

Staff Report

Complaint Alleging Violation of the Americans with Disabilities Act of 1990 (ADA)

July 12, 2011

In 2009 the City of Ames completed projects that included asphalt resurfacing of Summit Avenue and Crescent Street between 13th Street and Ridgewood Avenue. The area has existing sidewalk located in sporadic, discontinuous locations. This project did not include any sidewalk work within the project limits.

Neighborhood resident, Mark Goodale, filed a complaint with the Federal Highway Administration (FHWA) alleging violation of the Americans with Disabilities Act of 1990 (ADA). Mr. Goodale contended that the City should have completed the sidewalk network in conjunction with the project. The Iowa Department of Transportation (IDOT) and the FHWA conducted an investigation of the alleged violations (see attached letter), **and ruled that there was no requirement to install or replace sidewalks** in conjunction with the project. The issues and findings are summarized, below.

Issue #1: Whether the ADA requires neighborhoods having incomplete sidewalk systems to be made continuous when the City does work beyond basic street maintenance.

The investigation found that sidewalks were not a part of the project area. Therefore, there is no requirement to install or replace sidewalks. However, it was also found that the City is required, at a minimum, to add curb ramps at three locations (A, B, and C), as shown on the attached map.

In a meeting with staff, IDOT and FHWA representatives stated that, rather than install ramps at location C, it is *preferred* that a limited amount of sidewalk be constructed along Summit Avenue at the intersection of Ridgewood Avenue (location C-alt), in addition to the ramps. With the addition of the ramps at locations A and B, this additional sidewalk would provide a continuous walkway network from 13th Street to Ames High School.

As a result of these findings, staff visited with the homeowners that are potentially directly affected by the added sidewalk. Only one homeowner was opposed to the new sidewalk. Even though this homeowner's property already has a sidewalk adjacent to a portion of its frontage, the owner did not want the added maintenance responsibility.

The cost to install ramps at the three locations is estimated at \$4800, while the additional cost to add the sidewalk is estimated at \$3000. It is anticipated that staff will obtain private contractor quotes for the work, which may be financed using unobligated Sidewalk Safety Program funds.

Issue #2: Whether the City of Ames has an ADA Coordinator and an ADA grievance procedure.

The City of Ames has had a longstanding ADA Transition Plan which identifies the ADA Coordinator and an ADA grievance procedure. The report **found that the City is in compliance with these requirements. The report also asked that the grievance procedure be finalized and published.** The City Council adopted an update to the ADA Transition Plan on April 12, 2011, and the updated grievance procedure was published on the City website on or about April 15, 2011. This completed the action on this issue as directed in the report.

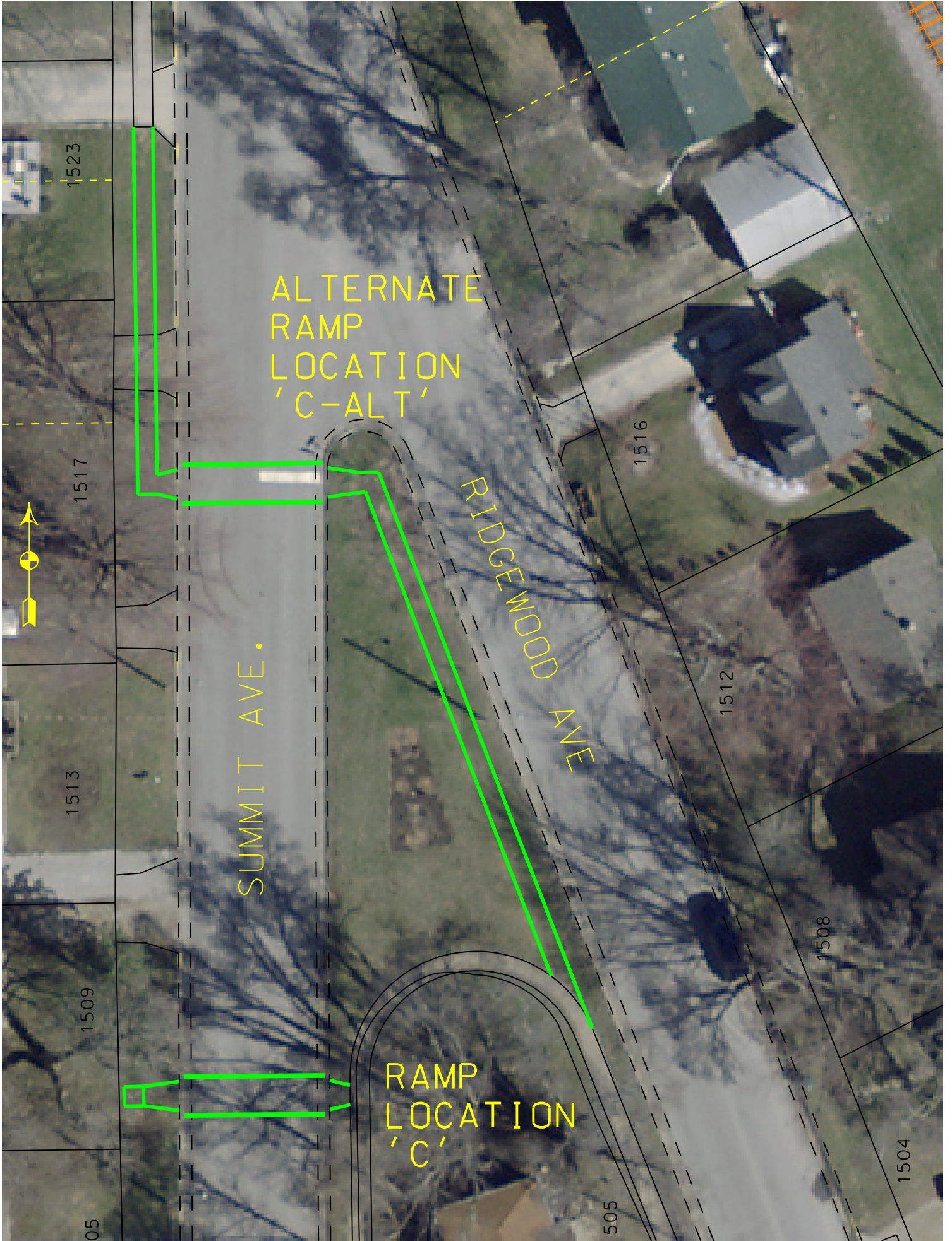
Conclusions

The City of Ames has already met the requirement to have a finalized ADA Transition Plan, which includes publication of the grievance procedure. In order to meet the requirement to install curb ramps, the City Council must decide whether to construct the minimum requirement of ramps in the three identified locations, or to construct the additional limited sidewalk along Summit Avenue at the intersection of Ridgewood Avenue. With direction from the City Council, it may be possible for the improvements to be completed before the start of the 2011/12 school year.

After Council makes this decision, the City Manager must provide a written plan that documents how the City has met or intends to implement the provisions of the report. This plan is to be submitted to FHWA within 90 days of notification, which was sent on May 27, 2011.

Because of our commitment to principles of the ADA, staff would support the installation of the additional six ramps along with the additional section of sidewalk. The City Council will have to decide whether to support this action in the face of the opposition voiced by an impacted property owner. The \$7,800 to finance this work will come from the annual Sidewalk Safety Program budget.



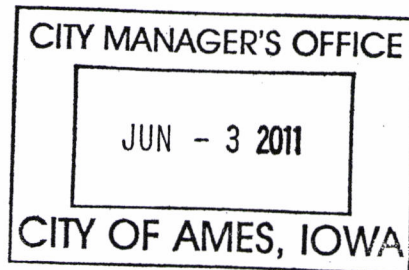




U.S. Department
of Transportation
**Federal Highway
Administration**

1200 New Jersey Avenue, SE.
Washington, DC 20590

MAY 27 2011



In Reply Refer To: HCR-40
DOT# 2011-0053

Mr. Steve Schainker
City Manager
City of Ames
515 Clark Avenue
PO Box 811
Ames, IA 50010

Dear Mr. Schainker:

The Federal Highway Administration (FHWA) is in receipt of the Report of Investigation from the FHWA Division Office in Iowa regarding the complaint filed by Mr. Mark Goodale against the City of Ames alleging violations of the Americans with Disabilities Act of 1990 (ADA).

The issues raised in the complaint are addressed below.

Issue #1

Whether the ADA requires neighborhoods having incomplete sidewalk systems to be made continuous when the City does work beyond basic maintenance.

Findings

- The City of Ames completed projects in the summer of 2009 which included 4 inches of resurfacing in the area cited in the complaint.
- The 4 inch resurfacing on these projects is structural resurfacing and is classified as an alteration and not maintenance.
- The sidewalks are not a part of the project area. Therefore, there is no requirement to install or replace the sidewalks.
- The City is required to put curb ramps in the project area.

ADA Requirements

28 Code of Federal Regulations 35.151(b) Alteration.

Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.



FHWA Questions and Answers About ADA/Section 504 (#20)

The scope of an alteration project is determined by the extent the alteration project directly changes or affects the public right-of-way within the project limits. The public agency must improve the accessibility of only that portion of the public right-to-way changed or affected by the alteration. If the project resurfaces the street, for accessibility purposes the curbs and pavement at the pedestrian crosswalk are in the scope of the project, but the sidewalks are not. Any of the features disturbed by the construction must be replaced so that they are accessible. All remaining access improvements within the public right-to-way shall occur within the schedule provided in the public agency's planning process.

American with Disabilities Act Accessibility Guidelines

Section 4.7 Curb Ramps

Section 4.7.1 Location

Curb ramps complying with 4.7 shall be provided wherever an accessible route crosses a curb.

Section 4.7.7 Detectable Warnings.

A curb ramp shall have a detectable warning complying with 4.29.2. The detectable warning shall extend the full width and depth of the curb ramp.

Section 4.29.2 Detectable Warnings on Walking Surfaces.

Detectable warnings shall consist of raised truncated domes with a diameter of nominal 0.9 in (23 mm), a height of nominal 0.2 in (5 mm) and a center-to-center spacing of nominal 2.35 in (60 mm) and shall contrast visually with adjoining surfaces, either light-on-dark, or dark-on-light.

Conclusion

The City was not required to install or replace sidewalks as part of the project cited in the complaint. However, the City is required to install curb ramps throughout the project area.

Issue #2

Whether the City of Ames has an ADA Coordinator and an ADA grievance procedure.

Finding

- The City of Ames has an ADA Coordinator.
- The City of Ames has completed a draft grievance procedure.

ADA Requirements

§ 35.107 Designation of responsible employee and adoption of grievance procedures.

(a) Designation of responsible employee.

A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.

(b) Complaint procedure. A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

Conclusion

The City of Ames has an ADA Coordinator and a draft ADA grievance procedure.

Decision

The City of Ames is not in compliance with the ADA with respect to its failure to install the required curb ramps in the project area.

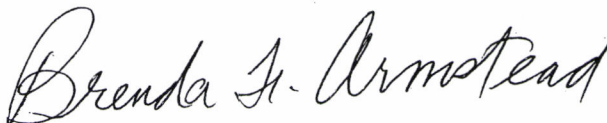
The City of Ames is in compliance with the ADA regarding the requirement to have an ADA Coordinator and an ADA grievance procedure.

Recommendations

1. The City of Ames should take immediate action to install the required curb ramps in the project area.
2. The City of Ames should finalize and publish the ADA grievance procedure.

Within 90 days of being notified of its noncompliance with the ADA, the City of Ames should provide to the FHWA Iowa Division Office documentation showing how the City of Ames plans to implement the above recommendations. The FHWA Iowa Division Office will provide oversight until the above recommendations have been implemented.

Sincerely,

A handwritten signature in black ink that reads "Brenda F. Armstead". The signature is written in a cursive, flowing style.

Brenda F. Armstead
Director, Investigations and Adjudications