Illinois Court Cases Related to Engineering

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Introduction

- 9 cases to cover
- Publication after they get to appellate level
- We will present:
  - Facts
  - What each side says
  - Other pertinent issues
  - We will discuss the case
  - Court rulings (may not be the same ruling as trial court)
- The appellate court will affirm, reverse or remand (or a combination of the above).

Definitions

- Summary judgment - *A procedural device used during civil litigation to promptly and expeditiously dispose of a case without a trial. It is used when there is no dispute as to the material facts of the case and a party is entitled to judgment as a matter of law.*
- Declaratory judgment - *A declaratory judgment is a binding judgment from a court defining the legal relationship between parties and their rights in a matter before the court.*

Definitions

- A directed verdict - *A procedural device whereby the decision in a case is taken out of the hands of the jury by the judge.*
- Tort - *A negligent or intentional civil wrong not arising out of a contract or statute. These include "intentional torts" such as battery or defamation, and torts for negligence*.

Definitions

- With prejudice - *means that a case is dismissed permanently. A case dismissed with prejudice is over and done with, once and for all, and can't be brought back to court.*
- *Proximate cause - a happening which results in an event, particularly injury due to negligence or an intentional wrongful act.*

Introduction

- What to take away from this seminar
  - Shank v Fields – liability during a lane closure on a holiday weekend.
  - Thompson v Gordon – the difference between "replacement" and "improvement" in contract language.
  - Moss v Rowe Construction – who is responsible for safety at a work site.

Introduction

- What to take away from this seminar
  - Hess v Miller – does a landowner have an easement over a highway after it is closed.
  - Gantzert v Mazon – does the Tort Immunity Act cover a township for work done on a roadway.
  - Boub v Township of Wayne – liability for defects in the roadway during repairs.

Introduction

- What to take away from this seminar
  - Kirschbaum v. The Village of Homer Glen – Trees and brush obstructing view of a highway.
  - Chamness v. Mays – Abandonment of a County Highway.
  - Putnam v. Village of Bensenville – Liability for sidewalk defect.

Shank v Fields

No. 4-06-0340 (2007)

Shank v Fields

- Facts of the Case:
  - Jason A. Shank, Plaintiff-Appellant
  - H. C. Fields, Defendant (Not a party to the appeal)
  - Champaign Asphalt, Defendant-Appellee
  - Appeal from Circuit Court of Champaign County

Shank v Fields

- Facts of the Case:
  - On May 25, 2001, Champaign Asphalt was doing road construction work on I-74 near exit 192.
  - Contract required all lanes of traffic shall be open on any legal holiday, including the Friday before Memorial Day, beginning at 3p.
  - May 25 was the Friday before Memorial Day
  - A major multivehicle accident occurred at 3:35p

Shank v Fields

I-74 at St. Joseph Exit

Shank v Fields

- Facts of the Case:
  - AADT was 34400 (2009)
  - 24% trucks
  - Only one lane was open.
  - The reason for the delay was an Athey Loader unexpectedly broke down.

Shank v Fields

- Facts of the Case:
  - At the time of the accident, traffic, which was required to merge from two lanes to one lane, was backed up for 1.34 miles.
  - Rex Nichols, driving a semi, struck the line of vehicles, hitting the car in which plaintiff was a passenger and the car driven by defendant Fields.
  - Nichols had been driving about 57 MPH and did not reduce his speed before colliding with the vehicles.

Shank v Fields

- Facts of the Case:
  - The road was level and the weather was clear
  - Nichols knew in advance that traffic would be stalled; he had driven that same stretch of highway three times in the last two months. He was also warned over his radio.
  - Proper traffic control devices were in place for the lane closure.
  - Cautionary signs indicated an upcoming lane merger at three miles, two miles and one-half mile.

Shank v Fields

- Facts of the Case:
  - Plaintiff was seriously injured in the accident.
  - Plaintiff's parents entered into an agreement with Nichols and his employer for $427,500.
  - Upon reaching the age of majority, plaintiff brought action against Champaign Asphalt.

Shank v Fields

- Facts of the Case:
  - Champaign Asphalt (CA) filed a motion for summary judgment.
  - Trial court granted the motion, stating, *"the alleged negligence of CA did nothing more than create a condition making this accident possible; and the intervening negligence of Mr. Nichols broke that causal chain; and therefore, it was the sole proximate cause."*
  - Plaintiff appeals

Shank v Fields

- Plaintiff's Pleadings:
  - Count I: Champaign Asphalt (CA) failed in its duty to reopen all lanes of traffic by 3:00p
  - Count II: Plaintiff was a third-party beneficiary to contract between IDOT and CA requiring that all lanes of travel be open from 3:00p on Friday, May 25th to midnight on Monday, May 28.

Shank v Fields

- Plaintiff's Pleadings:
  - It is foreseeable that accidents will occur when traffic lanes are closed, and therefore CA had a duty to have the lane open.

cr

Shank v Fields

- Court Rulings:
  - Many Illinois cases have refused to impose a duty in situations where an accident was foreseeable. It is not a breach of duty to supply electricity to a community knowing that, over time, electrocution is likely. *"The benefits of electricity outweigh the disadvantages."* Tinder v Illinois Power 325 ILL App 3d 606 (2001)

Shank v Fields

- Court Rulings:
  - Municipalities are not required to build medians that would be sufficient to prevent a drunk driver from crossing over into oncoming traffic. *"The magnitude of guarding against this injury ….would be too great."* In re Estate of Elfayer 757 NE 2d 581 (2001)

Shank v Fields

- Court Rulings:
  - Road-construction projects make travel conditions more dangerous for motorists, and accidents are certainly foreseeable. But what is the alternative? Not repairing roads? Completely closing any highway that is undergoing repairs?
  - The magnitude of the burden of preventing reckless drivers from causing harm justify a finding of no duty in this case

Shank v Fields

- Court Rulings:
  - Certainly highway authorities have a duty to act reasonably in preventing harm to the public, even harm caused by third-party negligent drivers.
  - CA complied with that general duty here, by posting all the required warning signs.
  - CA was required by its contract to attempt to have all lanes open by 3p., but would not have acted reasonably if it had opened the lanes before they were ready.

Shank v Fields

- Court Rulings:
  - "Legal cause" is required for the imposition of liability and there was no "legal cause" in this case. The failure to have both lanes open was not so closely tied to plaintiff's injury that CA should have responsibility for it.
  - The failure to have the lane open was only a condition that allowed this accident to happen, not a cause.
  - The actions of CA in closing the lane did not promote or encourage Nichols to act in the way he did.

Shank v Fields

- Court Rulings:
  - The trial court properly concluded that CA had no duty, either as a matter of general legal principles or by virtue of its contract with IDOT, to prevent the independent intervening act that occurred here.
  - The trial court properly concluded that CA's conduct was not a proximate cause of the injuries to plaintiff.
  - Appellate Court affirms trial court for defendants.

Hess v Miller

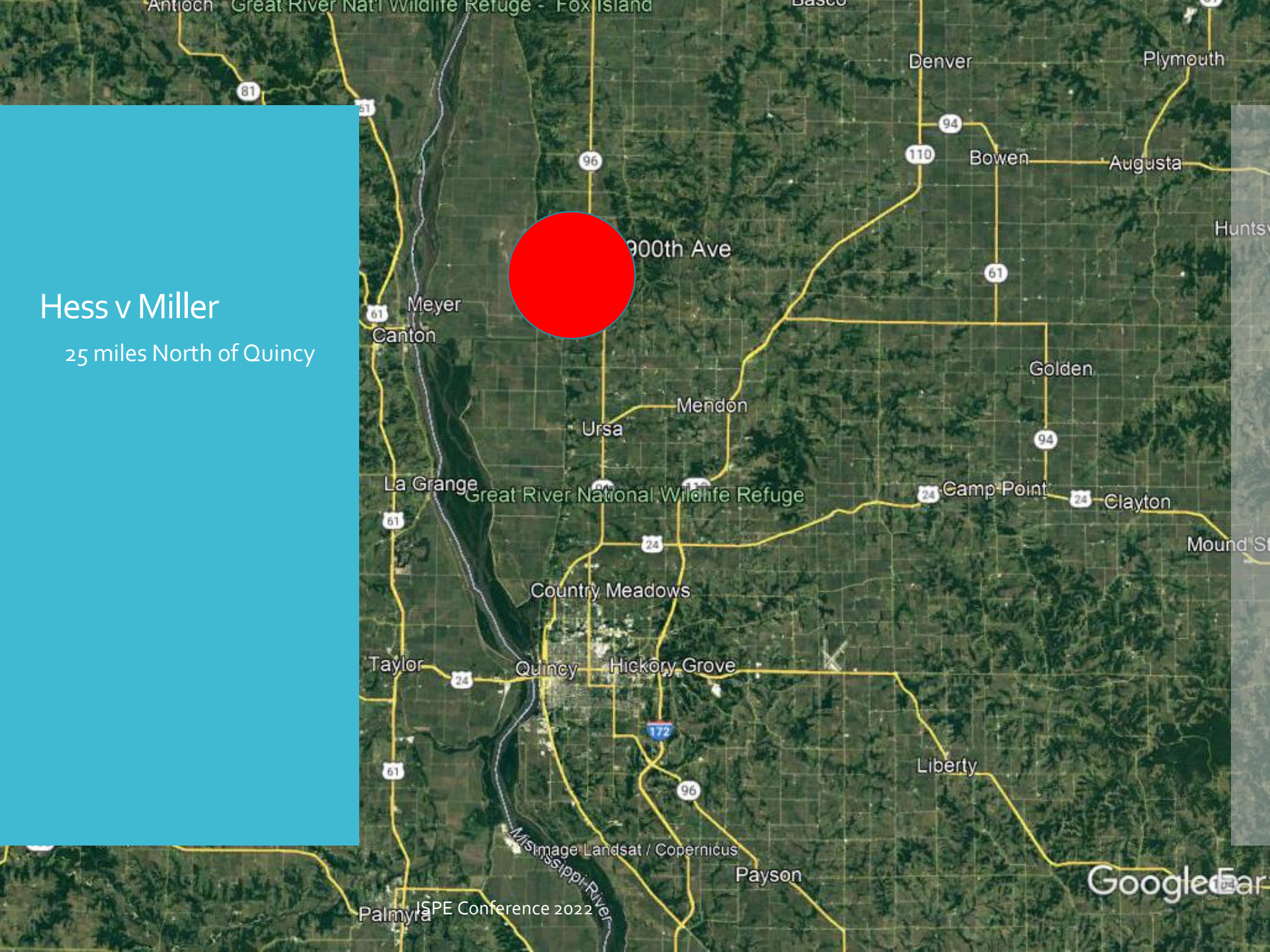
No. 2019 IL App (4th) 180591

Hess v Miller

- Facts of the Case:
  - Marcella M. Hess and Steven L Hess, Plaintiffs-Appellees
  - Jeffrey L Miller as Highway Commissioner of Lima Township, Adams County, James Frankenhoff as County Engineer and Hunt-Lima Drainage & Levee District – Defendants – Appellants
  - Circuit Court of Adams County granted landowners an easement across the vacated portion of the road and the bridge
  - Drainage District appeals

Hess v Miller

25 miles North of Quincy



Hess v Miller

Hess v Miller

Hess v Miller

Hess v Miller

Hess v Miller

- A Matter of Law:
- The Illinois Highway Code (Code) (605 ILCS 5/6-201.2) provides that a highway commissioner has the authority to “[l]ay out, alter, widen or vacate township or district roads as provided in this Code.” The Code further provides as follows:

Hess v Miller

- A Matter of Law:
- "No road shall be *** altered or vacated unless the highway commissioner finds that such alteration or vacation is in the public and economic interest and further finds that any person residing or owning land within 2 miles of any portion of the road proposed to be altered or vacated shall still have reasonable access (but not necessarily a direct route) by way of a motor vehicle or other portable farm machinery commonly used in the area *** after the road is altered or vacated." 605 ILCS 5/6-305

Hess v Miller

- Facts of the Case:

  Jim Frankenhoff, Adams County Engineer provided background information about the bridge and the lawsuit.

  The roadway is inaccessible for around five months of the year from December through April due to a rock shelf that retains water on the roadway that ices over during winter months.

Hess v Miller

- Facts of the Case:

  The bridge is a fracture critical structure requiring frequent special feature inspection.

  A fracture critical structure is a bridge with no redundancy of critical load-bearing elements that will cause the bridge to collapse if one element fails.

  In addition, several timber piles are rotted and the wooden abutment caps are also rotted.

Hess v Miller

- Facts of the Case:

  A structure engineer estimated that the repair costs to keep the bridge open would be approximately $100,000. The bridge would still require inspections every three months and would be posted at a weight limit of 4 Ton.

Hess v Miller

- Facts of the Case:

  To replace the three-span bridge was estimated at $500,000. This would not be an economical use of county and township funds for a bridge and roadway that services two landowners.

Hess v Miller

- Facts of the Case:

  The highway commissioner closed the bridge by welding an I-beam across the deck of the bridge.

Hess v Miller

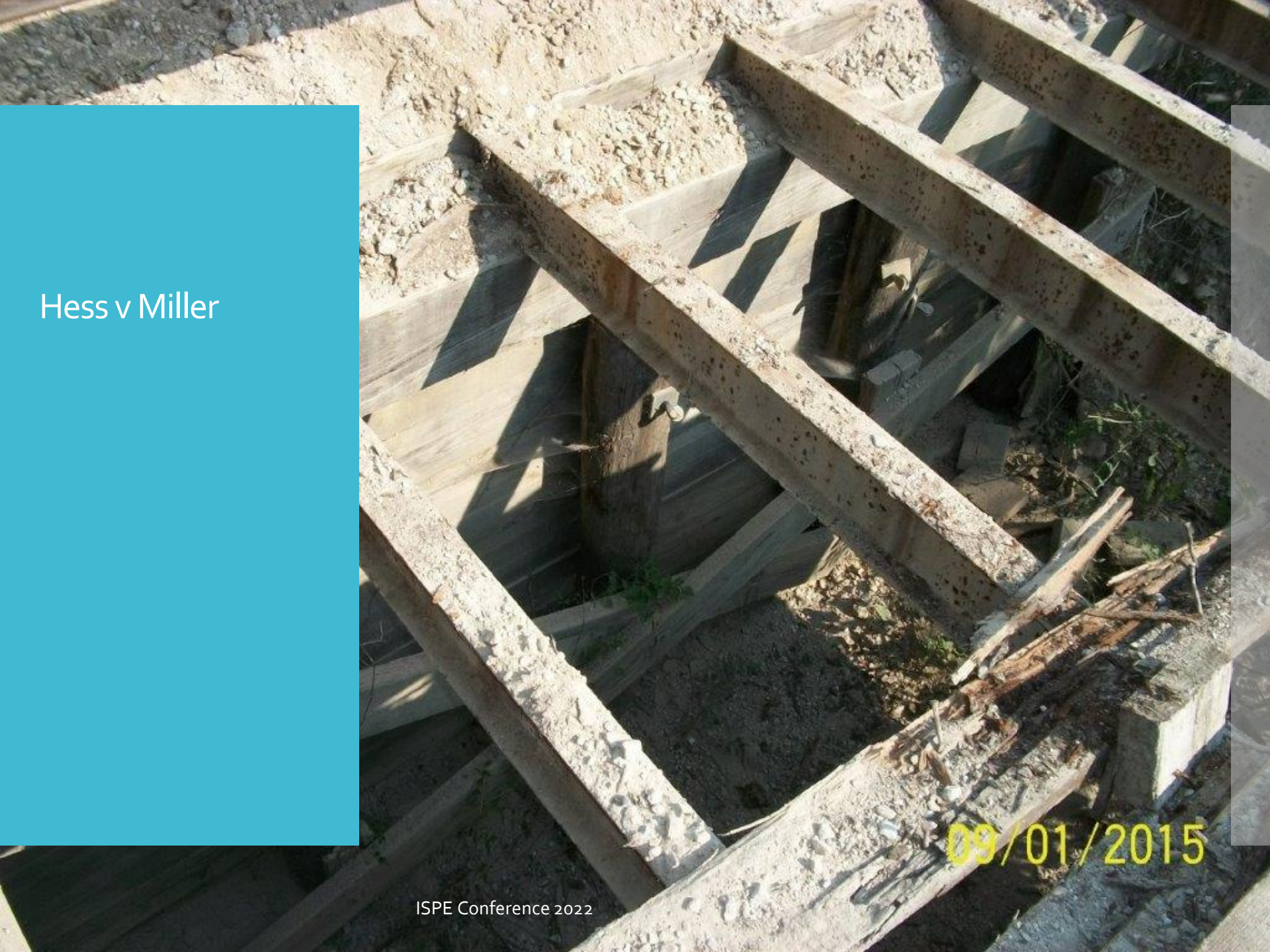
Hess v Miller

Hess v Miller

- Facts of the Case:

  This closure lasted four days. Parties unknown cut the weld and removed the I-beam to re-open the bridge. Subsequently, the highway commissioner removed planking on each end of the bridge and re-attached the I-beam.

Hess v Miller



Hess v Miller

- Plaintiffs' Pleas:

  In December 2016, landowners filed a two-count complaint against (1) Miller and (2) the drainage district. Count I, which the trial court ultimately dismissed with prejudice and is not appealed to this court, sought administrative review of Miller's closure of the bridge and the partial closure of the road.

Hess v Miller

- Plaintiffs' Pleas:

  Count II, which was a request for declaratory judgment, sought an easement across the vacated bridge that crossed the drainage district's levee. Landowners sought "a common law private and perpetual easement right to use the subject vacated road, which includes the bridge, for the purpose of traveling the same to and from their properties that lie adjacent to the vacated road."

Hess v Miller

- Plaintiffs' Pleas:

  Landowners sued the drainage district for an easement because the drainage district owned "the land under which the subject bridge is situated, and by virtue of the subject road vacation and by operation of law, now owns the bridge structure that is affixed to its land."

Hess v Miller

- Plaintiffs' Pleas:

  The common law rule in Illinois relative to vacated public roads and abutting landowners affected thereby, is that upon vacation, those landowners maintain a private easement right over and across that vacated road to access their properties.

Hess v Miller

- Plaintiffs' Pleas:

  In other words, after a public road is vacated, the adjacent landowners have a continued legal right to traverse the vacated road to get to and from their properties, notwithstanding the general public's right to use the vacated road is extinguished

Hess v Miller

- Plaintiffs' Pleas:

  Within this complaint, landowners explained that they had recently purchased a residence at 510 North 2900th Avenue, Ursa, Illinois. Landowners argued that "no one made them aware that the Lima Township was planning to vacate that section of the township road known as North 2900th Avenue that lies South of, adjacent to[,] and immediately in front of their residence."

Hess v Miller

- Plaintiffs' Pleas:

  Landowners noted that in September 2015, Miller "physically closed the subject portion of the public road, including the steel truss bridge that lies over the lands of [the drainage district] by, *inter alia*, cutting the wood oak floor planks at both ends of the bridge

Hess v Miller

- Plaintiffs' Pleas:

  Attached to landowners' complaint was an "affidavit in opposition to road vacations." Within this affidavit, landowners explained that they "had only two ways to get to our Home:

Hess v Miller

- Plaintiffs' Pleas:
    1) access from the West by way of the subject North 2900th Avenue and its bridge that quickly leads to the hard-paved Bottom Road (the 'Blacktop Road Access') or
    2) 2) access from the East by way of North 2900th Avenue and other gravel township roads that eventually lead to Highway 96 (the 'Gravel Road Access')."

Hess v Miller

- Plaintiffs' Pleas:

  Landowners elaborated that elimination of the bridge "would completely eliminate the Blacktop Road Access to our Home, which means of access is the most reasonable, efficient[,] and safe route for us to get to and from Quincy, Illinois[,] because it is hard pavement, dust free[,] and is the quickest route"

Hess v Miller

- Defendants' Pleas:

  In June 2017, the drainage district filed a motion to dismiss. 735 ILCS 5/2-615 (West 2016). The drainage district argued that the rationale of *Cook* applied only when an "owner['s] rights to a property are derived from the platting of a subdivision."

Hess v Miller

- Defendants' Pleas:

  Accordingly, the drainage district argued that landowners were not entitled to an easement "because their rights are not derived from the platting of a subdivision." In September 2017, the trial court denied this motion.

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Hess v Miller

- Court Ruling
- We conclude that *Rexroat* is applicable to the facts of this case. In *Rexroat*, 89 Ill. 2d at 230-31, the Illinois Supreme Court reasoned that the plaintiffs did not acquire an easement by implication across an abandoned road because there were other reasonable alternative paths to reach their seven tillable acres.

Hess v Miller

- Court Rulings:
- The court held that “the only easements which survive or arise are those reasonably necessary for means of ingress and egress” and that “an easement by implication is not sanctioned if available alternatives affording reasonable means of ingress and egress exist

Hess v Miller

- Court Rulings:
- Accordingly, because the plaintiffs had other reasonable means to reach their seven acres, the court concluded that the plaintiffs “failed to establish that the use of the old roadway at the time of the public abandonment was essential to the beneficial enjoyment of [their] land *** and, therefore, a private easement did not then arise and does not now exist.”

Hess v Miller

- Court Rulings:
- In this case, landowners attached an affidavit to their complaint in which they stated that they had only two ways to reach their home:
- (1) the blacktop road access and
- (2) the gravel road access.

Hess v Miller

- Court Rulings:
- Landowners further explained that it would take “approximately 20 minutes” to reach Quincy from the blacktop road access. They further stated that it would take “approximately 35 minutes” to reach Quincy from the gravel road access. Landowners argued that the blacktop road access was “the most reasonable, efficient and safe route *** because it is hard pavement, dust free and is the quickest route.”

Hess v Miller

- Court Rulings:
- Although we understand the inconvenience that this bridge closure has caused, we conclude that the gravel road access is a reasonable means of ingress and egress for landowners to reach their home. See *id.* at 230-31.

Hess v Miller

- Court Rulings:
- Accordingly, landowners fail to establish that the vacated bridge is essential to the beneficial enjoyment of their land, and therefore, they do not have an implied easement across the vacated bridge. *Id.* at 231. Moreover, based on the record, there is no other basis to affirm the trial court's order.

Hess v Miller

- Court Rulings:
- Accordingly, we reverse the trial court's order granting landowners an easement.

Gantzert v Mazon

No. 2021 IL App (3d) 200469-U

Gantzert v Mazon

- Facts of the Case:
  - GORDON M. GANTZERT, CHRISTINE J. GANTZERT, MICHAEL HOMERDING, and JEFF HOMERDING, Plaintiffs-Appellants
  - MAZON TOWNSHIP ROAD DISTRICT and ED WALKER, in his official capacity as Mazon Township Road Commissioner, Defendants-Appellees

Gantzert v Mazon

- Facts of the Case:
  - The trial court dismissed the plaintiffs' complaint against the defendants finding that "the defendants established their affirmative defense of immunity pursuant to the Local Governmental and Governmental Employees Tort Immunity Act for damages resulting from certain improvements defendants made to roadways along plaintiffs' property.

Gantzert v Mazon

- Facts of the Case:
  - This lawsuit is in Grundy County near Coal City, Illinois

Gantzert v Mazon

6 miles SW of Coal City

Gantzert v Mazon

6 miles SW of Coal City

Gantzert v Mazon

- Defendants' Pleas:
  - Defendants claimed they were immune from legal liability for the improvements to Reed Road under section 2-201 of the Tort Immunity Act (745 ILCS 10/2-201

Gantzert v Mazon

- A Matter of Law:
- Section 2-201 states:
- (745 ILCS 10/2-201) (from Ch. 85, par. 2-201)
  Sec. 2-201. Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused. (Source: Laws 1965, p. 2983.)

Gantzert v Mazon

- Facts of the Case:
  - Plaintiffs Gordon and Christine Gantzert owned property located near the intersection of Tynan Road and Reed Road in Grundy County, Illinois. The Gantzerts lease the right to farm the property to Michael and Jeff Homerding.

Gantzert v Mazon

- Plaintiffs' Pleas:
  - The flooding of the land decreased the farmland's rent rate. Plaintiffs alleged that defendants caused the flooding by making the following improvements to Reed Road, Higgins Road, and Tynan Road:

Gantzert v Mazon

- Plaintiffs' Pleas :
- a. In the Fall of 2010, the Defendant, Mazon Township Road District, replaced a culvert under Tynan Road at Reed Road.
- b. In the Fall of 2010, the Defendant graded the South roadside ditch of Reed Road to alleviate ponding that was occurring in the North half of the Northwest quarter of Section 13 Township 32 North, Range 7 East, Third Principal Meridian Mazon Township.

Gantzert v Mazon

- Plaintiffs' Pleas :
- c. In the Fall of 2013, the Defendant graded and deepened the South roadside ditch of Reed Road, east of Higgins Road.
- d. In the Fall of 2013, the Defendant raised the road pavement of Reed Road east of Higgins Road.

Gantzert v Mazon

- Plaintiffs' Pleas :
  - After these improvements were made, plaintiffs suffered recurring flooding on their land

Gantzert v Mazon

- Plaintiffs' Pleas:
- Count I alleged negligent construction. Count I referenced the Illinois Drainage Code which provided, "Land may be drained in the general course of natural drainage by either open or covered drains." Plaintiffs alleged defendants were negligent by changing the natural flow of water and causing flooding on plaintiffs' land. Plaintiffs claimed that defendants acted willfully and wantonly by failing to ensure that the improvements met or complied with IDOT standards of construction and all applicable laws and regulations.

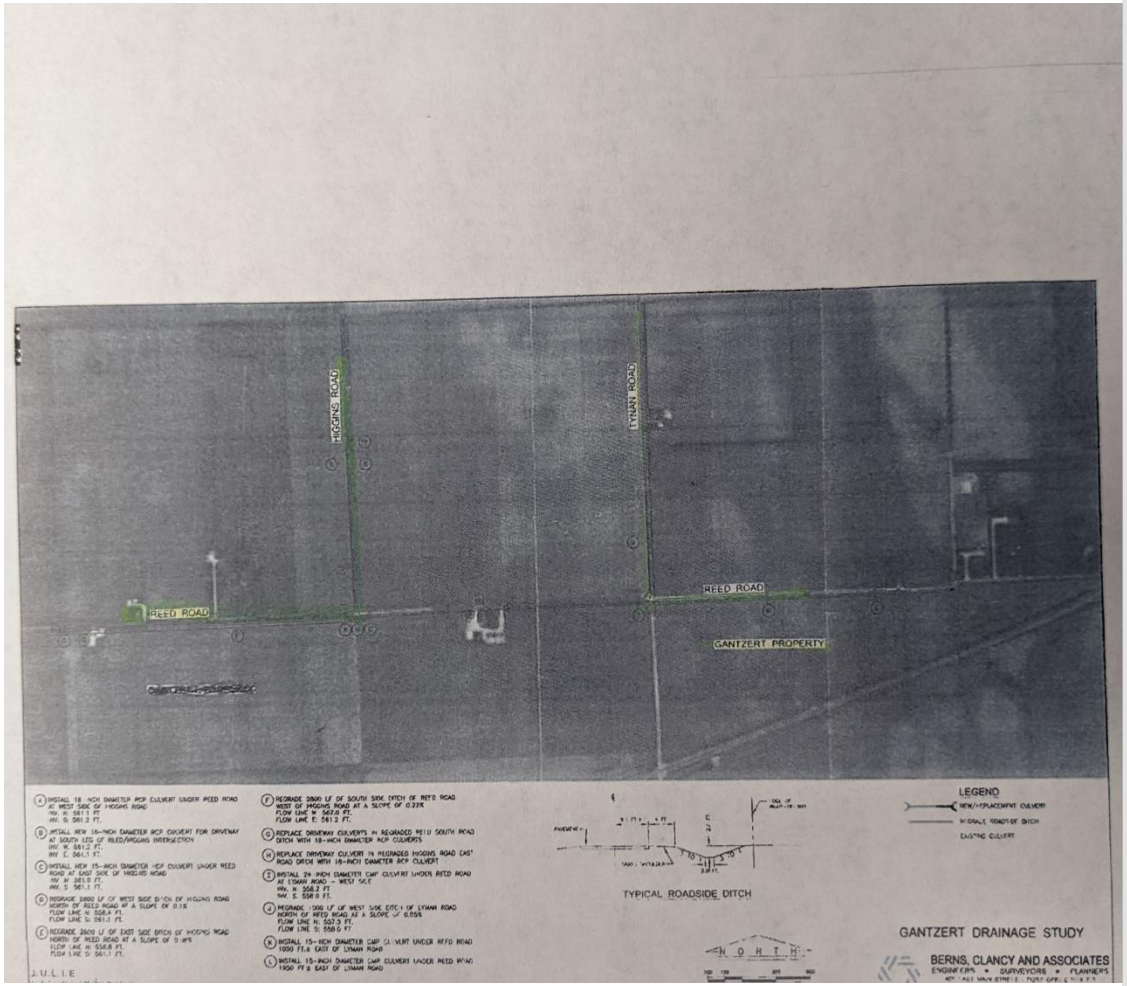
Gantzert v Mazon

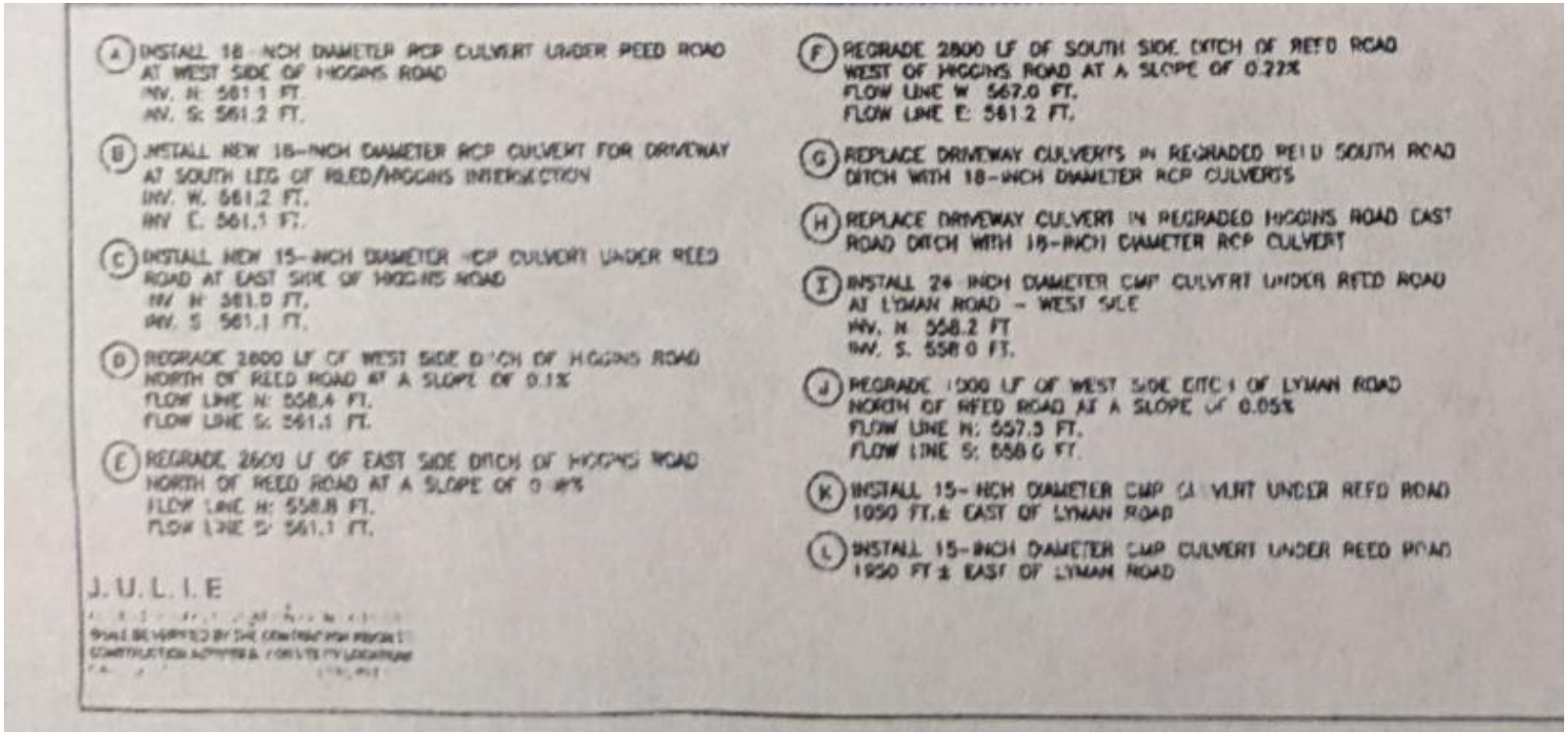
- Plaintiffs' Pleas:
- Count II alleged a claim of trespass based on the diversion of water, which caused an unnatural accumulation of water on plaintiffs' property.

Gantzert v Mazon

- Plaintiffs' Pleas:
- Count III sought a preliminary and permanent injunction requiring defendants to make corrections to the roads to prevent the unnatural accumulation of water on plaintiffs' property

Gantzert v Mazon





Gantzert v Mazon

Gantzert v Mazon

- Defendants' Pleas:
  - Defendants claimed they were immune from legal liability for the improvements to Reed Road under section 2-201 of the Tort Immunity Act. Because defendants made improvements to Reed Road as part of their official duties and made the discretionary decision to make such improvements, defendants claimed that section 2-201 provided absolute immunity against plaintiffs' claims.

Gantzert v Mazon

- Defendants' Pleas:
  - Walker further averred that in his capacity as the commissioner, he "made a policy decision to make an improvement to Reed Road at or near Tynan Road due to excessive rainfall making Reed Road at certain locations dangerous for the traveling public using Reed Road."

Gantzert v Mazon

- Defendants' Pleas:
  - The improvement made in 2010 was a policy decision he made by "balancing competing interests of the danger to the public, erosion of the roadway, shoulder and ditches, costs, safety and availability of materials and equipment to do so."

Gantzert v Mazon

- Defendants' Pleas:
  - Further, Walker "made a conscious decision to make this improvement as the best solution to the flooding problems considering safety for the public, erosion to the road, shoulders and ditches and how best and when best to do so.

Gantzert v Mazon

- A Matter of Law:
  - Under section 2-201, a municipality and its officials can claim immunity against injuries caused by an official's actions that are "both a determination of policy and an exercise of discretion."

Gantzert v Mazon

- A Matter of Law:
  - Policy determinations are defined as " ' "those decisions which require the municipality to balance competing interests and to make a judgment call as to what solution will best serve each of those interests." ' " *Monson v. City of Danville*, 2018 IL 122486, ¶ 30 (quoting *Harinek*, 181 Ill. 2d at 342, quoting *West v. Kirkham*, 147 Ill. 2d 1, 11 (1992)).

Gantzert v Mazon

- A Matter of Law:
  - "Discretionary decisions are 'unique to a particular public office' [citation] and 'involve the exercise of personal deliberation and judgment in deciding whether to perform a particular act, or how and in what manner that act should be performed

Gantzert v Mazon

- A Matter of Law:
  - "In contrast to discretionary and policy decisions, a public entity's ministerial acts are not immune from liability under the [Tort Immunity] Act." *Id.*

Gantzert v Mazon

- A Matter of Law:
  - Consequently, the negligent performance of ministerial acts can subject a municipality to tort liability. *Id.*

Gantzert v Mazon

- A Matter of Law:
  - Ministerial acts are ‘those which a person performs on a given state of facts in a prescribed manner, in obedience to the mandate of legal authority, and without reference to the official’s discretion as to the propriety of the act.’ ” *Id.* (quoting *Snyder*, 167 Ill. 2d 466, 474 (1995)
    - cr

Gantzert v Mazon

- Court Rulings:
  - We agree with plaintiffs. Walker did not have discretion to ignore IDOT and MFT regulations. If defendants used MFT funds, then IDOT and MFT regulations mandate the acts Walker must perform before beginning road maintenance, repair, and improvement projects.

Gantzert v Mazon

- Court Rulings:
  - While Walker maintained discretion to determine which roads required repairs or maintenance, he lacked discretion to begin those projects without first complying with IDOT and MFT regulations. It is possible that the result would have been different had Walker followed these regulations

Gantzert v Mazon

- Court Rulings:
  - IDOT could have rejected Walker's request and, instead, required him to make the improvements according to IDOT's instruction. Given that Walker required IDOT's approval before beginning the improvements, those decisions are not discretionary.

Gantzert v Mazon

- Court Rulings:
  - Consequently, if defendants used MFT funds and failed to comply with IDOT regulations, those acts would not be shielded from liability under section 2-201 of the Tort Immunity Act

Gantzert v Mazon

- Court Rulings:
  - For the foregoing reasons, reverse and remand the judgment of the circuit court of Grundy County.

Thompson v Gordon

Docket No. 110066 Supreme Court of the State of Illinois

2011

Thompson v Gordon

- Facts of the Case:
  - Corinne Thompson, Appellee
  - Christie Gordon, et al, Appellants
  - Plaintiff individually and as administrator of the estates of her husband, Trevor Thompson, and daughter, Amber Thompson, sued defendants, Jack E. Leisch and Associates, Inc., and CH2M Hill, Inc. along with others not parties to this appeal, for negligence.

Thompson v Gordon

- Facts of the Case:
  - The circuit court of Lake County granted summary judgment in favor of defendants.
  - The appellate court reversed the trial court and remanded for further proceedings.
  - This court granted defendants' petition for leave to appeal to Illinois Supreme Court.

Thompson v Gordon

- Facts of the Case:
  - We allowed the Illinois Trial Lawyers Association to file a brief *amicus curiae* on behalf of plaintiff.

Thompson v Gordon

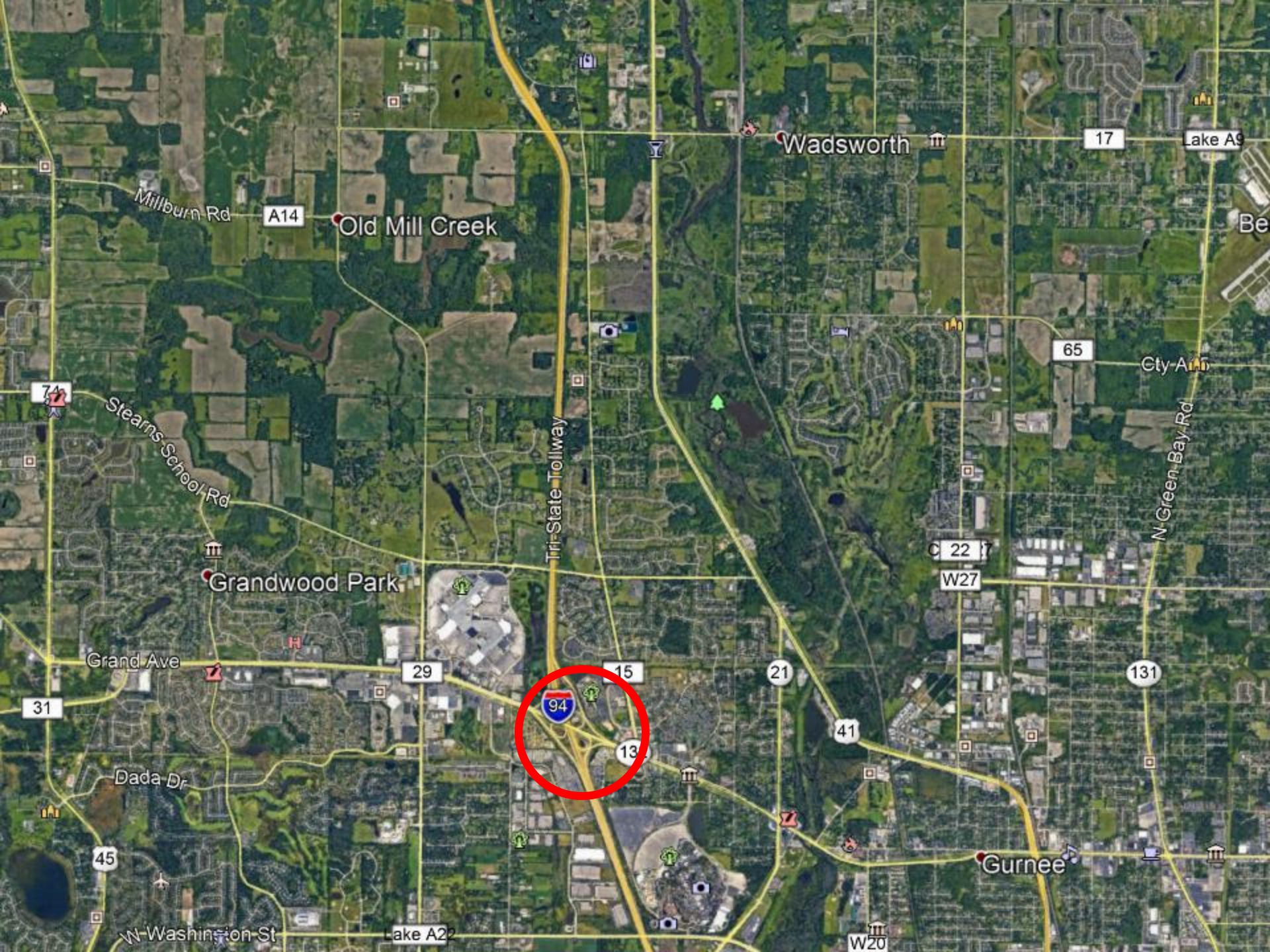
- Facts of the Case:
  - We also permitted the American Council of Engineering Companies of Illinois, the Illinois Society of Professional Engineers, the American Institute of Architects-Illinois Council, the Structural Engineers Association of Illinois, and the Illinois Professional Land Surveyors Association, as well as the Illinois Section of the American Society of Civil Engineers and the Association of Licensed Architects, and the Illinois Association of Defense Trial Counsel to file *amici curiae* on behalf of defendants.

Thompson v Gordon

- Facts of the Case:
  - On Jan 16, 1991, the defendants entered into a contract with Western Development Corp. (WDC) to provide engineering services in connection with WDC's development of the Gurnee Mall, in Gurnee, IL
  - In order to accommodate the increased traffic, WDC was required to improve Grand Ave (St. Rte. 132) at I-94
  - Accordingly, WDC's contract with defendants required them to design two ramps and the bridge deck surface.

Thompson v Gordon

- Facts of the Case:
  - The original bridge deck had a concrete median approximately six inches high and four feet wide that divided the EB and WB lanes of traffic
  - The replacement bridge deck designed by defendants had a median that was approximately seven inches high and four feet wide.



Wadsworth
17
Lake A9
Millburn Rd
A14
Old Mill Creek
65
Cty A
74
Stearns School Rd
Tri-State Tollway
N Green Bay Rd
22
W27
Grandwood Park
Grand Ave
29
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21
131
31
94
41
Dada Dr
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Gurnee
W Washington St
Lake A22
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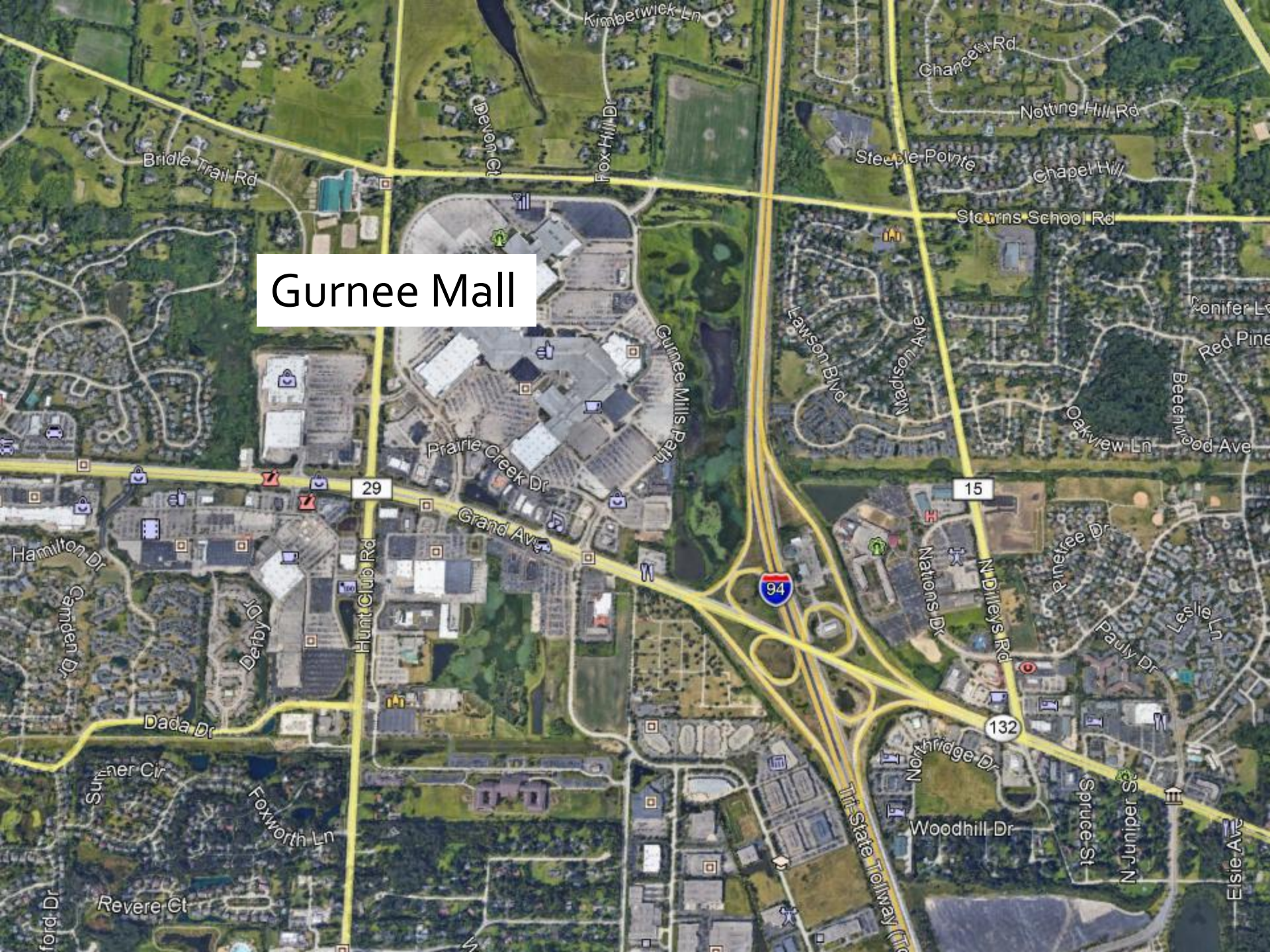

Gurnee Mall
Kimberwick Ln
Devon Ct
Fox Hill Dr
Bridle Trail Rd
Chauncey Rd
Notting Hill Rd
Steeple Pointe
Chapel Hill
Stearns School Rd
Lawson Blvd
Madison Ave
Gurnee Mills Pkwy
Prairie Creek Dr
Conifer Ln
Red Pine
Beechwood Ave
Oakview Ln
29
Grand Ave
15
94
Hamilton Dr
Cambon Dr
Derby Dr
Hunt Club Rd
Nations Dr
N Dilleys Rd
Pinetree Dr
Pauly Dr
Leslie Ln
Dada Dr
132
Sumner Cir
Foxworth Ln
Revere Ct
Northridge Dr
Woodhill Dr
Spruce St
N Juniper St
Elsie Ave
Tri State Tollway

Tri-State Tollway (Toll road)
Grand Ave

WB Rt. 132 looking west
W Grand Ave

Thompson v Gordon

- Facts of the Case:
  - The ISTHA, which owned I-94, and the IDOT, which operated and maintained Grand Avenue reviewed all plans.
  - IDOT approved the plans and issued a permit for work to commence.
  - The work was completed sometime in 1991 or 1992

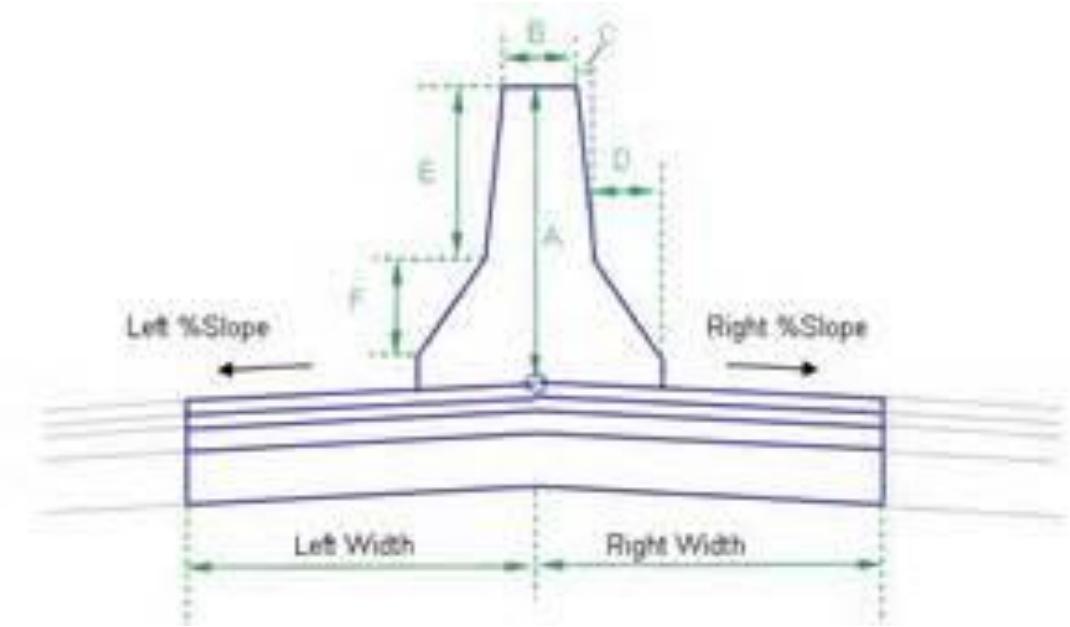
Thompson v Gordon

- Facts of the Case:
  - Thereafter, on Nov 27, 1998, Trevor Thompson was driving WB on Grand Ave, with plaintiff and Amber Thompson as passengers.
  - Christie Gordon was driving EB on Grand Ave when she swerved to avoid another vehicle.
  - Gordon lost control and hit the median.
  - Gordon's vehicle went airborne and landed on the Thompson's vehicle killing Trevor and Amber and seriously injuring plaintiff

Thompson v Gordon

- Plaintiff's Pleadings:
  - The essence of plaintiff's case against defendants is that defendants should have designed and constructed a "Jersey barrier."
  - Plaintiff asserts that had a Jersey barrier been constructed, Gordon's vehicle would not have vaulted into the air and onto Thompson's vehicle when she lost control and struck the median.

Jersey Barrier


B
C
E
D
A
F
Left %Slope
Right %Slope
Left Width
Right Width

Thompson v Gordon

- Plaintiff's Pleadings:
  - Plaintiff alleged, *inter alia*, that defendants were negligent in that they:
    - Failed to provide a median barrier warrant analysis
    - Failed to consider the necessity of crossover protection
    - Failed to design a barrier median to separate traffic
    - Failed to consider any traffic impact studies during design

Thompson v Gordon

- Defendants' Pleadings:
  - Defendants filed a motion for summary judgment.
  - Defendants argued that they owed no duty to plaintiff because the work that they contracted to perform for WDC did not require median barrier analysis or design, and the design work performed by defendants did not encompass the area of the accident.

Thompson v Gordon

- Plaintiff's Pleadings:
  - In response, plaintiff filed the affidavit of Andrew Ramisch, her expert witness
  - (Ramisch's qualifications as an expert witness were addressed in a prior decision from this court).
  - Ramisch testified that defendants failed to meet the ordinary standard of care.

Thompson v Gordon

- Plaintiff's Pleadings:
  - Specifically, Ramisch opined that:
    - Defendants failed to properly consider and analyze all available data provided by their consultants
    - Failed to consider crossover protection and failed to perform an analysis of crossover protection on the bridge deck
    - Failed to submit to WDC and IDOT for consideration the necessity of crossover protection in the form of a Jersey barrier on the bridge deck at the interchange

Thompson v Gordon

- Trial Court Rulings:
  - The trial court granted defendants' motion for summary judgment
  - The trial court stated that defendants' duty to plaintiff was circumscribed by the terms of the contract that they entered into with WDC and the scope of their work was determined by their contractual undertaking
  - The trial court observed that the contract did not call for an assessment of the sufficiency of the median barrier

Thompson v Gordon

- Trial Court Rulings:
  - Rather, the contract simply required defendants to reconstruct the raised median and road surface
  - The trial court concluded that to impose an obligation on defendants to perform a median analysis, as if the contract called for a redesign of the roadway or a raised median, would impose an obligation on defendants that was not specified in their contract.

Thompson v Gordon

- Appellate Court Rulings:
  - In the appellate court, plaintiff argued that, pursuant to the contract, defendants had a duty to consider and then design an improved median barrier.
  - Defendants responded that the plain language of the contract, which required them to submit design plans for a bridge deck "replacement" indicated that defendants' role was limited to submitting designs to recreate the bridge deck exactly as it had existed.

Thompson v Gordon

- Appellate Court Rulings:
  - The appellate court, however, then found that the standard of care clause in the contract added an important qualifier to defendants' work: that defendants were obligated to act within the prescribed standard of care.
  - Defendants owed a duty to perform that contractual task using the degree of skill and diligence normally employed by professional engineers.

Thompson v Gordon

- Appellate Court Rulings:
  - Ramisch's affidavit stated that an engineer acting within the standard of care while creating plans to replace the bridge deck would have considered and designed an improved median barrier.
  - The appellate court rejected defendants' claim that their duties were confined to those explicitly mentioned in the contract

Thompson v Gordon

- Appellate Court Rulings:
  - By virtue of Ramisch's affidavit, plaintiff had raised a question of fact as to whether the professional standard of care included such a duty.
  - The appellate court stated that the measure of skill and care employed by a professional engineer is a question of fact.
  - The appellate court reversed the trial court (trial court ruled summary judgment in favor of defendant) and remanded for further proceedings.

cr

Thompson v Gordon

- Supreme Court Rulings:
  - The basic rules of contract interpretation are well settled.
  - In construing a contract, the primary objective is to give effect to the intention of the parties
  - A contract must be construed as a whole, viewing each provision in light of the other provisions
  - The parties' intent is not determined by viewing a clause in isolation.

Thompson v Gordon

- Supreme Court Rulings:
  - If the words in the contract are clear and unambiguous, they must be given their plain, ordinary and popular meaning.
  - However, if the language of the contract is susceptible to more than one meaning, it is ambiguous
  - If the contract language is ambiguous, a court can consider extrinsic evidence to determine the parties' intent.

Thompson v Gordon

- Supreme Court Rulings:
  - Plaintiff argues that in defining the term "*replacement*," the lower courts viewed the term out of context, ignored other aspects of the contract, and thereby improperly created a definition for "*replacement*" that does not exist.
  - Plaintiff contends that, reading the contract in its entirety, the lower courts should have found that defendants were required to design "*improvements.*"

Thompson v Gordon

- Supreme Court Rulings:
  - We disagree with plaintiff.
  - The contract uses the word "*improvements*" in describing the scope of services concerning the roadway design, while the contract uses the word "*replacement*" in describing the scope of services for the structural design.
  - To interpret "*replacement*" to mean "*improvement*" would render the word "*replacement*" meaningless.

Thompson v Gordon

- Supreme Court Rulings:
  - As we have found, replacing the bridge deck did not include improving the bridge deck or considering or adding a Jersey barrier.
  - Therefore, the appellate court improperly considered expert testimony to expand the duty expressly set forth in defendants' complaint.

Thompson v Gordon

- Supreme Court Rulings:
  - The parties easily could have included a provision in the contract requiring defendants to improve the bridge deck to include a Jersey barrier, but they did not.
  - The appellate court therefore erred in holding that, based upon the standard of care clause in defendants' contract, there was a question of fact.

Thompson v Gordon

- Supreme Court Rulings:
  - Because defendants owed no duty to plaintiff to consider and design an improved median barrier, the trial court properly granted summary judgment in favor of defendants.
  - The appellate court, therefore, erred in reversing the judgment of the trial court.

Thompson v Gordon

- Supreme Court Rulings:
  - We reverse the decision of the appellate court, affirm the decision of the trial court, and remand the cause to the circuit court of Lake County for further proceedings consistent with this opinion

Moss v Rowe Construction

No. 4-03-0004 (2003)

Moss v Rowe Construction

- Facts of the Case:
  - John L. Moss, Independent Administrator of the Estate of John E. Moss, Deceased – Plaintiff-Appellant
  - Rowe Construction Company, a/k/a Cullinan & Son, Inc., a Delaware Corporation – Defendant-Appellee
  - Laesch Electric, Inc., - Third-Party Defendant
  - Appeal from Circuit Court of McLean County
  - In Dec 2002, the trial court entered summary judgment for defendant on plaintiff's complaint of negligence
  - Plaintiff appeals

Moss v Rowe Construction

- Facts of the Case:
  - On February 15, 1999, plaintiff's decedent, John E. Moss, was killed while working as an employee for subcontractor Laesch Electric, Inc.
  - Laesch was under contract to Rowe Construction Company to remove traffic control devices and foundations and install new ones as part of Rowe's contract with IDOT for improvements to Veterans Parkway in Normal.

Moss v Rowe Construction

- Facts of the Case:
  - Under the general contract between IDOT and Rowe, Rowe was required to maintain control of safety on the project.

Moss v Rowe Construction

- Article VIII Safety: Accident Prevention:
  1. *In the performance of this contract the contractor shall comply with all applicable federal, state, and local laws governing safety, health and sanitation. The contractor shall provide all safeguards, safety devices, and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine to be reasonably necessary to protect the life and health of employees…..*

Moss v Rowe Construction

- Article VIII Safety: Accident Prevention:
  2. *It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are ….hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards.*

Moss v Rowe Construction

- Further, the general contract required:
  - *"The contractor shall furnish a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work)"*

Moss v Rowe Construction

- Additionally:
  - *"No portion of the contract shall be sublet, assigned, or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract."*
  - *These elements of the general contract are incorporated in their entirety, including the IDOT standard specifications, into the subcontract between Rowe and Laesch.*

Moss v Rowe Construction

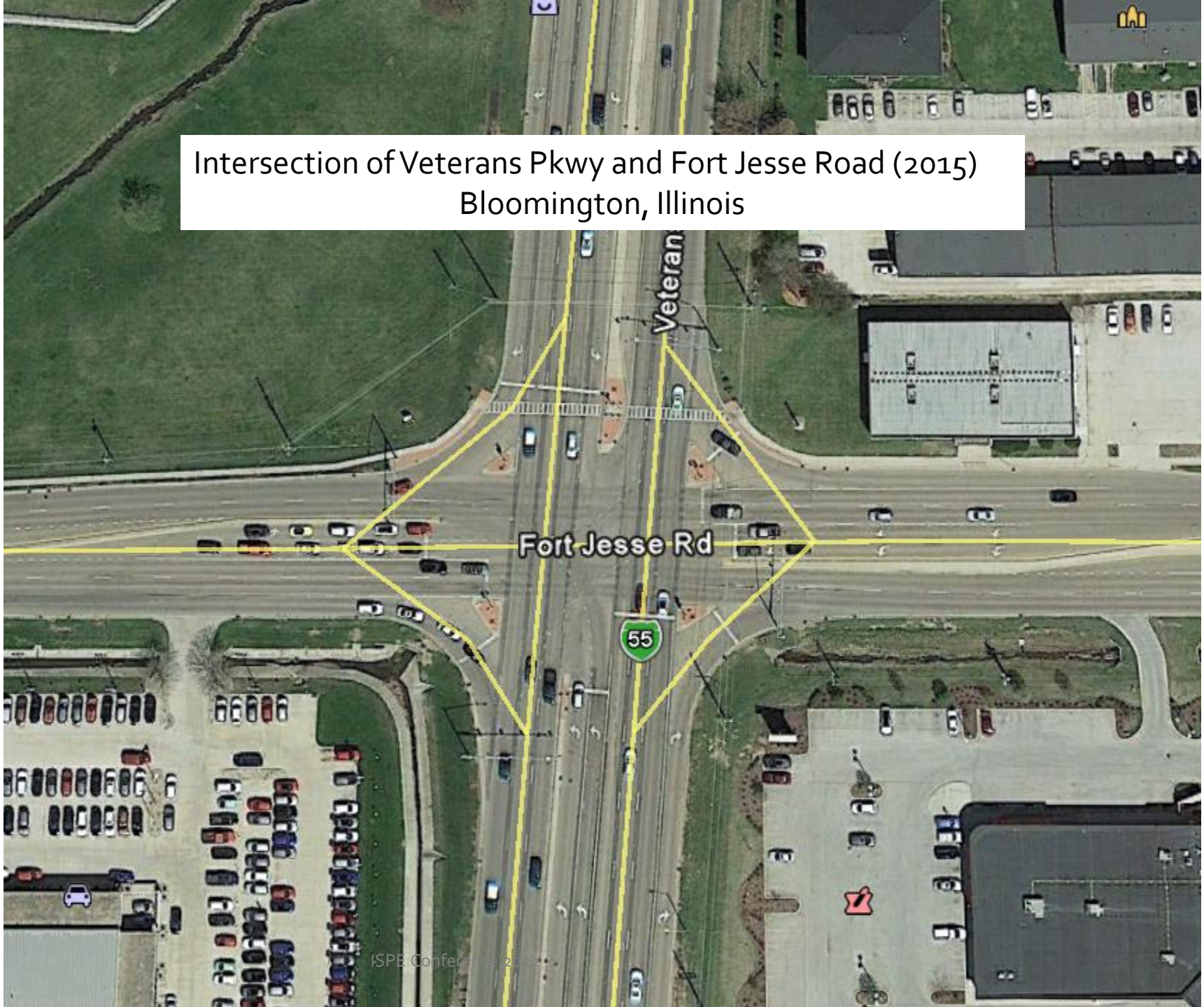
- The subcontract additionally stated:
  - *The subcontractor shall follow the contractor's directions regarding safety, clean-up and storage of materials on the work site.*

Moss v Rowe Construction

- Facts of the Case:
  - The death of Moss occurred on February 15, 1999 at the intersection of Veterans Parkway and Fort Jesse Road.
  - Rowe's superintendent for the project, who was on the site on a daily basis, was not present at the time of the accident.

Moss v Rowe Construction

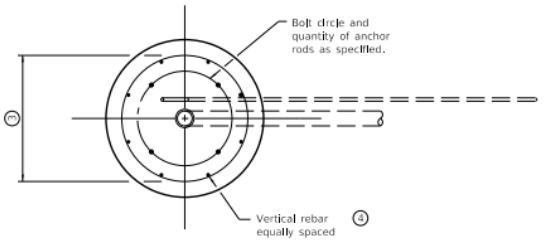
- Details of Accident:
  - Decedent Moss, Michael Laesch, and two other Laesch employees were removing 7,000 pound concrete foundations upon which traffic control devices are installed.
  - Laesch was operating a truck-mounted derrick
  - Another employee was operating a dump truck
  - Moss and the fourth employee were the 'ground men' designated to steady the load as it was lifted



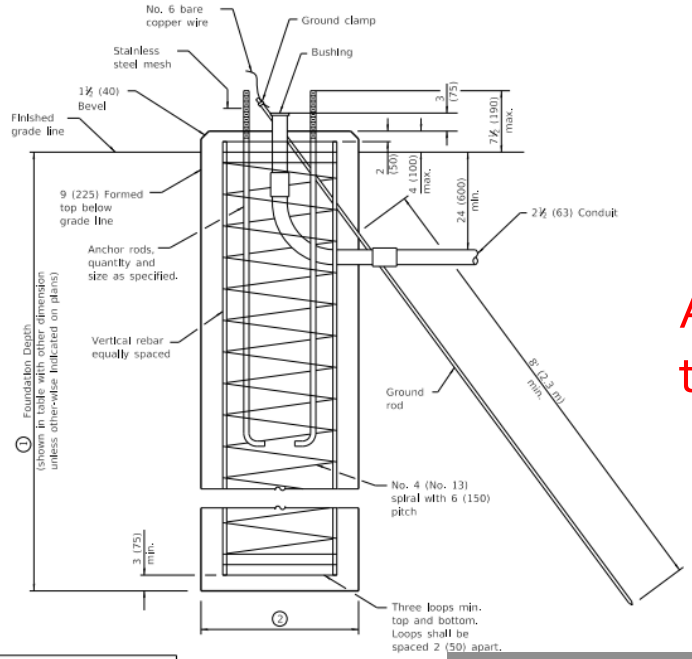
Intersection of Veterans Pkwy and Fort Jesse Road (2015)
Bloomington, Illinois

Intersection of Veterans Pkwy and Fort Jesse Road (3/1999)

Looking East at Fort Jesse Road and Veterans Parkway
Fort Jesse Rd



TOP VIEW



TYPE E

Mast Arm Length	① Foundation Depth *	② Foundation Diameter	③ Spiral Diameter	④ Quantity of Rebars	Size of Rebars
Less than 30' (9.1 m)	10'-0" (3.0 m)	30 (750)	24 (600)	8	6 (19)
Greater than or equal to 30' (9.1 m) and less than 40' (12.2 m)	13'-6" (4.1 m)	30 (750)	24 (600)	8	6 (19)
	11'-0" (3.4 m)	36 (900)	30 (750)	12	7 (22)
Greater than or equal to 40' (12.2 m) and less than 50' (15.2 m)	13'-0" (4.0 m)	36 (900)	30 (750)	12	7 (22)
Greater than or equal to 50' (15.2 m) and up to 55' (16.8 m)	15'-0" (4.6 m)	36 (900)	30 (750)	12	7 (22)
Greater than or equal to 56' (16.8 m) and less than 65' (19.8 m)	21'-0" (6.4 m)	42 (1060)	36 (900)	16	8 (25)
Greater than or equal to 65' (19.8 m) and up to 75' (22.9 m)	25'-0" (7.6 m)	42 (1060)	36 (900)	16	8 (25)

* For standard and combination mast arm assemblies. Foundation depths for standard dual mast arms with the longest arm length upto and including 55' (16.8 m) shall be increased by 1' (0.3 m) of that shown in the table, based on the longer of the two arms.

These foundation depths are for sites which have cohesive soils (clayey silt, sandy clay, etc.) along the length of the shaft, with an average Unconfined Compressive Strength (Qu) > 1.0 tsf (100 kpa). This strength shall be verified by boring data prior to construction or with testing by the Engineer during foundation drilling. The Bureau of Bridges & Structures should be contacted for a revised design if other conditions are encountered.

According to the table the weight of the conc. found. is 7,000-36,000 lbs.

Example of Concrete Foundation

Illinois Department of Transportation

PASSED January 1, 2015
ENGINEER OF OPERATIONS

APPROVED January 1, 2015
ENGINEER OF DESIGN AND ENVIRONMENT

ISSUED 1-1-02

CONCRETE FOUNDATION DETAILS

(Sheet 2 of 2)

STANDARD 878001-10

Example of Truck-Mounted Derrick

Moss v Rowe Construction

- Details of Accident:
  - Rather than using 'tag lines' to guide the concrete, at the direction of Laesch, Moss and the other man were standing next to the foundation guiding it with their hands due to the tight circumstances caused by an adjacent light pole and guy wires.
  - Those obstructions prevented Michael Laesch from placing the dump truck closer to the concrete foundation

Moss v Rowe Construction

- Details of Accident:
  - Contractual terms prohibited Laesch from placing its equipment on the roadway during certain times of day, limiting placement options.
  - Additionally, the ground upon which the derrick was placed was muddy, one of the outrigger supports for the truck-mounted derrick was not properly padded for the muddy conditions
  - The derrick was improperly placed on a downward 5 degree slope

Example of Truck-Mounted Derrick
VERSALIFT
Outrigger pads

Moss v Rowe Construction

- Details of Accident:
  - On the first attempted lift, the concrete began to spin and had to be set down.
  - The second attempt was halted when the hydraulic overload protective system (HOPS) activated.
  - HOPS is a warning system on the truck-mounted derrick indicating that something was not proper in the lift attempt.
  - As a result, the dump truck was repositioned.

Moss v Rowe Construction

- Details of Accident:
  - On the third attempt, the derrick began to tip, and Laesch yelled for everyone to clear the area.
  - Moss backed away into several guy wires.
  - As he moved again, he was struck by the boom of the derrick and killed
  - Moss's estate sued defendant Rowe, the general contractor, alleging defendant retained control of the work and was negligent, causing Moss's death

Moss v Rowe Construction

- Facts of the Case:
  - Rowe moved for summary judgment on the basis that Rowe did not retain or exercise control over the work being done by Laesch sufficient to impose liability on Rowe.
  - The trial court granted the motion and entered judgment for Rowe and against Moss on plaintiff's complaint
  - Plaintiff appeals

Moss v Rowe Construction

- Plaintiff's Pleadings:
  - *"Whether the Reinstatement of Torts, Section 414 requires a defendant to have actually exercised control over the 'means and methods' of a subcontractor's work to be subject to liability to a subcontractor's injured employee, or whether the retention of a right to control safety is sufficient to create at least a question of fact as to liability; and whether defendant in the present case exercised and/or retained the right to exercise control over the work in a manner sufficient for it to be subject to liability pursuant to Section 414 is a question of fact."*

Definitions

- Summary judgment - *A procedural device used during civil litigation to promptly and expeditiously dispose of a case without a trial. It is used when there is no dispute as to the material facts of the case and a party is entitled to judgment as a matter of law.*

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Moss v Rowe Construction

- Appellate Court Rulings:
  - The issue before the court is more specifically framed under section 414 of the Restatement of Torts:
    - Did defendant retain some degree of duty to control safety on the project?
    - Further, if defendant did retain that duty to control safety, did defendant negligently exercise or fail to exercise that duty to control safety?

Moss v Rowe Construction

- Appellate Court Rulings:
  - In this case, the retention of the duty to control safety is answered directly by the contracts.
  - Further, the exercise of that duty or the failure to exercise that duty presents a genuine issue of material fact.

Moss v Rowe Construction

- Appellate Court Rulings:
  - Because genuine issues of material fact remain as to whether the contract placed a duty to control safety on defendant and whether defendant physically exercised or failed to exercise that duty, we reverse the finding of summary judgment for defendant and remand to the trial court for further proceedings.

Boub v Township of Wayne

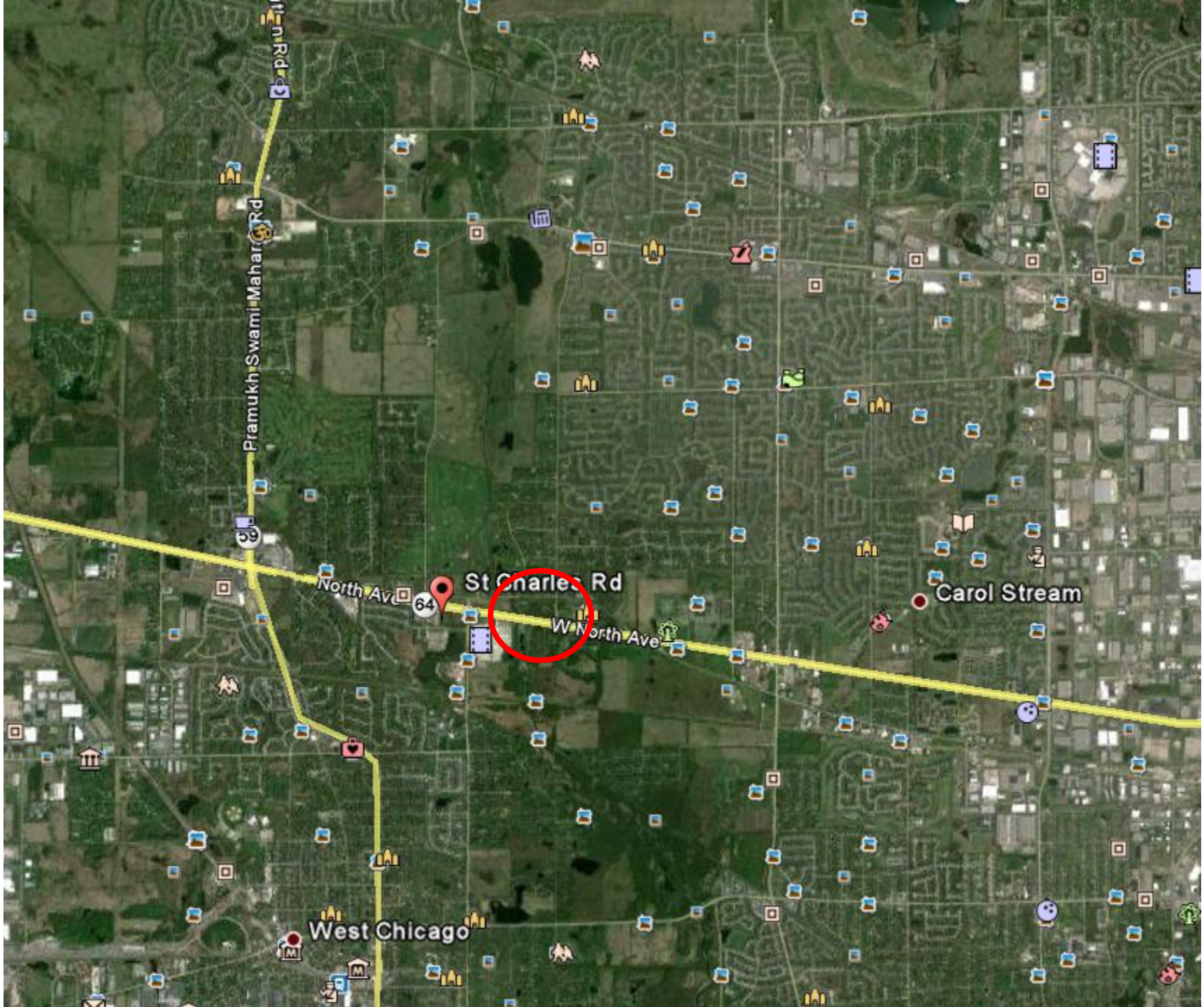
Docket No. 84246 (1998) Supreme Court of Illinois

Boub v Township of Wayne

- Facts of the Case:
  - Jon P. Boub, Appellant
  - Township of Wayne, et al, Appellees
  - Circuit Court granted the defendants' motion for summary judgment and the appellate court affirmed
  - Plaintiff petitions for leave to appeal

Boub v Township of Wayne

- Facts of the Case:
  - Boub was riding his bicycle on the morning of Sept. 8, 1992 on St. Charles Road in Wayne Township, Du Page County
  - The accident occurred as Boub was traveling across a one-lane bridge
  - The surface of the bridge consisted of wood planking
  - Sometime before the accident, asphalt patching between the planks had been removed as a part of a bridge renovation project.
  - The Plaintiff was thrown from the bicycle when his front tire became stuck between two of the planks on the bridge.


Pramukh Swami Maharaj Rd
59
North Ave
64
St Charles Rd
W North Ave
Carol Stream
West Chicago

Cape Av
Morningside Ave
Anderson Ct
St Charles Rd
64
W North Ave

Current Bridge Looking East
St Charles Rd

Boub v Township of Wayne

- Facts of the Case:
  - The Plaintiff sought recovery in negligence and willful and wanton misconduct and alleged that the defendants violated a duty owed to the Plaintiff under section 3-102(a) of the Tort Immunity Act
  - The defendants moved for summary judgment
  - Following a hearing, the trial judge granted the defendants' motion and entered summary judgment in their favor.

Boub v Township of Wayne

- Plaintiff's Pleadings:
  - The League of Illinois Bicyclists and the Chicagoland Bicycle Federation submitted *amici curiae* in support of the plaintiff.
  - The plaintiff argues that the lower courts erred in ruling that the complaint was barred by the immunity provisions of the Tort Immunity Act.

Boub v Township of Wayne

- 745 ILCS 10/3-102 :
  - (a) Except as otherwise provided in this Article, a local public entity has the duty to exercise ordinary care to maintain its property in a reasonably safe condition for the use in the exercise of ordinary care of people whom the entity intended and permitted to use the property in a manner in which and at such times as it was reasonably foreseeable that it would be used, and shall not be liable for injury unless it is proven that it has actual or constructive notice of the existence of such a condition that is not reasonably safe in reasonably adequate time prior to an injury to have taken measures to remedy or protect against such condition.

Boub v Township of Wayne

- Facts of the Case:
  - Plaintiff appealed, and the appellate court affirmed.
  - Appellate court concluded that the defendants were immune from liability under Section 3-102(a) of the Tort Immunity Act.

Boub v Township of Wayne

- Plaintiff's Pleadings:
  - In *Vaugn v City of West Franfort*, "Section 3-102(a) imposes a duty of ordinary care on municipalities to maintain property for uses that are *both* permitted and *intended*"
  - The present plaintiff must qualify as both a permitted and an intended user of the property if he is to maintain the action alleged against the defendants.

Boub v Township of Wayne

- Defendant's Pleadings:
  - The Plaintiff, as a bicyclist, was not an intended user of the road and bridge, and that he was, at most, only a permitted user.
  - The question before the court concerns whether the plaintiff may also be characterized as an intended user.

Boub v Township of Wayne

- Plaintiff's Pleadings:
  - The Plaintiff asserts that the rights of bicycle riders and vehicle drivers are generally coextensive.
  - He observes that bicyclists have traditionally used roads and highways without restriction, and he cites state statute provision that grants bicyclists the rights and duties of drivers of vehicles.
  - Bicyclists were not excluded from riding on the road where the present accident occurred.

Boub v Township of Wayne

- Plaintiff's Pleadings:
  - The plaintiff notes that section 11-1502 of the state Vehicle Code provides that "*every person riding a bicycle upon a highway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this Code*."

Boub v Township of Wayne

- Defendants' Pleadings:
  - The defendants do not concede that state statutes are applicable in determining Wayne Township's intent regarding the use of the road and bridge in this case.
  - The defendants argue that state statutes, to whatever extent they might be relevant to this case, fail to sustain the plaintiff's position.

Boub v Township of Wayne

- Plaintiff's Pleadings:
  - *Amici* observe that the portion of St. Charles Road involved in this case was designated "a through street generally suitable for bicycling" by the Du Page County Board in 1983.

Boub v Township of Wayne

- Plaintiff's Pleadings:
  - Citing *Molway v City of Chicago*, the plaintiff contends that bicyclists must be considered intended and permitted users of Illinois streets and highways.
  - The plaintiff in that case was injured when the bicycle he was riding hit a hole in the street.
  - Trial court and appellate court found against the City of Chicago and for the bicyclist plaintiff.

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Boub v Township of Wayne

- Supreme Court Rulings :
  - The supreme court ruled *Molway* was not persuasive in the present case, citing the accident in *Molway* occurred in 1905, long before motorized vehicles became the predominant users of Illinois streets and highways.

Boub v Township of Wayne

- Supreme Court Rulings:
  - Many road conditions that do not pose hazards to vehicles may represent special dangers to bicycles, and imposition of liability in this case would, we believe, open the door to liability for a broad range of pavement conditions, such as potholes, speed bumps, expansion joints, sewer grates, and rocks and gravel, to name but a few.

Boub v Township of Wayne

- Supreme Court Rulings :
  - By the same token, we believe that imposition of municipal liability in the circumstances shown here is more appropriate for the legislature to initiate, if it is to be done at all.
  - In this regard, it is appropriate to consider the potentially enormous costs both of imposing liability for road defects that might injure bicycle riders and of upgrading road conditions to meet the special requirements of bicyclists.

Boub v Township of Wayne

- Supreme Court Rulings:
  - The provisions cited by the plaintiff is entirely consistent with the conclusion that bicyclists are permitted, but not intended, users of the roads, in the absence of specific markings, signage, or further manifestation of the local entity's intent that would speak otherwise

Boub v Township of Wayne

- Supreme Court Rulings :
  - In determining Wayne Township's intent, it is necessary to look at pavement marking, signs, and other physical manifestations of the intended use of the property.
  - Just as the presence or absence of special pavement markings and signs is relevant in determining whether pedestrians are intended users of streets, so too do we believe that the presence or absence of pavement markings and signs is relevant here in determining whether the plaintiff was an intended user

Current Bridge Looking East
Note: No pavement markings or signs for Bicycle Path
St Charles Rd

LANE
BIKE
alamy stock photo

ROUTE

Boub v Township of Wayne

- Supreme Court Rulings :
  - In the present case, there is nothing in the roadway or bridge that would suggest that it was intended for use by bicycles.
  - No special pavement markings or signs indicated that bicyclists, like motorists, were intended to ride on the road or bridge, or that bicycles, rather than vehicles, were the intended users of the route.

Boub v Township of Wayne

- Supreme Court Rulings :
  - For the reasons stated, the judgment of the appellate court, affirming the judgment of the circuit court of Du Page County, is affirmed.

Kirschbaum v. Village of Homer Glen

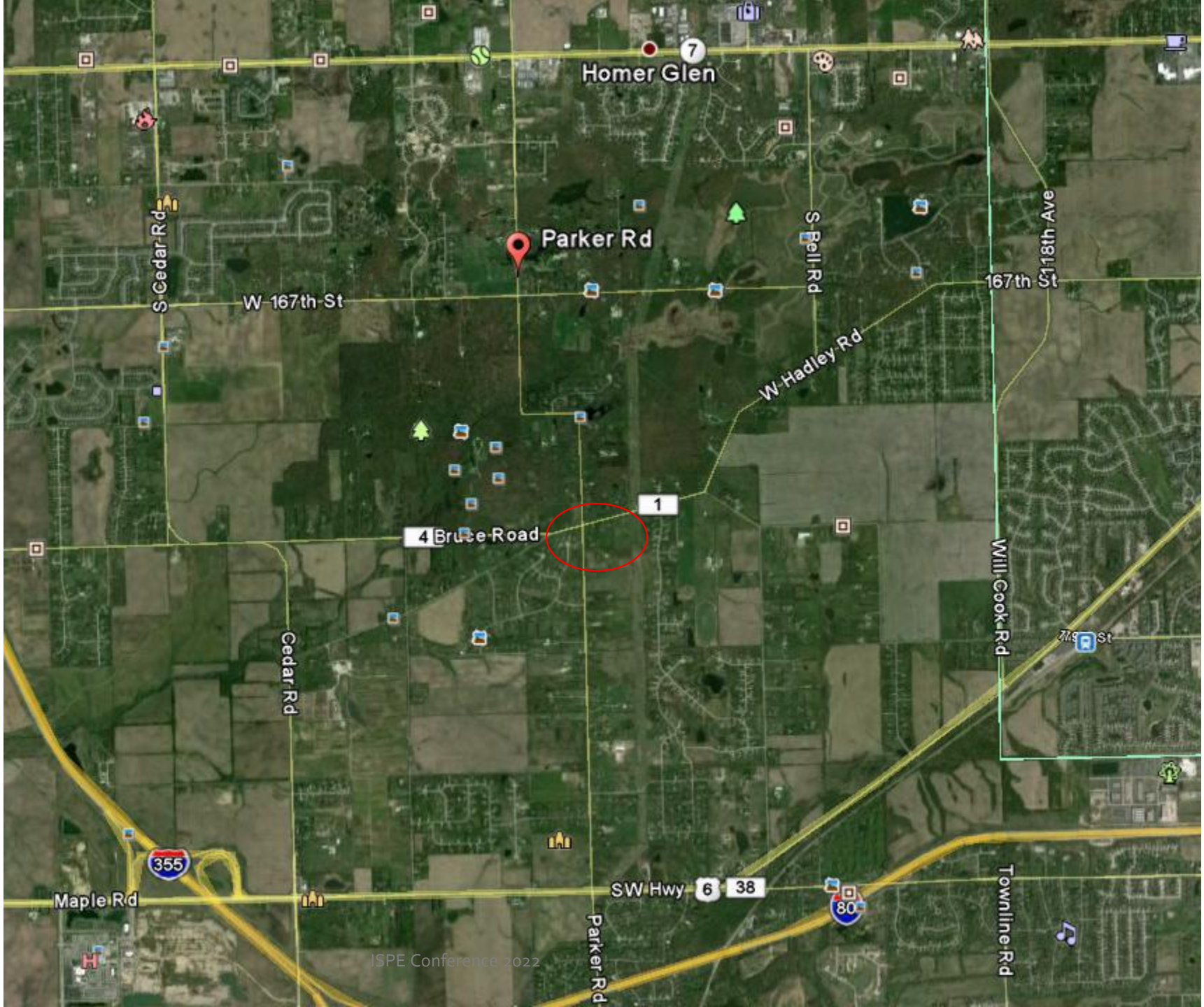
No. 3-04-0794 (2006)

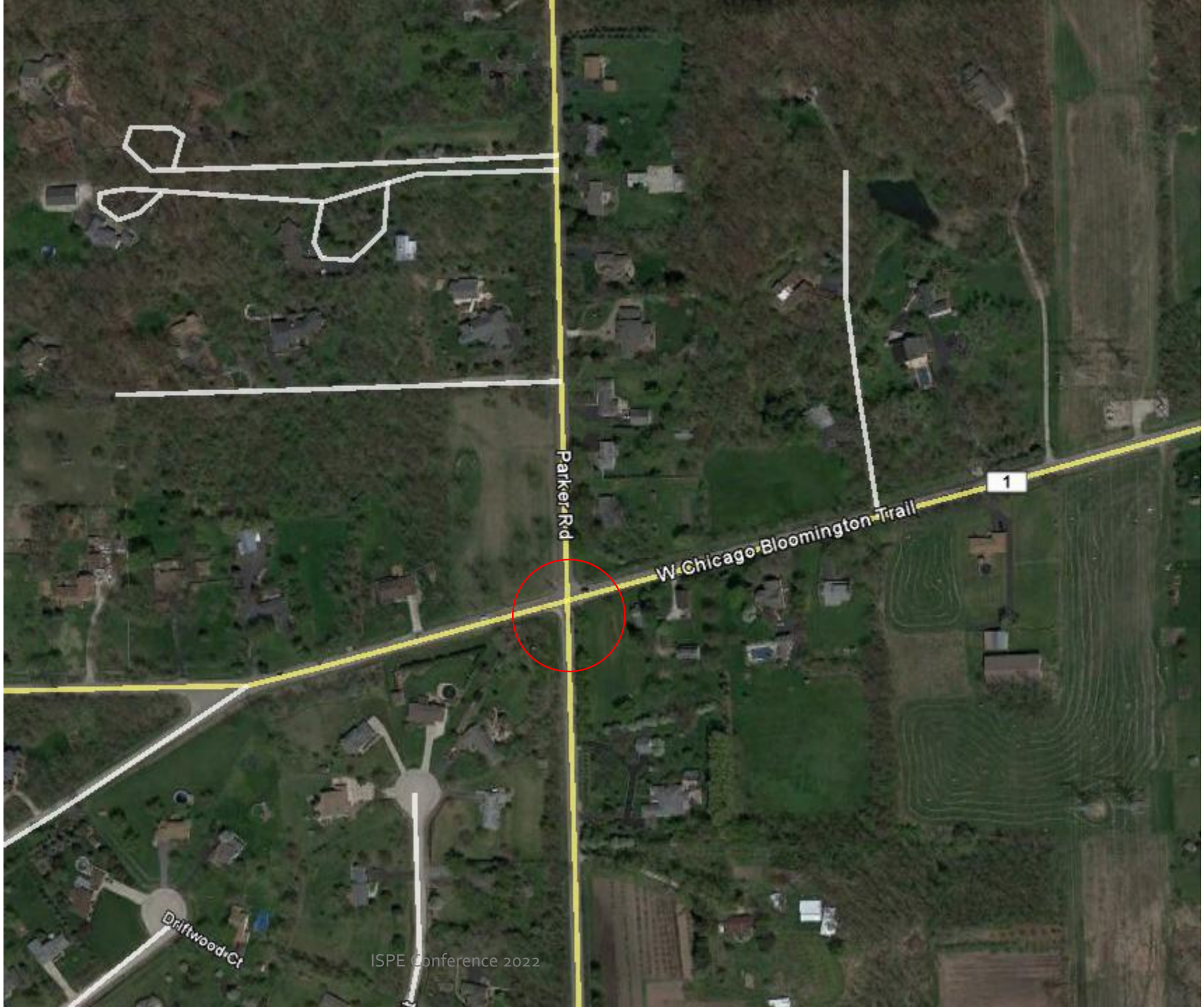
Kirschbaum v. Village of Homer Glen

- Facts of the case:
  - Lauren Kirschbaum is the Plaintiff-Appellant
  - Village of Homer Glen, Homer Township, Homer Township Highway Department, Homer Township Road Commissioner Franklin E. Dunn, Will County, Will County Department of Highways, and Will County Engineer Sheldon C. Latz, are Defendants-Appellees.

Kirschbaum v. Village of Homer Glen

- Facts of the case:
  - On appeal, Plaintiff driver attempts to show the order of the Will County circuit court granting defendants' motion to dismiss was improper because defendants owed Plaintiff a duty to prevent trees and brush from obstructing her view of oncoming traffic.
  - The incident in question occurred at the intersection of Parker Road and Chicago Road, in Homer Township, a township of Will County, Illinois.
  - The intersection is controlled by stop signs at each corner.


Homer Glen
7
Parker Rd
S Cedar Rd
W 167th St
S Bell Rd
167th St
S 118th Ave
W Hadley Rd
1
4 Bruce Road
Will Cook Rd
Cedar Rd
Parker Rd
Townline Rd
355
Maple Rd
SW Hwy
6
38
80
ISPE Conference 2022


Parker Rd
W Chicago Bloomington Trail
1
Driftwood Ct

Direction of travel of Defendant's vehicle
STOP
County Hwy 1
WB Traffic looking West

Direction of travel of Plaintiff's vehicle
STOP
Parker Rd
SB Traffic Looking South

SB Traffic looking East

Kirschbaum v. Village of Homer Glen

- Facts of the case:
  - On Sept. 5, 2002 at 5:45p, Plaintiff was driving her car south on Parker Road
  - A car driven by Sam Blatt was heading WB on Chicago Road.
  - When Plaintiff reached the intersection, she made a complete stop for the stop sign at NW corner and then continued to drive south into the WB lane of the intersection.
  - Plaintiff claims she was unable to see Blatt's approaching vehicle because her view was blocked by the obstacles at the NE corner of the intersection.

Kirschbaum v. Village of Homer Glen

- Facts of the case:
  - As Plaintiff's car entered the intersection, Blatt's car also entered from the east and struck Plaintiff's driver-side door at about 45 mph.
  - Blatt admitted disobeying the stop sign on the NE corner, claiming the sun blinded him and he could not see the stop sign.
  - There was no contention that Blatt's vision of the stop sign was obscured by brush.
  - As a result of injuries sustained in the accident, Plaintiff's left leg is deformed and an inch shorter than her right leg.

Kirschbaum v. Village of Homer Glen

- Facts of the case:
  - Subsequently, Plaintiff filed a complaint against the Defendants.
  - In her complaint, Plaintiff alleged the collision would not have occurred if the Defendants had removed the obstructions which blocked her view.
  - Plaintiff concludes that this created an unreasonable risk of harm and violated the Tort Immunity Act.
  - Defendants asserted Plaintiff failed to properly plead a cause of action and that they were immune from liability because they owed no duty to remove brush and trees pursuant to the Act.

Kirschbaum v. Village of Homer Glen

- Facts of the case:
  - After hearing argument, the trial court granted Defendants' motion to dismiss.
  - Plaintiff appeals this order.

Kirschbaum v. Village of Homer Glen

- 745 ILCS 10/3-102:
  - Sec. 3-102. (a) Except as otherwise provided in this Article, a local public entity has the duty to exercise ordinary care to maintain its property in a reasonably safe condition for the use in the exercise of ordinary care of people whom the entity intended and permitted to use the property in a manner in which and at such times as it was reasonably foreseeable that it would be used, and shall not be liable for injury unless it is proven that it has actual or constructive notice of the existence of such a condition that is not reasonably safe in reasonably adequate time prior to an injury to have taken measures to remedy or protect against such condition.

cr

Kirschbaum v. Village of Homer Glen

- Appellate Court Rulings:
  - Plaintiff does not contend and the record does not show that the trees and bushes in the area obstructed either Plaintiff's view or Blatt's view of the stop signs .
  - Defendant blamed his failure to see the sign on blinding sunlight, not the trees or brush.
  - Under the applicable case law, defendants successfully discharged their duty by placing visible stop signs at each corner of the intersection.

Kirschbaum v. Village of Homer Glen

- Appellate Court Rulings:
  - The trial court ruled correctly in finding that Plaintiff's negligence count failed to sufficiently plead the existence of a duty owed to Plaintiff.
  - Because we find that the Tort Immunity Act does not create a duty for Defendants to clear brush from an intersection where there are clearly visible traffic control devices at each corner and that the brush constitutes a condition rather than a proximate cause of the accident and the Plaintiff's injuries.
  - Judgment of the circuit court is affirmed.

Chamness v. Mays

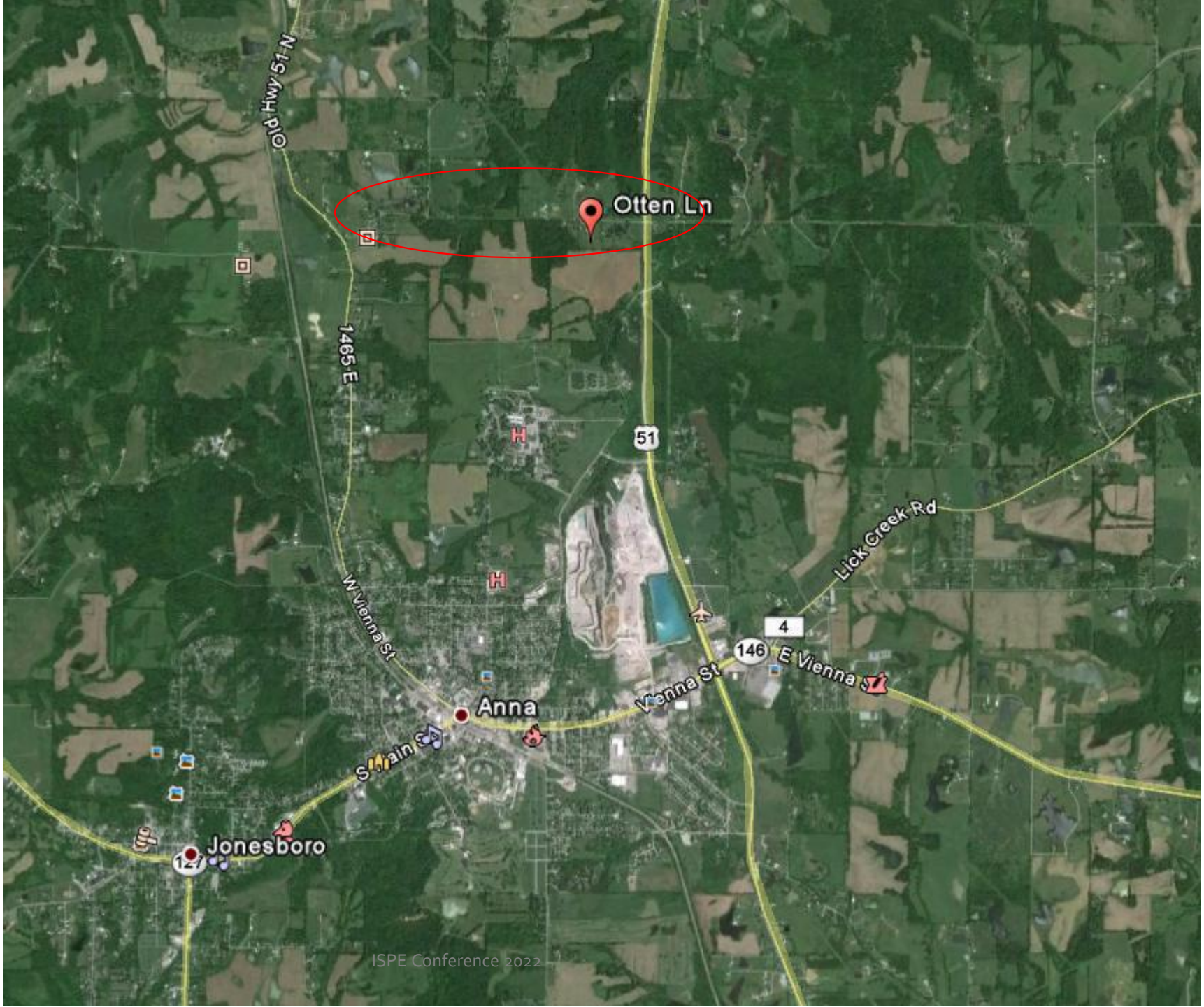
IL App (5th) 130381 (2014)

Chamness v. Mays

- Facts of the case:
  - Robert L. Chamness, Richard Tweedy, and Beverly Tweedy, are Plaintiffs-Appellants
  - Allen Mays, Janean Mays, and Union County, Illinois are Defendants-Appellees.
  - The Plaintiffs maintain that the disputed portion of Otten Lane was abandoned by Union County and is no longer a public highway.
  - The Defendants assert that the road was not abandoned and that it remains a public highway.
  - The trial court granted the defendants' motion for summary judgment.
  - Plaintiffs appealed.

Chamness v. Mays

- Facts of the case:
  - This appeal relates to a small portion of Otten Lane located in Union County.
  - Otten Lane is a gravel, east-west road. Portions of Otten Lane indisputably remain county roads.
  - It is undisputed that Otten Lane is a public roadway from New Route 51 on the east to the Tweedy mailbox on the west.
  - It is also considered a public roadway from Casper Church Road on the west to the Treece property on the east.
  - The portion in dispute is approximately ½ mile long


Otten Ln
Old Hwy 51 N
1465 E
51
W Vienna St
Lick Creek Rd
4
146
E Vienna St
Vienna St
Anna
S Main St
Jonesboro
127

Public Road
Public Road
Casper Church Rd
Otten Ln

Otten Lane?

Chamness v. Mays

- Facts of the case:
  - Union County ceased maintaining the disputed portion of Otten Lane in the 1960s.
  - In 1964 Union County stopped collecting MFT for the disputed portion of Otten Lane.
  - Over the years the disputed portion of the road has become overgrown with brush and trees.
  - On June 8, 1989, Thomas Gilchrist, Union County superintendent of highways, wrote a '*to whom it may concern*' letter in which he stated that he reviewed the road and certified that it was public from New Route 51 to the driveway of Earl Thompson.

Chamness v. Mays

- Facts of the case:
  - In April 1993, the Tweedys purchased their 21 acre property.
  - Their property sits alongside the beginning of the disputed portion of Otten Lane.
  - Richard Tweedy testified that he bought the land because it was a dead-end road.
  - Beverly Tweedy stated because their road was a dead end, she believed the disputed portion was not a public road.

Chamness v. Mays

- Facts of the case:
  - In 2001, Defendant Brown received a five-acre parcel of land along the disputed portion of Otten Lane and bordering the Tweedys' property.
  - The only roadway which accesses the Defendants' property is the disputed portion of Otten Lane.
  - Shortly after acquiring the land, Defendant Allen Mays met with the Plaintiffs about his intent to build a home on the property and about providing access to the new home.

Chamness v. Mays

- Facts of the case:
  - Within days of the meeting between the Plaintiffs and the Defendants, Allen Mays started work clearing the disputed portion of Otten Lane.
  - A contractor bulldozed the roadbed and put down gravel.
  - The contractor called Allen and informed him that the Plaintiffs objected to the heavy equipment being there and the work on the roadway.

Chamness v. Mays

- Facts of the case:
  - Bill Boyd testified by discovery deposition.
  - He stated that he was the Union County engineer from 1989 through 2009.
  - As county engineer he investigated the dispute over Otten Lane.
  - He discovered that from the 1800s through 1962 Otten Lane had been maintained by the Union County highway department.
  - MFT had been spent on the road through 1964
  - No vacations were filed on that road either at IDOT or in the Union County clerk's office.

Chamness v. Mays

- Facts of the case:
  - Mr. Boyd testified that he went to the abstractor who provided him with the deeds for the properties in the disputed area.
  - He found that in the conveyances of the properties, the properties were considered to abut a public road.
  - He testified that the portion of Otten Lane that had not been maintained by the county since 1964 was overgrown with brush.

Chamness v. Mays

- Facts of the case:
  - Mr. Boyd testified that the fact that a county roadway had fallen into disrepair does not mean that it was abandoned as a public roadway by the county and does not mean that the county can no longer maintain it.
  - He further stated that if a county road has fallen into disrepair, adjoining landowners cannot take over the road and prohibit others from using it.
  - He found that there has never been a formal abandonment of the roadway by the county.

Chamness v. Mays

- Facts of the case:
  - Mr. Boyd testified that he was aware of the letter written by Thomas Gilchrist at the time he made his findings of fact.
  - He stated that he did not agree with the letter.
  - Mr. Boyd stated that, as far as he knew, Mr. Gilchrist, as Union County superintendent of highways, never vacated any roads; he just stopped maintaining them.

Chamness v. Mays

- Facts of the case:
  - On November 21, 2006 Bill Jackson, chairman of the Union County board sent a letter to landowners stating that it had determined that Otten Lane had never been vacated and that access to the road could not be denied.
  - On November 21, 2007, the plaintiffs filed a complaint for injunctive relief enjoining the defendants from asserting any right, title, or interest in the disputed portion of Otten Lane.
  - On February 1, 2008, the defendants filed a motion to dismiss.

Chamness v. Mays

- Facts of the case:
  - On February 15, 2008, the plaintiffs filed a second amended complaint.
    - Count I – to enjoin Union County from asserting any right, title or interest in the disputed portion of Otten Lane.
    - Count II – to enjoin the Mays from entering the disputed portion of Otten Lane.
    - Count III – a claim against the Mays for trespass
    - Count IV – a claim to quiet title
    - Count V – a claim for declaratory judgment.

Chamness v. Mays

- Facts of the case:
  - In May 2008, the defendants filed a motion to dismiss.
  - On April 12, 2010, the court denied the defendants' motion to dismiss the second amended complaint.
  - On February 28, 2011, the defendants filed an answer to the plaintiffs' second amended complaint and a counterclaim.
  - The counterclaim was premised on the assertion that the disputed portion of Otten Lane retained its character as a public roadway and that access to it could not be denied.

Chamness v. Mays

- Facts of the case:
  - On August 26, 2011, the defendants filed a motion for summary judgment.
  - On July 6, 2012, the plaintiffs filed a motion for summary judgment and a response to the defendants' motion for summary judgment.

Chamness v. Mays

- Facts of the case:
  - On March 12, 2013, the court entered an order granting the defendants' motion for summary judgment.
  - It found that there was no evidence that Otten Lane was ever vacated.
  - It found that the evidence established that the disputed portion of Otten Lane had not been maintained by Union County or used as a roadway since approximately 1964.
  - It found that the road was overgrown with trees and brush.

Chamness v. Mays

- Facts of the case:
  - It found that no MFT funds are received on the roadway.
  - The roadway is not listed as a road in the IDOT highway and road maps.
  - It held that nonuse of a roadway alone is insufficient to establish an intent of abandonment.
  - It held that Mr. Gilchrist's letter does not state that any portion of Otten Lane had been abandoned.
  - It merely stated that a portion of the road is public.
  - The court found that the defendants' property is landlocked.
  - The court granted the defendants' motion for summary judgment.
  - The plaintiffs filed a timely notice of appeal.

cr

Chamness v. Mays

- Appellate Court Rulings:
  - An established public highway does not lose its character as a public road unless it is either vacated by the authorities in the manner prescribed by statute or abandoned.
  - Nonuse of the road alone is insufficient to establish abandonment by the public.
  - **Abandonment will be found only where the public has acquired the legal right to another road or where the necessity for the road has ceased to exist**.

Chamness v. Mays

- Appellate Court Rulings:
  - The disputed portion of Otten Lane is a public roadway.
  - It was not abandoned by the public because the presumed necessity for the disputed portion of the road had not ceased to exist and there was no alternate route.
  - We affirm the trial court's order granting the defendants' motion for summary judgment.

Putnam v. Village of Bensenville

337 Ill app (3d) 197 2003

Putnam V. Village of Bensenville

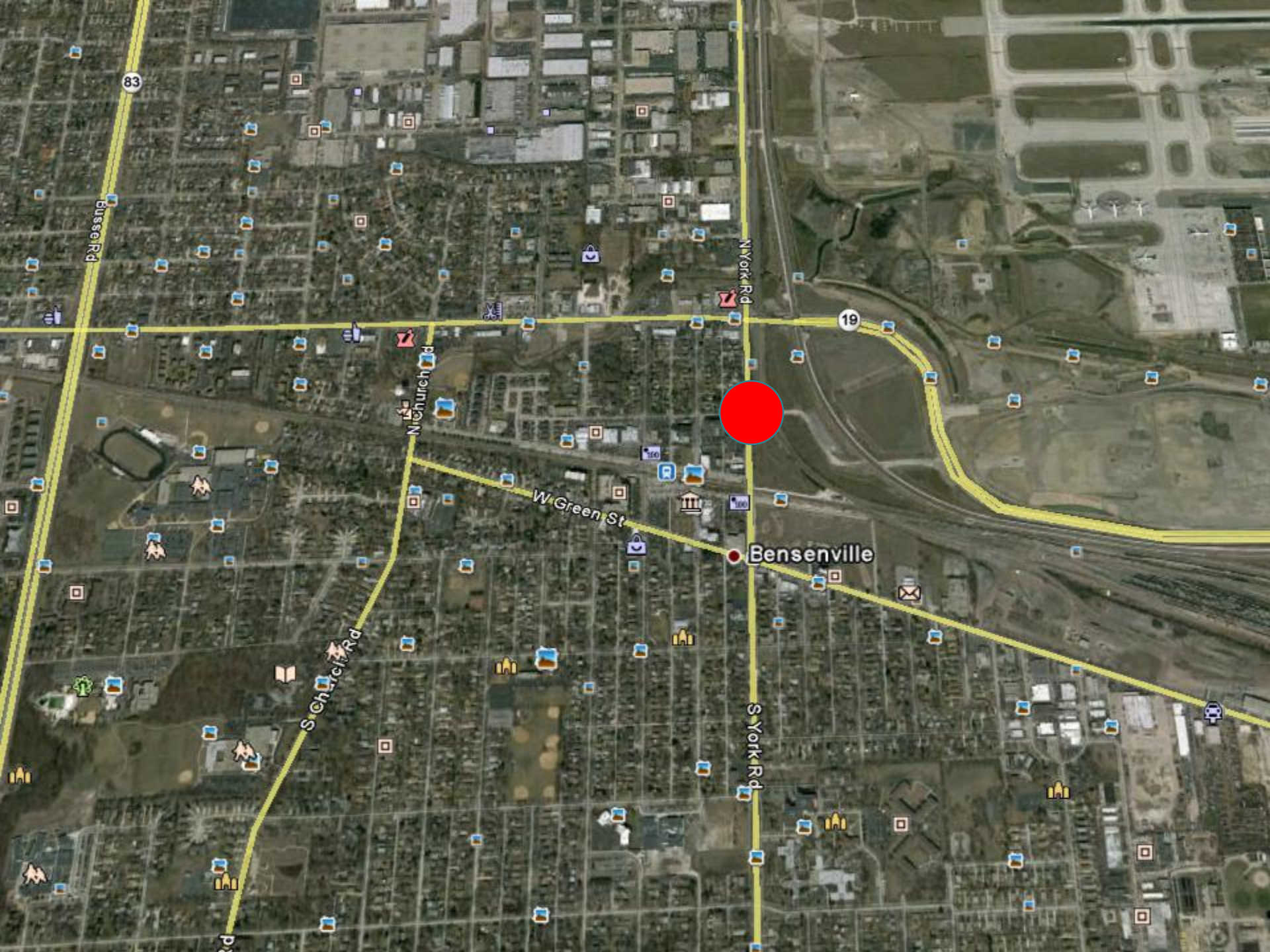
- Plaintiffs-Appellants:
  - Albert P. Putman and Ardelle J. Putman
- Defendants-Appellees:
  - Village of Bensenville
  - Eagle Concrete Contractors, Inc.
  - James J. Benes and Associates, Inc.

Putnam V. Village of Bensenville

- Facts of Case:
  - Plaintiffs, Albert P. Putman and Ardelle J. Putman instituted an action in the circuit court of Du Page County following a fall that rendered Albert a quadriplegic.
  - Plaintiffs named as Defendants, among others, the Village of Bensenville, Eagle Concrete Contractors, Inc. and James J. Benes & Assoc., Inc.
  - Eagle was a subcontractor hired on a road improvement project in Bensenville, and Benes was the engineering firm hired by the Village for the project.
  - A number of other defendants settled or were granted summary judgment and are not parties to this appeal.

Putnam V. Village of Bensenville

- Facts of Case:
  - Defendants moved for summary judgment.
  - Trial court granted defendants' motions, and plaintiffs now appeal.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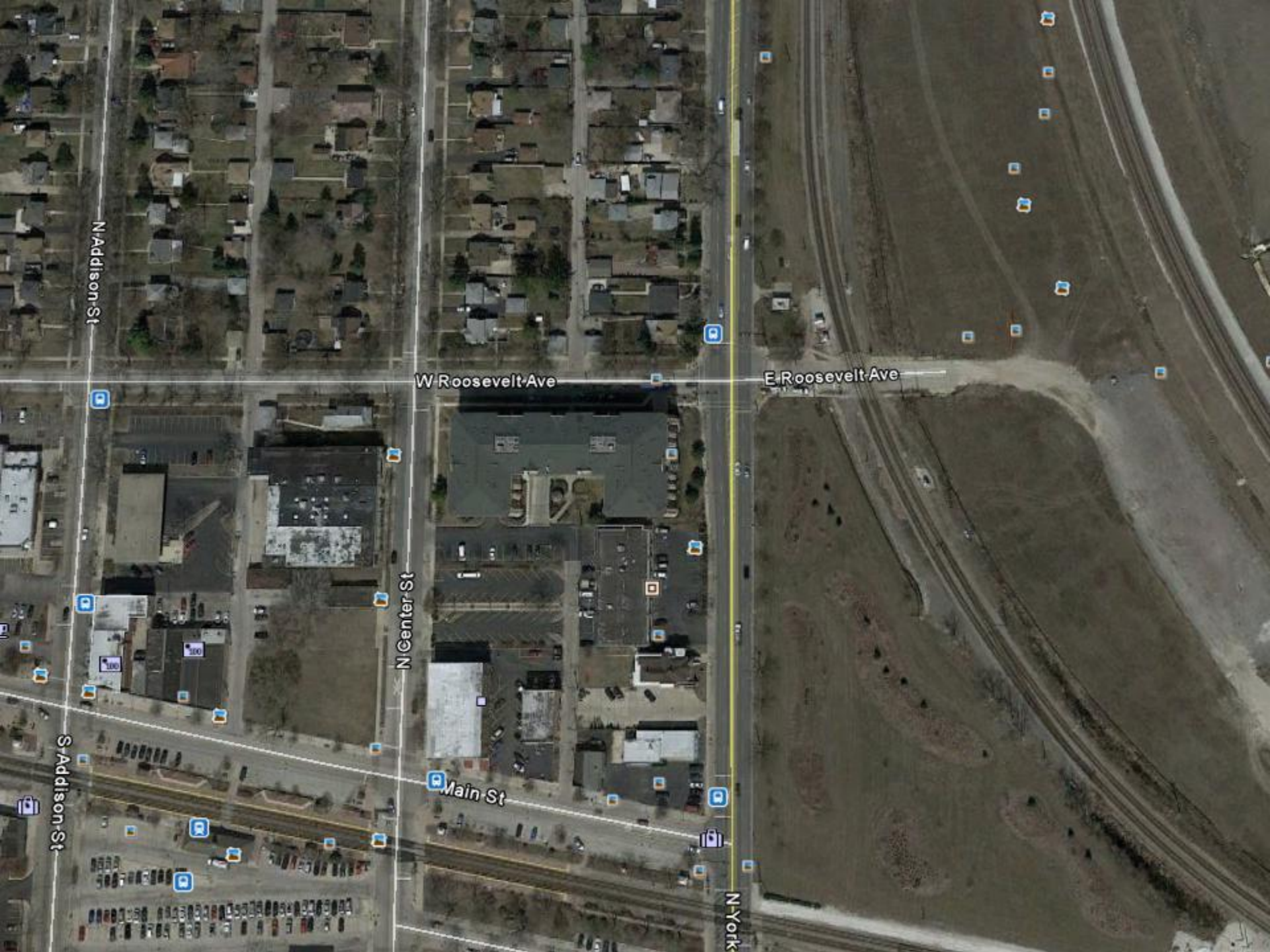
19
N Church Rd
W Green St
Bensenville
S Church Rd
S York Rd


N Addison St
W Roosevelt Ave
E Roosevelt Ave
N Center St
S Addison St
Main St
N York

Parking Lot
VFW Building
N Addison St
W Roosevelt Ave
E Roosevelt Ave
N Center St
Main St
S Addison St
Aerial Photo 1993

York Road at Roosevelt Ave.
Bensenville, IL

WALK

Putnam V. Village of Bensenville

- Facts of Case:
  - On November 9, 1995, Albert was to attend a meeting at the VFW building in Bensenville.
  - The meeting was to commence at 8:00p
  - He arrived about 7:30p and parked in a lot across the street.
  - As he approached the intersection to cross the street, he noted that the pedestrian crosswalk and traffic signals were working, but the overhead lighting at the intersection was not.
  - Albert stated that the intersection was dark and shadowy.
  - Albert pressed the pedestrian signal button and waited until the walk signal came on before crossing the intersection.

Putnam V. Village of Bensenville

- Facts of Case:
  - When he was about halfway across the intersection, the signal changed to "*don't walk*."
  - Albert related that he increased his pace "*a trifle*," *but "didn't hurry that much."*
  - Albert acknowledged that he was familiar with the intersection due to the number of times he had previously traversed it, which he estimated at approximately 30.
  - Albert stated that the signal appeared to be quicker than usual on the night of the accident.
  - In fact, the signal had been damaged about three weeks earlier, and a temporary controller had been installed.

Putnam V. Village of Bensenville

- Facts of Case:
  - This controller would give a pedestrian the walk signal for between 3 and 8 seconds and then allow an additional 15 seconds to cross the intersection.
  - On the VFW side of the intersection, Bensenville had installed a ramp to make the sidewalk handicapped accessible.
  - The ramp consisted of a sloped portion of the sidewalk that came down to meet the road.
  - There was a gutter at the base of the ramp.
  - As Albert was leaving the roadway, he tripped on the front edge of the ramp where it adjoined the gutter.

Putnam V. Village of Bensenville

- Facts of Case:
  - He fell forward and struck his head on a concrete parking block.
  - As a result, he was paralyzed from the neck down.
  - The record in this case is voluminous and additional facts will be discussed as they pertain to the issues raised by plaintiffs.

Putnam V. Village of Bensenville

- Facts of Case:
  - The trial court granted summary judgment in favor of all three defendants.
  - Summary judgment is appropriate only where no genuine issues of material fact exist and the movant is entitled to judgment as a matter of law.
  - As the issues pertaining to the separated defendants are discrete, we will address them separately.
    - Bensenville (Village)
    - Eagle (Contractor)
    - Benes (Engineer)

Putnam V. Village of Bensenville

- Bensenville:
  - The evidence, viewed in the light most favorable to plaintiffs, shows that there was a one-inch lip between the ramp and the gutter.
  - Plaintiffs' expert, Paul Box, produced a diagram showing this change in elevation.
  - The upper half of the inch reflected the distance where the ramp sloped downward, and only the lower half was perpendicular to the gutter.
  - Defendants produced testimony indicating that the lip was smaller; however, as this appeal involves a summary judgment, we must accept the testimony of plaintiffs' expert.

Putnam V. Village of Bensenville

- Bensenville:
  - We also note that Albert estimated the distance from the lowest point in the gutter to the ramp at two to three inches.
  - This measurement is not relevant, as Albert asserts that he tripped on the front edge of the ramp.
  - Moreover, it is not surprising that, to allow for drainage, the lowest point of the gutter was somewhat lower than the ramp.

Putnam V. Village of Bensenville

- Bensenville:
  - Thus, for the purpose of resolving this issue, we will assume that a one-inch lip existed at the front edge of the ramp. Numerous cases have held that such defects fall within the de-minimis rule.
    - *"Turning to the facts in the case before us, we believe that the city's evidence, a 1 1/8 inch maximum height variation, would indicate that, in view of the surrounding circumstances, no cause of action would lie due to the minimal nature of the defect." (Warner v City of Chicago, 72 Ill 2d 100)*
    - *"The point at which liability attaches in such cases is when the defect approaches two inches." (Birck, 241 Ill App 3d 122)*
  - In this case, a one inch defect lies within the ambit of the de-minimis rule and is not actionable.

Putnam V. Village of Bensenville

- Bensenville:
  - Plaintiffs do not seriously attempt to argue that the one-inch defect would not fall within the de-minimis rule. Instead, they attempt to argue that the rule has no application to the case at bar. To this end, they advance two arguments.
    - First, they argue that the ramp was a special statutorily mandated handicapped ramp
    - Second, they contend that certain regulation that state how such ramps should be constructed should control this action and trump the de-minimis rule.
  - We find both arguments unpersuasive.

Putnam V. Village of Bensenville

- Bensenville:
  - First, we attach significance to the fact that Albert tripped on the ramp rather than on some other portion of the sidewalk.
  - Plaintiffs attempt to distinguish the ramp from the balance of the sidewalk by pointing out that the design of such ramps is set forth in detail in certain administrative regulations.
  - However, other portions of sidewalk are also governed by exacting standards.
  - Thus, the fact that the ramps are heavily regulated provides no basis for distinguishing them from the rest of the sidewalk.

Putnam V. Village of Bensenville

- Bensenville:
  - More fundamentally, adopting the position advocated by plaintiffs would lead to an absurdity. A sidewalk ramp is, obviously, intended to provide access to a sidewalk.
  - Thus, the same individuals who traverse the ramp also use the sidewalk.
  - If we were to exclude ramps from the de-minimis rule, an individual who tripped on a defect in the ramp would have a cause of action while one who tripped on a defect in the very next slab would not.
  - The ramp is, in fact, part of the sidewalk.
  - Accordingly, we reject plaintiffs' contention that the mere fact that the accident occurred on a ramp makes the de-minimis rule inapplicable.

Putnam V. Village of Bensenville

- Bensenville:
  - Plaintiffs point out that, in addition to the defect in the ramp, overhead lighting at the intersection was not functioning and the pedestrian crossing signal was, as Albert described, "faster" than usual on the night of the accident.
  - Regarding the lighting, there is no duty to illuminate a defect that is not otherwise actionable. (Swett v. Village of Algonguin 169 Ill. App. 3d 78).
  - A contrary rule would require a municipality to install lighting over every nonactionable defect in a sidewalk, substantially undercutting the purpose of the de-minimis rule.

Putnam V. Village of Bensenville

- Bensenville:
  - We question whether the quicker walk signal was causally related to Albert's injury, as plaintiffs point to nothing to suggest that a properly operating signal would allow a pedestrian to clear the intersection completely before it switched back to "don't walk."
  - Accordingly, we hold that, in accordance with the de-minimis rule, Bensenville had no duty to remedy the minor defect in the ramp. We affirm the decision of the trial court granting summary judgment to the Village.

Putnam V. Village of Bensenville

- Eagle:
  - Plaintiffs next contend that the trial court erred in granting summary judgment in favor of Eagle. Plaintiffs contend that an issue of fact exists as to whether Eagle constructed the ramp in accordance with applicable plans and specifications.
  - Eagle makes two responses.
    - First, it asserts that there is no evidence in the record to establish that the defect in the ramp existed at the time it completed the ramp.
    - Second, it argues that it, like the Village, is entitled to the benefit of the de-minimis rule.
  - We disagree with both contentions, thus, we reverse the order of the trial court granting summary judgment to Eagle.

Putnam V. Village of Bensenville

- Eagle:
  - Eagle contends that no issue of material fact exists as to whether it complied with the plans. In support of this position, Eagle points to the testimony of several witnesses who inspected the ramp around the time Eagle completed its work.
  - Contrary evidence exists in the record. Robert Tarosky, an engineer retained by plaintiffs as an expert witness, averred that the ramp had a lip in excess of one-quarter of an inch and that this defect violated the applicable standard.
  - Hence, we are presented with a conflict in the evidence, making summary judgment inappropriate.
  - Therefore, we reverse the decision of the circuit court granting Eagle's motion of summary judgment.

Putnam V. Village of Bensenville

- Benes:
  - Regarding Benes, the trial court granted summary judgment on the basis of the following provision in the contract under which Benes agreed to provide inspection services for the project:
    - *"Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any agreement between PUBLIC AGENCY and any other party concerning this project, the ENGINEER shall not have control or be in charge of and shall not be responsible for the means, methods, techniques, sequences or procedures or construction nor shall the ENGINEER be responsible for the acts or omissions of PUBLIC AGENCY provided that the ENGINEER has properly executed his duties."*

Putnam V. Village of Bensenville

- Benes:
  - *ENGINEER shall not be responsible for the failure of the PUBLIC AGENCY, any architect, engineer, consultant, contractor or subcontractor to carry out their respective responsibilities in accordance with the project documents or any other agreement concerning the project.*
  - The trial court found that the duty of Benes regarding the project was set forth in the contract, and, thus the above-cited provision limited Benes's liability.

Putnam V. Village of Bensenville

- Benes:
  - Plaintiffs attempt to avoid the effect of this disclaimer by distinguishing between the acts of Benes and those of Eagle. Plaintiffs assert that their action against Benes is not based on Eagle's failure to comply with the plans for the ramp. Instead, they claim that their action is based on Benes's own failure to properly inspect the ramp.
  - Virtually every error in construction could be recast and advanced against Benes as a failure to supervise or inspect the project.
  - We cannot find that the parties intended such a result.
  - Accordingly, we hold that the disclaimer set forth above is effective to relieve Benes of liability on the present issue.

Putnam V. Village of Bensenville

- Benes:
  - The trial court properly granted summary judgment in favor of Benes.

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Putnam V. Village of Bensenville

- Final Ruling:
  - In light of the foregoing, we affirm the decision of the circuit court of Du Page County granting summary judgment to Bensenville and Benes.
  - We reverse the grant of summary judgment to Eagle and remand this portion of the cause for further proceedings.