

Agenda
Village of Glen Ellyn
Village Board Workshop
Monday, January 25, 2010
7:00 P.M. – Galligan Board Room
Glen Ellyn Civic Center

1. Call to Order
2. Public Comments?
3. Central Business District Snow Shoveling – Joe Caracci (Pages 2-8)
4. School Zone Snow Shoveling – Joe Caracci (Pages 9-14)
5. Other items?
6. Adjournment

1-25-10

(3)



To: Steve Jones, Village Manager
From: Joe Caracci, Public Works Director
Date: January 5, 2010
Re: CBD Sidewalk Snow Removal Discussion

Background

The Village's Snow and Ice Management Plan calls for the Public Works Department to clear a four (4) foot wide path on Central Business District (CBD) sidewalks when snow accumulation reaches three (3) inches. When accumulation is less than three (3) inches, we rely on the property owners to clear the sidewalks. During any accumulation, the Public Works Department clears sidewalks adjacent to any Village owned property and the train station, in their entirety.

Issues

Cooperation from property owners in the CBD is assumed, however, some owners do not clear sidewalks on a regular basis (if at all). Vacant properties also tend to be uncleared. This leaves sections of snow-packed or icy sidewalks in the CBD, creating unsafe passage for pedestrians. I have made multiple presentations to the Village Board with options available, but have received no direction as to which to pursue.

It is interesting to note that the EDC surveyed downtown business owners prior to the finalization of the economic development SSA discussions to gauge the opinion on creating some boutique services that could be funded through potentially increasing the SSA levy. Although downtown snow removal was very much desired, virtually all respondents said they did not want to pay for this service.

Other communities handle snow clearing in many different ways. For example, Wheaton and Lombard require business owners to clear sidewalks via ordinance. LaGrange and Geneva provide in-house clearing but are compensated for such services through a combination of SSA and TIF monies. Many, however, receive cooperation from property owners to keep the sidewalks clear.

The Village President has requested research into costs associated with providing complete snow removal services in the CBD. If the Village Board seeks to provide this service, I will look into obtaining accurate costs that will be comparable in scope to other communities.

Another option is to move forward with an ordinance requiring business owners to clear the sidewalks in the CBD (similar to Wheaton and Lombard). This topic was discussed as part of a legal opinion provided by our Village attorney back in September 2008 (attached). Enforcement would be of concern as well as the message that may be interpreted from property owners on the Village mandating this service.

Action Requested

- a. Direction as to whether there is concurrence from the Board to provide CBD sidewalk clearing services.
- b. Direction as to whether there is concurrence from the Board to move forward with a CBD Snow Clearing Ordinance.
- c. Direction as to pursuing any other options that the Village Board sees fit.

Attachments

- September 18, 2008 Legal Opinion from Village Attorney Diamond
- Supplemental Attachment

Supplemental Agenda Information Village of Glen Ellyn

Agenda Item Supplemented by Commentary

- X Pros & Cons
 - Strategic Action Goal
 - Downtown Strategic Plan Goal
 - Budget Impact/Return on Investment
 - Process Improvement
 - Green Initiative
 - Communication Initiative
 - Safety/Liability/Risk Assessment
 - Other

Comments:

1. Pros / Cons for providing CBD Sidewalk Snow Removal Services

Pros

- Provides safer sidewalks for pedestrians navigating through the CBD.
- Creates a visual indication that shoppers are welcome in downtown Glen Ellyn.

Cons

- Added cost to our budget or added costs to an SSA /future TIF District
- If Village taxes used, service will benefit CBD property owners only - Introduces the question of why doesn't the Village clear my sidewalk?
- Creates a potential liability due to **Village** clearing of sidewalks. This would relate to injuries alleged to occur as a result of "improper" snow removal efforts. It is not unusual for municipalities to receive claims from falls in public parking lots, municipal facilities, etc.

2. Pros / Cons for providing developing a CBD Snow Clearing Ordinance

Pros

- Provides safer sidewalks for pedestrians navigating through the CBD.
- Creates a visual indication that shoppers are welcome in downtown Glen Ellyn.

- No impact on budget

Cons

- Perception of Village forcing property owners to clear sidewalks in CBD (I would prefer business owners coming to the Village Board with a request rather than us initiating the ordinance).
- Initial enforcement efforts would have some negative public relations affects.
- Enforcement process may take longer than the actual hazard (snow & ice do melt over time) in the case of an uncooperative property owner. Thus, a false sense of a solution may exist.

Ancel Glink

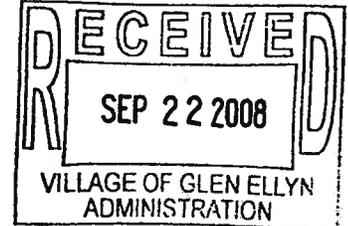
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September 18, 2008

Mr. Steve Jones, Village Manager
Village of Glen Ellyn
535 Duane Street
Glen Ellyn, Illinois 60137



Re: Sidewalk Snow Removal

Dear Steve:

You have asked whether a municipality can require the owners of commercial and residential properties to remove snow from sidewalks maintained by the municipality. Several years ago, you were told by our firm, in another community that no power existed to make this requirement. The law appears to have changed, but there is still an important policy decision for a community to evaluate as to whether it can or wishes to assign this responsibility to particular property owners. In Glen Ellyn, it has been suggested by some citizens that individuals whose property is on a path used by many students to walk to school should be required to clean their sidewalks when a certain amount of snow has fallen.

There are at least two Illinois statutes that deal with snow removal from sidewalks. The first statute is found at 65 ILCS 5/11-80-13. That statute gives all municipalities, (even non-home rule units), the ability to require "the owner or occupant of any premises to keep the sidewalks abutting the premises free from snow and other obstructions. In spite of a strong dissent, the Illinois Supreme Court upheld the validity of an ordinance enacted under the statutory authority. City of Carbondale vs. Brewster, 34 Ill.Dec. 838 (1979). The Court reviewed cases from a large number of other States and found that, in general, judicial decisions had upheld similar enactments. The Court wrote: "The expenditure of time and effort, and perhaps expense, which the ordinance exacts is incidental to the enjoyment of property...by making the requirement proportional to the length of the property frontage, the legislation, in our opinion, is in compliance with constitutional requirements." I have always found this decision to be surprising since the sidewalk in question was clearly owned by the municipality and one might wonder why citizens could not be assigned other tasks such as the requirement to tutor students in the school or trim the hedges in public parks.

The second Illinois statute limits the immunity of individuals, who either on a voluntary basis or under the coercion of an ordinance, perform snow and ice removal. 745 ILCS 75/2 provides that:

Mr. Steve Jones
Glen Ellyn, Illinois 60137
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Any owner, lessor, occupant, or other person in charge of any residential property, or any agent of or other person engaged in by any such party, who removes or attempts to remove snow or ice from sidewalks abutting the property shall not be liable for any personal injuries alleged caused by the snowy or icy conditions of the sidewalk resulting from his or her acts or omissions unless the alleged misconduct was willful or wanton.

As you are aware from other contexts, the ability to prove a willful or wanton action is rather difficult, since the standard is that the person intended an injury to take place or should have clearly anticipated that an injury would occur.

The proposal that has come to the Village Board is different from the comprehensive duty imposed on all residential property owners in Carbondale. The proposal is to adopt an ordinance that would only require citizens to clear the government's sidewalk when they lived in the direct walking path of a school or other public building. Other citizens throughout the community would not have this requirement unless the Village Board decided to require all citizens within the community to undertake this burden.

A person objecting to the limited responsibility imposed near public buildings might argue that merely choosing to live near a school building, for example, should not carry with it the extra burden of cleaning sidewalks. It could be argued that, under its home rule powers, this responsibility might sensibly be imposed upon businesses, which invite individuals to use the sidewalk to add to their trade, but how could the same argument apply, for example, to a senior citizen, whose only contact with young people may be a rare visit in the summer from grandchildren. It must be pointed out, however, that an attack on equal protection grounds, would face a defense that there is a "rational basis" for requiring people who live on well-traveled streets, to undertake a higher duty. It might be more fun representing the home owners.

Based upon the information provided above, and with some substantial risk of having the ordinance overturned, it, nonetheless, appears that the Village of Glen Ellyn, as a home rule community, could make an effort to pass such an ordinance. As I recall, another alternative was discussed when this issue was raised before. Since sidewalks are typically owned by the municipality, the Village of Glen Ellyn could give the School District permission to extend the sidewalk cleaning that the School District does on its own sidewalks into the Village-owned system. It was suggested that the problem became most acute in sidewalks within relatively close proximity to the school facilities where children coming from a number of directions would need to use a

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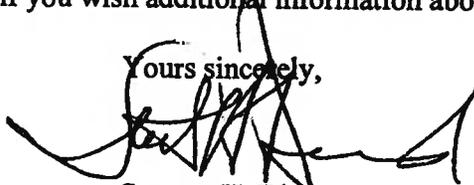
common path to get to the school. Since I believe that the School Districts often clean the sidewalks adjacent to their own property, it would appear not to be difficult to extend the work on these heavily-traveled adjacent sidewalks. The Village could certainly give approval to the schools to accomplish this work.

The next question is who would assume the liability in the event that the sidewalk cleaning was not done properly? Under Illinois law, governmental bodies, in general, have no responsibility or cleaning sidewalks. If a government does, however, undertake this responsibility and does not do so in a proper manner, liability can incur. In effect, governments are responsible for injuries caused by a "unnatural accumulation" of ice or snow. Under these circumstances, the School District could assume responsibility for the work that it performed and liability could be shared or the municipality could even assume all liability on the assumption that it could be assured that the School District would attempt to do a thorough job.

In summary, the law appears to allow a governmental body to transfer the liability of snow removal to adjacent private property owners. Less clear is whether the municipality could do this if it only placed that burden upon property owners whose land abutted well-traveled sidewalks. Another alternative is for the municipality to give a specific approval to the School District to plow well-traveled sidewalks or even to share some level of liability in the event that the work is not properly done. It is likely that in almost every instance the responsibility assumed in an intergovernmental agreement containing such terms and conditions would be included in the scope of coverage offered by governmental self-insurance pools.

Please let me know if you wish additional information about these matters.

Yours sincerely,



Stewart H. Diamond

SHD:dar

cc: Mr. Joe Caracci

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1-25-10

(4)



To: Steve Jones, Village Manager
From: Joe Caracci, Public Works Director
Date: January 5, 2010
Re: School Zone Sidewalk Snow Removal Discussion

Background

The Village Board was approached by a number of residents during the winter months back in 2007 and 2008. During very heavy snow and/or ice events, children were having trouble navigating to and from school safely due to uncleared and iced over sidewalks near schools. *The Village Board chose not to get involved with residential snow issues following either request.* This was clearly communicated to the residents making the request. Instead it was decided to utilize a public education approach through our Village Newsletter and e-blast to encourage residents to clear the sidewalks and also to help those who are unable to clear the sidewalks. At the request of the Village Manager, our Village attorney drafted a legal opinion regarding the ability of the Village to require residential or commercial properties to remove snow from sidewalks maintained by the municipality. I have attached that legal opinion for reference.

Issues

There have been some discussions between elected officials and residents regarding this issue again during the past few weeks. The Village President desires to research the potential costs associated with providing snow removal services around all our schools (including our private grade schools and potentially College of DuPage).

If there is consensus that this is something the Village Board seeks to consider, I will need some direction on expectations in order to provide useful information and accurate cost estimates.

Action Requested

- a. Direction as to whether there is concurrence from the Board to provide school zone sidewalk clearing services.
- b. If so, which schools are we looking to cover? (elementary, junior high, high school, public, private, etc.)
- c. What distance away from the schools are we looking to provide service? (i.e. 2 block radius?)

- d. Do we expect cleared sidewalks for morning and afternoon commute? (will this require night time / overtime snow clearing or are we looking for cleared walks within 24 hours?)
- e. Are we looking at contracted or in-house forces to perform the work?
- f. Will this service only be provided when school is in session? (i.e. no service during winter break)

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Comments:

Pros / Cons for providing School Zone Sidewalk Snow Removal Services

Pros

- Provides safe sidewalks for students to get to and from school and encourages walking to school.
- May benefit those who also walk to the train station each day.

Cons

- Added cost to our budget – would funds need to be taken from other core services?
- Residents tax dollars benefit specific residents close to schools – Introduces the question of “why doesn’t the Village clear my sidewalk”?
- Only addresses sidewalks within a predetermined distance away from schools. What about the kid walking an extra 2-blocks?
- Creates a potential liability due to **Village** clearing of sidewalks. This would relate to injuries alleged to occur as a result of “improper” snow removal efforts. It is not unusual for municipalities to receive claims from falls in public parking lots, municipal facilities, etc.

Ancel Glink

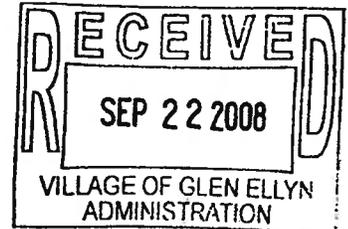
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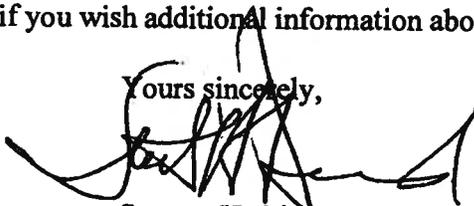
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