Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

[redacted]	)	
	)	
	)	
Plaintiff; appellant	)	
	)	Appeal
v.	)	[redacted]
	)	
CITY OF CHICAGO	)	[redacted]
	)	Appeal from the Law Division of the
Defendant; appellee	)	Circuit Court of Cook County, the
	)	Honorable Judge [redacted]

APPELLANT'S BRIEF

NOW COMES the appellant-Plaintiff [redacted] y and through [redacted] attorney, Colin Cameron of CHICAGO BIKE LAW FIRM, 2864 N Milwaukee Ave. Chicago, IL 60618, and fo[redacted] ppellant brief, submits the arguments contained herein.

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RULE 314 (h)(2) INTRODUCTORY STATEMENT

This action was brought to recover damages for personal injury and property damage by Plaintiff [redacted] against CITY OF CHICAGO as a result of injuries sustained by the Plaintiff in an accident that occurred on [redacted] On said date, as Plaintiff was riding [redacted] bicycle through the intersection [redacted] in the City of Chicago, upon a roadway owned and maintained by Defendant City of Chicago, the front tire of Plaintiff's bicycle became stuck in a road defect that Defendant had actual knowledge of since at least [redacted] Plaintiff brought the present action against Defendant for negligent failure to maintain the roadway in question in a reasonably safe manner.

Defendant CITY OF CHICAGO motioned for summary judgment on the grounds that it did not owe a duty to [redacted] pursuant to the Illinois Local Governmental and Local Governmental Employees Tort Immunity Act, because [redacted] was

not an intended user of the roadway on which was injured. The trial court granted Defendant's motion for summary judgment on said grounds.

ISSUES PRESENTED FOR REVIEW

- Whether Defendant CITY OF CHICAGO owed a duty to Plaintiff as a matter of law, to properly maintain the intersection for use by cyclists, on
- Whether the trial Court properly granted summary judgment in favor of DEFENDANT City of Chicago

JURISDICTION

This is an appeal from a final appealable order of the the Circuit Court of Cook County. The court entered an order granting summary judgment on all issues in favor of Defendant CITY OF CHICAGO and against the only Plaintiff and stated explicitly that said order was a "final and appealable order" pursuant to Illinois Supreme Court Rule 301. *C222.* A notice of an appeal pursuant to Illinois Supreme Court Rule 301 was filed *C223.*

STATUTES INVOLVED

Illinois Local Governmental and Local Governmental Employees Tort Immunity Act, 745 ILCS 10/3-102: "*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."

735 ILCS 5/2-1005
625 ILCS 5/11-1502
625 ILCS 5/11-1505
625 ILCS 5/11-1505(a)

STATEMENT OF FACTS

On [redacted] at approximately 10:00 PM, Plaintiff [redacted] was riding [redacted] bicycle southbound on [redacted] City of Chicago, County of Cook and State of Illinois, at or near the intersection of [redacted] C12; C41. At that same time and place, there existed a road defect [redacted] namely a pothole. C12. This road defect, of which Defendant had actual knowledge as of at least [redacted] was on a roadway owned and maintained by Defendant CITY OF CHICAGO. C12; C41; C203. At that same time and place, as Plaintiff was riding [redacted] bicycle [redacted] tire became stuck in said road defect, causing [redacted] fall off [redacted] bicycle. C12. As a result of said accident, Plaintiff sustained personal injuries for which [redacted] sought recovery from Defendant City of Chicago pursuant to a negligence cause of action for negligent failure to adequately maintain the roadway. C13.

ARGUMENT

Summary Judgment Was Inappropriate in this Case

Summary judgment is only appropriate when "the pleadings, depositions and admissions on file, together with affidavits, if any, show there is no genuine issue as to

any material fact and that the moving party is entitled to judgment as a matter of law. *735 ILCS 5/2-1005.* Because Defendant owed a duty to Plaintiff at all times material hereto, and questions of material fact related to damages have yet to be resolved, the trial court's granting of summary judgment in favor of defendant in this matter was improper. Therefore, the decision of trial court should be reversed and this case should be remanded to the trial court for further proceedings. Orders granting summary judgment are subject to de novo review. *Boub v. Township of Wayne*, 183 Ill.2d 520, 523 (Ill., 1998).

The Illinois Tort Immunity Act, Strictly Construed, Does Not Relieve Defendants from Liability

Section 3-102(a) of the Illinois Tort Immunity Act imposes upon municipalities, such as Defendant City of Chicago, a duty of ordinary care to maintain municipal property for Plaintiffs who are intended and permitted users of the said property. *Vaughn v. City of West Frankfort*, 166 Ill.2d 155 (Ill., 1995). The Tort Immunity Act is a "derogation of common law," and must therefore be "strictly construed against the local government entity." *Id* at 157; see also *Curatola v. Village of Niles*, 154 Ill. 2d 201, 205 (Ill., 1993).

Section 3-102(a) of the statute has been held to apply to roadways owned and operated by municipalities. See *Id.* Strictly construed against Defendant City of Chicago, Section 3-102(a) of the Tort Immunity Act does not shield Defendant from its duty of reasonable care to Plaintiff [redacted] n the [redacted] Therefore, the trial court should not have granted Defendant's motion for summary judgment upon said grounds.

Plaintiff Was a Permitted User of the Roadway at Issue In This Case

First, it is uncontested that Plainti[redacted] as a cyclist on a public road in the City of Chicago, was a *permitted* user of [redacted] Both the Illinois Motor Vehicle Code and the Chicago Municipal Code grant cyclists permission to cycle on highways and streets within the state of Illinois and City of Chicago respectively, in addition to granting cyclists all the rights and responsibilities of motor vehicle operators. (see *625 ILCS 5/11-1502*, granting cyclists all rights and duties of motor vehicle operators on Illinois roads; *625 ILCS 5/11-1505*, granting cyclists permission to ride on roads in the State; *Chicago Municipal Code 9-52-010*, granting cyclists all rights and duties applicable to motor vehicle operators.)

In *Boub v. Township of Wayne*, 183 Ill.2d 520 (Ill., 1998), the Illinois Supreme Court held that such statutory language evinced the permissive status of a cyclist on Illinois roads, so by logical extension, substantially similar language in the Chicago Municipal Code, read in conjunction with the same provisions of the Illinois motor vehicle code, must also be viewed as permitting cyclists to ride on city streets as well. Furthermore, Defendant has not offered evidence that cyclists were otherwise specifically forbidden via signage or in any other manner from cycling [redacted] Plaintiff was clearly a permitted user of said roadway on the day of the incident giving rise to this litigation, and Defendant has not contested this point.

Plaintiff Was an Intended User of the Roadway at Issue in This Case

Therefore, the question of whether Defendant owes a duty to the Plaintiff turns on whether or not Plaintiff is considered an "intended" user of the roadway. In making a

determination as to whether or not a user of a roadway is an intended user, "it is the intent of the local public entity that is controlling," and therefore the intent of the Defendant City of Chicago that must be ascertained in order to determine whether or not the Defendant owed a duty to Plaintiff. See *Boub v. Township of Wayne*, 183 Ill.2d 520, 523 (Ill., 1998). The intent of the local municipality can be gleamed via analysis of street markings, customs and history, the local municipal code, and other factors tending to show intent. *Id.*

Physical Manifestations of Intent

In *Boub*, the court stated that it is "appropriate" to look to the "nature of the property itself" in order to ascertain a municipality's intent, and that it is "necessary" to examine physical evidence at the location at issue, including pavement markings, signs, and other physical manifestations of the intended use of the property. *Id.* Plaintiff concedes that no marked bike lanes were present [illegible] which the road defect at issue in this case existed, but does not concede that this ends the inquiry.

Traffic signals, stop signs, lane markings and other physical manifestations of intent on the roadways of the City of Chicago, as described in *Baub*, did in fact exist on Glenwood Ave. on October 2, 2014, and said markings are also rendered applicable to cyclists in the City of Chicago, via municipal code, whether a marked bike lane is present on a particular street or not. *See Chicago Municipal Code 9-52-010(a) and (b)*, ("The regulations in the traffic code applicable to bicycles shall apply whenever a bicycle is operated upon *any* roadway or public sidewalk or upon any public path set aside for the use of bicycles, subject to those exceptions stated herein," emphasis added).

Such a sweeping application of physical road markings to cyclists by a local government defendant was not present in *Baub*, as nothing in the court's decision in that case indicates that the Township of Wayne's municipal code contained any such regulations. The municipal code of the City of Chicago thus makes this case distinguishable from *Boub* in that there are, in fact, physical manifestations of intention by the local governing entity for cyclists to use all roads within the city, since the local government has explicitly made such physical manifestations as applicable to bicycles as they are to vehicles. A stop sign is a stop sign for vehicles and bicycles, just as a painted bike lane is a painted bike lane that applies to both vehicles and bicycles. If physical markings such as stop signs tend to show a municipality's intent that vehicles travel on the road, and said signs apply with equal force to bicycles via the express intent of the municipality as contained in the language of the municipal code, then stop signs are a physical manifestation of municipal intention for cyclists to use the streets just as much as they are a manifestation of that same intent for vehicles.

<u>This Court Must Consider Other Manifestations of Defendant's Intent for Cyclists to use All Roads within City Limits</u>

And while it's true that the *Boub* court concluded that site specific physical evidence was "relevant" in determining the intent of a municipal defendant regarding use of a roadway (see *Id.* at 524), it did not hold that such on-site physical evidence is the *only* kind of evidence that can or should be considered in determining municipal intent (*see Boub* at 525 "Just as the presence or absence of special pavement markings and signs *is relevant* [emphasis added] in determining whether pedestrians are intended users of streets and highways, 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 of the road and bridge where the accident occurred.") *Id.* See also *Brooks v. City of Peoria*, 305 Ill.App.3d 806, (Ill. App., 1999) ("In *Marshall v. City of Centralia* 143 Ill 2d 1 (1991), "the Supreme Court acknowledged historical use as an indicator of intended use. Contrary to defendant's argument, *Boub* did not "expressly reject" *Marshall*, nor did the Supreme Court in *Boub* hold that historical use is irrelevant. On the contrary, the *Boub* court merely stated that *Marshall* does not stand for the proposition that historical practice *alone* is sufficient to establish a particular use of public property as an intended use.") Historical practice, when considered in conjunction with other factors, remains a valid indicator of intended use of public property. *Id.*

Evidence of municipal defendant intent outside of physical manifestations on the street itself were examined by the court in *Boub*, and can and must be assessed in the present case in order to determine the intentions of the Defendant City of Chicago regarding cyclist use of public roadways. Specifically, the *Boub* court looked to historical use, as well as the Illinois motor vehicle code and certain designations made by Du Page County regarding the roadway at issue in the case. See *Boub* at 528.

While the court rejected the arguments that relied upon said considerations, it stated that it did so because it was the intention of Wayne Township itself, rather than the state of Illinois or Du Page County, that was controlling in determining intent and therefore duty under the Tort Immunity Act. *Id,*(" under section 3-102(a) of the Tort Immunity Act it is the intent of the local public entity that controls; accordingly, the intent of another public body, whether it is the state, a county, or other local entity, should be irrelevant.")

Inquiries into local municipal intent that go beyond physical manifestations are also consistent with others Illinois Supreme Court case law on the issue, as well as Appellate Court case law. (See *Brooks v. City of Peoria,* 305 Ill.App.3d 806 (Ill. App., 1999), court looked to historical and customary use of municipal property as "relevant" factors in determining intent, as well as bicycle maps and local codes and ordinances; see also *Marshall By Marshall v. City of Centralia,*143 Ill.2d 1, (Ill., 1991), court looks to historical and customary use of municipal properties as relevant factors in determining municipal intent; see also *Curatola v. Village of Niles,* 154 Ill.2d 201, (Ill., 1993), court used practical necessity as a factor in discerning whether or not a particular roadway user was an intended user.)

Even the cases relied upon by the Supreme Court in *Baub* for its proposition that pavement markings are relevant in determining the intentions of the defendant municipality do not explicitly prohibit the consideration of factors outside of pavement markings in order to determine the intend of the municipality. *See Generally Wojdyla v. City of Park Ridge*, 148 Ill.2d 417 (Ill., 1992); *Vaughn v. City of West Frankfort,* 166 Ill.2d 155 (Ill., 1995); *Sisk v. Williamson County*, 167 Ill.2d 343 (Ill., 1995).

The sum of these cases is that while physical markings on roadways are relevant in determining the intent of the governing body and thus whether or not a duty exists, they are not dispositive of the issue, and other factors can and should be considered when determining the intent of a municipal defendant. Although it is true that there were no marked bike lanes o[illegible] (although there were stop signs and other markings applicable to cyclists), there at all times material hereto existed several other significant examples of Defendant's intent for Plaintiff to cycle on said

roadway o one of which were present as to the local municipality in *Boub*, and all of which can and must be considered by this court.

The Defendant's intention that cyclists should be able to ride on all Chicago streets, including have been expressed in the Chicago Municipal Code itself, as well via direct statements from both the Chicago Mayor's office and the Chicago Department of Transportation, demonstrating a long held customary intent for cyclists to ride on Chicago streets. Additionally, the necessity for certain cyclists to use unmarked roads to get to and from marked bike lanes within the city can and must also be considered. None such examples of municipal intent existed in the *Boub* case, and therefore the present case warrants a different result.

<u>Manifestations of Defendant's Intent That Distinguish This Case From *Boub*</u>

In *Boub*, the court noted that there were "no affirmative manifestations" that Wayne Township, the municipal Defendant in that case, "intended- rather than simply permitted," bicyclists to use the road on which the cyclist Plaintiff was injured. *Boub* at 528. In the present case, there are myriad examples of the Defendant City of Chicago expressing just such intention long before It is clear that the City of Chicago intended for cyclists to use all roads, including those that are unmarked as bike lanes, o

The most apparent of these expressions come from the Mayor's office and the Chicago Department of Transportation. Chicago Mayor Rahm Emanuel, Defendant's chief executive, has made safe bicycling in the city one of the cornerstones of his administration, stating in May of 2014 that he wanted to "make Chicago the most bike friendly city in the United States." *C195*. Not only did the Mayor's office facilitate the

Divvy bicycle sharing program into the City of Chicago in 2013 (which encourages cyclists to rent bicycles at rental stations, many of which are not found on marked bike paths), but the city has continued to very publicly market Chicago as a bike friendly city in all parts of the city, not just in marked bike lanes. *Id.*

Additionally, the Chicago Department of Transportation has also displayed myriad manifestations of its intention to increase the number of people cycling on all Chicago streets, including unmarked streets. Id. The Department's "complete streets" program aims to "help establish Chicago as the most bicycle friendly big city in America," while its "Streets for Cycling Plan for 2020," in place on October 2, 2014, aims, among other goals, to "build more protected bike lanes" and "improve hundreds of miles of residential streets for bicyclists," indicating in its plain language an intent both to create more marked bike lanes *and* to improve safety for cyclists riding on streets that do not contain bike lanes or other markings, meaning that the City's Department of Transportation, the department charged with making determinations about who is permitted an intended to use city streets, surely *intended* for cyclists to ride on said unmarked streets. *Id.* If no such intention existed, surely the department would not address cyclist use of streets that do not contain marked bike lanes such as [illegible] If anything, they would discourage riders from riding on said streets.

Unlike Defendant CITY OF CHICAGO, Wayne Township in the *Boub* case had not manifested any intent for cyclists to use its roadways in its official publications, but it is clear that Defendant City of Chicago has been doing just that, time and time again, for years. Because the Defendant has very publicly expressed its intention for cyclists to use all Chicago streets, this court should not be bound by the decision in the *Boub* case, and

should conclude, based on Defendant's own words and actions, that the City of Chicago intended for cyclists to use any and all city streets, including

Manifestations of Local Intent in the Chicago Municipal Code

In *Boub*, the court rejected arguments that the Illinois Motor Vehicle Code's granting of the same rights and duties to cyclists and motorists was a manifestation of the municipal Defendant's intent for cyclists to use the roads because the Illinois Motor Vehicle Code reflects only the intentions of the Illinois State legislature, whereas it was the intention of the Township of Wayne that was at issue in the case. *Boub* at 525.

Here, unlike the Township of Wayne, the City of Chicago has specifically reflected its intentions for cyclists to ride on all city streets through its adoption of numerous sections of the Chicago Municipal Code. One such example that occurred prior to was the city's adoption of the 2013 Bicycle Safety Ordinance proposal. *Section 9-80-035 of the Chicago Municipal Code* is commonly referred to as the Chicago "dooring law." This ordinance makes it a violation for a passenger or driver in a vehicle to open a car door directly into moving traffic, and Section 9-4-025 imposes a $1,000 fine for such action when a door is opened into the path of a bicycle causing a collision between the motor vehicle and bicyclist. This ordinance is applicable on any and all Chicago streets, marked with bike lanes or otherwise, indicating an intention by Defendant City of Chicago for cyclists to use all roads within city limits safely, not just those marked with bike lanes. If Plaintiff ad been "doored" on on the night o the passenger in the motor vehicle

would have been in violation of 9-4-025, even though no bike lane markings or route designations were physically present on the street in question.

Elsewhere in the Chicago Municipal Code, cyclists have been granted all the rights and duties given to motorists (9-52-010), and a myriad of other regulations in the code are made applicable to cyclists on all roads within city limits, not just roads with marked bike lanes or paths. *See Generally* Chicago Municipal Code Chapter 9-52.

It is also noteworthy that the *Boub* court utilized other parts of the Illinois Motor Vehicle code in its analysis of section 11-1502, and drew upon said sections in concluding that the vehicle code renders cyclists merely permitted rather than intended users of the roadways. The court looked to the definitions of "highway," "road," "vehicle," "bicycle" and "street" in the Illinois Motor Vehicle Code for support for the proposition that vehicles, and not bicycles, were the intended users of highways, roads and streets.

However, the Chicago Municipal Code contains a different definition of "street" than the one found in the Illinois Motor Vehicle Code and cited by the *Boub* majority. While the motor vehicle code definition cited by the *Boub* court limited the definition of "street" to an area used "for the purpose of vehicular travel," the Chicago Municipal Code's definition omits such limitation: " 'Street' means the entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of general *traffic* circulation." [emphasis added] Id at; see also *Chicago Municipal Code 9-4-010*. The Chicago Municipal Code defines "traffic" as: "pedestrians, ridden or herded animals, bicycles, vehicles, and other conveyances either singly or together while using any public way for purposes of travel." *Id.* Thus, the plain

language of the municipal code includes "bicycles" as a part of "traffic" and permits "traffic circulation" on "streets," such as the one the Plaintiff was riding on when she was injured on October 2, 2015. Put another way, the *Boub* majority relied on definitions contained within the Illinois Motor Vehicle Code that seemed to indicate an intent for only vehicles to use the roadways, but substantially similar definitions are not to be found in the Chicago Municipal Code, thus further distinguishing *Boub* from the present case.

<u>This Court is Not Bound By the Conclusions of the Majority In *Latimer v. Chicago Park District*</u>

The trial court in this matter also noted in its appealable order that the arguments made by Plaintiff in this case are similar to those made by the Plaintiff in *Latimer v. Chicago Park District*, 323 Ill. App. 3d 466. In that case, the Plaintiff sought damages against the Chicago Park District for injuries she sustained from a road defect while riding on a city street. *Id* at 757. The Plaintiff argued that the Chicago Municipal Code's granting of "all" the same rights to cyclists that are granted to vehicle operators tended to show the city's intention for cyclists to use all city streets, but the Court rejected said argument, reasoning that the *Boub* court had itself already rejected such arguments. *Id* at 759.

However, the *Boub* court's statements concerning these provisions were merely *obiter dicta,* and therefore do not constitute binding authority that constrains this court. "*Obiter dictum* refers to a remark or expression of opinion that a court uttered as an aside, and is generally not binding authority or precedent within the *stare decisis* rule." *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, (Ill., 2009). "A dictum is `any statement made by a court for use in argument, illustration, analogy or suggestion. It is a remark, an

aside, concerning some rule of law or legal proposition that is not necessarily essential to the decision and lacks the authority of adjudication.'" *Id* at 274.

Further, the court in *Exelon* cited several factors tending to show that a remark in an opinion was *obiter dicta*: "One is that the passage was unnecessary to the outcome of the earlier case and therefore perhaps not as fully considered as it would have been if it were essential to the outcome. A closely related reason is that the passage was not an integral part of the earlier opinion— it can be sloughed off without damaging the analytical structure of the opinion, and so it was a redundant part of that opinion and, again, may not have been fully considered." Id, quoting *United States v. Crawley*, 837 F.2d 291, 292 (7th Cir. 1988).

Although it is true that the Boub majority substantively concluded that substantially similar provisions of the Illinois Motor Vehicle Code merely demonstrated permissive use of roads by cyclists of rather than intended use, the court actually rejected these arguments on the basis that they were state laws rather than local ordinances, and therefore did not reflect local municipal intent. Therefore, the court's comments on the substance of those provisions of the Illinois motor vehicle code were not necessarily essential to the decision and, as a result, lack the authority of binding precedent under the *stare decisis* rule. As a result, this court is not obligated to arrive at the same conclusion on this issue.

Argument in the Alternative for Good Faith Modification of the Law

Finally, The Court in *Boub* examined the state motor vehicle code as opposed to a municipal motor vehicle code, and to the extent that the court did not find the "rights and duties" language in the Illinois Motor Vehicle Code to be indicative of an intent for

cyclists to use the roadways, and if this court determines that said analysis is binding precedent, the Plaintiff seeks a good faith modification or reversal of existing law pursuant to Illinois Supreme Court Rule 137(a).

Use of Non Marked Bike Lane Streets in the City of Chicago Is Necessary and Therefore Intended

In *Curatola v. Village of Niles*, 154 Ill.2d 201, (Ill., 1993), a Plaintiff brought a negligence cause of action against a municipal defendant after injuring himself in a pot hole he stepped into on a public street as he exited his vehicle from the back after legally parking said vehicle on the side of a municipal road owned and maintained by the Defendant. The Village of Niles motioned to dismiss the complaint, arguing that the Plaintiff was not an intended user of the roadway because roadways, outside of marked crosswalks, were only intended for use by motor vehicles, and therefore it had no duty as to him or any other pedestrian walking on a roadway outside of a crosswalk. After a circuit court finding in favor of Defendant, the Illinois Supreme Court reversed and remanded, holding that the municipality "had a duty to maintain the street immediately around [Plaintiff's] legally parked vehicle," *Id.* at 206.

The court reasoned that because the Plaintiff had parked his car legally on the street, it was necessary for him to walk in the area of the street immediately surrounding his vehicle in order to enter and exit his vehicle, pay at the parking meter and travel to the sidewalk. *Id.* Use of the road as a pedestrian was necessary in order for the Plaintiff to be able to use the designated parking lanes in the manner *intended* by the Defendant municipality (to park cars), and therefore such limited use must have also been intended by the Defendant when it designated and created parking lanes on city streets in the first place. *Id.* As a result, Plaintiff, as a pedestrian, was found to be both a permitted user

(because he was parking legally) and intended user (because Defendant knew that anyone in his position would need to walk in that specific area of the street in order to use the street as intended), and Defendant was therefore found to have owed him a duty of reasonable care when he walked in the area immediately surrounding his vehicle. *Id* at 208.

Although the court categorized said exception as a limited and specific one, there are logical parallels between the necessity of pedestrian use of the roadway in that case and the necessity of cyclist use of unmarked roadways. Over the past several years, the City of Chicago has designated hundreds of miles of city roads as routes for cyclists to use within the city limits. C197; C204-7. These routes include traditional barrier and buffer protected bike lanes with visible and tangible markings on the road, as well as marked bike lanes, marked shared lanes, and "bike routes," which do not necessarily contain markings on the street. Id. These designations are part of a larger plan undertaken by the City to create hundreds of miles of bike friendly streets and encourage safe and efficient cycling transportation throughout the city of Chicago.

The physical evidence on the streets in which bike lanes have been marked, buffered, or otherwise physically signified quite clearly demonstrates Defendant's intention for cyclists to use those roads, just as Defendant's designation of largely unmarked "bike routes" throughout the city signifies the same intent on said roads that do not contain corresponding site specific physical evidence. However, the Defendant argues that becaus[illegible] does not have a bike lane and is not a designated bike route, the city did not intend for Plaintiff to use that specific roadway.

But just as use of the roadway by the Plaintiff as a pedestrian in *Curatola* was necessary in order to use the roadway in the manner the Defendant intended (to park vehicles), use by a cyclist of non designated roadways can in fact be *necessary* in order to get to and/or from a roadway that *was* a designated bike route, and therefore said use of the unmarked roadway must have necessarily been intended by the Defendant. Defendant argued in its reply brief that this argument is inapplicable because of comments made in Plaintiff's deposition, but it is indisputably the intention of the Defendant, rather than the injured Plaintiff, that determines intent in this case. If the Defendant, via necessary use, intended for any cyclist to use [illegible] hen it owed a duty to all cyclists using that stretch o [illegible] for cycling, including the Plaintiff in the present case.

Furthermore, Section *9-52-020 of the Chicago Municipal Code* prohibits cyclists over the age of 12 from riding bicycles on city sidewalks unless said sidewalks are designated as a bicycle route, and the 1st District court of Appeals' holding in *Prokes v. City of Chicago*, 208 Ill.App.3d 748 (Ill. App. 1 Dist., 1991) reiterates that the Defendant has no duty to cyclists on sidewalks because cyclists are neither intended or permitted users of the sidewalk. See *Id.* Therefore, if a cyclist in Chicago is not coming from or going to a destination that is on a street marked or designated as a bike lane or route, how are they expected to travel to and from such streets?

A map of the bike paths in and around the area where the accident in this case took place provides a useful illustration of this conundrum for cyclists. *C206-7.* This map of the bike lanes and routes in the [illegible] where the accident in question in this case took place, along with an accompanying detailed map of the same geographical area, show dozens of residential blocks that do no have direct access to

public transportation or designated bike lanes and routes. Therefore, a resident of said neighborhood who wishes to ride his or her bicycle either to or from a designated bike path, being prohibited from riding on almost all sidewalks in the city pursuant to the Municipal Code, must ride their bicycle on unmarked city streets in order to reach the marked or designated bike lanes/paths. This use isn't a choice, it's a necessity.

Nothing short of reverting to another form of transportation would make travel by bike in the city of Chicago possible for these cyclists, and any argument that the city instead intended for those cyclists to get off their bicycles and walk on all streets that did not contain bike paths or route designations defies common sense, as well as historical and customary usage of the streets. If a cyclist is not permitted to ride on a sidewalk within city limits, and is departing from a location on a street that does not have a bike lane and is not a designated bike route, it is *necessary* for said cyclists to occasionally cycle on that specific part of said roadways in order to utilize said form of transportation. Plaintiff and all other cyclists must make such use of non-designated roads in order to travel to roads that do have such designations, just as it is necessary for persons entering and exiting legally parked vehicles on the street to use portions of the street as pedestrians.

Additionally, the necessity of use in this case is also analogous to that in *Curatola* in the sense that the area of the road considered necessary for use is appropriately limited. In that case, the court considered the municipal Defendant's argument that imposing a duty in that specific situation would be costly and difficult to enforce because it was not appropriately restricted and defined. The court held that the area of the roadway in which Defendant was found to have a duty was reasonably and properly limited to the pavement

immediately surrounding a legally parked vehicle, and in this case it is similarly limited to the area of the non-designated roadways furthest to the right as safe and practicable for cyclists to travel, pursuant to the Illinois Motor Vehicle Code and Chicago Municipal Code. *625 ILCS 5/11-1505(a)*. *Section 9-52-040* of the Municipal Code requires cyclists to ride on roadways "as near as practical and safe to the right-hand side of the roadway" except in certain specifically enumerated situations, and it is these areas of the roadway in which the Defendant owes a duty to all cyclists, including the Plaintiff.

The First District's holding in *Gutstein v. City of Evanston*, 402 Ill. App. 3d 610 (Ill. App., 2010) is also instructive in this regard. In that case, the court found that because the city required that waste be disposed of and collected in garbage cans in the city's alleyways, it was necessary for residents to walk on the portions of the alleyways that were necessary to travel to and from trash cans, and therefore, because of this necessity, the municipal defendant owed a duty to a Plaintiff who was injured while walking to and from trash bins in the alley. See *Id*. In rejecting the City's argument that the Plaintiff could have accessed her trash bins from her own property, and therefore such use of the alley wasn't necessary, the court posited that such argument, in reference to the holding in *Curatola*, "is analogous to saying that the driver of a legally parked vehicle should climb over the gear shift and exit the vehicle from the passenger side door in order to avoid walking in the roadway." *Id* at 620. To say that Defendant intended for cyclists to get of their bikes and walk them when they were on city streets that do not contain marked bike lanes is equally ridiculous. Because the city clearly intended for cyclists to use marked bike lanes, it also, via necessity, intended for cyclists to use unmarked bike lanes to travel to and from said lanes.

CONCLUSION

Defendant City of Chicago's intention for cyclists to use all roadways, including [redacted] t all times material hereto, is manifested in physical markings on the roads, as well as the municipal code, direct statements from the Defendant itself, and historical and customary use of roads in the city of Chicago. And because Defendant City of Chicago intended for Plaintif [redacted] bicycle on [redacted] n [redacted] Defendant owed Plaintiff a duty of reasonable care at all times material hereto, and the court's granting of summary judgment in favor of Defendant on the grounds that Defendant owed no duty to the Plaintiff should be reversed, and this case should be remanded to the trial court for further proceedings.

Respectfully Submitted,

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IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

[redacted]	)	
	)	
	)	
Plaintiff; appellant	)	
	)	Appeal
v.	)	[redacted]
	)	
CITY OF CHICAGO	)	[redacted]
	)	Appeal from the Law Division of the
Defendant; appellee	)	Circuit Court of Cook County, the
	)	Honorable Judge [redacted]

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 22 pages.

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