

Illinois Court Cases Related to Highway Safety

2020 THE Conference

Illinois Court Cases Related to Highway Safety

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Illinois Court Cases Related to Highway Safety

- ▶ Introduction
- I am not a lawyer; just someone interested in court cases
- 6 cases to cover
- Publication after they get to appellate level
- I will present:
 - Facts
 - What each side says
 - Other pertinent issues
 - Court rulings
- The appellate court will affirm, reverse or remand (or a combination of the above).

Illinois Court Cases Related to Highway Safety

- ▶ What to take away from this seminar
 - Thompson v Gordon – the difference between “replacement” and “improvement” in contract language
 - Perfetti v. Marion Co. – Tort Immunity Act
 - Dinelli v. County of Lake – Injury at a mid-block bicycle crosswalk

Illinois Court Cases Related to Highway Safety

- ▶ What to take away from this seminar
 - Kirschbaum v. The Village of Homer Glen – Trees and brush obstructing view of a highway
 - DeMambro v City of Springfield – liability for defects in the roadway
 - Putnam v Village of Bensenville – Liability for sidewalk defect.

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.*

Definitions:

- ▶ Directed verdict – *A directed verdict is a ruling entered by a trial judge after determining that there is no legally sufficient evidentiary basis for a reasonable jury to reach a different conclusion.*

Definitions:

- ▶ Proximate cause *refers to a thing that happened to cause something else to occur. This is usually brought up when something has gone wrong, such as an automobile accident in which someone was injured, and refers to the non-injured party's legal responsibility for the event.*

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

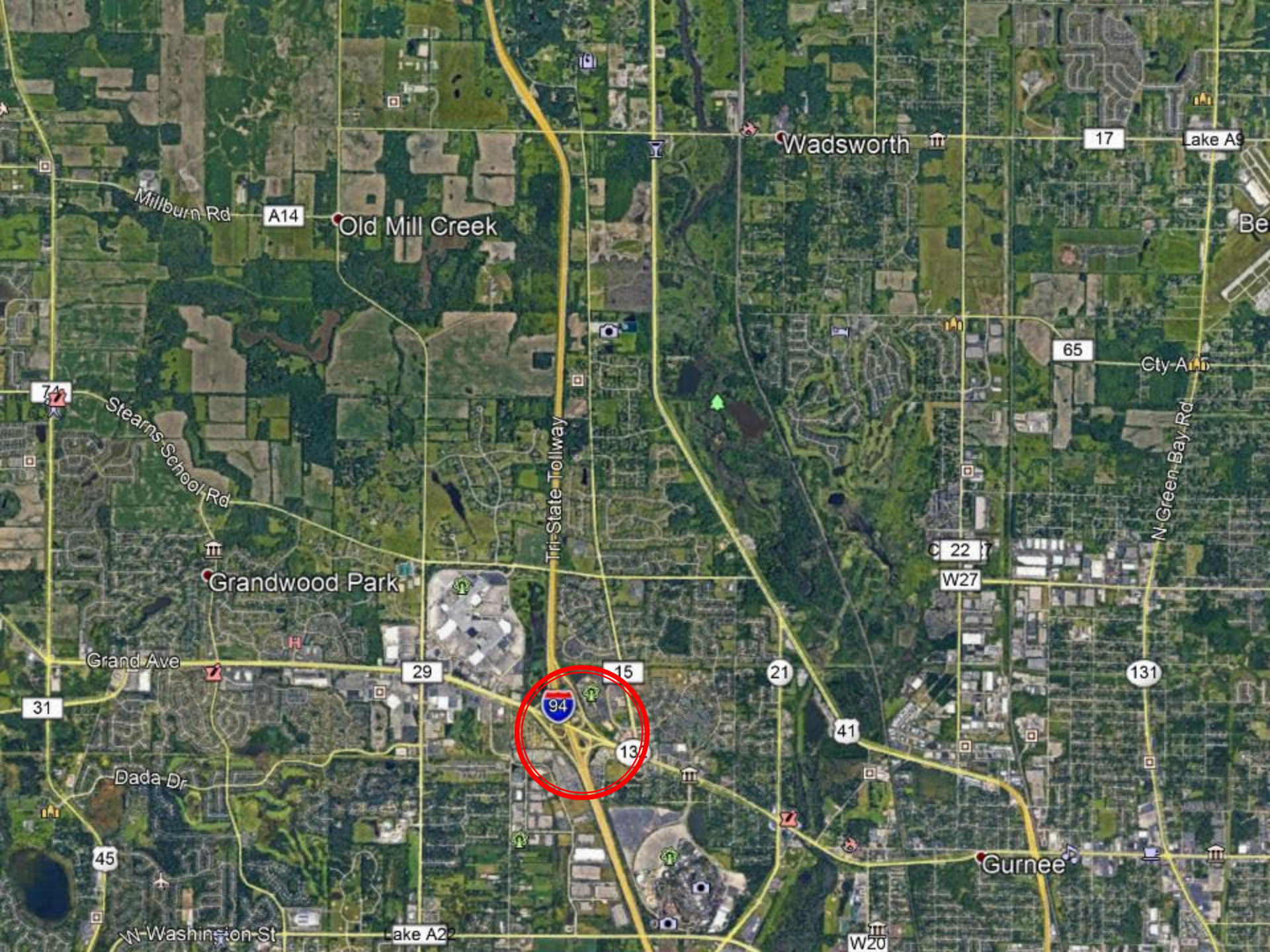
▶ Facts of the Case:

- 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

Be

74

Stearns School Rd

Tri-State Tollway

City Air

N Green Bay Rd

Grandwood Park

C 22

W27

Grand Ave

29

15

21

131

31



13

41

Dada Dr

45

Gurnee

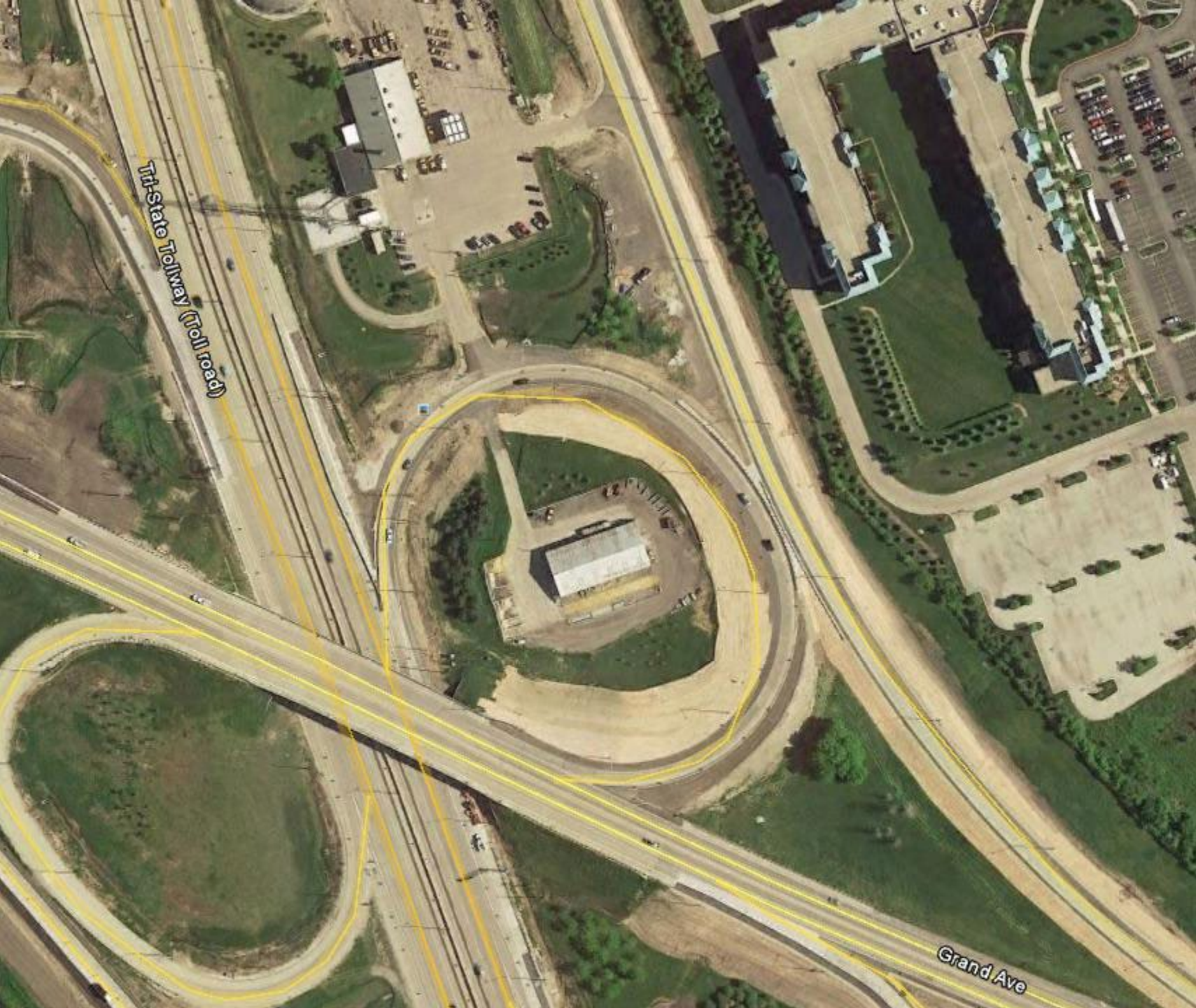
W Washington St

Lake A22

W20

Gurnee Mall





1st 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

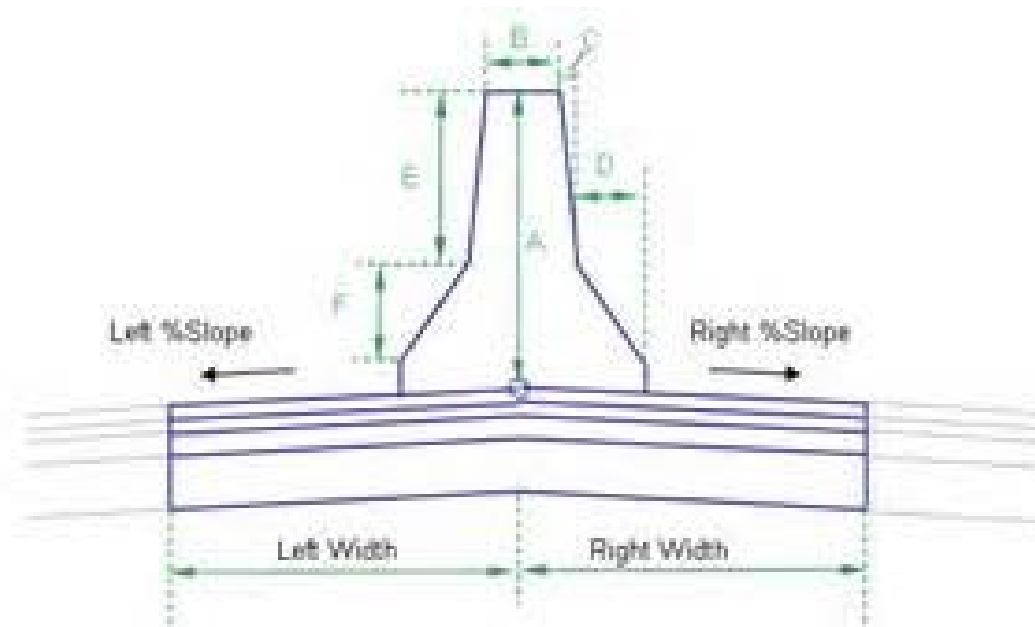
▶ Facts of the Case:

- 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.





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.

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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
 - Ruled for the defendant designers

Perfetti V. Marion County, IL

»» No 5-11-0489 2013

Perfetti V. Marion County, IL

- ▶ Roy Perfetti, Plaintiff–Appellant
- ▶ Marion County, IL, Marion County Highway Department and Kinmundy Township, Defendants–Appellees
- ▶ Filed January 28, 2013
- ▶ Appealed from Circuit Court of Marion County

Perfetti V. Marion County, IL

- ▶ Facts of the case
 - The Plaintiff, Roy Perfetti, filed an action in the circuit court of Marion County against the defendants, Marion County, IL, Marion County Highway Department and Kinmundy Township, alleging that the defendants' negligence and willful and wanton misconduct with regard to an unsafe roadway caused a one-vehicle collision that resulted in his injury.

Perfetti V. Marion County, IL

▶ Facts of the case

- The circuit court dismissed the plaintiff's cause against Kinmundy Township, and the plaintiff elected to proceed solely against Marion County
- Circuit court granted Marion County's motion for a directed verdict.
- On appeal, the plaintiff argues that the circuit court's directed verdict was not based on the evidence, that Marion County did not plead an affirmative defense for which a directed verdict could be granted and that it was not immune pursuant to **Tort Immunity Act**.

Perfetti V. Marion County, IL

▶ From Tort Immunity Act

(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.)

Perfetti V. Marion County, IL

- ▶ Plaintiff's Pleading:
 - On June 30, 2006, the plaintiff filed a complaint alleging that despite its actual or constructive knowledge of the unsafe roadway construction of Kinoka Road, Marion County negligently and willfully and wantonly constructed, designed, failed to maintain, and failed to repair the allegedly defective roadway.

Perfetti V. Marion County, IL

- ▶ Plaintiff's Pleading:
 - The plaintiff further alleged that Marion County negligently allowed the roadway to remain in a defective condition, failed to warn of the defective condition of the roadway, failed to protect the plaintiff from the hazardous condition in the roadway and improperly permitted the plaintiff and other users to use the roadway.

Perfetti V. Marion County, IL

- ▶ Plaintiff's Pleading:
 - The plaintiff alleged that the unsafe construction, maintenance, and condition of Kinoka Road caused him to lose control of his vehicle and suffer extensive injuries.
 - The plaintiff alleged that as a direct and proximate result of Marion County's acts or omissions, he suffered injuries to his neck, shoulder, and back.

Vernon

S A St

Kinoka Road

Griffin Financial Inc

Wesley United Methodist Church

Patoka Fire Department

Patoka

51

250E

Co Rd 900 E



Kinoka Rd, Illinois

Kinoka Road



8

Kinaka Rd



Perfetti V. Marion County, IL

▶ Plaintiff's Pleading:

- On September 7, 2005, the plaintiff was driving eastbound on Kinoka Road in Marion County, IL.
- **As he descended a hill, his truck abruptly shook, flipped, and rolled into a ditch.**
- The plaintiff suffered injuries and was transported by ambulance to the hospital
- On the day of the accident, the plaintiff returned to the accident scene with his son Donald.
- The plaintiff witnessed what he described as “*nothing but bubbles*” in the road.
- The plaintiff further described the road as “*all ripples and spongy.*”

Perfetti V. Marion County, IL

▶ Plaintiff's Pleading:

- The plaintiff testified that when he stood on the road and moved his feet, the road moved three feet in front “*like standing on a bowl of Jello.*”
- The plaintiff testified that the ripples were evident completely across the road and 50 to 75 feet downhill.
- On cross-examination, the plaintiff acknowledged that he had to exit his vehicle to view the road's condition.
- Donald also described the road as “*wavy, spongy, and mushy.*” Donald testified that when he stood on the roadway, it sank.

Perfetti V. Marion County, IL

- ▶ Plaintiff's Pleading:
 - The plaintiff returned the following day with his son Paul and took additional photographs.
 - Paul described the road as a “*washboard with a ripple effect in the road.*”
 - Paul testified that the road moved when stepped upon and that the defect in the roadway covered a 70-acre area.

Perfetti V. Marion County, IL

- ▶ Defendant's Response:
 - Marion County asserted as affirmative defenses contributory negligence immunity under section 3-102 and 2-201 of the Tort Immunity Act.
 - Marion County argued that it had neither actual nor constructive notice of the existence of the allegedly unsafe condition at a reasonably adequate time prior to the plaintiff's accident to take measures to remedy or protect against such conditions.
 - Marion County asserted that it was not liable for injuries resulting from the Marion County highway engineer's act or omission in determining policy and exercising his discretion.

Perfetti V. Marion County, IL

▶ Defendant's Response:

- Jerry Cunningham, the Marion County Engineer, testified that he was not aware of the plaintiff's accident until the following year.
- Jerry testified that Marion County was responsible for the condition of Kinoka Road, which experienced heavy semitruck traffic at the time of the plaintiff's accident.
- Jerry testified that he last inspected the area of the accident two days before the accident and did not observe anything unsafe.
- Jerry acknowledged that there were sections of the highway at issue that Marion County had been monitoring for "*bleeding*."

Perfetti V. Marion County, IL



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Perfetti V. Marion County, IL

▶ Rulings:

- Plaintiff failed to present evidence that Marion County had actual or constructive notice that the roadway was not in a reasonably safe condition prior to the Plaintiff's injury
- Plaintiff failed to present evidence that Marion County had actual notice of the defective condition of the roadway or that the defective condition of the roadway was apparent for such a length of time or was so conspicuous that Marion County should have known of its existence by exercising reasonable care and diligence.
- We hereby conclude that the circuit court properly entered a directed verdict.

Illinois Court Cases Related to Highway Safety

- »» Dinelli v. County of Lake
2-97-0288 (1997)

Dinelli v. County of Lake

- ▶ Facts of the case:
 - Frank Dinelli and Carol Dinelli are Plaintiffs–Appellants
 - County of Lake is Defendant–Appellee
 - Circuit Court of Lake County dismissed the Plaintiffs’ complaint against the Defendant
 - Plaintiffs appealed.

Dinelli v. County of Lake

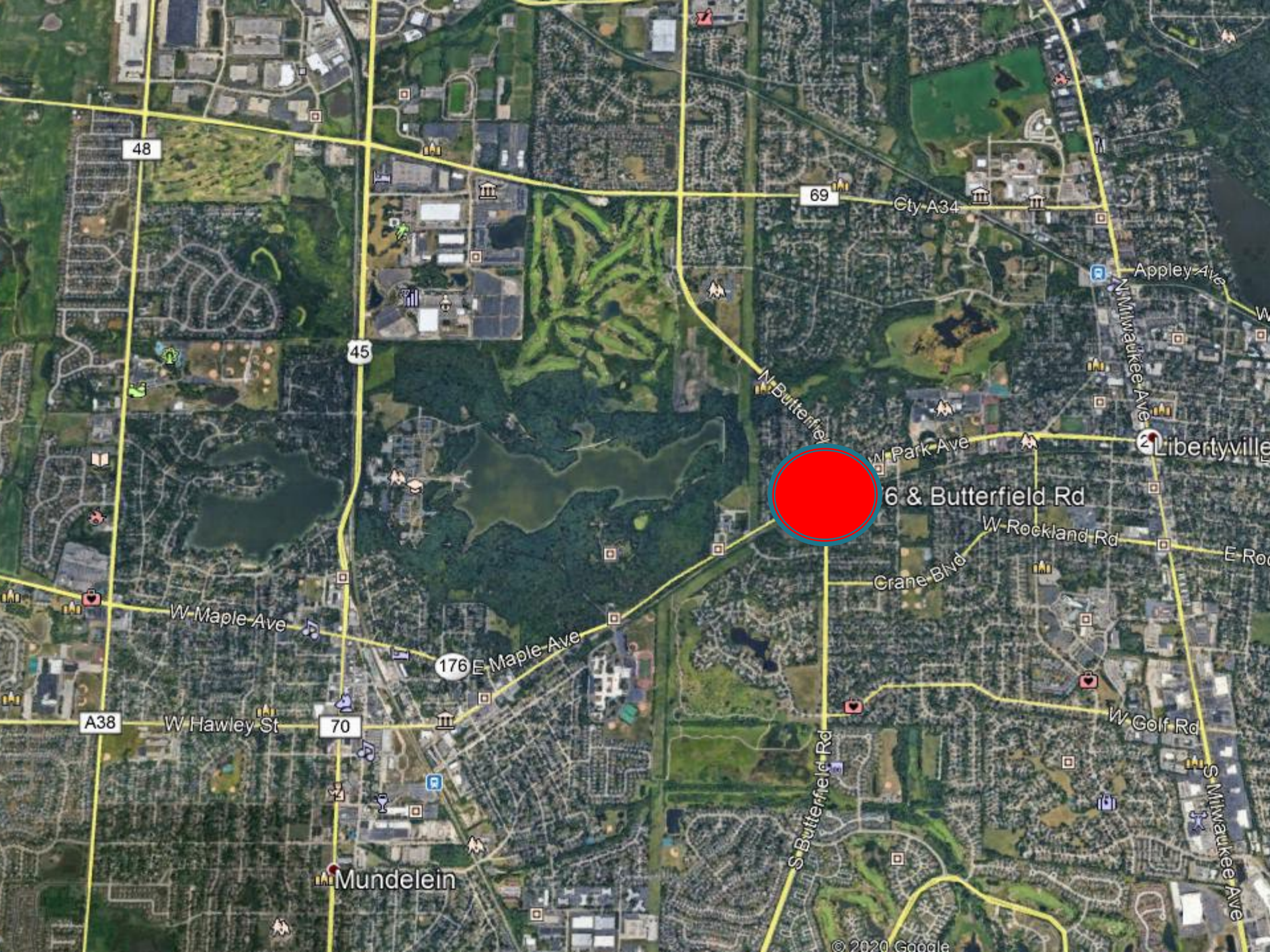
- ▶ Facts of the case:
 - Complaint alleged that the County was negligent and willful and wanton in its design and maintenance of a midblock bicycle crosswalk.
 - Plaintiff Frank Dinelli was struck and injured by a motor vehicle while walking his bicycle across the crosswalk.
 - The trial court found that the crosswalk had been intended for recreational use and therefore concluded that the County was immune from liability pursuant to Tort Immunity Act.

Dinelli v. County of Lake

▶ Tort Immunity Act:

- (745 ILCS 10/3-106) (from Ch. 85, par. 3-106)
Sec. 3-106. Neither a local public entity nor a public employee is liable for an injury where the liability is based on the existence of a condition of any public property intended or permitted to be used for recreational purposes, including but not limited to parks, playgrounds, open areas, buildings or other enclosed recreational facilities, unless such local entity or public employee is **guilty of willful and wanton conduct proximately causing such injury.**

(Source: P.A. 84-1431.)



48

45

69

Cty A34

Appley Ave

N Milwaukee Ave

Libertyville



6 & Butterfield Rd

W Rockland Rd

E Ro

Crane Blvd

W Maple Ave

176 E Maple Ave

A38

W Hawley St

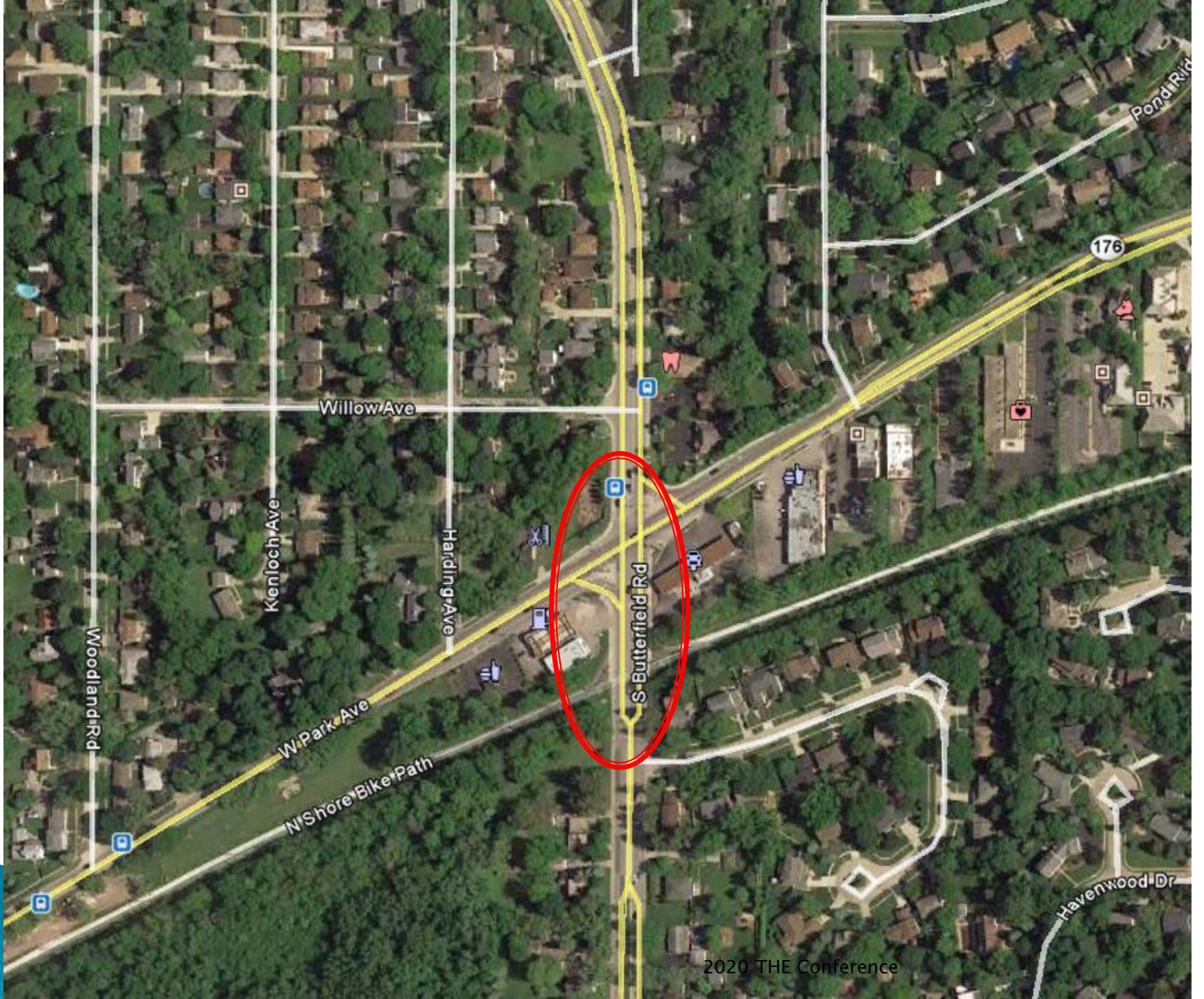
70

Mundelein

S Butterfield Rd

W Golf Rd

S Milwaukee Ave





Butterfield Road looking N.



Butterfield Road looking W at NSBP



Butterfield Road NB Lane looking at accident site

Dinelli v. County of Lake

▶ Facts of the case:

- On September 23, 1994, Frank Dinelli was riding his bicycle in an easterly direction along the North Shore Bicycle Path (NSBP) in Libertyville.
- In 1994, the NSBP included a midblock crosswalk across Butterfield Road, approximately 240 feet south of the intersection of Butterfield Road and IL Rte 176.
- Street signs at the crosswalk warn motorists on Butterfield Road where the NSBP crosses the road.

Dinelli v. County of Lake

- ▶ Facts of the case:
 - As the plaintiff attempted to ride his bicycle across the crosswalk, he was struck by a NB vehicle being driven by Louise Rejc.
 - According to witness at the time the plaintiff attempted to cross the crosswalk, NB traffic on Butterfield Road was stopped for a red light at IL Rte 176.
 - The witness testified that the plaintiff entered the crosswalk and proceeded to cross Butterfield Road while the NB traffic remained stopped.

Dinelli v. County of Lake

- ▶ Facts of the case:
 - As the plaintiff was crossing the SB lane, he was struck by Rejc's vehicle.
 - Rejc was allegedly traveling NB in the SB lane in order to more quickly reach the LT lane at the intersection with IL Rte 176.
 - As a result of the collision, the plaintiff suffered a broken hip, broken pelvis, three fractured ribs, and other internal injuries requiring hospitalization for over six weeks.

Dinelli v. County of Lake

- ▶ Facts of the case:
 - Count I and II of the plaintiffs' complaint alleged that the county was negligent in its design and maintenance of the NSBP
 - In Count III and IV, the plaintiffs alleged that the County's conduct had been willful and wanton
 - The plaintiffs alleged that the county:
 - Failed to use traffic and pedestrian counts
 - Located the crosswalk in a high volume area
 - Installed the crosswalk without the recommendation of the County Engineer
 - Failed to design the crosswalk according to MUTCD

Dinelli v. County of Lake

- ▶ Facts of the case:
 - In Counts I and II, Frank Dinelli sought relief for his personal injuries
 - In Counts III and IV, Carol Dinelli sought relief for the loss of her husband's services, society, companionship and conjugal relationship.

Dinelli v. County of Lake

- ▶ Facts of the case:
 - On July 17, 1996, the County filed a motion for summary judgment as to Counts I and II
 - In its motion, the County asserted that the crosswalk was part of the NSBP and as such, the County was immune under 3-106.
 - Attached to the motion was the affidavit of Martin Buehler, the county engineer for Lake County.

Dinelli v. County of Lake

- ▶ Buehler's affidavit:
 - Buehler stated that the NSBP included the crosswalk across Butterfield Road.
 - Buehler averred that the NSBP, including the crosswalk, was intended and permitted to be used by the citizens of Lake County for recreational purposes.

Dinelli v. County of Lake

- ▶ Facts of the case:
 - On September 18, 1996, the trial court denied the County's motion for summary judgment.
 - On September 26, 1996, the County filed a motion requesting the trial court to reconsider its ruling
 - The county also filed a motion to dismiss counts III and IV on the grounds that the allegations were insufficient to support an action for willful and wanton conduct.

Dinelli v. County of Lake

▶ Facts of the case:

- On October 23, 1996, the trial court granted the motion to reconsider and entered summary judgment on behalf of the County on Counts I and II
- The trial court also granted the County's motion to dismiss Counts III and IV.
- The trial court gave the plaintiffs leave to file an amended complaint.
- On February 19, 1997, following a hearing, the trial court dismissed the plaintiffs' fourth amended complaint.
- Plaintiffs filed a timely notice of appeal.

cr

Dinelli v. County of Lake

- ▶ Appellate Court Rulings:
 - We conclude that the crosswalk was part of the NSBP which was designed and implemented for recreational purposes.
 - The trial court properly entered a judgment in favor of the County as to counts I and II.

Dinelli v. County of Lake

- ▶ Appellate Court Rulings:
 - As to Counts III and IV, in order to sufficiently plead a cause of action for willful and wanton conduct a plaintiff must allege that a defendant engaged in a course of action that proximately caused the injury.
 - A public entity may be found to have engaged in willful and wanton conduct only if it has been informed of a dangerous condition, knew others had been injured because of the condition, or if it intentionally removed a safety device or feature from property used for recreational purposes.

Dinelli v. County of Lake

- ▶ Appellate Court Rulings:
 - In light of these authorities, we conclude that the County's alleged misconduct in the instant case did not rise to the level of willful and wanton.
 - For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

Illinois Court Cases Related to Highway Safety

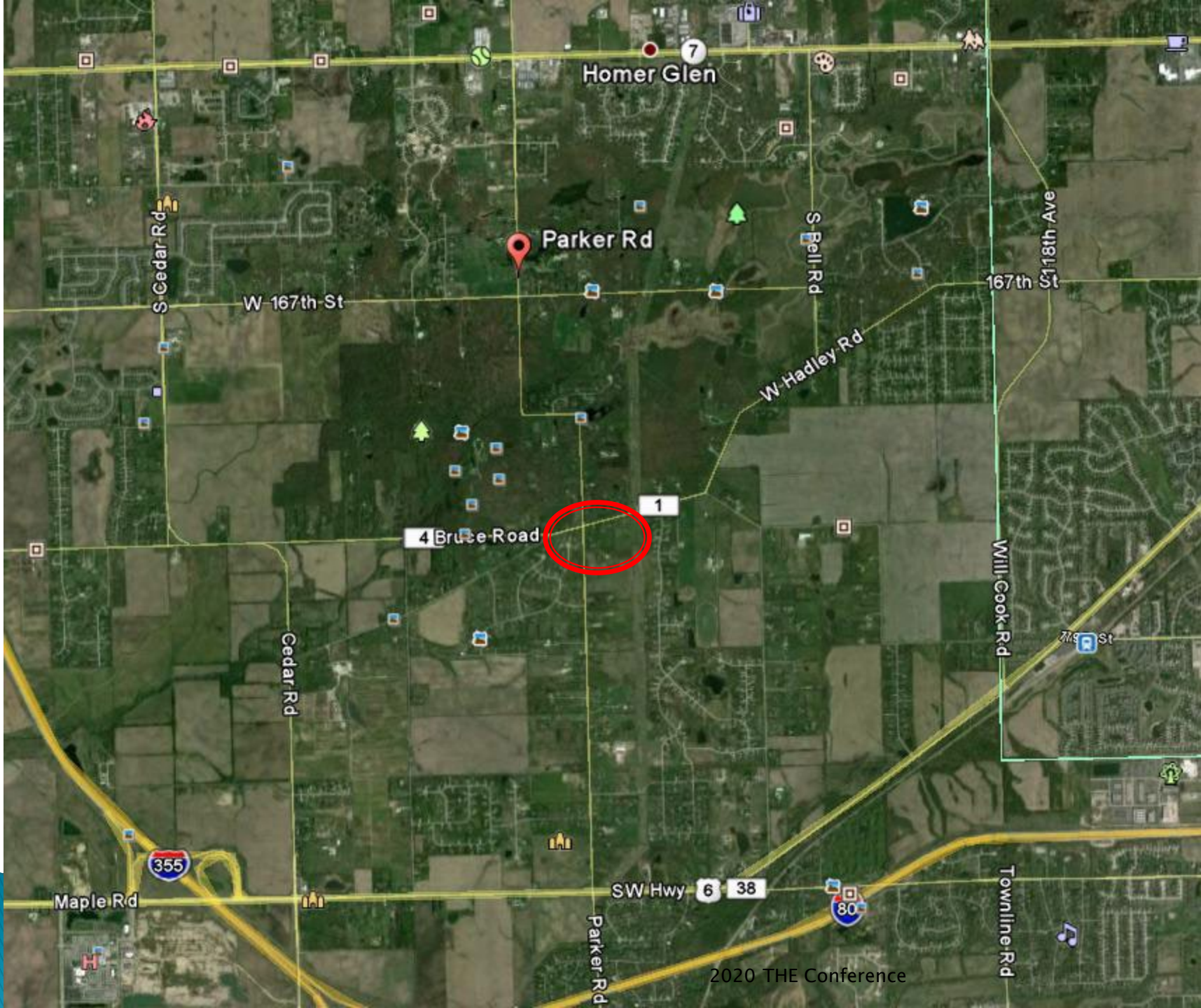
- » Kirschbaum v. Village of
Homer Glen
No. 3-04-0794 (2006)

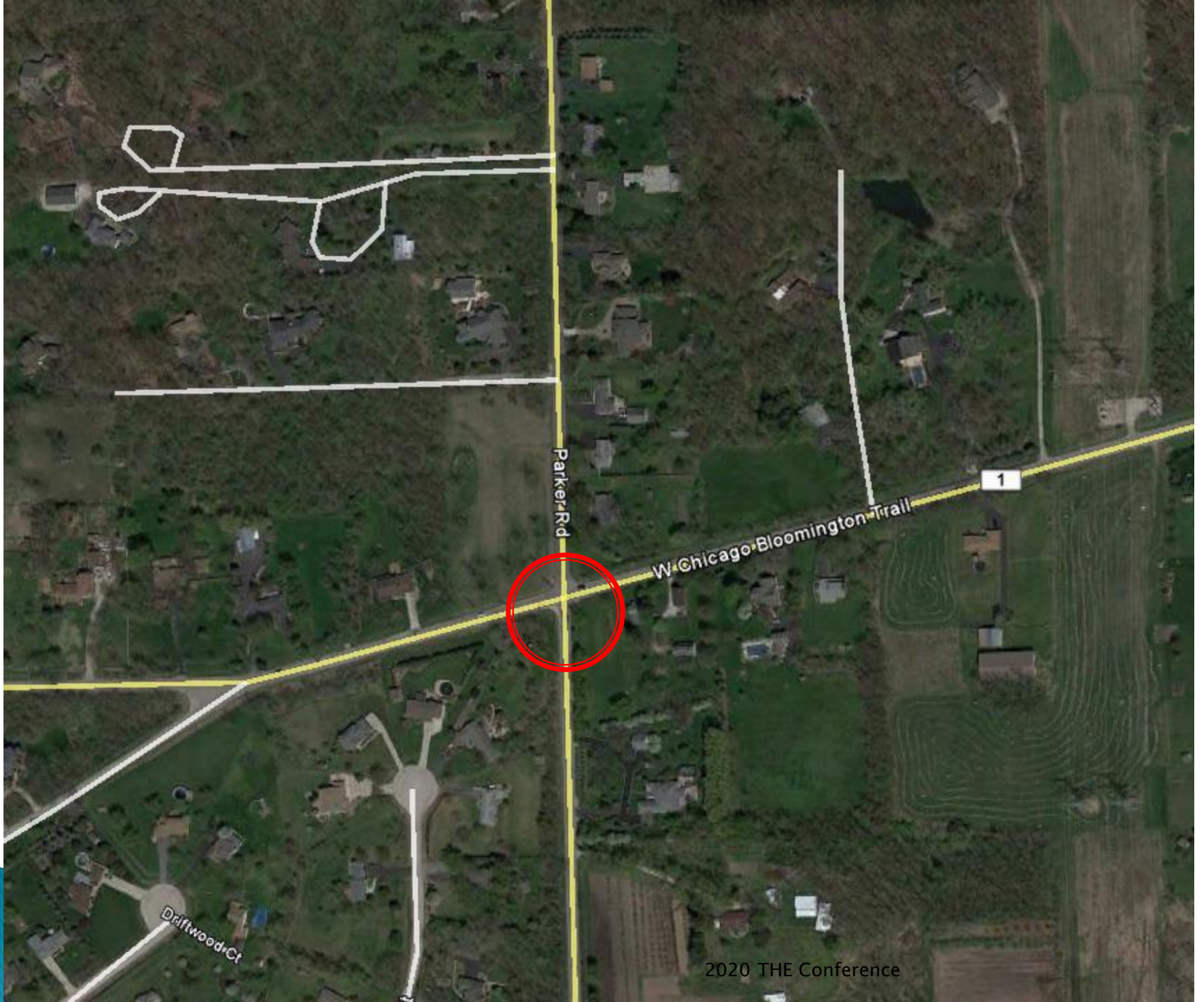
Kirschbaum v. Village of Homer Glen

- ▶ 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.





Parker Rd

W Chicago Bloomington Trail

1

Driftwood Ct

Direction of travel of Defendant's vehicle



WB Traffic looking West

County Hwy 1

2020 THE Conference

Direction of travel of Plaintiff's vehicle



Parker Rd

SB Traffic Looking South

2020 THE Conference



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.

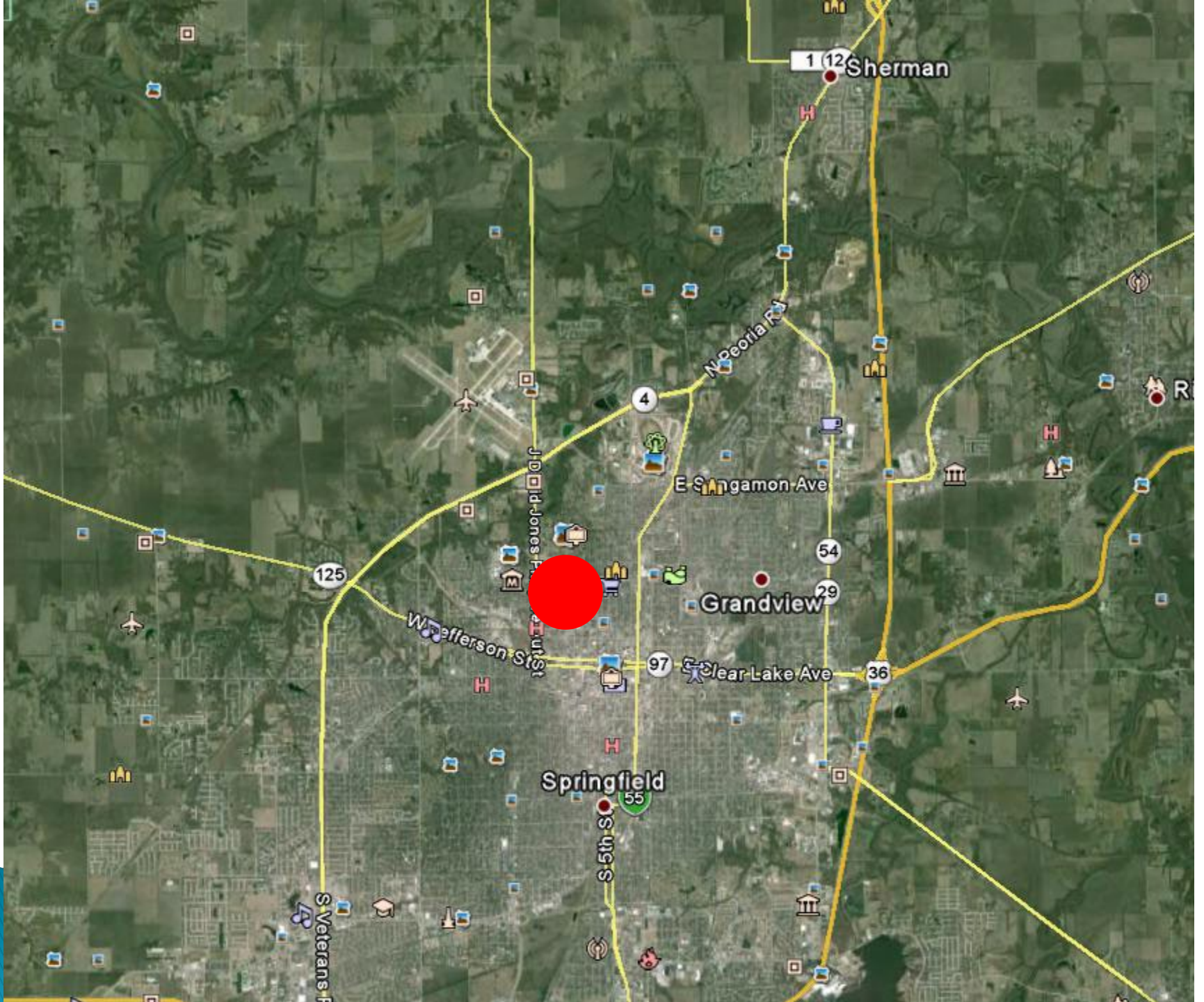
DeMambro v. City of Springfield

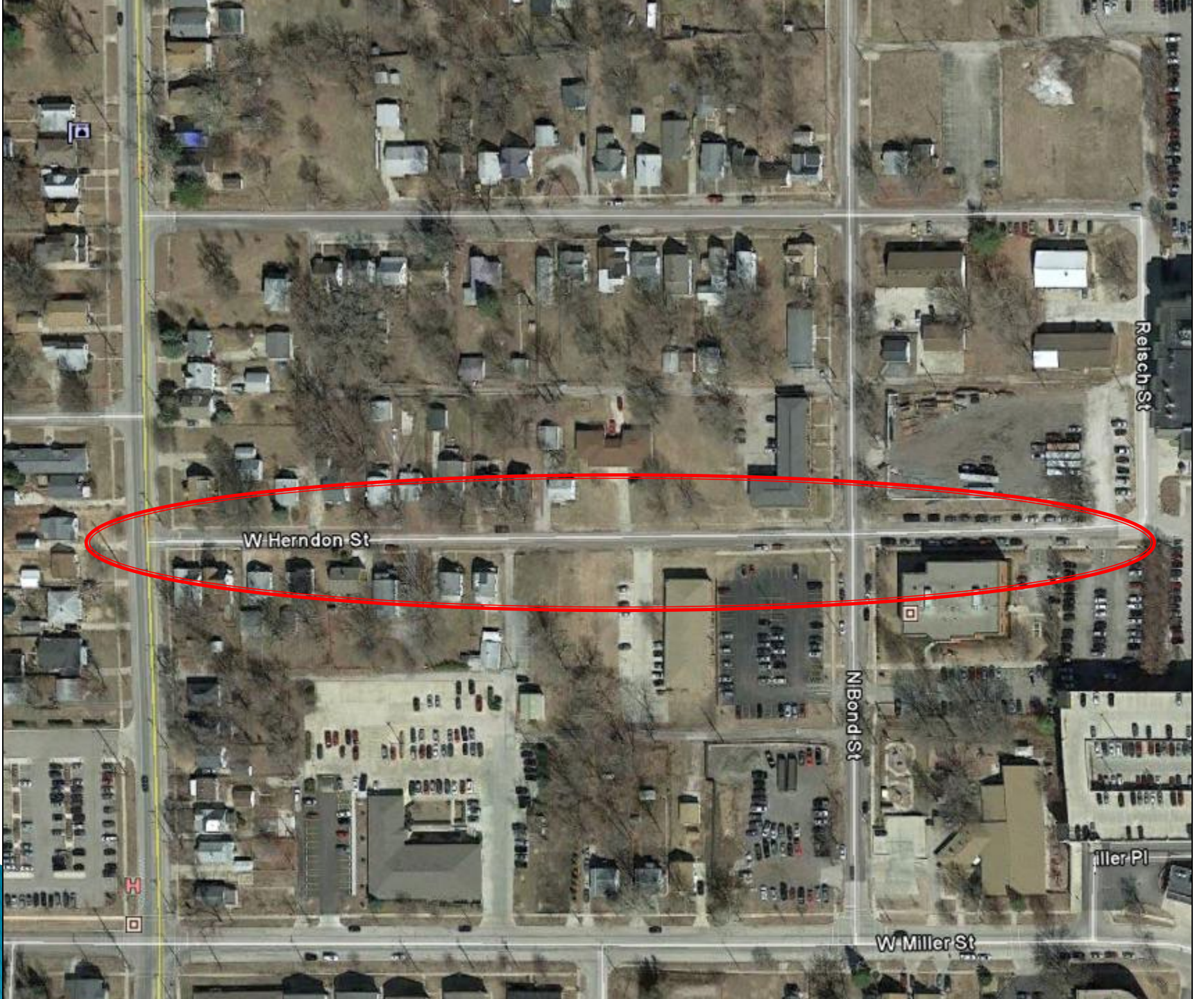
»» IL App (4th) 120957 (2013)

DeMambro v. City of Springfield

▶ Facts of the Case:

- In July 2007, Plaintiff parked her vehicle on Herndon Street, the city street parallel to the curb in front of her house.
- No signs, meters, or road stripes indicated that the City permitted parking at that location.
- The City conceded that parking is permitted at that location.
- After placing an item into the passenger side of her vehicle, plaintiff walked toward the driver's side of her vehicle and fell into a pothole located near the curb, injuring her ankle.





W Herndon St

N Bond St

W Miller St

Reloch St

Miller Pl



W Herndon St

Reisch St

N Bond St

Miller Pl

W Miller St

Herndon Street 2007



W Herndon St

Herndon Street looking west



Herndon Street looking east

DeMambro v. City of Springfield

- ▶ Facts of the Case:
 - Plaintiff sued the City for failing to maintain its streets in a reasonably safe condition.
 - The City later filed a motion for summary judgment asserting that it was immune from liability under the Tort Immunity Act.

DeMambro v. City of Springfield

- ▶ 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.

DeMambro v. City of Springfield

▶ Trial Court Rulings:

- In July 2012, the trial court entered summary judgment in favor of the City finding:
 - ...the Plaintiff failed to provide evidence that the City intended for Herndon Street to be used by pedestrians.
 - ...there was no evidence that the street in front of the Plaintiff's house had parking meters, parking stalls, or lined spaces.
 - In the absence of these manifestations, it would be an enormous burden to impose on the City a duty to all pedestrians who are entering or exiting a car within its boundaries.
 - ...imposing a burden with regard to streets and roadways in their entirety would be unduly expensive and burdensome.

DeMambro v. City of Springfield

- ▶ Trial Court Rulings:
 - While it may have been necessary for Plaintiff to exit the curb so that she could reach the driver side of her vehicle, necessity does not equate to an intended user.
 - Based on the foregoing, the Court finds that Plaintiff was merely a permitted user of the street – not an intended user.
 - There was no evidence the City physically manifested its intent that Plaintiff use the street.
 - This appeal followed.

DeMambro v. City of Springfield

- ▶ Plaintiff's Pleadings:
 - Plaintiff argues that the trial court erred by granting summary judgment in favor of City because the court erroneously found that she was not an "*intended*" user of the parking space in which she was injured.

DeMambro v. City of Springfield

▶ Matters of Law:

- Summary judgment is appropriate *“if the pleadings, depositions, and admissions on file together with the affidavits, if any, show 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.”* 735 ILCS 5/2–1005(c).
- When deciding whether to grant a motion for summary judgment, courts must draw all reasonable inferences in favor of the nonmoving party. *Gaston v City of Danville, 393 Ill. App. 3d 591.*

DeMambro v. City of Springfield

▶ Matters of Law:

- In *Di Domenico v Village of Romeoville*, the appellate court concluded that the plaintiff was an intended *and* permitted user of a city street where he was “lawfully parked parallel to the curb” and was injured when he fell into a hole in the street while walking to retrieve an item from the vehicle’s trunk.
- In so concluding – and without mentioning signs, signals, meters, or stripes – the court added that the plaintiff was an intended and permitted user because he was legally parked and had to use the street to gain access to his vehicle.

DeMambro v. City of Springfield

▶ Matters of Law:

- Four years later, the Supreme Court of Illinois concluded that a decedent was *not* an intended and permitted user of a six-lane highway where he was struck and killed near the center lane of traffic as he was attempting to cross the road outside of a crosswalk. *Wojdyla v. City of Park Ridge*.

DeMambro v. City of Springfield

▶ Matters of Law:

- Less than a year after *Wojdyla*, the supreme court held that a plaintiff, who was injured when he exited his lawfully parked truck to deliver boxes and stepped into a pothole, was an intended and permitted user of the street. *Curatola v. Village of Niles*.
- In so holding, the supreme court restated what it had explained less than a year before in *Wojdyla* – namely, that a reviewing court “*need look no further than the property itself which the plaintiff was using when injured to determine its intended use.*”

DeMambro v. City of Springfield

▶ Matters of Law:

- In 1995, the supreme court held that a plaintiff who was injured when she fell after tripping on a pothole in the street was not using the street for its *intended* purpose because she was walking outside of the established crosswalk. Vaughn, 166 Ill. 2d, 163.
- As part of its rationale, the supreme court squared its holding with its previous decisions related to parked cars: “We note that, *except for those cases in which street defects were in the area immediately around a parked vehicle*, Illinois courts have refused to impose a duty on municipalities for injuries to pedestrians which were caused by those defects.”

DeMambro v. City of Springfield

▶ Matters of Law:

- Three years later, the supreme court rejected a plaintiff's argument that he was an intended and permitted user of a one-lane bridge owned by a township. *Boub, 183 Ill 2d 520.*
- The supreme court concluded that although it “*had no quarrel with the proposition that bicycle riders were permitted users of the road and bridge, the court did not believe that they must also be considered intended users of those facilities.*”

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DeMambro v. City of Springfield

▶ Appellate Court Rulings:

- The trial court's focus on the lack of evidence of a "*physical manifestation*" by the City that it intended the street in front of Plaintiff's house to be used by pedestrians misapplies the scope of analysis outlined by the supreme court.
- The proper scope in cases involving a pedestrian who is using the street for ingress and egress to a vehicle that has been lawfully parked on the street is not whether the pedestrian is intended to be on the street as a whole, but whether, as the supreme court put it, the pedestrian is intended to be "*in the area immediately around a parked vehicle.*"

DeMambro v. City of Springfield

- ▶ Appellate Court Rulings:
 - However, unless otherwise indicated, the area near the curb is intended for parking and, as a result, that area is intended for:
 - (1) parked vehicles and
 - (2) pedestrians who exited and seeking to access their vehicles.
 - Accordingly, we hold that as a matter of law, Plaintiff was an “intended” user of the area immediately around her parked vehicle within the meaning of section 3-102 (a) of the Tort Immunity Act.

DeMambro v. City of Springfield

- ▶ Appellate Court Rulings:
 - We reverse the trial court's granting of summary judgment and remand for further proceedings.
 - Found for the Plaintiff and against the Defendant.

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.

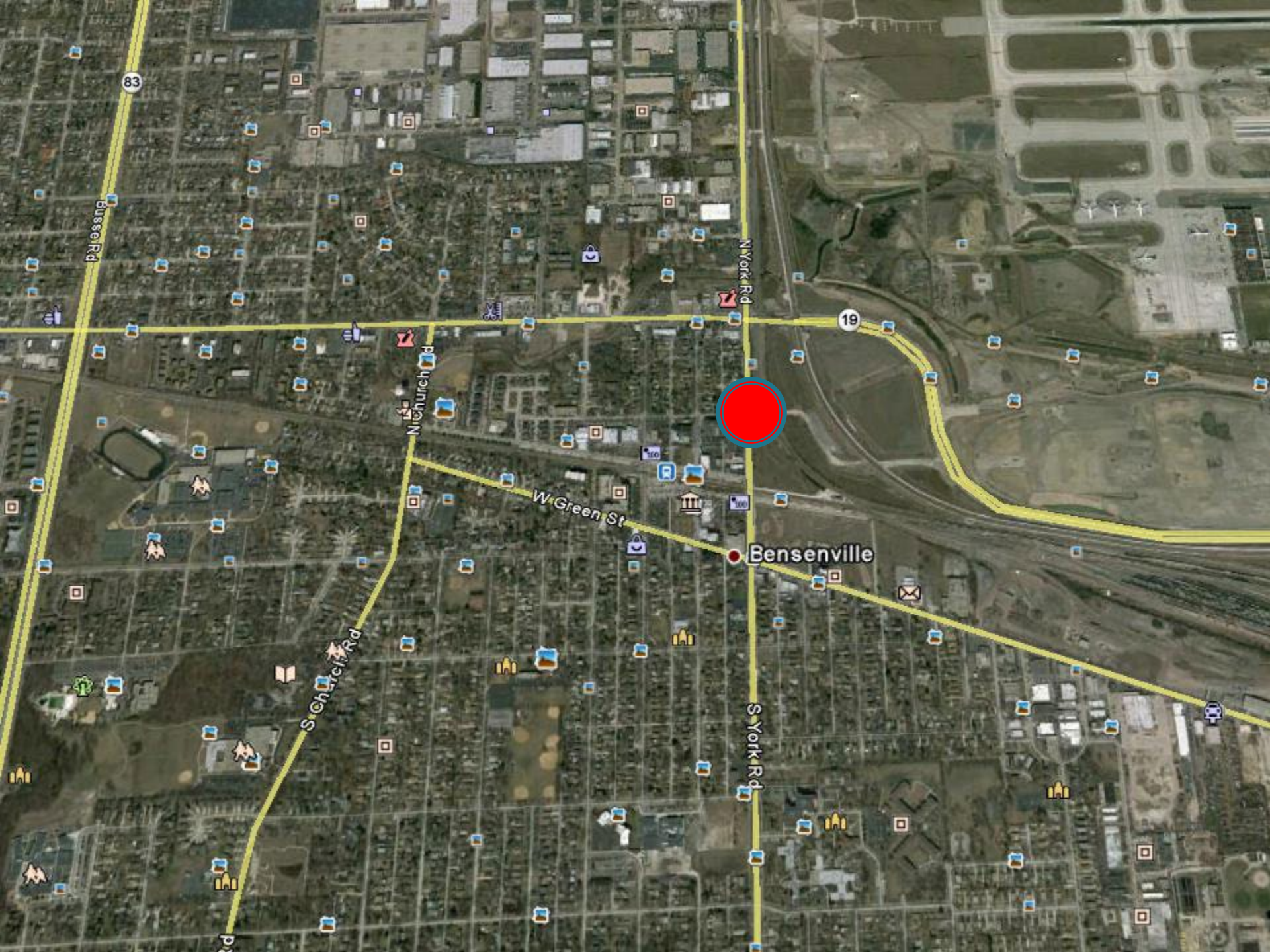
Putnam V. Village of Bensenville

▶ 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.



83

Busse Rd

N York Rd

19

N Church Rd

W Green St

Bensenville

S York Rd

S Church Rd



N Addison St

W Roosevelt Ave

E Roosevelt Ave

N Center St

Main St

S Addison St

N York St



Parking Lot

VFW Building

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 Algonquin 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.