that they had not received complete discovery responses, but provided no record supporting that assertion other than the argument of counsel and some attached emails; the sole relief sought in the proposed order was to continue the trial until at least March 23, 2023, which would have been more than four years after the case was filed.

The Court denied the motion to continue, noting the following:

> In particular, no party has brought any discovery issues before the Court since the pretrial conference on June 3, 2022, despite having had nearly four months to do so. The discovery cut off is October 10, 2022. At this stage, if evidence was responsive to but not produced in discovery, it may be subject to exclusion at trial, or other pretrial remedies may be appropriate.

After this order was entered, Plaintiffs then sought a renewed CR 30(b)(6) deposition of the City. The City sought a protective order due to the short notice and the substantial number of topics in the notice, the same issues that had previously resulted in the deposition being deferred. The Court granted the motion for protective order in part, allowing Plaintiffs to

conduct the deposition after the discovery cut off on reasonable notice and after resolving objections to the scope of the notice. Plaintiffs also apparently sought the deposition of Defendant Wiitanen, although that issue was not brought before the Court.

Following the Court's rulings, Plaintiffs' counsel continued emailing the Court's bailiff attempting to raise substantive issues regarding discovery by email. On October 21, 2022, the bailiff sent a reply email to Plaintiffs' counsel including the following:

> The Court is not able to address substantive issues over email and without an opportunity for all parties to be heard.
>
> If the plaintiffs are seeking to compel discovery, that needs to be done by motion. The Court notes that the discovery cut off has passed so the plaintiffs would need to include a request for leave of court explaining why the motion should be heard after the cut-off date and why a motion was not timely made earlier.
> * * *
> There is a pretrial conference set for November 4; if the plaintiffs want to file motions they could note them for the normal course on that day.

Plaintiffs did not file a discovery motion, a point which arose again during oral argument on the motion for summary judgment on November 4, 2022. Overall, the Court has afforded Plaintiffs copious opportunities to complete discovery and to file motions to compel discovery if necessary, but to date Plaintiffs have not done so, and trial is set for one week from today (November 28, 2022).

Finally, the Court notes that Plaintiffs' counsel in his declaration does not identify how specific evidence he seeks would create a disputed issue of material fact. He simply asks for more time to conduct additional discovery based on the CR 30(b)(6) deposition testimony.

(Internal citations omitted).

The trial court did not abuse its discretion in denying the Ryans' CR 56(f) motion for a continuance.

III

The Ryans argue the trial court erred in granting summary judgment because there were sufficient facts to support that the City was negligent in the design and maintenance of Talbot Road S. by failing to (1) maintain RPMs between the south end of terminus of the center turn lane ("gore point") and the intersection with S. 55th Street; (2) failing to install a double yellow center line with RPMs (approach lane) between the gore point and S. 55th Street; and (3) failed to follow channelization standard or uniformity of intersection standards. We disagree.

We review summary judgment orders de novo and perform the same inquiry as the trial court. Owen v. Burlington N. & Santa Fe R.R. Co., 153 Wn.2d 780, 787, 108 P.3d 1220 (2005). We view all facts and reasonable inferences in the light most favorable to the nonmoving party—in this case, Ryan. Owen, 153 Wn.2d at 787. Summary judgment is proper if the record before the trial court establishes "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c). "A material fact is one that affects the outcome of the litigation." Owen, 153 Wn.2d at 789. "If reasonable minds can differ, the question of fact is one for the trier of fact, and summary judgment is not appropriate." Owen, 153 Wn.2d at 788. The moving party may support its motion for summary judgment by challenging the sufficiency of the plaintiff's evidence on any material issue. Las v. Yellow Front Stores, Inc., 66 Wn. App. 196, 198, 831 P.2d 744 (1992). If the plaintiff fails to show the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial, then the moving party is entitled to

judgment as a matter of law and the trial court should grant the motion. Young v. Key Pharms., 112 Wn.2d 216, 225, 770 P.2d 182 (1989).

"Negligence requires proof of four elements: (1) the existence of a duty to the person alleging negligence, (2) breach of that duty, (3) resulting injury, and (4) proximate cause between the breach and the injury." Nguyen v. City of Seattle, 179 Wn. App. 155, 164, 317 P.3d 518 (2014).

Generally, municipalities are held to the same negligence standards as private parties. RCW 4.96.010; Keller v. City of Spokane, 146 Wn.2d 237, 242-43, 44 P.3d 845 (2002). "Whether a municipality owes a duty in a particular situation is a question of law." Keller, 146 Wn.2d at 243. A municipality "owes a duty to all persons, whether negligent or fault-free, to build and maintain its roadways in a condition that is reasonably safe for ordinary travel." Keller, 146 Wn.2d at 249. "A city's duty to eliminate an inherently dangerous or misleading condition is part of the overarching duty to provide reasonably safe roads for the people of this state to drive upon." Owen, 153 Wn.2d at 788.

But a municipality need not update every road to present-day standards. Ruff v. County of King, 125 Wn.2d 697, 705, 887 P.2d 886 (1995). "Nor does the duty require a [municipality] to anticipate and protect against all imaginable acts of negligent drivers for to do so would make [the municipality] an insurer against all such acts." Ruff, 125 Wn.2d at 705 (citations and internal quotations omitted).

Notice is required unless the municipality created the dangerous condition or reasonably anticipated it would develop:

> Actual or constructive notice of a dangerous condition is an essential element of the duty of reasonable care. But the notice requirement does not apply to dangerous conditions created by the governmental entity or its employees or to conditions that result from their conduct. Nor is notice required where the City should have reasonably anticipated the condition would develop.

Nguyen, 179 Wn. App. at 165 (citations and internal quotations omitted). Put another way, a "plaintiff is not required to prove notice only if the government entity created the unsafe condition directly through its negligence, or if it was a condition it should have anticipated." Helmbreck v. McPhee, 15 Wn. App. 2d 41, 53, 476 P.3d 589 (2020).

The standard for public highways in Washington State is in the 2009 edition of the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD). RCW 47.36.020; WAC 468-95-010. Cities are required to equip certain primary, secondary, and connecting streets with traffic control devices. RCW 47.36.060. The MUTCD requires that center lines be used to delineate the separation of traffic lanes traveling in opposite directions of travel in three possible configurations: (1) two direction passing zone markings of a normal broken yellow line, (2) one direction no passing markings of double yellow lines, one of which is broken, and (3) two direction no passing markings of two solid yellow lines.[2] Washington has modified the MUTCD so that RPMs may be substituted for pavement markings as follows:

> If raised pavement markers are substituted for broken line markings, a group of 3 to 5 markers equally spaced at no greater than N/8 (see Section 3B.11), or at the one-third points of the line segment if N is other than 40 feet, with at least one retroreflective or internally illuminated marker used per group.

[2] Although the MUTCD was adopted in its entirety, the code reviser determined not to publish every regulation in the MUTCD. WAC 468-95-010. The MUTCD provision cited is not in the published code, but is in our clerk's papers.

WAC 468-95-210. According to the 2015 Washington State Department of Transportation Design Manual, RPMs have a service life of two years and provide good wet night visibility and a rumble effect.

Here, the state of the RPMs making up the single yellow broken line on Talbot Road S. at the time of the collision is unclear. The City denied that any RPMs were missing at the time of the collision and noted that RPMs were being phased out in favor of reflective paint. But the City acknowledged that RPMs have to be replaced every other year and that those replacements occur typically in the spring and summer months. The portion of the road was inspected sometime in the winter or spring of 2016, so likely sometime in the few months before or following the collision. Viewing these facts in favor of the Ryans, we assume that some RPMs were missing on Talbot Road S. at the time of the collision.

But the Ryans fail to present adequate evidence to establish the City breached its duty of care. The Ryans rely mainly on the testimony of Neuman to assert that the City should have replaced missing RPMs and placed a double strip of RPMs in the approach to S. 55th Street. Neuman points to three "defects" of pavement markings: (1) lack of double yellow RPMs south of the gore point, (2) failure to use uniform markings consistent with those on S. 55th Street, and (3) poorly maintained RPMs on the date of the accident. But the Ryans present no evidence that the City was required to make such improvements, inspect Talbot Road S. more often, or replace RPMs more often than once every other year. The City did not design Talbot Road S. and was not required to update the road even if the standard or guideline in 2016 called for a double strip of RPMs in the approach to the intersection. Ruff, 125 Wn.2d at 706. Neuman's

belief that the road markings were defective, without more, is insufficient to create a genuine issue as to whether the City breached its duty to maintain Talbot Road. S. in a manner reasonably safe for ordinary travel.

Without a complaint of missing RPMs or notice of a dangerous condition due to center line visibility or confusion, the City's duty cannot reasonably include inspection of this portion of Talbot Road S. more often than it already does or replacement of each RPM at the moment it wears out or goes missing. The only complaint made about this particular section of road related to traffic back up issues at certain times of day that led to cars driving on the shoulder to bypass cars waiting to turn. That complaint cannot create a genuine issue as to whether there was a dangerous or misleading condition related to RPMs and the center line visibility. Further, the collision history shows that all other documented incidents in the two years before this collision occurred at the intersection and were because of inattention, speeding, or illegal turns—and were not because of missing RPMs, lack of a rumble effect, or impaired center line visibility.

Thus, the Ryans fail to present evidence creating a genuine issue of material fact that the City designed or maintained the road in an unsafe manner or was on notice or should have been aware of a dangerous or misleading condition created by missing RPMs or the existing design. Summary judgment and dismissal in favor of the City was not error.

We affirm.

Mann, J.

WE CONCUR:

Cheung, J.

Brown, J.

Appendix B

FILED
7/29/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

GREGORY RYAN, husband, and NEREYDA RYAN, wife, individually, and on behalf of their marital community, Appellants, v. CITY OF RENTON, a government entity; and DANIEL WIITANEN, Respondents.	No. 85015-6-I DIVISION ONE ORDER DENYING MOTION FOR RECONSIDERATION

Appellants Gregory Ryan and Nereyda Ryan moved to reconsider the court's opinion filed on June 10, 2024. The panel has determined that the motion for reconsideration should be denied. Therefore, it is

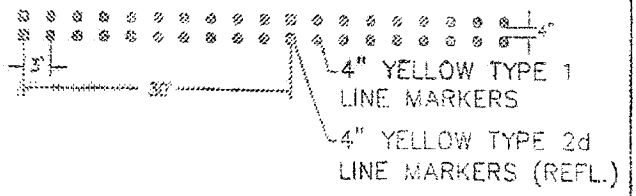
ORDERED that the motion for reconsideration is denied.

FOR THE COURT:

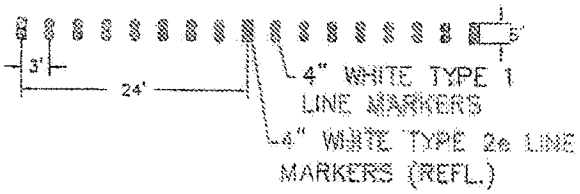
Mann, J.

Appendix C

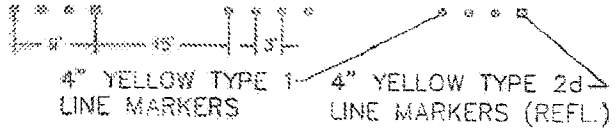
DOUBLE YELLOW CENTER LINES



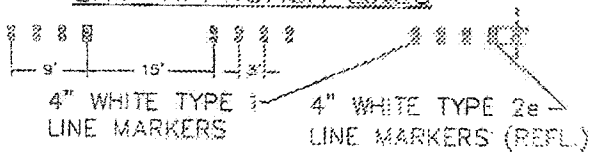
APPROACH LINES



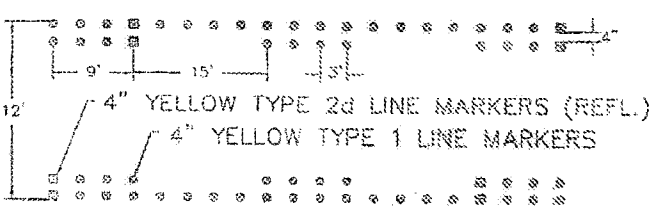
SINGLE SKIP YELLOW CENTER LINES



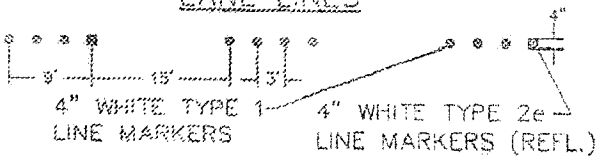
SKIP APPROACH LINES



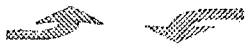
TWO-WAY LEFT TURN LANES



LANE LINES

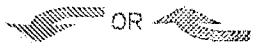


2-WAY LEFT TURN ARROW SPACING



SPEED LIMIT 25 MPH ------ 200' O.C.
SPEED LIMIT 30-35 MPH --- 250' O.C.
SPEED LIMIT 40-45 MPH --- 300' O.C.

LEFT AND RIGHT TURN ARROW SPACING

APPROACH LINE LENGTH	ARROW LOCATIONS  OR
20'-50'	1 ARROW (20' BACK FROM CROSSWALK OR STOP BAR)
50'-125'	2 ARROWS (20' BACK & END OF APPROACH LINE)
125'-300'	3 ARROWS (20' BACK, MIDWAY & END OF LINE)
OVER 300'	ARROWS AT 100' INTERVALS

RAISED PAVEMENT MARKER (RPM) TYPES

RPM TYPE 2 RAISED FACE COLORS	
RPM	COLOR
TYPE 2a	WHITE AND RED
TYPE 2b	SEE COR STD WATER PLANS
TYPE 2c	YELLOW AND RED
TYPE 2d	YELLOW AND YELLOW
TYPE 2e	WHITE - ONE SIDE ONLY
TYPE 2f	YELLOW - ONE SIDE ONLY

RPM SIZES		
RPM	WIDTH/DIAMETER	HEIGHT
TYPE 1	±4"	±0.7"
TYPE 2	±4"	±0.7"

NOTE: RPM MATERIAL SPECIFICATIONS SHALL BE PER WSDOT STANDARD SPECIFICATIONS SECTION 9-21 RAISED PAVEMENT MARKERS (RPM)

PUBLIC WORKS DEPARTMENT

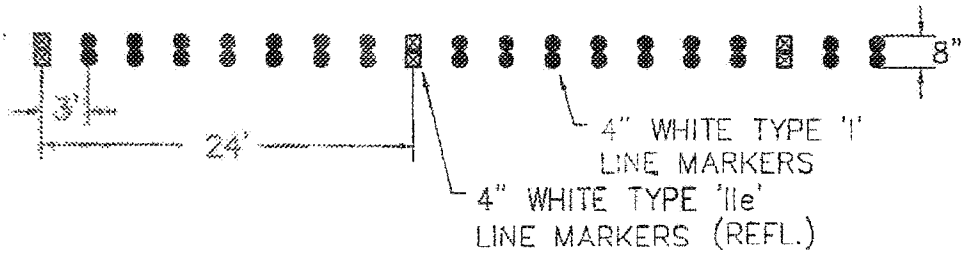
CHANNELIZATION MARKERS DETAIL

STD. PLAN- 109

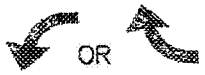
APPROVED: Gregg Zimmerman

DATE

APPROACH LINE

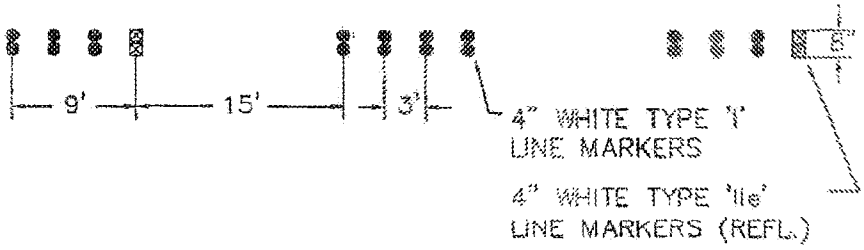


NUMBER AND LOCATIONS OF ARROWS

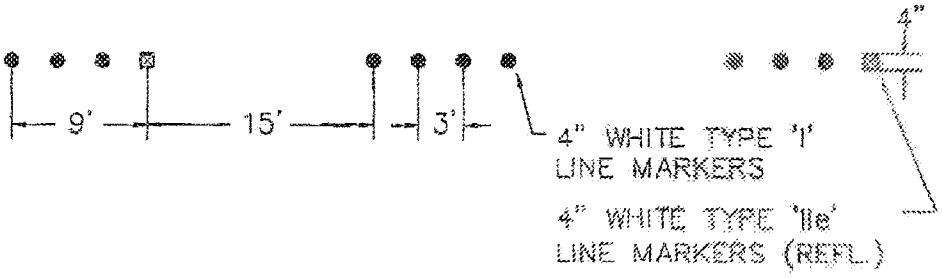


APPROACH LINE LENGTH	ARROW LOCATIONS
20'–50'	1 ARROW (20' BACK FROM CROSSWALK OR STOP BAR)
50'–125'	2 ARROWS(20' BACK & END OF APPROACH LINE)
125'–300'	3 ARROWS(20' BACK, MIDWAY & END OF LINE) ARROWS
OVER 300'	AT 100' INTERVALS

SKIP APPROACH LINE



LANE LINE

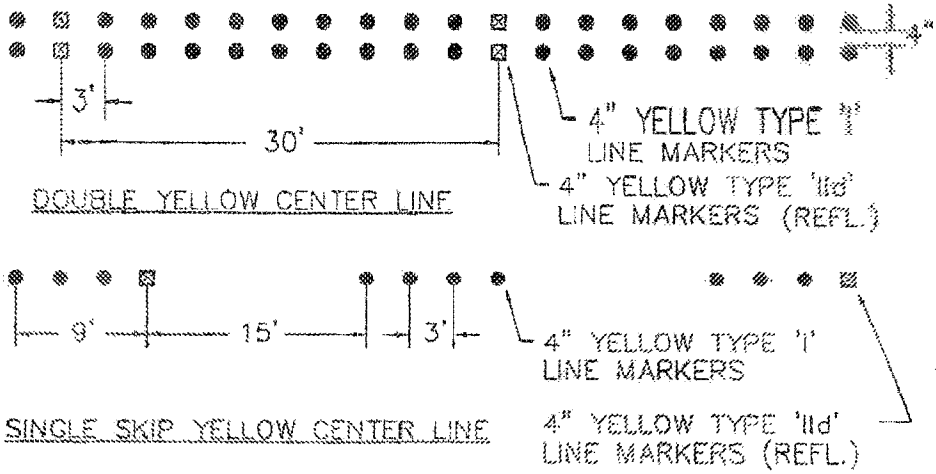


CHANNELIZATION MAKERS DETAIL

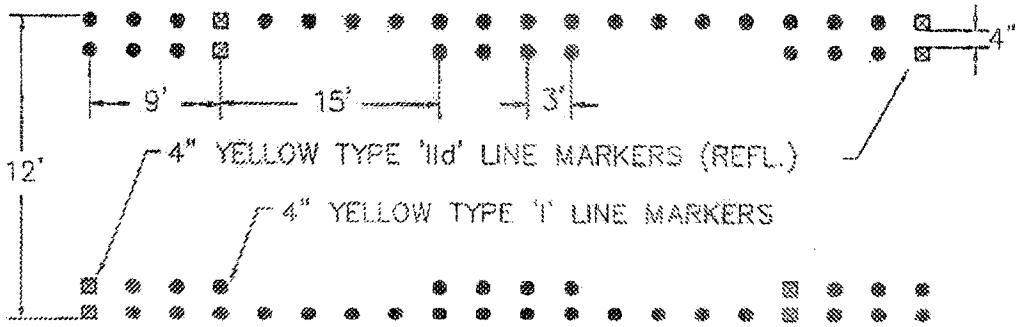
ADOPTED
CITY OF RENTON

STANDARD PLANS
LST DATE: 04/04

CENTER LINES



TWO-WAY LEFT TURN LANE



NUMBER OF 2-WAY LEFT TURN ARROWS

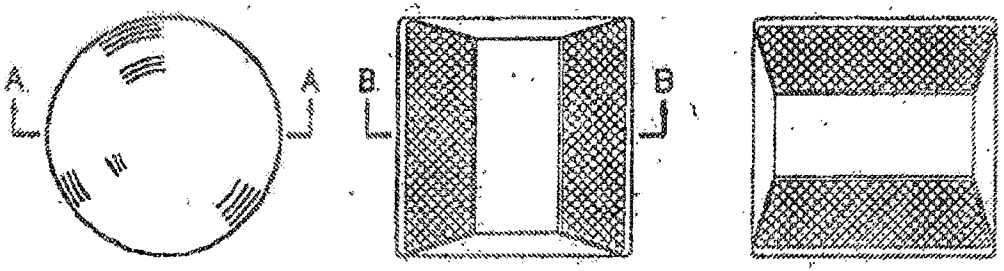
SPEED LIMIT 25 MPH ------ 200' O.C.
SPEED LIMIT 30-35 MPH -- 250' O.C.
SPEED LIMIT 40-45 MPH -- 300' O.C.

CHANNELIZATION MARKERS DETAIL

ADOPTED
CITY OF RENTON

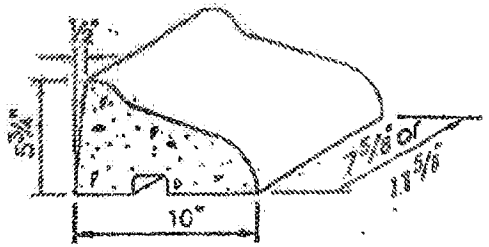
STANDARD PLANS
LST DATE: 04/04

#43

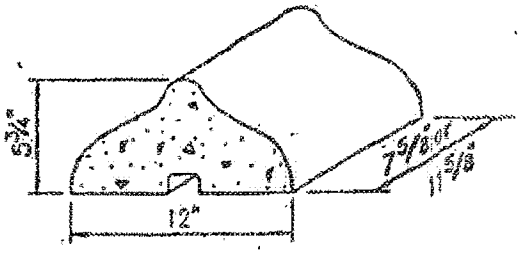


RPM TYPE 2 RAISED FACE COLORS	
Type 2a	White and Red
Type 2c	Yellow and Red
Type 2d	Yellow and Yellow
Type 2e	White – One Side Only.
Type 2f	Yellow – One Side Only

RAISED PAVEMENT MARKERS (RPM)



TYPE "A" BLOCK



TYPE "C" BLOCK

PRECAST BLOCK TRAFFIC CURBS

Raised Pavement Markers and Precast Block Traffic Curbs

ADOPTED
CITY OF RENTON
STANDARD PLANS
1ST DATE: 2-Oct-87

DWG NAME: RR-06 SP PAGE: H007

COA 612

Appendix D

CHAPTER 7
ROAD, BRIDGE AND MUNICIPAL CONSTRUCTION STANDARDS

SECTION:

9-7-1 CODE ADOPTED:

The 2010 Standard Specifications for Road, Bridge and Municipal Construction, published by the Washington State Department of Transportation and the Washington State Chapter of the American Public Works Association as modified or supplemented by the City of Renton's supplemental specifications, together with the Standard Plans for Road, Bridge and Municipal Construction published by the Washington State Department of Transportation and the Washington State Chapter of the American Public Works Association as modified or supplemented by the City of Renton Standard Plans for Public Works Construction/Details, are hereby adopted as the City of Renton Standard Specifications for Municipal Public Works construction (hereinafter "Standard Specifications"). One copy of each document is on file and made available for examination by the public in the office of the City Clerk. (Ord. 4340, 1-20-92; amd. Ord. 4646, 12-16-96; Ord. 5539, 5-24-10)

9-7-2 AMENDMENTS:

Any and all amendments, additions or modifications to said Code, when printed and filed with the City Clerk of the City of Renton by authorization of the Public Works Administrator from time to time, shall be considered and accepted and constitute a part of such Code without the necessity of further adoption of such amendments, modifications or additions by the legislative authority of the City of Renton or by ordinance. (Ord. 5539, 5-24-10)

9-7-3 AUTHENTICATION, RECORD OF CODE:

The City Clerk is hereby authorized and directed to duly authenticate and record a copy of the abovementioned Standard Specifications together with any amendments or additions thereto, together with an authenticated copy of this Ordinance.

9-7-4 LIABILITY:

This Ordinance shall not be construed to relieve from or lessen the responsibility of any person owning, building, altering, constructing or moving any building or structure or engaging in any such construction as defined in the aforementioned Standard Specifications, nor shall the City of Renton or any agent thereof be held as assuming such liability by reason of inspection authorized herein or a certificate of inspection issued by the City or any of its agencies.

9-7-5 CONFLICTING PROVISIONS:

If any part or provision of said Code be in conflict with any other Code heretofore or hereafter adopted by the City of Renton, then in any such event the more restrictive provision shall be applicable and control. (Ord. 2972, 10-6-75)

The Renton Municipal Code is current through Ordinance 6137, passed July 15, 2024.

Disclaimer: The City Clerk's Office has the official version of the Renton Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: https://rentonwa.gov/
City Telephone: (425) 430-6502

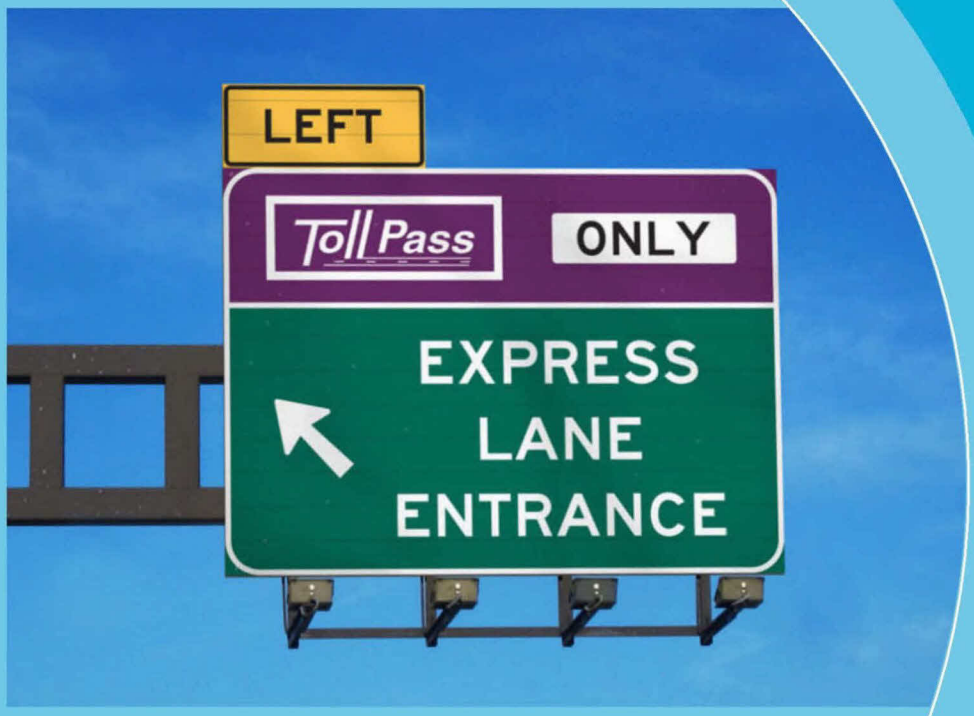
Codification services provided by General Code

Appendix E

Manual on Uniform Traffic Control Devices

for Streets and Highways

2009 Edition



U.S.Department of Transportation
Federal Highway Administration

MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES
INTRODUCTION

Standard:

01 **Traffic control devices shall be defined as all signs, signals, markings, and other devices used to regulate, warn, or guide traffic, placed on, over, or adjacent to a street, highway, pedestrian facility, bikeway, or private road open to public travel (see definition in Section 1A.13) by authority of a public agency or official having jurisdiction, or, in the case of a private road, by authority of the private owner or private official having jurisdiction.**

02 **The Manual on Uniform Traffic Control Devices (MUTCD) is incorporated by reference in 23 Code of Federal Regulations (CFR), Part 655, Subpart F and shall be recognized as the national standard for all traffic control devices installed on any street, highway, bikeway, or private road open to public travel (see definition in Section 1A.13) in accordance with 23 U.S.C. 109(d) and 402(a). The policies and procedures of the Federal Highway Administration (FHWA) to obtain basic uniformity of traffic control devices shall be as described in 23 CFR 655, Subpart F.**

03 **In accordance with 23 CFR 655.603(a), for the purposes of applicability of the MUTCD:**

- **A. Toll roads under the jurisdiction of public agencies or authorities or public-private partnerships shall be considered to be public highways;**
- **B. Private roads open to public travel shall be as defined in Section 1A.13; and**
- **C. Parking areas, including the driving aisles within those parking areas, that are either publicly or privately owned shall not be considered to be "open to public travel" for purposes of MUTCD applicability.**

04 **Any traffic control device design or application provision contained in this Manual shall be considered to be in the public domain. Traffic control devices contained in this Manual shall not be protected by a patent, trademark, or copyright, except for the Interstate Shield and any items owned by FHWA.**

Support:

05 Pictographs, as defined in Section 1A.13, are embedded in traffic control devices but the pictographs themselves are not considered traffic control devices for the purposes of Paragraph 4.

06 The need for uniform standards was recognized long ago. The American Association of State Highway Officials (AASHO), now known as the American Association of State Highway and Transportation Officials (AASHTO), published a manual for rural highways in 1927, and the National Conference on Street and Highway Safety (NCSHS) published a manual for urban streets in 1930. In the early years, the necessity for unification of the standards applicable to the different classes of road and street systems was obvious. To meet this need, a joint committee of AASHO and NCSHS developed and published the original edition of this Manual on Uniform Traffic Control Devices (MUTCD) in 1935. That committee, now called the National Committee on Uniform Traffic Control Devices (NCUTCD), though changed from time to time in name, organization, and personnel, has been in continuous existence and has contributed to periodic revisions of this Manual. The FHWA has administered the MUTCD since the 1971 edition. The FHWA and its predecessor organizations have participated in the development and publishing of the previous editions. There were nine previous editions of the MUTCD, and several of those editions were revised one or more times. Table I-1 traces the evolution of the MUTCD, including the two manuals developed by AASHO and NCSHS.

Standard:

07 **The U.S. Secretary of Transportation, under authority granted by the Highway Safety Act of 1966, decreed that traffic control devices on all streets and highways open to public travel in accordance with 23 U.S.C. 109(d) and 402(a) in each State shall be in substantial conformance with the Standards issued or endorsed by the FHWA.**

Support:

08 The "Uniform Vehicle Code (UVC)" is one of the publications referenced in the MUTCD. The UVC contains a model set of motor vehicle codes and traffic laws for use throughout the United States.

Guidance:

09 *The States should adopt Section 15-116 of the UVC, which states that, "No person shall install or maintain in any area of private property used by the public any sign, signal, marking, or other device intended to regulate, warn, or guide traffic unless it conforms with the State manual and specifications adopted under Section 15-104."*

18 Each Section is comprised of one or more paragraphs. The paragraphs are indented and are identified by a number. Paragraphs are counted from the beginning of each Section without regard to the intervening text headings (Standard, Guidance, Option, or Support). Some paragraphs have lettered or numbered items. As an example of how to cite this Manual, the phrase "Not less than 40 feet beyond the stop line" that appears in Section 4D.14 of this Manual would be referenced in writing as "Section 4D.14, P1, A.1," and would be verbally referenced as "Item A.1 of Paragraph 1 of Section 4D.14."

Standard:

19 **In accordance with 23 CFR 655.603(b)(3), States or other Federal agencies that have their own MUTCDs or Supplements shall revise these MUTCDs or Supplements to be in substantial conformance with changes to the National MUTCD within 2 years of the effective date of the Final Rule for the changes. Substantial conformance of such State or other Federal agency MUTCDs or Supplements shall be as defined in 23 CFR 655.603(b)(1).**

20 **After the effective date of a new edition of the MUTCD or a revision thereto, or after the adoption thereof by the State, whichever occurs later, new or reconstructed devices installed shall be in compliance with the new edition or revision.**

21 **In cases involving Federal-aid projects for new highway or bikeway construction or reconstruction, the traffic control devices installed (temporary or permanent) shall be in conformance with the most recent edition of the National MUTCD before that highway is opened or re-opened to the public for unrestricted travel [23 CFR 655.603(d)(2) and (d)(3)].**

22 **Unless a particular device is no longer serviceable, non-compliant devices on existing highways and bikeways shall be brought into compliance with the current edition of the National MUTCD as part of the systematic upgrading of substandard traffic control devices (and installation of new required traffic control devices) required pursuant to the Highway Safety Program, 23 U.S.C. §402(a). The FHWA has the authority to establish other target compliance dates for implementation of particular changes to the MUTCD [23 CFR 655.603(d)(1)]. These target compliance dates established by the FHWA shall be as shown in Table I-2.**

23 **Except as provided in Paragraph 24, when a non-compliant traffic control device is being replaced or refurbished because it is damaged, missing, or no longer serviceable for any reason, it shall be replaced with a compliant device.**

Option:

24 A damaged, missing, or otherwise non-serviceable device that is non-compliant may be replaced in kind if engineering judgment indicates that:

A. One compliant device in the midst of a series of adjacent non-compliant devices would be confusing to road users; and/or
B. The schedule for replacement of the whole series of non-compliant devices will result in achieving timely compliance with the MUTCD.

PART 1
GENERAL

CHAPTER 1A. GENERAL

Section 1A.01 Purpose of Traffic Control Devices

Support:

01 The purpose of traffic control devices, as well as the principles for their use, is to promote highway safety and efficiency by providing for the orderly movement of all road users on streets, highways, bikeways, and private roads open to public travel throughout the Nation.

02 Traffic control devices notify road users of regulations and provide warning and guidance needed for the uniform and efficient operation of all elements of the traffic stream in a manner intended to minimize the occurrences of crashes.

Standard:

03 **Traffic control devices or their supports shall not bear any advertising message or any other message that is not related to traffic control.**

Support:

04 Tourist-oriented directional signs and Specific Service signs are not considered advertising; rather, they are classified as motorist service signs.

Section 1A.02 Principles of Traffic Control Devices

Support:

01 This Manual contains the basic principles that govern the design and use of traffic control devices for all streets, highways, bikeways, and private roads open to public travel (see definition in Section 1A.13) regardless of type or class or the public agency, official, or owner having jurisdiction. This Manual's text specifies the restriction on the use of a device if it is intended for limited application or for a specific system. It is important that these principles be given primary consideration in the selection and application of each device.

Guidance:

02 *To be effective, a traffic control device should meet five basic requirements:*

A. Fulfill a need;
B. Command attention;
C. Convey a clear, simple meaning;
D. Command respect from road users; and
E. Give adequate time for proper response.

03 *Design, placement, operation, maintenance, and uniformity are aspects that should be carefully considered in order to maximize the ability of a traffic control device to meet the five requirements listed in the previous paragraph. Vehicle speed should be carefully considered as an element that governs the design, operation, placement, and location of various traffic control devices.*

Support:

04 The definition of the word "speed" varies depending on its use. The definitions of specific speed terms are contained in Section 1A.13.

Guidance:

05 *The actions required of road users to obey regulatory devices should be specified by State statute, or in cases not covered by State statute, by local ordinance or resolution. Such statutes, ordinances, and resolutions should be consistent with the "Uniform Vehicle Code" (see Section 1A.11).*

06 *The proper use of traffic control devices should provide the reasonable and prudent road user with the information necessary to efficiently and lawfully use the streets, highways, pedestrian facilities, and bikeways.*

Support:

07 Uniformity of the meaning of traffic control devices is vital to their effectiveness. The meanings ascribed to devices in this Manual are in general accord with the publications mentioned in Section 1A.11.

Section 1A.03 Design of Traffic Control Devices

Guidance:

01 *Devices should be designed so that features such as size, shape, color, composition, lighting or retroreflection, and contrast are combined to draw attention to the devices; that size, shape, color, and simplicity of message combine to produce a clear meaning; that legibility and size combine with placement to permit adequate time for response; and that uniformity, size, legibility, and reasonableness of the message combine to command respect.*

02 *Aspects of a device's standard design should be modified only if there is a demonstrated need.*

39. "Guidelines for Accessible Pedestrian Signals (NCHRP Web-Only Document 117B)," 2008 Edition (TRB)
40. "Highway Capacity Manual," 2000 Edition (TRB)
41. "Recommended Procedures for the Safety Performance Evaluation of Highway Features," (NCHRP Report 350), 1993 Edition (TRB)
42. "The Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG)," July 1998 Edition (The U.S. Access Board)

Section 1A.12 Color Code

Support:

01 The following color code establishes general meanings for 11 colors of a total of 13 colors that have been identified as being appropriate for use in conveying traffic control information. tolerance limits for each color are contained in 23 CFR Part 655, Appendix to Subpart F and are available at the Federal Highway Administration's MUTCD website at http://mutcd.fhwa.dot.gov or by writing to the FHWA, Office of Safety Research and Development (HRD-T-301), 6300 Georgetown Pike, McLean, VA 22101.

02 The two colors for which general meanings have not yet been assigned are being reserved for future applications that will be determined only by FHWA after consultation with the States, the engineering community, and the general public. The meanings described in this Section are of a general nature. More specific assignments of colors are given in the individual Parts of this Manual relating to each class of devices.

Standard:

03 **The general meaning of the 13 colors shall be as follows:**

- **A. Black—regulation**
- **B. Blue—road user services guidance, tourist information, and evacuation route**
- **C. Brown—recreational and cultural interest area guidance**
- **D. Coral—unassigned**
- **E. Fluorescent Pink—incident management**
- **F. Fluorescent Yellow-Green—pedestrian warning, bicycle warning, playground warning, school bus and school warning**
- **G. Green—indicated movements permitted, direction guidance**
- **H. Light Blue—unassigned**
- **I. Orange—temporary traffic control**
- **J. Purple—lanes restricted to use only by vehicles with registered electronic toll collection (ETC) accounts**
- **K. Red—stop or prohibition**
- **L. White—regulation**
- **M. Yellow—warning**

Section 1A.13 Definitions of Headings, Words, and Phrases in this Manual

Standard:

01 **When used in this Manual, the text headings of Standard, Guidance, Option, and Support shall be defined as follows:**

- **A. Standard—a statement of required, mandatory, or specifically prohibitive practice regarding a traffic control device. All Standard statements are labeled, and the text appears in bold type. The verb "shall" is typically used. The verbs "should" and "may" are not used in Standard statements. Standard statements are sometimes modified by Options. Standard statements shall not be modified or compromised based on engineering judgment or engineering study.**
- **B. Guidance—a statement of recommended, but not mandatory, practice in typical situations, with deviations allowed if engineering judgment or engineering study indicates the deviation to be appropriate. All Guidance statements are labeled, and the text appears in unbold type. The verb "should" is typically used. The verbs "shall" and "may" are not used in Guidance statements. Guidance statements are sometimes modified by Options.**
- **C. Option—a statement of practice that is a permissive condition and carries no requirement or recommendation. Option statements sometime contain allowable modifications to a Standard or Guidance statement. All Option statements are labeled, and the text appears in unbold type. The verb "may" is typically used. The verbs "shall" and "should" are not used in Option statements.**
- **D. Support—an informational statement that does not convey any degree of mandate, recommendation, authorization, prohibition, or enforceable condition. Support statements are labeled, and the text appears in unbold type. The verbs "shall," "should," and "may" are not used in Support statements.**

64. Engineering Judgment—the evaluation of available pertinent information, and the application of appropriate principles, provisions, and practices as contained in this Manual and other sources, for the purpose of deciding upon the applicability, design, operation, or installation of a traffic control device. Engineering judgment shall be exercised by an engineer, or by an individual working under the supervision of an engineer, through the application of procedures and criteria established by the engineer. Documentation of engineering judgment is not required.
65. Engineering Study—the comprehensive analysis and evaluation of available pertinent information, and the application of appropriate principles, provisions, and practices as contained in this Manual and other sources, for the purpose of deciding upon the applicability, design, operation, or installation of a traffic control device. An engineering study shall be performed by an engineer, or by an individual working under the supervision of an engineer, through the application of procedures and criteria established by the engineer. An engineering study shall be documented.
66. Entrance Gate—an automatic gate that can be lowered across the lanes approaching a grade crossing to block road users from entering the grade crossing.
67. Exact Change Lane (Automatic Lane)—a non-attended toll lane that has a receptacle into which road users deposit coins totaling the exact amount of the toll. Exact Change lanes at toll plazas typically require vehicles to stop to pay the toll.
68. Exit Gate—an automatic gate that can be lowered across the lanes departing a grade crossing to block road users from entering the grade crossing by driving in the opposing traffic lanes.
69. Exit Gate Clearance Time—for Four-Quadrant Gate systems at grade crossings, the amount of time provided to delay the descent of the exit gate arm(s) after entrance gate arm(s) begin to descend.
70. Exit Gate Operating Mode—for Four-Quadrant Gate systems at grade crossings, the mode of control used to govern the operation of the exit gate arms.
71. Expressway—a divided highway with partial control of access.
72. Flagger—a person who actively controls the flow of vehicular traffic into and/or through a temporary traffic control zone using hand-signaling devices or an Automated Flagger Assistance Device (AFAD).
73. Flasher—a device used to turn highway traffic signal indications on and off at a repetitive rate of approximately once per second.
74. Flashing—an operation in which a light source, such as a traffic signal indication, is turned on and off repetitively.
75. Flashing-Light Signals—a warning device consisting of two red signal indications arranged horizontally that are activated to flash alternately when rail traffic is approaching or present at a grade crossing.
76. Flashing Mode—a mode of operation in which at least one traffic signal indication in each vehicular signal face of a highway traffic signal is turned on and off repetitively.
77. Freeway—a divided highway with full control of access.
78. Full-Actuated Operation—a type of traffic control signal operation in which all signal phases function on the basis of actuation.
79. Gate—an automatically-operated or manually-operated traffic control device that is used to physically obstruct road users such that they are discouraged from proceeding past a particular point on a roadway or pathway, or such that they are discouraged from entering a particular grade crossing, ramp, lane, roadway, or facility.
80. Grade Crossing—the general area where a highway and a railroad and/or light rail transit route cross at the same level, within which are included the tracks, highway, and traffic control devices for traffic traversing that area.
81. Guide Sign—a sign that shows route designations, destinations, directions, distances, services, points of interest, or other geographical, recreational, or cultural information.
82. High-Occupancy Vehicle (HOV)—a motor vehicle carrying at least two or more persons, including carpools, vanpools, and buses.
83. Highway—a general term for denoting a public way for purposes of vehicular travel, including the entire area within the right-of-way.
84. Highway-Light Rail Transit Grade Crossing—the general area where a highway and a light rail transit route cross at the same level, within which are included the light rail transit tracks, highway, and traffic control devices for traffic traversing that area.
85. Highway-Rail Grade Crossing—the general area where a highway and a railroad cross at the same level, within which are included the railroad tracks, highway, and traffic control devices for highway traffic traversing that area.

Appendix F

PDF **RCW** 46.61.125

Further limitations on driving to left of center of roadway.

(1) No vehicle shall be driven on the left side of the roadway under the following conditions:

(a) When approaching or upon the crest of a grade or a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event other traffic might approach from the opposite direction;

(b) When approaching within one hundred feet of or traversing any intersection or railroad grade crossing;

(c) When the view is obstructed upon approaching within one hundred feet of any bridge, viaduct or tunnel;

(d) When a bicycle or pedestrian is within view of the driver and is approaching from the opposite direction, or is present, in the roadway, shoulder, or bicycle lane within a distance unsafe to the bicyclist or pedestrian due to the width or condition of the roadway, shoulder, or bicycle lane.

(2) The foregoing limitations shall not apply upon a one-way roadway, nor under the conditions described in RCW 46.61.100(1)(b), nor to the driver of a vehicle turning left into or from an alley, private road or driveway.

[2005 c 396 s 3; 1972 ex.s. c 33 s 2; 1965 ex.s. c 155 s 20.]

NOTES:

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

LAW OFFICE OF JONATHAN R RAPPAPORT

August 30, 2024 - 3:45 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	103,416-4
Appellate Court Case Title:	Gregory Ryan, et ano. v. City of Renton, et al.

The following documents have been uploaded:

- 1034164_Motion_20240830154101SC762538_7566.pdf
  This File Contains:
  Motion 1 - Amended Brief
  The Original File Name was 20240830 Motion to File Amended Peition for Review.pdf
- 1034164_Other_20240830154101SC762538_5002.pdf
  This File Contains:
  Other - Amended Petition for Review
  The Original File Name was 20240830 Amended Petition for Review.pdf

A copy of the uploaded files will be sent to:

- Greg@jnseattle.com
- MIS@LawyerJon.com
- crowley@524law.com

Comments:

Per instruction from the Court's receptionist, I am filing this Motion to Amended Petition for Review, and separately attaching the Amended Petition for Review. The $200 filing fee has already been paid.

Sender Name: Jonathan Rappaport - Email: JRR@LawyerJon.com
Address:
PO BOX 27783
SEATTLE, WA, 98165-2783
Phone: 206-634-0711

Note: The Filing Id is 20240830154101SC762538