

Questions from Q & A Session of ADA Conference

1. Should jurisdictions include retrofitting bus stops to ADA compliance as an element of their Transition Plan? Why? What's the requirement?

Lois Thibault, Access Board: Absolutely! All programs are covered. See section 10 in Americans with Disabilities Act Accessibility Guidelines (ADAAG) for bus stop requirements. Note also that United States Department of Justice (DOJ) considers bus stops to be pedestrian routes, thus requiring sidewalks.

Barbara McMillen, Federal Highway Administration (FHWA): In a word "yes." The transition plan requirement covers all local government programs and facilities.

Dianna Stephens, City of Nashville: We completed an assessment of "fixed" bus shelters prior to our completing our transition plan. The replacement of the shelters will happen at the time that our sidewalks are rehabbed, with the following exception; there is a request for accommodation, which then would be treated as a priority, or, as has happened, there is money included in the capitol budget for upgrades. Bus stops are made accessible at the time the sidewalk is replaced/installed. All of this hinges on an entity having policies for managing the right of way and identifying who is responsible for any elements located in the right of way.

2. Are sidewalks mandated to be built on all public streets? Where they currently do not exist? If so, under what rules?

Lois Thibault: It is general dot policy that sidewalks be constructed when roads are constructed or improved. Some state laws also require sidewalks. Where pedestrian circulation is intended, a complying route (surface, width, cross slope, curb ramps, etc.) must be provided. Certain programs, such as a walk-to-school requirement or the presence of bus stops, are indicators of pedestrian circulation. And when sidewalks are provided, they must be accessible.

Barbara McMillen: It depends! I do not think this is a yes or no answer as some people may think. If you have a pedestrian system, what should the obligation be to fill in the gaps or have the system complete and usable for all? If I can walk on the grass or the road in between areas that do not have sidewalks, but say disabled person can't, then isn't that entity discriminating against the disabled person. I think this is an issue that needs to have some thought put into the responsibilities of government in respect to inequities. We should be applying the same access principles to sidewalks as we do roadways--direct, convenient, safe, connectivity.

Dianna Stephens: I can only answer for what we require. If there is a public street that does not include a sidewalk, and it is determined that it is a pedestrian area, then we included these locations in our sidewalk plan. We found several areas of town that have "patchwork" sidewalk sections. Those are higher on our priority list. As for new construction, such as subdivisions, the planning commission has determined that sidewalks are to be included on both sides of the street, with an exception for cul-de-sacs. Commercial properties that are building a new facility are required to install a sidewalk, even if there are no surrounding sidewalks. It is felt that with the sidewalk plan being in implementation that eventually there should a continuous accessible pedestrian route throughout the county.

3. Is slurry sealing a street considered RRR (Alteration) and would this trigger upgrading of curb ramps to meet current ADA standard

Lois Thibault: We defer to FHWA on this. In general, I think that anything that has a thickness or is applied as a lift constitutes an alteration, but a liquid surface coating could be thought of as a maintenance treatment.

Barbara McMillen: It all depends on the way Yerusalem is interpreted. The court said:

With this directive, we must now determine whether resurfacing a street affects its usability. Both physically and functionally, a street consists of its surface; from a utilitarian perspective, a street is a two-dimensional, one plane facility. As intended, a street facilitates smooth, safe, and efficient travel of vehicles and pedestrians -- in the language above, this is its "primary function."

As such, we can only agree with the district court that resurfacing a street affects it in ways integral to its purpose. As discussed above, "resurfacing" involves more than minor repairs or maintenance. At a minimum, it requires the laying of a new asphalt [**19] bed spanning the length and width of a city block. n7 The work is substantial, with substantial effect. As the district court described in its opinion granting plaintiffs' motion for summary judgment:

n7 The City suggests that disposition on summary judgment was inappropriate because the district court failed to distinguish among the various types of resurfacing (paving, milling, and reconstruction). There is no dispute that some resurfacing jobs are more extensive than others. However, the district court based its decision, as we do here, on that which is common to all, the elements required by the City for any resurfacing. See supra p. [typescript at 3].

Resurfacing makes driving on and crossing streets easier and safer. It also helps to prevent damage to vehicles and injury to people, and generally promotes commerce and travel. The surface of a street is the [*1074] part of the street that is "used" by both pedestrians and vehicular traffic. When that surface is improved, the street becomes more usable in [20] a fundamental way.**

Dianna Stephens: We have a policy that requires curb ramps to be replaced at the time of an alteration to the streets. Milling, paving and an overlay are considered alterations to the right of way, per our policy. I do not think that we use a slurry seal, but will check.

4. What are the differences in the requirements for sidewalk vs the access way inside of a building?

Lois Thibault: We have proposed to remove the running slope limit from sidewalks and allow them to take the slope of underlying terrain. We also propose a wider route in the right-of-way (48"), since it's often at the curb or across the street and used in inclement weather.

Barbara McMillen: Both are covered under the ADAAG.

- We move faster in public open areas-more space is needed
- Interactions with motor vehicles-safety issue

- Way finding with objects on the sidewalk and people using the same corridor requires more space-safety issue for determining when to cross street
- Motorized scooters and chairs are getting bigger, and the number of people using them is growing due to the aging population
- Old dimensions are from the Korean war era based on Disabled Veterans -they need to reflect the entire population
- Space for turning around is often more critical in the public r-o-w because there are extensive gaps and barriers-another safety issue

Dianna Stephens: We require that access to a facility meet the sidewalk standards that have been adopted by Metro, which are public works standards, which are compliant. That would include any curb cut that would provide access from a parking lot.

5. What does a city or county need to do to get and ADA design exception, and to determine equivalent facilitation?

Lois Thibault: There's no exceptions process under the ADA. However, alterations must meet the new construction standard only 'to the maximum extent feasible'. If technical infeasibility is encountered in an alteration to an existing developed streetscape, a lesser level of accessibility may be all that is feasible.

Equivalent facilitation recognizes that there may be several ways of achieving the required accessibility and permits agencies to pursue other methods than those in the standards. It is not an approval of a lesser level of access -- only permission to do it a different way.

In all cases, agencies must make and document these determinations of technical infeasibility, maximum extent feasible, and equivalent facilitation. Several agencies have processes (Hawaii Department of Transportation (DOT), Florida DOT, Texas DOT, Nashville, others) to do this. It's all rebuttable (can be challenged), but it's good evidence that you did the best thing and considered alternatives thoughtfully.

Barbara McMillen: FHWA cannot grant "exceptions" for federally funded projects. Documentation by the responsible agency should be part of the record if an engineer or transportation agency cannot meet minimum design features.

Dianna Stephens: We do not make exceptions. It is our interpretations that there are no exceptions, only cases of technical infeasibility which are only found in a retrofit or rehab. We require that a statement of technical infeasibility be completed by a licensed professional if that decision is made. This is documented in all of curb and sidewalk retrofits. Will include forms.

6. What authority does the local entities have to make utility companies repair broken/damaged utility boxes in the sidewalks?

Lois Thibault: Utilities work in the right-of-way only with approval of the jurisdiction. Jurisdictions should require compliance as a part of their permission for utility access.

Barbara McMillen: The public right-of-way is the responsibility of property owner, and therefore the owner is liable for the work utility companies perform on their property. It is in an entities best interest to examine their policies/or lack of policies and make necessary changes to contracts, laws, etc.

Dianna Stephens: Metro manages the right of way in Davidson County. They are responsible for permitting or approving anything that happens in the right of way. It took several years, but we have come to an agreement with the utility companies. Currently, we send notices to the utility companies prior to work being completed in an area and they are required to move or repair within 60 days. This is a good example of why it is so important to have written policies that show that work is being completed consistently. We require the same for anything or any work being completed in the right of way, including Metro Water.

7. Pertaining to crosswalks, what is the position of installing concrete pavers, brick pavers, or an AC (Asphalt Concrete) stamped crosswalk? How can a visually impaired person (especially people who are totally blind) know how to walk within the crosswalk?

Lois Thibault: The audible and tactile environment provides the cues used by pedestrians who have vision loss. The sound of traffic surges, the underfoot detection of curbs and detectable warnings, the audible and vibrotactile information from pedestrian signals all provide input to crossing analysis.

Some jurisdictions have installed guidestrips (some are raised, others are troughs) on the centerline of a crosswalk, especially where the intersection is irregular. The rolling surface of a crosswalk should be relatively smooth, but slightly raised edge markings could be useful if understood as edges.

Barbara McMillen: A smooth, firm surface is important. Textures are uncomfortable underfoot, and are often tripping hazards--the crosswalk is the last place you want to have pedestrians tripping or having difficulty getting to the other side. Textures can be aesthetic borders to the sidewalk and crosswalks, but should not be used for the intended walking surface.

People with visual disabilities use the stopping and surging sounds of parallel and perpendicular traffic for determining a number of travel issues. Following the surging sound of parallel traffic helps to determine the travel path to the other side of the street.

Dianna Stephens: We are currently installing tactile warnings at curbs so that an individual will know when they are leaving the right of way. However, in all new designs for sidewalk improvements, we are requiring color definition when outlining the crosswalks.

Discussion on Nashville's Use of the 20% Rule

Jeff Holm: Question posed to Barbara McMillen regarding FHWA policy. Just wondering what your thoughts are on Nashville's 20% rule (see attached email). It was my understanding that this applied to Title III (private) and we could not apply it to Title II. I don't want to create any waves or heartache for Nashville for bring the issue up, but if we can use this in the public sector, it would solve many issues on funding (maybe even creating new issues). Is this something that came out of the Sacramento lawsuit where they have to use 20% of their transportation funds for curb ramps? I have been adamant about not allowing locals trying to use a percentage.

Barbara McMillen: You are correct that "20%" came out of Title III. I believe the 20% was originally based on the fact that 20% of the population has a disability.

There is a difference in Title III requirements and the Sacramento and Nashville Title II settlements.

A Title III entity does not have to spend more than 20% of the overall cost of retrofitting to make the existing facility accessible. The distinction in Nashville's policy is they are doing what is required in retrofit projects (regardless of the cost--curb ramps, etc) and then applying an additional 20% of the project funding to make other pedestrian improvements. My understanding is that the Sacramento settlement is similar. So they are not being held to a percentage for doing what is required for making the facility accessible when retrofitting--these are additional improvements.

There has obviously been an imbalance for many years on our overall transportation funding priorities when we weight in the various factors such as mode shares, the distribution of injuries and fatalities, and the overall cost we are socially and economically paying for placing all our eggs in one basket (motor vehicle travel). Even though the Federal aid program has seen a significant rise in pedestrian projects, we are still probably spending less than 1% of our overall budgets on pedestrian travel in this country. Those 20% settlements are probably in line with the big picture issues and the long term negligence--it can be a real shocker to those entities and agencies that have been ignoring compliance and pedestrian travel.

I think it would be a real good idea to make a distinction/disclaimer when this information goes out to the participants so that there is not any confusion about Nashville's 20% rule. We do not want to make your jobs more difficult!

Dianna Stephens: Jeff, you are correct. This is an internal policy, keeping in mind that we can ask for more, but not less. While we currently have a \$20 million dollar sidewalk program funded, this will not correct all of our sidewalk issues. We feel that if someone has been given the courtesy to work in our right of way, then they should share in the improvements. We require the same for our facilities. All of our policies have been reviewed by the Department of Justice. Sorry if this appears to be misleading.

I actually had forgotten this, but originally, we were using a 100% rule. If someone was working in the ROW and upgrades were required, then the third party had to bring the entire area up to standards. This included the curbs, sidewalks and driveway ramps, as well as relocating obstructions. We operated under this public for about a year. This decision was made by the "FINANCE" Director.