



MEMO

To: Mayor and City Council

Cc: Steve Schainker, City Manager
Mark Lambert, City Attorney
John Joiner, Public Works Director
Reg Stewart, Vice President for Diversity and Inclusion
Diane Voss, City Clerk

From: Damion Pregitzer, Traffic Engineer

Date: July 19, 2019

Subject: Update on Inclusion Crosswalk at 5th Street and Douglas

BACKGROUND:

At the June 25, 2019 City Council meeting, Council directed staff to proceed with a project to install an inclusion crosswalk treatment at the 5th Street and Douglas Avenue intersection in Downtown Ames. This memo is to provide updates on the progress of the project and some issues that have arisen that require further direction for staff.

FEDERAL HIGHWAY ADMINISTRATION DETERMINATION OF NON-COMPLIANCE:

Approximately one week after the June 26th Ames Tribune article on the inclusion crosswalk, local Federal Highway Administration (FHWA) staff contacted the City to inform staff that they were reviewing the proposed design for compliance with the Manual on Uniform Traffic Control Devices (MUTCD).

It should be noted that City staff provided language from the current edition of the MUTCD (2009) in the staff report to City Council as to what the standards are for crosswalk markings. However, FHWA staff cited an internal memorandum from 2013 (“*Official Ruling 3(09)-24(I) – Application of Colored Pavement*”) that provided an official ruling from FHWA on use of modern decorative crosswalk treatments. **In an email dated July 16, 2019, the FHWA determined that the proposed inclusion crosswalk design at 5th and Douglas was non-compliant and that if the City installed the treatment, FHWA would issue an official letter of non-compliance.**

In response, City staff met with FHWA staff to discuss potential alternatives to the design that would bring the treatment into compliance. The following is a summary of the questions posed and the response from FHWA (the answers are paraphrased):

Q1: What does a letter of “non-compliance” mean for the City, and would it affect the City’s ability to receive Federal Funds?

FHWA: It could mean increased liability if there was an accident at the 5th and Douglas intersection. In their research, local FHWA staff has not come across any specific consequences towards federal funding restrictions, but that doesn’t mean a case doesn’t exist somewhere in the country. If any cases are found, FHWA will provide that information to the City.

Q2: Would the decorative inclusion treatment be compliant if it was moved out of the crosswalk area and into the center of the intersection?

FHWA: No, any decorative treatment used either in the crosswalks or in the intersection would be viewed as non-compliant. Acceptable treatments would be painted on the sidewalk, overhead banners, etc. Generally, anything that is not applied to the surface of the street would not be acceptable.

Q3: What if the treatment was done in temporary paint that can be applied for an event and then power washed after the fact?

FHWA: That will still be considered non-compliant for the time that the treatment is in place of the intersection is open to traffic. It might be compliant if the street was closed off temporarily to motorists for a pedestrian-only event if it was removed before opening the intersection back up to traffic. A determination from FHWA headquarters office would be needed before we could be certain.

Q4: There are a dozen, if not more, examples in our area and around the country of not just inclusion crosswalks designs, but all manner of decorative crosswalk treatments. Why is this project being held to [what appears to be] a higher standard than other cities?

FHWA: It could be that the respective local FHWA staff is unaware of the treatment or has already issued a letter of non-compliance and the respective

City who has chosen to ignore the FHWA letter, thereby accepting the additional liability. Further discussion with other FHWA field staff would be needed to understand which the most common case is.

Q5: Why doesn't the guidance in the 2013 memorandum show up in any version of the MUTCD available to cities, or another resource that is more readily available?

FHWA: Official Rulings, interpretations, and supplemental guidance will not show in the MUTCD until a new manual goes through committee and is adopted into Federal Law. The current MUTCD version is 2009. It is possible that when a new manual is approved, it will include greater detail on decorative crosswalks and other forms of street art.

UPDATED PROJECT COSTS:

Following the June 25th meeting, staff solicited quotes for the inclusion crosswalk design asking that the project be completed by August 9, 2019. Typically, the City would like to see a minimum of three quotes for any informal competitive bid. **However, because it is the height of the construction season and the project having a relatively short deadline, the City only received one quote from Iowa Plains Signing, Inc. of Slater, Iowa in the amount of \$68,760.00.**

As a reminder, staff initially estimated the cost of the "bars" style design to be \$12,140 (~520 sq. ft. of decorative paint), which included a 15% increase in material costs to act as contingency. That number was developed using an estimate from Todco LLC of Omaha, Nebraska dated July 11, 2019, where \$44,950 was quoted for a 2,200 sq. ft. design (\$20.43/sq. ft.). Todco is a longtime certified installer of Ennis Paint products. Also, Todco did not bid on this project because it could not meet the installation deadline.

It should be noted that it is not uncommon for the City to get a wide range of bid prices for projects let during the summer as compared to the fall or winter. The time of year appears to be the main contributing factor to the excessively high bid prices.

STAFF COMMENTS:

It should be noted that the local FHWA was very sympathetic to the difficult situation this places the City (or any municipality) when wanting to do a project that is positive for the

community that has been found to be non-compliant. However, the local FHWA staff cannot ignore official rulings from their divisional administrators.

Based on the FHWA determination, it appears that the original proposal of doing a decorative crosswalk or any other on-street treatment will be deemed non-compliant by FHWA. **Therefore, given the ruling from FHWA, City staff (as professional engineers) cannot make the recommendation that City Council move forward with the project to install permanent markings on the street. Staff could work with the ISU Diversity and Inclusion staff to develop other alternatives, which could include:**

- 1. Painting sidewalks**
- 2. Purchasing and installing banners or flags at the intersection**
- 3. Temporarily closing the intersection for painting using temporary paint or chalk, then removing the paint or chalk before opening the intersection to traffic**

If City Council wants to move ahead with the on-street option it should: 1) have the City Attorney research the potential liability of proceeding in defiance of the FHWA determination, and 2) decide whether or not to pay the \$68,760 to install the treatment by Pride Fest in September (or delay installation to allow for more bidders and potentially receive lower costs closer to the original estimate).