

Liability and Complete Streets

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Liability & Immunity

Q. Does enhancement of safety through adoption of a Complete Streets policy and design or infrastructure changes expose a public entity to liability, or is it immune from liability?

A. It depends on whether the changes are made in conformance with the qualified immunity provisions of the governing law.

Q. What is the Most Important Immunity for Complete Streets to be Successfully Implemented?

A. Plan or Design Immunity

What is Plan / Design Immunity?

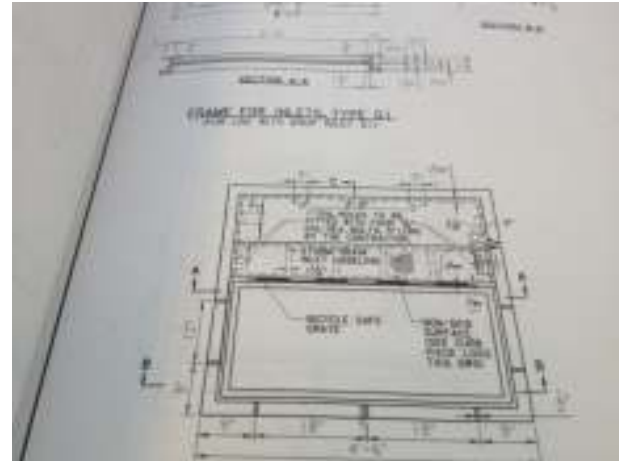
- Most crashes are caused by driver error. Sometimes they are caused by the negligent design, plan or maintenance of a road, street, highway, intersection, shoulder, draining ditch, culvert or signage. Sometimes defective roadway design or maintenance at least contributed to the accident. New York State law and most states' tort claims laws recognize the right to sue the governmental entity that designed or maintained the roadway.

What Standards Apply to Qualify for Immunity?

- Generally, in unsafe design cases, the rule is that the road has to comply only with the design and engineering standards that existing at the time the road was built, not modern roadway design standards. However, there are two very common exceptions to this rule: (1) If the road has a history of accidents, then the government may have to upgrade the design to comport with more modern standards; and (2) If the government undertakes a significant reconstruction project or repair of the road, this can trigger a requirement to upgrade the design to comply with current standards.

Get Your Plan Approved First

- Plan/design or improvement must be approved by an official body
- Plan/design or improvement must be approved by a public employee exercising discretion (e.g., the engineer)

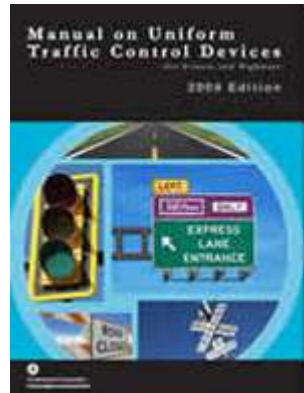


How Does Plan or Design Immunity Attach to Project?

- Plan, design or improvement must be built in conformity with standards previously approved by authorized entity or person.
- The approved feature of the plan must sufficiently address the condition that is the subject of the claim to demonstrate the official's discretionary approval

Examples of Approved Standards

- Institute of Transportation Engineers (ITE)
- Manual on Uniform Traffic Control Devices (MUTCD)

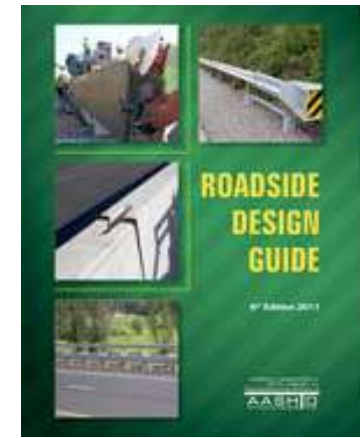


- A Policy on Geometric Design of Highways and Streets (FHWA, The Green Book)
- Older Driver Highway Design Book
- Highway Capacity Manual
- ADAAG Guidelines



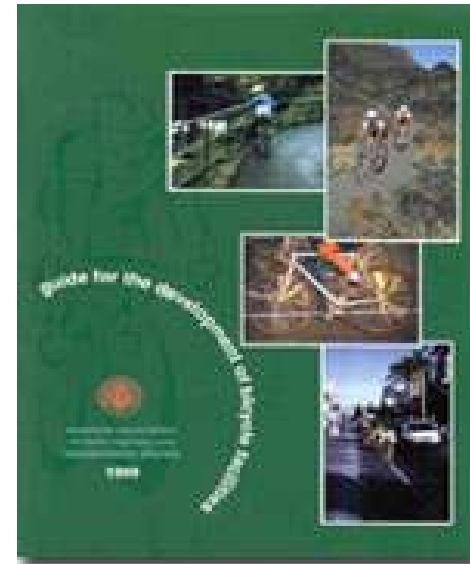
More Examples of Standards

- Guide for the Planning, Design and Operation of Pedestrian Facilities Designing Sidewalks and Trails (FHWA)
- Building a True Community (PROWAAC)
- Accessible Rights of Way: A Design Guide (U.S. Access Board)



Additional Standards

- Guide for the Development of Bicycle Facilities (1999, AASHTO)



- Designing Walkable Urban Thorofares (ITE)

Project Conforms To Previously Approved Design

- A public employee exercising discretionary authority to give such approval of plan or design will be protected from liability.

A public entity will be protected from liability where such plan or design is prepared in conformity with standards previously so approved.

Question from an engineer:

- “If we encourage people to use roads that have little or no shoulder, are we potentially liable in the event of an accident involving a bicyclist riding in the shoulder?”
- Encourage --how? By adopting a policy? Share the road sign? Stripe a bicycle lane into the roadway that is too narrow? Or which has potholes and is not maintained?
- Adopting a policy will not impose liability. Installing a share the road sign will not impose liability. Striping a lane that does not meet AASHTO standards may result in a dangerous condition.



Mode of Travel is Irrelevant to Liability or Immunity

- If the design or plan is not in conformance with approved standards, then liability may attach.
- Conversely, if the design or plan is in conformance with previously approved standards, immunity will attach *regardless* of which mode the traveler was using— walking, bicycling or driving a car.



Accommodating bicycle and pedestrian travel
safely is
not liability-inducing.
Therefore, don't "do nothing."



Maintenance is Important!

- The government that owns the roadway is also required to properly maintain it. Crashes may be caused by careless or improper maintenance of the road, signage or signal devices. Examples are potholes not being timely filled, lines not being timely repainted, signs becoming obstructed by shrubbery or trees, traffic lights that malfunction, and drainage ditches or culverts not being timely cleared of obstructions.

A Few Actual Lawsuits...

- **In 2007...**
- The Illinois DOT was sued for wrongful death of a bicyclist who was killed while riding along the bridge.
- **The Tort Immunity Act requires:**
 - **“intended and permitted” users;**
 - **“reasonably foreseeable to use the property in that manner;”**
 - **“actual or constructive notice of a condition that is not reasonably safe in reasonably adequate time prior to an injury to have taken measures to remedy or protect against such condition.”**



Muhammad and Estate of Smith v. State of Maryland

- In 2008, two pedestrians were struck and killed while walking along a road that had sidewalks, but not in the 200 foot section where the pedestrians were walking.
- In 2011, a jury awarded \$800,000 to the mother of one pedestrian and \$2.5 million to the 2-year old daughter of another.



Turturro v. City of New York, App. Div. 2010

- Bicyclist struck by car on road with speeding traffic, DOT had only qualified immunity where it has entertained and passed on, regarding same question of risk as would the jury; the fact that the BE identified several traffic calming measures which could be used to reduce speeding but no such studies were done, precluded judgment of immunity for DOT.

Chen v. City of Seattle, Ct. of Appeals, Washington (2009)

- Pedestrian struck and killed on crosswalk in last lane of five lane roadway; City had removed pedestrian refuge island and plaintiff's expert cited Zegeer report and showed City had incorporated portions of Zegeer recommendations into its internal guidelines, case triable to the jury.

Polzo v. Essex County, NJ (Supreme Court, 2008)

- Bicyclist hit depression on shoulder of county road, fell and died; County contended it was not aware of depression and therefore plaintiff failed to establish County was on actual or constructive notice. (However, maintenance supervisor testified that County had no regular policy of inspecting roads and only responded to complaints.) Immunity reversed, remanded to lower court to reconsider.

Questions on Liability or Immunity Defenses?



Midblock Crosswalk?



Observed Use Not Very Safe



Midblock Crosswalk?



Michael King



Michael King

Sidewalk Access



Crash Reduction Stats

(Mass DOT 1/20/2012)

Feature	All	Pedestrian
Sidewalks		88%
Shoulders		71%
Medians	40%	
Road Diets	18-49%	
Countdown signals	25%	