

VILLAGE OF ELM GROVE

13600 Juneau Boulevard
Elm Grove, WI 53122

PUBLIC SAFETY COMMITTEE

Thursday, December 13, 2018 * 6:00PM * Parkview Room

AGENDA

1. **Call meeting to order.**

2. **Review and approve minutes from September 13, 2018**

Documents:

[*ps 091318md.pdf*](#)

3. **Review and act on legal opinion regarding previously approved child safety signs near St. Mary's School and Church.**

Documents:

[*children at play memorandum.pdf*](#)

4. **Discuss making permanent the temporary traffic signage around Tonawanda School.**

5. **Other Business**

6. **Adjournment.**

Any person who has a qualifying disability as defined by the Americans with Disabilities Act who requires that the meeting or materials for the meeting has to be in an accessible location or format must contact the Village Clerk, Mary S. Stredni, at 262-782-6700 or 13600 Juneau Boulevard by 3:00 PM Friday prior to the meeting so that any necessary arrangements can be made to accommodate your request.

NOTICE: It is possible that members of, and possibly a quorum of, other governmental bodies of the Village may be in attendance at the above stated meeting to gather information. No action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to in the above notice

PUBLIC SAFETY COMMITTEE MEETING MINUTES

THURSDAY, September 13, 2018

Present: Chair Trustee Katy Cornell, Village President Neil Palmer, Trustee John Domaszek (arriving at 6:25PM), Committee Members, Ms. Barbara Decker, Mr. Gus Moulas.

Members Excused: Mr. Vrakas and Mr. D.J Richlen.

Also Present: Police Chief Jim Gage.

1. Call the meeting to order

The meeting was called to order, at 6:00 pm, by Trustee Cornell.

2. Review and approve minutes from June 14, 2018.

Trustee Cornell entertained a motion for approval. President Palmer made a motion for approval of the minutes, from June 14, 2018, with Ms. Decker seconding and Mr. Moulas abstaining. Motioned passed.

3. Discuss citizen request for Gremoor pathway.

Trustee Cornell provided an overview of pathway projects currently under consideration by the Village Board, indicating the following;

- The Watertown Plank Road path from Highland Drive to Pilgrim Parkway is slated for completion in 2019.
- The Hollyhock pathway has been approved in concept to be completed with the scheduled North Ave. reconstruction beginning in 2021. However, this project has not been funded, nor has there been any engineering studies on the project.
- The Gebhardt pathway is also slated for 2021 and is not funded and there have not been any engineering studies.

President Palmer gave a brief historical background on the pathway progression, indicating the Public Safety Committee had reviewed and ranked requests, bringing us to the timeline outlined by Trustee Cornell. Palmer mentioned that even though the Public Safety Committee may recommend a pathway that does not mean that a pathway will be built, since ultimately the project needs to be approved by the Village Board and funded.

Ms. Sarah W. Smith, of 13380 Gremoor Drive, provided the Committee with a petition to build a pathway on Gremoor Drive and informed the Committee of her perception of speeding vehicles and high traffic volumes necessitating the pathway.

Chief Gage informed the Committee that the entire stretch of Gremoor Drive experienced eleven accidents, since 2006, with six of those accidents occurring at Gremoor and 124th Streets. Additionally, there were no pedestrian or bicycle accidents reported during this timeframe.

Ms. Rita Larsen, 1850 Hollyhock Lanes, asked about the cost of the pathway project. President Palmer indicated that costs are based on things like engineering and asphalt costs and reiterated that Hollyhock is not funded currently. He additionally stated that it can take a number of years to approve and fund projects on this type.

Ms. Mary Inden, of 14745 Watertown Plank Road, expressed her approval for pathways, citing her experience in utilizing the Watertown Plank Road path across from her home. She further suggested that the Village set up a general pathway fund in the budget, so that funds are being accumulated in preparation for the approval of some or all of the recommended pathways.

There was some general discussion about pathway timelines and funding options, along with various complaints about speeding vehicles on Watertown Plank Road. As a result, Ms. Inden was in favor of having the village purchase additional electronic speed advisory signs. Chief Gage indicated that there are currently two more signs on order.

President Palmer made a motion that the Public Safety Committee recommend to the Finance Committee to establish a method and schedule to fund general pathways requests. Palmer gave an example by stating maybe over a ten year period. The motion was seconded by Ms. Decker and the motion carried unanimously.

4. Discuss Tonawanda School on street parking and traffic flow.

Chief Gage gave an overview of the progress made, working with the school staff, to establish the following;

- As a temporary action, recommending that the north side of Bobby Lane and west side of Hollyhock Lane be posted no parking.
- Install a no left turn sign, except busses, for the west parking lot entrance.
- Send correspondence, through the school, to the parents advising a right turn only into the west parking lot entrance, along with discouraging on-street parking.

Long term changes include;

- Repaint the parking lot spaces to allow for a west to east only flow through the parking lot.
- Eliminate the parking row closest to the building to allow for queuing more parent pickup cars in the parking lot.
- Reconstruct the playground area to allow for a roadway/parking area to the south of the building with Legion Drive access.

Mr. Spencer Mayhew of 855 Grandview, commented that he serves on the Tonawanda Parent/Teacher Organization (PTO) and that they are in agreement with the changes and will help to get the word out to the parents. He indicated that the PTO will be helping craft an advisory notice to parents and asked that any changes occur early next week.

Discussion also revealed that the area should be repainted to better define the crosswalk.

President Palmer made a motion to authorize the Chief of Police to make temporary traffic sign changes, as deemed necessary, to accommodate safer and more efficient traffic flow in the area. Seconded by Ms. Decker and the motion passed unanimously.

5. Discuss proposed cul-du-sac for Underwood Parkway.

Chief Gage briefly discussed the memos associated with this agenda item, indicating that department heads had no issues with the concept of cul-du-sacing Underwood Parkway. President Palmer indicated that any cul-du-sac construction would coincide with the North Ave reconstruction project. He went on to mention that due to the designed elevation of the roadway after construction, it was recommended that the road be terminated at North Ave.

Mr. and Mrs. Andrew Azpell of 2030 Mt. Kisco Drive, mentioned that they heard the request was driven by the home owners on Underwood Parkway. Additionally, they were concerned about increase traffic on Mt. Kisco Drive, since the access to North Ave. will be closed off to those homes on Underwood Parkway. They indicate that making a left turn onto North Ave., from Mt. Kisco, is very difficult now and fear that the additional traffic will make it worse.

Trustee Domaszek also thought that the change was initiated by the North Ave. construction project and not area residents, citing that with the new widened roadway, engineers are looking for opportunities to limit intersections along the roadway.

Much of the discussion centered on traffic flow and volume, along with some discussion regarding creek flooding that could close off access to homes. It was the consensus of the Committee that the Department of Public Works had conducted traffic volume studies in that area recently. They directed staff to confirm whether traffic counts had been done. They further indicated that if they were not done, to conduct counts on Underwood Parkway, Mt. Kisco Drive and Marcella Ave and report back to the Committee.

6. Other Business.

There was no other business.

7. Adjournment.

Trustee Cornell entertained a motion for adjournment, at 7:35PM. Trustee Domaszek made a motion to adjourn, seconded by Mr. Moulas, and the motion passed unanimously.

Respectfully submitted

James P Gage

Chief of Police

CONFIDENTIAL LEGAL MEMORANDUM

ATTORNEY-CLIENT PRIVILEGED

TO: David De Angelis, Village Manager for the Village of Elm Grove

FROM: von Briesen & Roper, s.c.
By: Hector de la Mora & Christopher T. Koehnke

DATE: November 7, 2018

RE: Children at Play Signs

You have asked our firm to research the installation of “Children at Play” signs in the Village of Elm Grove (the “Village”) and what, if any, possible liability the Village may be exposed to due to the installation of such signs. We have analyzed this issue and would recommend that the Village **not** install “Children at Play” signs. Our analysis is below:

Background

On May 10, 2018, the Public Safety Committee authorized the installation of four (4) “Child Safety/Slow Down” advisory signs at each of the St. Mary’s parking lot exits, and one sign in the 1200 block of Crescent Drive. The Village Chief of Police expressed some concern that installing such signs could expose the Village to some liability.

National Trend to Discontinue Use of “Children at Play” Signs

The use of “Children at Play” and similar signs is decreasing across the county. This is due to the fact that there is little or no evidence which shows the use of such signs is effective.

In September of 2007, the Wisconsin Department of Transportation (“WisDOT”) published a Transportation Synthesis Report (“TSR”) which reviewed research regarding the effectiveness of signs related to children in order to assist WisDOT in policy decisions regarding the use of these signs. In summary, the TSR found:

There is no evidence that special warning signs of this sort reduce driver speeds or crash rates. This is the unanimous conclusion of the many credible sources we located on this topic. This claim is supplemented by a number of often-cited “common sense” observations that such signs do not give clear and enforceable guidance to drivers, provide a false sense of security to parents and children that may increase risk, expose the government to liability, give the false impression that areas without such signs do not have children, represent an unnecessary cost

that then propagates as additional signs are requested and violate the principle that signage should be based on engineering, not political, decision making.

Additionally, Chapter 2, Section 1 of the *Traffic Engineering, Operations & Safety Manual* prepared by WisDOT states the following regarding the use of “Slow Children” signs.

The use of this sign is probably the most common non-standard to be found on local streets. It is typically a black on yellow rectangular sign, with a running child figure. A variation may add the phrase “at play.” It is often shown in sign catalogs.

The purpose of this sign is largely to placate the residents. While their concern for the safety of their children is understandable, the real issue is not being addressed, which is the hazard caused by children either playing in the street or entering the street without exercising care. Both actions are illegal. The sign therefore tends to endorse illegal actions, and that is why it should not be used.

Potential Liability

In addition to the fact that there is no evidence which suggest they are effective, many communities have also stopped using children at play or similar signs because they are not included in the Manual on Uniform Traffic Control Devices (“MUTCD”) prepared by the Federal Highway Administration (“FHWA”). There is some concern that using signs that do not conform to the MUTCD may expose a municipality to liability if it does use such signs.¹

The basis for this belief is found in a FHWA publication which states “[a]gencies should avoid the use of CAUTION – CHILDREN AT PLAY or SLOW CHILDREN nonstandard signs since such signs may imply that the involved jurisdiction approves of streets as playgrounds, which may result in the jurisdiction being vulnerable to tort liability².”

We have been unable to locate any Wisconsin case law where the issue of municipal liability related to the use of child safety signs had been litigated. In the absence of any legal authority or factual basis that the usage of such signage is legally defensible or beneficial, we recommend following the recommendation from WisDOT that such signs should not be used.

¹ There is a clear obligation on the part of “local authorities” to place and maintain traffic control devices in conformity with Wis. Stat. §349.065 which provides:

Uniform traffic control devices. Local authorities shall place and maintain traffic control devices upon highways under their jurisdiction to regulate, warn, guide or inform traffic. The design, installation and operation or use of new traffic control devices placed and maintained by local authorities after the adoption of the uniform traffic control devices manual under s.84.02 (4) (e) shall conform to the manual. After January 1, 1977, all traffic control devices placed and maintained by local authorities shall conform to the manual.

Wis. Stat. 84.02 (4) (e) provides: The department shall adopt a manual establishing a uniform system of traffic control devices for use upon the highways of this state. The system shall be consistent with and, so far as practicable, conform to current nationally recognized standards for traffic control devices.

² FHWA Course on Bicycle and Pedestrian Transportation: Pedestrian Signing and Pavement Markings
https://safety.fhwa.dot.gov/ped_bike/univcourse/instrtoc.cfm

Enforcement Alternatives

As discussed above, WisDOT recommends against the use of child safety signs. These signs serve as nothing other than a warning and have no legal enforceability. If the Village wanted to pursue alternatives to improve the safety of children when near Village roadways, there are other options available to it.

1. Increased Traffic Enforcement – The Village could post additional speed limit signs in areas of particular concern and coordinate increased police patrol of these areas during times when traffic poses an increased danger to children. The Village could also paint additional crosswalks at areas of particular concern.
2. Close Village Roadways at Specific Times – Wis. Stat. § 66.0429(1) provides as follows:

The governing body of a city, village or town may set aside streets or roads that are not a part of any federal, state or county trunk highway system for the safety of children in coasting or other play activities, and may obstruct or barricade the streets or roads to safeguard the children from accidents. The governing body of the city, village or town may erect and maintain on the streets or roads barriers or barricades, lights, or warning signs and is not liable for any damage caused by the erection or maintenance.

This statute clearly authorizes municipalities to set aside and barricade streets "that are not part of any federal, state or county trunk highway system" for children's play purposes. Although it does not expressly authorize municipalities to close streets near schools for the purpose of loading school buses safely, municipalities have nevertheless used this statute to temporarily barricade streets adjacent to schools. The Wisconsin Supreme Court has previously ruled that, pursuant to Wis. Stat. § 66.0429(1)³ a municipality could adopt a resolution to barricade a street adjacent to a public and parochial school from 8:30 a.m. to 4:30 p.m. on school days. The court concluded that Wis. Stat. § 66.0429(1) permitted the city to erect and maintain a barricade in such a location and manner and granted the city immunity from claims of liability brought by persons injured by the barricade. *See Bendorf v. City of Darlington*, 31 Wis.2d 570, 143 N.W.2d 449 (1966).

Conclusion

Because "Children at Play" signs have been found to be ineffective in actually protecting children and have no legal enforceability, we would recommend against their installation. The Village may wish to consider other policy options to reduce the potential danger to children at specific locations within the Village.⁴

³ The Court considered Wis. Stat. 66.046(1) which was the precursor to Wis. Stat. § 66.0429(1) and contained language identical to the current statute.

Please let us know if you have any questions or wish to discuss the subject of this memo further.

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⁴ The Village may also wish to discourage the informal placement of similar signage within right of ways by adjacent property owners so that it cannot be claimed that the Village is passively sanctioning the placement of questionable signage within right of ways.