

# **On-road Bicycle Routes and Illinois' Liability Disincentive**

*Ed Barsotti, League of Illinois Bicyclists (latest revision 10-25-13)*

The sharing of roads by bicyclists and motor vehicles is fully recognized around the nation, in the Uniform and Illinois' Vehicle Codes, and in industry standards from IDOT, AASHTO, and the Federal Highway Administration.

These guidelines provide for “shared roadways” – the majority of the road network; those common, undesignated roads not needing any special treatment or signage. Some *options* listed include paved shoulders (for busy rural roads), bike route signage (on preferred routes), and on-road bike lanes (on some urban roads). In appropriate locations, these options may be used to improve on-road bike safety.

However, some local governments in Illinois have decided not to add these safety features because of a court-induced liability disincentive. *We believe there has been overreaction on this issue, and we ask agencies to take a closer look.*

In the sharply-divided *Boub v. Wayne Township* decision in 1998, the Illinois Supreme Court granted immunity to local governments for injuries suffered by cyclists due to road condition. Further, this immunity vanishes for roads designated with bike-specific features such as signage or bike lane markings. Do nothing, get immunity; add proven safety features like on-road bike lanes or signage, incur liability.

Thus, the disincentive – a problem unique to Illinois, and unchanged since 1998 despite attempts at legislation. But how much liability exposure is there? Are other local governments adding on-road bikeways in this environment? Typical agency decision-making weighs risk management and exposure against policy, safety, and service to residents. Has this issue been receiving a fair assessment?

**Level of Exposure:** Historically, the exposure level has been very minimal, based on experiences in:

- 1) Illinois now: lots of pre-1998 Bike Route signs and even bike lanes exist in many scattered towns around the state; new on-road bikeways have since been installed in several other towns (below);
- 2) On all Illinois roads before the 1998 decision;
- 3) In all other states – where the Uniform Vehicle Code grants cyclists "all of the rights and duties applicable to the driver of a vehicle" – including liability protection.

While still unsettled in case law (which itself shows a lack of lawsuits), it could be interpreted that on-road bikeways would only bring a willful and wanton level of exposure – instead of the negligence standard. (Willful and wanton seems to be a comfortable liability level for agencies, as evidenced by the abundance of *off-road* trails and a wide variety of recreational and other facilities.) This has been suggested by Ed Dutton, the winning attorney for Wayne Township in the *Boub* case, and since then, the top local government expert on this issue. According to Mr. Dutton (2-14-06 e-mail message):

*“I’ve consistently tried to make clear that (a) the standard of care under existing law is unclear where a bicyclist is injured on a marked/signed (i.e., intended for bicycle use) roadway bike lane, route or path, and (b) although the standard of care—negligence or willful and wanton—is unsettled in the case law, under the appellate court’s holding in *Dinelli v. County of Lake*, 691 N.E.2d 394 (2<sup>nd</sup> Dist. 1998) (Held: bicyclist struck by car while in marked crosswalk/bike path on public roadway was required to plead and prove willful and wanton conduct under section 3-106), there is certainly an argument that the applicable standard of care on bike paths and routes on roadways is willful and wanton under the section 3-106 standard. In short, the question is unsettled under current case law but, under *Dinelli*, there is a strong argument that the posting of a public road as intended for bicycle use would bring that marked area within section 3-106 recreational property immunity. No case has so held to my knowledge, and I’m not aware of the issue ever having been addressed.”*

In March 2007, two major insurers of Illinois local government agencies (IPARKS and St. Paul-Travelers) were asked how much insurance premiums would rise for hypothetical additions of: a) 10 miles of off-road bike path; b) 10 miles of on-road bike lanes; and c) 10 miles of signed road routes. Both responded that there would be ZERO increase for each case, assuming that they were consulted to ensure proper engineering design standards were met.

**Other towns:** Several Illinois towns have proceeded since the 1998 decision, despite the disincentive. Chicago is the most notable (104 miles of bike lanes and 155 miles of signed routes in 2005; another 130 miles planned by 2015). Almost all of Chicago's on-road bikeways have been added since *Boub*.

While definitely not an all-inclusive list, the following are some other Illinois cities believed to have installed marked bike lanes and/or signed bike routes since 1998:

- Aurora (signed bike routes)
- Batavia (signed bike routes and bike lanes)
- Berwyn (signed bike routes)
- Belleville (signed bike routes)
- Carbondale (bike lanes)
- Champaign (bike lanes)
- Chicago (numerous bike lanes, Shared Lane Markings, signed routes, etc.)
- Clarendon Hills (signed bike routes)
- Crystal Lake (bike lanes, Dole Ave)
- Darien (bike lanes)
- Dixon (signed bike routes)
- Downers Grove (bike lanes, signed bike routes)
- DuPage County (Clarendon Hills Road bike lanes, and 2008 on-road bikeway policy)
- Edwardsville (bike lanes, New Poag Rd)
- Elgin (bike lanes, Shared Lane Markings)
- Evanston (bike lanes and signed bike routes)
- Geneseo (bike lanes and signed bike routes)
- Geneva (bike lanes and signed bike routes)
- Hoffman Estates (signed bike routes)
- Joliet (signed bike routes)
- Lebanon (signed bike routes)
- Moline (signed bike routes)
- Morrison (signed bike routes)
- Morton (bike lanes on Jefferson Street)
- Naperville (bike lanes and signed bike routes)
- Normal (Shared Lane Markings, signed bike routes)
- Northbrook (Shared Lane Markings)
- Oak Park (signed bike routes)
- O'Fallon (bike lanes)
- Olympia Fields (bike lanes)
- Park Forest (bike lanes)
- Park Ridge (bike lanes and signed bike routes)
- Plainfield (bike lanes on Van Dyke Road)
- River Forest (signed bike routes)
- Rockford (bike routes, Shared Lane Markings)
- Rock Island (bike lanes)
- Roselle (bike lanes and signed bike routes)
- Schaumburg (bike lanes)
- South Holland (bike lanes, Cottage Grove, 170<sup>th</sup>)
- Springfield (bike lanes and Share the Road signs)
- Skokie (bike lanes and signed bike routes)
- Urbana (bike lanes)
- Warrenville (signed bike routes)
- Westmont (signed bike routes)
- Wheeling (bike lanes, Shared Lane Markings)
- Woodridge (signed bike routes)

**A Closer Look:** In other towns, however, it seems that officials have only looked at the “either liability or immunity” perspective. This is too simplistic, not considering the true level of risk exposure. Quantifying exposure based on existing evidence is necessary to making an informed policy decision. Towns do this all the time, in situations where doing nothing would mean no liability. So it should be with on-road bikeways, which create much less exposure than many other public amenities.

For many, unfamiliarity with on-road bikeways plays a role in the decision. Much can be learned from successful examples around the country – and from resources including the AASHTO Guide for the Development of Bicycle Facilities (4<sup>th</sup> edition, 2012). Following the court-accepted AASHTO guidelines is the best way to minimize liability exposure while improving public safety.