

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
10-CVS-019930

BRIAN CECCARELLI and LORI
MILLETTE,

Plaintiffs,

v.

TOWN OF CARY,

Defendant.

AFFIDAVIT OF
DAVID H. SPENCER, P.E.

I, David H. Spencer, am currently over twenty-one and I am competent to testify to the following facts that are known to me.

1. I am a licensed professional engineer.

2. I am currently employed with the Town of Cary ("Town"), as a Traffic Engineer. I have held this position with the Town for approximately five years. Prior to working for the Town, I was a Project Engineer with Withers & Ravenel, Inc. for 2 years, and a Traffic Engineer with the North Carolina Department of Transportation for over three years.

3. Part of my job responsibilities require me to be familiar with and to understand the North Carolina General Statutes relating to speed limits on State owned roads which are located within the Town.

4. I am familiar with the intersection of Cary Town Boulevard and Convention Drive (formally known as Western Boulevard Ext. and Convention Drive – Principal Lane), which is located within the Town, but is owned by the State of North Carolina.

5. In order to raise the speed limit on a state owned road that is located in a municipality, such as the Town of Cary, the Town must (1) pass a local ordinance authorizing the new speed limit and (2) the North Carolina Department of Transportation (NCDOT) must record a concurring ordinance for the same speed limit. The higher speed limit does not become effective until (1) NCDOT has passed the concurring ordinance and (2) a sign is posted showing the new speed. See N.C. Gen. Stat. § 20-141.

6. I am also familiar with the original Complaint filed in the above captioned matter on or about November 30, 2010. The Complaint alleged that "On November 6, 2009 at 9:27 PM Plaintiff Ceccarelli drove his vehicle eastbound on Cary Towne Blvd crossing its intersection with Convention Drive." (Complaint p. 2 ¶ 11.)

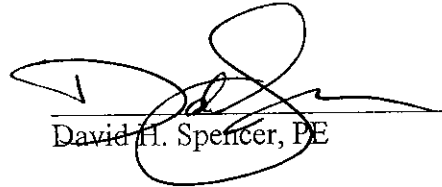
7. The Complaint went on to allege that "Subsequent to the implementation of NCDOT Traffic Signal Plan for the intersection of Cary Town Blvd and Convention Drive the speed limit on the relevant portion of Cary Town Blvd was increased to 45 mph." (Complaint p. 2 ¶ 14.)

8. Shortly after the Town received the Complaint I personally drove my vehicle eastbound through the intersection of Cary Town Boulevard and Convention Drive. As I drove

the area I was looking to see if there was a posted 45 mph speed limit sign prior to the intersection that would have the affect of causing the speed limit on that section of the road to be 45 mph. I drove the area several times. There was no posted 45 mph speed limit sign that would have raised the speed limit on that section of the road from 35 mph to 45 mph.

9. I subsequently notified NCDOT that the section of the highway that Mr. Ceccarelli was complaining about did not have a 45 mph posted speed limit sign. Thereafter, someone from NCDOT did come out accompanied by a Town engineer and erect a 45 mph speed limit sign on that section of the roadway.

10. Further this affiant says naught.

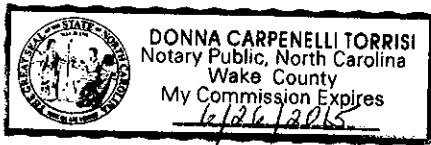

David H. Spencer, PE

Wake County, North Carolina

Sworn to and subscribed before me this day by David H. Spencer

Date: 12/7/12

(Seal)



Donna Carpenelli Torrisi
Notary Public

Donna Carpenelli Torrisi
Notary Public Printed Name

My Commission Expires: 6/26/2015

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon all counsel of Record by fax and depositing a copy hereof, postage prepaid, in the United States Mail, addressed to the attorney for each said party as follows:

Paul Stam
Caroline Nickel
Stam & Danchi, PLLC
PO Box 1600
Apex, NC 27502
FAX: _____
Attorneys for Plaintiffs.

This _____ day of _____, 2012.

Elizabeth A. Martineau