

BRIAN CECCARELLI and LORI MILLETTE individually and as class representatives,  <p style="text-align: right;"><b>Plaintiffs,</b></p>	WAKE COUNTY, C.S.C. BY _____ <hr/> <p style="text-align: center;"><b>Defendant.</b></p>
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**ORDER AND JUDGMENT**

This matter was called for trial and was heard by the undersigned Superior Court Judge presiding during the January 14, 2013 trial session for Wake County Superior Court. In this case, Plaintiffs sought a declaratory judgment and other relief from the Court requesting that the Court declare that the application of the Town of Cary's adopted ordinance Sec 34-301 *et seq.* as applied to the Plaintiffs, both individually and as class representatives, was void and unenforceable because the town's actions were beyond the scope of and violative of the applicable enabling authority under the General Statutes, its charter, or other law as applied to the Plaintiffs and Plaintiffs' class. The Plaintiffs were represented by attorney Paul Stam and Caroline Nickel with the law firm of Stam & Danchi, PLLC and the Defendant, Town of Cary, was represented by Elizabeth Martineau with the law firm Martineau King, PLLC.

At the close of all the evidence in this matter and after the parties closing arguments, the Court makes the following findings of fact, said findings of fact are made in addition to the factual trial stipulations made and entered into by the parties, accepted by this Court, and incorporated and adopted into this Order and Judgment as if they were set forth herein verbatim.

1. Defendant, Town of Cary ("Town"), is a North Carolina municipality located in Wake County, North Carolina;
2. During the date and time relevant to Plaintiffs' Complaint and during the applicable time periods set out in this Court's prior Order Granting Plaintiffs' Motion for Class Certification, the Town operated a traffic control photographic system, pursuant to Cary Town Code § 34-301 *et seq.* ("Red Light Camera Program" or "Red Light Camera System"). The Red Light Camera System was installed at various intersections located within the Town, including the intersections outlined below:
  - a. Intersection of Cary Towne Boulevard and Convention Drive;
  - b. Traveling westbound on Maynard Road & turning left onto Kildaire Farm Road;
  - c. Traveling westbound on Cary Parkway & turning left onto Kildaire Farm Road;
  - d. Traveling northbound on Kildaire Farm Road & turning left onto Cary Parkway;
  - e. Traveling northbound on Cary Parkway & turning left onto High House Road; and
  - f. Traveling southbound on Walnut Street & turning left onto Meeting Street.
3. The intersections in question were North Carolina state owned intersections and each intersection had an associated official signal plan that was approved and controlled by North Carolina Department of Transportation ("NCDOT").
4. Each official signal plan of record during the relevant time periods in this case were signed and sealed by a licensed professional engineer in accordance with Chapter 89C of the North Carolina General Statutes.

5. The duration of each of the relevant yellow light change intervals, as shown on the corresponding official signal plan of record at issue in this case, were predetermined using established and accepted engineering principles.
6. The duration of each of the relevant yellow light change intervals in question were between 3 - 6 seconds.
7. The engineering principles used by each licensed professional engineer when predetermining the appropriate duration of the yellow light change interval were widely accepted engineering principles; having been accepted throughout the State of North Carolina, the country, and throughout the world by traffic engineers.
8. These principles do not become invalid due to the constraints or values chosen by NCDOT engineers for perception reaction time, velocity, deceleration, or even by use of 20 mph velocity value used for protective left turns, such as used at the intersection of Cary Parkway and Kildaire Farm Road.
9. The engineering principles used by the NCDOT in designing signal plans do not create circumstances where drivers who were and are subject to the immutable laws of motion are incapable of complying with State laws regarding safe travel on the roads of North Carolina.
10. The duration of the yellow light change interval, the reasonableness of its application at signalized intersections, and the reasonableness of the engineering principles and practices used to calculate the same must all be considered in concert with all other traffic engineering measures used in the design, construction, and utilization of traffic signals including but not limited to: the location of detection devices, signal phasing, main street traffic signals for through lanes that rest in green while protected left turns rest in red, green intervals that incrementally respond to traffic demand, the ability of many traffic signals to use protected or permitted left turns in response to left-turn demands, and the different yellow light interval times provided for both permitted and protected left turns.
11. Both Plaintiff Ceccarelli and other drivers traveling through the intersection of Cary Towne Boulevard and Convention Drive during the relevant time period could reasonably assume that the legal speed limit on that section of roadway was 45 mph.
12. While the duration of the yellow light change interval at the intersection of Cary Towne Boulevard and Convention Drive during the relevant time period ideally would have reflected 45 mph, the Court cannot conclude based upon the evidence submitted during the trial of this matter what the posted statutory speed limit was in 1991 – the time the applicable official signal plan of record was prepared. If the posted statutory speed limit was 35 mph in 1991, the correct value was used in the computation of the duration of the yellow change interval for that intersection.
13. There is, however, no requirement under the law or engineering standards or practices that the NCDOT use recent signal or traffic control plans at its intersections, nor is there any requirement that those plans be updated in any more frequent basis due to the existence of a Red Light Camera System versus an intersection where a Red Light Camera System was not in use.

14. Plaintiffs have not met their burden that the use of a 35 mph velocity in determining the length of the yellow light duration back in 1991 at the intersection then known as Western Boulevard Ext. (now known as Cary Towne Boulevard) and Convention Drive was not the correct value traffic engineers should have used back in 1991.
15. However, even if the length of the yellow light duration at that intersection then known as Western Boulevard Ext. (now known as Cary Towne Boulevard) and Convention Drive should have been computed back in 1991 using a 45 mph velocity, the magnitude of the resulting "error" is not great enough to create any liability for the Town of Cary, who incidentally did not have any involvement in this computation, because the "erroneous yellow light duration" was nonetheless still compliant with the applicable enabling legislation and the Town of Cary Charter.
16. Drivers at the intersection of Cary Towne Boulevard and Convention Drive during the relevant period of time could, even with the length of the yellow time being determined by using a 35 mph velocity versus a 45 mph velocity, nonetheless safely bring their vehicle to a stop as shown by the application of the laws of motion within the time and distance provided with only a slightly greater by still reasonably comfortable braking force.
17. The length or duration of the yellow light change interval at the six intersections in question were no less than what was shown on the applicable signal plan of record signed and sealed by a licensed North Carolina Professional Engineer in accordance with Chapter 89C of the General Statutes and, were, at all times relevant to this lawsuit, in full conformance with the requirements of the Manual of Uniform Traffic Control Devices ("MUTCD").

THE COURT THEREFORE makes the following conclusions of law:

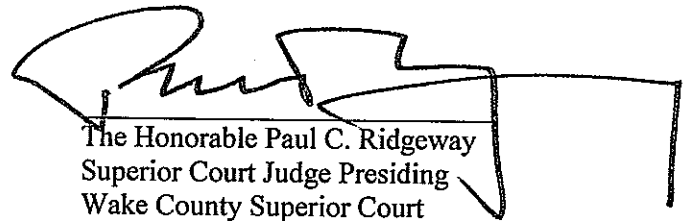
1. The fact that incidents of tickets may be shown to have increased or decreased after the length of the yellow light duration was adjusted by NCDOT, even assuming it shows a correlation, does not in and of itself mean that drivers were somehow unable to stop or that the Town of Cary somehow violated the applicable enabling statute in the Town's operation of its Red Light Camera Program. Nor does it mean that the length of the yellow light durations at the applicable intersections did not meet the requirements of the applicable provisions in the MUTCD.
2. The allegedly high incidents of tickets, the decision by the Town of Cary to enforce them, and the decision by the Town of Cary to terminate its Red Light Camera Program in August 2012 are all policy decisions within the purview of the elected officials of the Town of Cary and are not, absent a showing that such things violate the language contained in the applicable enabling statute or legislation, an appropriate basis for a court of law to enter judgment and order the Town to pay damages.
3. The Town of Cary's actions in this case in operating its Red Light Camera Program are subject to the applicable enabling legislation and it is the Plaintiffs' burden of proof to establish that the Town of Cary acted contrary to, or in violation of, that legislation.
4. The Red Light Camera System operated by the Town of Cary was at all times installed and operated in conformance with the applicable controlling enabling legislation, N.C. Gen. Stat. §160A-300.2, as amended by Session Law ("SL") 2001-286, SL 2003-380 (2003), and SL

2004 -141 (2004), and further as amended by SL 2010-132 (effective December 1, 2010) at each intersection where they were installed.

5. The Red Light Camera system operated by the Town of Cary was at all times installed and operated in conformance with the Town's Charter.
6. As such, this Court finds and concludes that the Plaintiffs have failed to meet their burden of proof to establish by the greater weight of the evidence that the Town of Cary exceeded its statutory authority by installing and operating its Red Light Camera Program at the six intersections in question and collecting fees resulting therefrom.
7. Because this Court was tasked with both making findings of fact in connection with its duty to interpret certain statutory provisions, there may be conclusions of law contained in this Court's findings of fact, and findings of fact contained in this Court's conclusions of law.
8. Costs shall be taxed against the Plaintiffs as may be agreed to by the parties or as may be hereinafter determined by the Court at a post-trial motion pursuant to N.C. Gen. Stat. §§ 6-20 and 7A-305 and Rule 68 of the North Carolina Rules of Civil Procedure.

WHEREFORE based upon the above findings of fact and conclusions of law this Court directs and enters Judgment for the Town of Cary on all of Plaintiffs' and Plaintiffs' class claims.

SO ORDERED this 4 day of March, 2013.

  
The Honorable Paul C. Ridgeway  
Superior Court Judge Presiding  
Wake County Superior Court

CERTIFICATE OF SERVICE

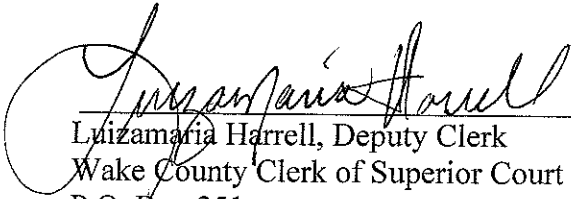
The undersigned Deputy Clerk of Court of Wake County hereby certifies that a copy of the forgoing Order was served on the following parties to this action by:  
 facsimile  hand delivery  by depositing a copy of the same in the United States Mail postage prepaid and addressed to:

Paul Stam  
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William Peaslee  
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Cary, NC 27511

Elizabeth A. Martineau  
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P.O. Box 31188  
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This the 4<sup>th</sup> day of March, 2013

  
Luzamaria Harrell, Deputy Clerk  
Wake County Clerk of Superior Court  
P.O. Box 351,  
316 Fayetteville Street Mall  
Raleigh, NC 27606-0351