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KEVIN STOCK
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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

CARL W. SCHWARTZ and SHERRY
SCHWARTZ, individually and the marital
community composed thereof,

Plaintiffs,

vs.

KING COUNTY, a local governmental entity
and municipal corporation within the state of
Washington,

Defendant.

NO.

COMPLAINT FOR DAMAGES

COMES NOW Plaintiffs Carl W. Schwartz and Sherry Schwartz, husband and wife, by
and through their attorneys at Davis Law Group, P.S., against Defendant King County, and state
and allege as follows:

I. PARTIES & JURISDICTION

1.1 Plaintiffs Carl W. Schwartz and Sherry Schwartz are currently residents of
Spokane County, Washington. Plaintiffs are husband and wife, and therefore constitute a
marital community under the laws of the state of Washington.

1 alternative ways to get around our region... check out King County’s regional trails!” (italics
2 added).

3 3.2 In 2004, Defendant King County published its Regional Trail Inventory and
4 Implementation Guidelines, where the County stated its goal or vision for regional trails in
5 King County: “To connect the communities within the county, major recreation destinations,
6 and urban centers with a system of trails for recreation *and non-motorized transportation that*
7 *provides for the widest range of non-motorized travel modes and meets accessibility guidelines*
8 *to the greatest extent possible.”* (italics added)
9

10 3.3 According to the County’s Regional Trail Inventory and Implementation
11 Guidelines, “the regional trails are not only very popular recreation attractions themselves, *but*
12 *also serve a significant number of transportation oriented trips, i.e., commuting, shopping,*
13 *etc.”* (italics added)
14

15 3.4 According to Defendant King County’s website, “The Green River Trail
16 winds more than 19 miles from Cecil Moses Park near Seattle’s south boundary to North Green
17 River Park in south Kent near Auburn.... The GRT links industrial lands to pastoral
18 landscapes, parks, communities and river views. Ideal for recreational journeys *and*
19 *nonmotorized commuting*, the trail is highly popular with a variety of user groups.” (italics
20 added)
21

22 3.5 According to the County’s Regional Trail Inventory and Implementation
23 Guidelines, since 1991 a major source of funding for acquisition and development of King
24 County’s trails, including the Green River Trail, has come from the federal government (U.S.
25
26

1 Department of Transportation or USDOT) with a focus of providing transportation funds
2 specifically for non-motorized forms of transportation.

3 3.6 In 2010, the USDOT issued its *Policy Statement* on bicycle accommodations
4 by encouraging state and local governments, including King County, and local and state
5 transportation and other agencies to go beyond minimum design standards and requirements to
6 create safe and accessible bicycling networks for the purpose of increasing and accommodating
7 nonmotorized forms of transportation.
8

9 3.7 Defendant King County has communicated its willingness and agreement in
10 the past, and no later than the date of the occurrence that is the subject of this lawsuit, to follow
11 and comply with USDOT's *Policy Statement* on bicycle accommodations.
12

13 3.8 The section of the GRT that is the subject of this lawsuit is the section that
14 abuts or runs near the Cecil Moses Memorial Park in Tukwila, Washington. This section of the
15 GRT is not limited solely to recreational use of the trail, but in fact is also used for
16 nonmotorized public transportation, including commuting by cyclists.
17

18 **B. Design and Construction Standards Applicable to King County's RTS.**

19 3.9 The Washington State Department of Transportation (WSDOT) has published
20 a design manual (WSDOT Design Manual) that provides policies, procedures, standards and
21 guidelines for the design and construction of bicycle facilities, including shared-use paths and
22 trails.
23

24 3.10 The WSDOT Design Manual governs the design and construction of bicycle
25 facilities in King County, including the GRT.
26

1 3.11 The WSDOT Design Manual has adopted the design and construction
2 standards and guidelines for trails and shared use paths set forth in the Manual on Uniform
3 Traffic Control Devices, 2009 Edition (MUTCD).

4 3.12 Washington state law requires Defendant King County to adopt, meet or
5 otherwise satisfy the design and construction standards and guidelines for bicycle facilities,
6 including trails and shared-used paths, that are set forth in the WSDOT Design Manual.

7 3.13 In 2007, Defendant King County adopted its *King County Road Design and*
8 *Construction Standards*. These standards applied to the GRT at the time of the occurrence.

9 3.14 Defendant's *King County Road Design and Construction Standards* adopted
10 the design and construction standards and guidelines for bicycle facilities, including trails and
11 shared-used paths, that are set forth in the WSDOT Design Manual and the AASHTO Guide
12 for the Development of Bicycle Facilities adopted by the American Association of State
13 Highway and Transportation Officials (AASHTO or AASHTO Standards). Section 3.10 states
14 in part:
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18 The planning and design of bikeways in any category shall be in accordance with the
19 WSDOT Design Manual and the AASHTO Guide for the Development of Bicycle
20 Facilities, current edition.

21
22 3.15 Defendant's *King County Road Design and Construction Standards* also
23 adopt the striping and pavement markings according to the MUTCD and AASHTO. Section
24 3.10 states in part:
25
26

1
2 6. Striping and signing shall be implemented as follows:

- 3 1. Pavement markings shall be used on bike lanes and paths according to
4 MUTCD and AASHTO Guide for the Development of Bicycle
5 Facilities, current edition.

6 3.16 Defendant King County has adopted all other design and construction
7 standards and guidelines for bicycle facilities and trails that are set forth in the MUTCD,
8 except when King County's Road Design and Construction Standards provide otherwise.
9

10 3.17 Defendant King County must also comply with the specifications and
11 guidelines set forth in MUTCD when pertinent concerning bicycle facilities, when required as
12 a development condition, or when required by state or federal funding authority.

13 3.18 Defendant King County has adopted all other design and construction
14 standards and guidelines for bicycle facilities and trails that are set forth in the Guide for the
15 Development of Bicycle Facilities adopted by the American Association of State Highway and
16 Transportation Officials, 2012 Fourth Edition (AASHTO or AASHTO Standards), except
17 when King County's Road Design and Construction Standards provide otherwise.
18

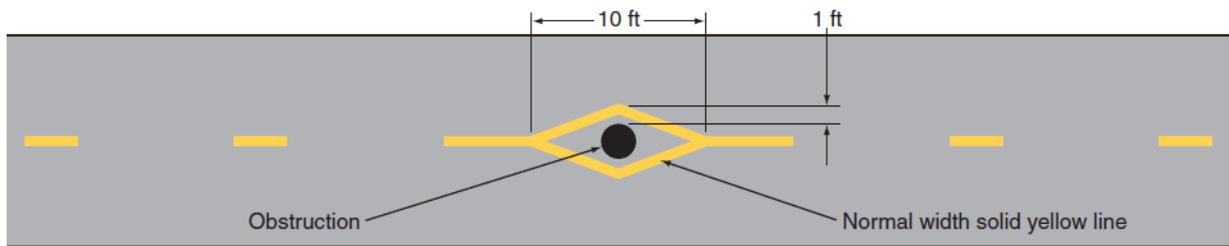
19 3.19 Defendant King County must also comply with all other specifications and
20 guidelines set forth in AASHTO when pertinent concerning bicycle facilities, when required as
21 a development condition, or when required by a state or federal funding authority.
22

23 3.20 King County's Road Design and Construction Standards provide that all
24 pavement markings on bike paths and trails, including those to alert path users of the existence
25 of bollards, shall be as provided in MUTCD and AASHTO.
26

1 concerning the installation and markings of bollards (as shown above) that are used on the
2 County's Regional Trail System, or its shared-use paths, including the section of the GRT that
3 is the subject of this lawsuit.

4 3.23 The MUTCD also requires specific pavement markings for bollards or
5 obstructions installed on shared use trails like those in Defendant King County's RTS, as
6 reflected in the figure below:
7

8 **Figure 9C-8. Examples of Obstruction Pavement Markings**



14 **A - Obstruction within the path**

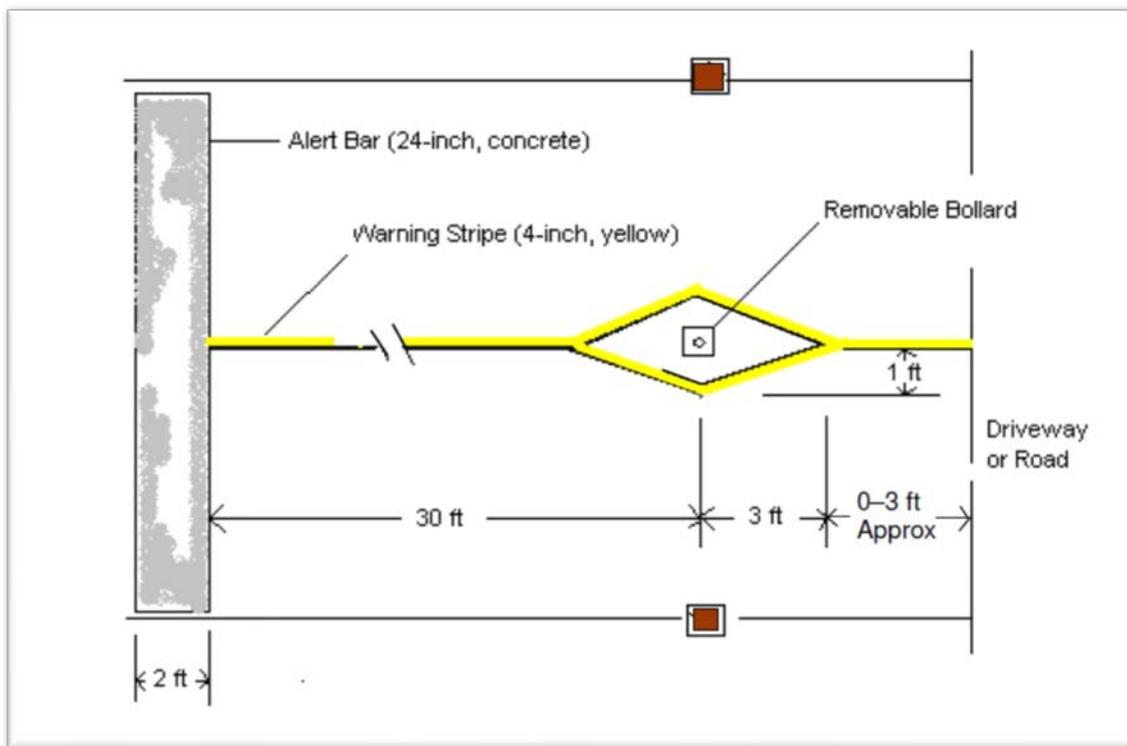
15 3.24 The MUTCD requires that obstructions like bollards which are installed in the
16 traveled way of a shared-use path shall be marked with retro-reflectorized materials and/or
17 appropriate object markers, and that all markers shall be retro-reflective.

18 3.25 The AASHTO Standards further recommend against the routine use of
19 bollards on trails or pathways to restrict motor vehicle traffic because (1) they are often
20 ineffective at keeping out motorized traffic, (2) there are other more effective and safer ways to
21 prevent motor vehicle traffic from accessing a trail, and (3) bollards are unsafe to path users,
22 including bicyclists who can hit bollards and suffer serious injury or death.

23 3.26 According to the AASHTO Standards, if bollards are absolutely necessary and
24 justified after weighing their safety risks and access issues, then measures should be taken to
25 make them as compatible as possible with the needs of bicyclists and other path users.
26

1 AASHTO states that these measures shall include the use of pavement markings and retro-
2 reflectorized material as required by MUTCD to alert approaching bicyclists and other path
3 users of the bollard's existence and to guide them around it.

4 3.27 In 2009, Defendant King County issued a draft addendum to its RTS
5 Development Guidelines (Addendum No. 6) that required pavement warning stripes and an
6 "alert bar" to warn bicyclists and other path users of the existence of bollards installed in the
7 middle of the shared use trail. Addendum No. 6 is depicted in the figure below:
8



27 3.28 Defendant King County never formally adopted or used RTS Development
28 Guideline Addendum No. 6 despite knowing that it met the requirements of the WSDOT
29 Design Manual (Standard Plan M-9.60-00), the MUTCD and AASHTO Standards.

1 3.29 Defendant King County’s proposed RTS Development Guideline Addendum
2 No. 6 is further proof that the County knew, or should have known, that bollards on shared-use
3 paths posed a significant risk of harm to path users, and especially to cyclists.

4 3.30 Defendant King County’s proposed RTS Development Guideline Addendum
5 No. 6 is further proof that the implementation of Addendum 6 for all bollards on shared-use
6 paths would have significantly reduced the risks of harm that bollards pose to path users, and
7 especially to cyclists.
8

9 3.31 Defendant King County never formally adopted or used RTS Development
10 Guideline Addendum No. 6 despite having received previous complaints and/or concerns from
11 its employees and members of the public that unmarked and non-reflectorized bollards were
12 unsafe for cyclists and constituted hazards that could cause serious injury or even death to
13 users of the County’s RTS.
14

15 **D. Portion of Green River Trail that is Subject to this Lawsuit.**

16 3.32 The incident that is the subject of this lawsuit occurred on a portion of the
17 Green River Trail that is next to the northwest section of Cecil Moses Memorial Park in
18 Tukwila, Washington, and runs parallel to Highway 99 (West Marginal Way South).

19 3.33 This section of the trail was designed by engineers as part of the County’s
20 Green River Trail Phase I. The final design plans of Phase I were completed in 1994.

21 3.34 The design plan for the section of the trail where the incident occurred did not
22 require, recommend and/or call for the installation of a single bollard or any other similar
23 obstruction on this section of the trail.
24
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1 3.35 Sometime after the construction of the section of the Green River Trail where
2 this incident occurred, Defendant King County then installed a single bollard in the middle of
3 the trail. Photos of the bollard as it existed on the date of the occurrence are listed below.



11 3.36 Defendant King County did not install appropriate pavement markings
12 surrounding the bollard, or install other warnings to alert cyclists and users of the hazard
13 associated with the bollard, as required by the MUTCD, AASHTO, and the WSDOT Design
14 Manual.

15
16 3.37 Defendant King County did not use retro-reflectorized markings on the
17 bollard itself as required by the MUTCD, AASHTO, and the WSDOT Design Manual.

18 3.38 Defendant King County did not install any warning signs or other barriers to
19 alert bicyclists and other path users about the existence of the single white unmarked bollard
20 in the middle of the trail.

21
22 3.39 Although King County did attach a single circular red reflector on the top
23 portion of the bollard, such a reflector is designed to reflect light at night from oncoming
24 headlights and therefore its usefulness to warn oncoming bicyclists in daylight and dusk
25 hours is marginal at best.
26

1 3.40 The single unmarked bollard was also difficult to see or detect by bicyclists
2 and other path users due to the lack of contrast that the bollard had with the surrounding
3 environment.

4 3.41 The single unmarked bollard was also difficult to see, decipher and/or
5 comprehend by cyclists depending on weather, lighting, site distance and/or traffic conditions
6 existing on the trail. One or more of these factors affected the bollard's conspicuity to path
7 users at various times of the day.

8 3.42 When Defendant King County installed the single white unmarked bollard, it
9 created a hazardous and unsafe condition on that portion of the GRT.
10

11 **E. Subject Bicycle Crash.**

12 3.43 On the morning of March 13, 2017, Plaintiff Carl W. Schwartz was riding his
13 bicycle on the Green River Trail in Tukwila, Washington.
14

15 3.44 Mr. Schwartz was a very experienced cyclist.

16 3.45 Mr. Schwartz was riding alone. He was wearing appropriate protective gear,
17 including a helmet.
18

19 3.46 Mr. Schwartz was heading south. He was riding in the middle of the trail. His
20 speed was no more than 15 miles per hour.

21 3.47 The weather was wet and overcast. It was raining or had been raining earlier
22 that day.

23 3.48 The lighting and the weather that day caused the single white bollard to
24 become inconspicuous to the point where it was undetectable, even to an experienced cyclist.
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- b. Installing a single white unmarked bollard in the middle of a shared used trail without justification;
- c. Installing a single white unmarked bollard in the middle of a shared used trail without adequate markings and retro-reflectorized material to make the bollard visible to all users of the path, including bicyclists;
- d. Installing a single white unmarked bollard in the middle of a shared used trail in violation of the County's own standards;
- e. Installing a single white unmarked bollard in the middle of a shared used trail in violation of the WSDOT Design Manual, MUTCD and AASHTO standards and guidelines;

4.4 Defendant King County had prior notice several years before Mr. Schwartz's injury that the single unmarked bollard was a serious safety hazard to path users.

4.5 Defendant King County has violated Washington State law by not meeting the standards adopted by WSDOT for the design, construction, and safety of bicycle facilities, including that section of the GRT that is the subject of this lawsuit.

4.6 As a result of Defendant King County's negligent, grossly negligent and/or reckless conduct, Plaintiffs were injured, suffered, and continue to suffer, physical disability and pain, emotional trauma, medical expenses, loss of earnings and earning capacity, loss of consortium, and other damages.

V. COUNT TWO – PREMISES LIABILITY

5.1 Plaintiffs re-allege the allegations set forth in Sections I through IV, and incorporate them as though fully set forth herein.

1 5.2 Plaintiff Carl A. Schwartz was considered a business invitee while riding his
2 bicycle on the GRT.

3 5.3 Defendant King County created an unsafe and dangerous condition to path
4 users by installing the single white bollard on the GRT without any reasonable basis.
5

6 5.4 The single white bollard, without appropriate warnings or markings,
7 constituted an unreasonable risk of harm to users of the GRT.

8 5.5 If the installation of a barrier on this section of the GRT was absolutely
9 necessary, then Defendant King County should have used other alternatives besides a single
10 white and inconspicuous bollard.
11

12 5.6 Defendant King County knew, or should have known, that at various times
13 throughout the day and/or season, and under certain weather and lighting conditions, the single
14 white bollard was difficult to see, spot, and/or observe, and at various times the bollard became
15 virtually undetectable to bicycle users.
16

17 5.7 Defendant King County failed to warn users of the single white bollard by not
18 erecting and/or installing sufficient warning signs and pavement markings to alert users of the
19 unsafe and dangerous condition.

20 5.8 As a result of Defendant King County's negligent, grossly negligent and/or
21 reckless conduct, Plaintiffs were injured, suffered, and continue to suffer, physical disability
22 and pain, emotional trauma, medical expenses, loss of earnings and earning capacity, loss of
23 consortium, and other damages.
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1 **VI. COUNT THREE – NEGLIGENT HIRING, TRAINING & SUPERVISION**

2 6.1 Plaintiffs re-allege the allegations set forth in Sections I through V, and
3 incorporate them as though fully set forth herein.

4 6.2 Defendant King County has negligently and grossly negligently failed to
5 properly hire, train and/or supervise its employees and/or agents with due care and good
6 judgment.

7
8 6.3 As a proximate cause of Defendant King County’s failure to properly hire,
9 train and/or supervise its employees and/or agents, the Plaintiffs were injured, suffered, and
10 continue to suffer, physical disability and pain, emotional trauma, medical expenses, loss of
11 earnings and earning capacity, loss of consortium and other damages.
12

13 **VII. NO COMPARATIVE FAULT**

14 7.1 The damages suffered by Plaintiffs were not caused by any fault, carelessness,
15 recklessness or negligence on Plaintiff Carl Schwartz’s part, but were instead proximately caused
16 solely by the tortious acts and/or omissions of Defendant King County.
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18 7.2 There are no other entities, known or unknown, which caused or contributed to
19 Plaintiffs’ injuries and/or damages.

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VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for judgment against Defendant King County as follows:

1. For all damages sustained by Plaintiffs, including without limitation, all past and future economic and non-economic damages, including past and future medical expense, lost earnings and lost earning opportunities, pain, suffering, disability, loss of enjoyment of life, mental anguish, emotional distress, loss of consortium, and other damages permitted by law;
2. Interest calculated at the maximum amount allowable by law, including pre- and post-judgment interest;
3. A reasonable attorney's fee as allowed by law;
4. Costs and disbursements pursuant to statute; and
5. Other and further relief as this Court may deem just and equitable.

Dated on this 17th day of October 2017.

DAVIS LAW GROUP, P.S.

S/ CHRISTOPHER M. DAVIS

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By: Maridith E. Ramsey, WSBA No. 46266

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