



JOHNS, FLAHERTY & COLLINS, SC

Good neighbors. Great lawyers.

January 31, 2022

VIA HAND DELIVERY AND E-MAIL

City of La Crosse
Attn: Legal Department, Stephen Matty
400 La Crosse St.
La Crosse, WI 54601

**RE: Our client: Dylan J. Matiak
Citation/Bill/Fine for snow removal
Board of Public Works Appeal 22-0109
City Invoice: 00024858**

205 5th Avenue S., Suite 600
P.O. Box 1626
La Crosse, WI 54602-1626
Phone: 608-784-5678
Fax: 608-784-0557

501 Empire Street, Suite 102
P.O. Box 50
Holmen, WI 54636-0050
Phone: 608-526-9320
Fax: 608-526-6394

Email:
general@johnsflaherty.com
Web: www.johnsflaherty.com

ATTORNEYS

Robert P. Smyth
Maureen L. Kinney
Terence R. Collins
Brent P. Smith *
Ellen M. Frantz
Steven P. Doyle
Sonja C. Davig
Brian G. Weber
Joseph G. Veenstra **
Brandon J. Prinsen
Anthony R. Gingrasso *
Justin W. Peterson *
David A. Pierce
Katelyn K. Doyle
Emily M. Iverson

James P. Gokey
1949-1998
Michael L. Stoker
1956-2011
Daniel T. Flaherty
1923-2013

RETIRED

Robert D. Johns, Jr.
Gregory S. Bonney
Peder G. Arneson

PARALEGALS

Lisa L. Felt
Jane R. Peterson

* Admitted to the
Minnesota Bar
** Court Commissioner

A Service Corporation

Dear City Attorney Matty:

We have been retained for a fine/bill in the amount of \$640.00 issued to Dylan J. Matiak for the one-time removal of snow at 2902 Robinsdale Avenue in the City of La Crosse. We are writing to contest the claim for a variety of reasons. It is our belief that no matter the name given to the dollar amount being assessed to Mr. Matiak, it is unreasonable, violated his due process rights, was arbitrarily and capriciously imposed, is subject to defenses of estoppel and unconstitutional excessiveness in violation of the 8th Amendment to the United States Constitution and Article 1, Section 6 of the Wisconsin Constitution.

I personally have spoken to a dozen people about this "bill" and not one person had thought it was fair or reasonable. First, Mr. Matiak recently purchased the home and, among other things, was inquiring of the Mayor, Mitch Reynolds, as to the status of his orphaned sidewalk and either removing it or having all sidewalks installed in his neighborhood. The Mayor, quite logically, indicated to Mr. Matiak that it was unlikely he'd be cited for not shoveling since the sidewalk is not really used by the public at large. In reliance on this, Mr. Matiak, did not shovel. I have enclosed those email communications.

Then, when he contested the citation/bill at the Board of Public Works, the Mayor, who is really a witness to the prior communications, was involved in the decision. Absent the Mayor's involvement, there would not have been a quorum, and because the board was short two members, two of the members were bureaucrats (no criticism intended with that fact), but they have no real direct responsibility to constituents. My further understanding from watching the Board of Public Works hearing is that at least one city official who had snow on their sidewalks was not cited while the non-public-official neighbors were. That

is, from any objective standpoint, unfair and supports our contention that something is awry with regard to how properties are chosen to be cited/billed.

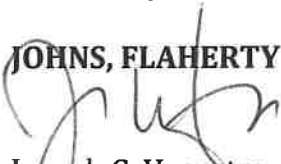
As noted above, we also believe the amount of the bill to be unconstitutionally excessive. *See e.g., Timbs v. Indiana*, 139 S. Ct. 682 (2019) (excessive fines clause of 8th Amendment applies to States via 14th Amendment and applied as to the facts). As you know, if a person does work for a property owner and the property owner is aware of the work, even absent a contract, the laborer could assert a claim against the property owner who enjoyed the fruits of the labor using a quantum meruit theory. *See e.g., Ramsey v. Ellis*, 168 Wis. 2d 779 (1992). The amount in any case would have to be reasonable. Nobody in town charges more than \$100 to shovel or snowblow a basic sidewalk. My own son does it for about \$20.00. I can provide numerous documented examples of what a reasonable charge would be if you wish, but I think you understand that even the \$100 figure would be at the high end of the amount charged. If this is truly a bill, it cannot be unreasonable. If it is a fine or citation, it is required by the U.S. and Wisconsin Constitutions to not be excessive. It is both.

We are asking the reconsider Mr. Matiak's bill and in this circumstance and give Mr. Matiak a warning. He would have shoveled had he not been informed that he was not likely to be cited due to the orphan nature of his walkway. He promised in his letter to do so. He has been working at the surgery hospital department all through this pandemic and frankly deserves a break. Charging a taxpayer \$640.00 for a one-off misunderstanding is really unfair.

Please advise and, of course, call me with any questions. We are operating on the assumption that this need not be paid until this is resolved one way or the other. Thank you.

Yours truly,

JOHNS, FLAHERTY & COLLINS, S.C.


Joseph G. Veenstra
JGV:JV
Enc.

cc: Asst. City Atty. E. Atterbury
Mayor Mitch Reynolds (by email)

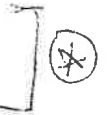
From: "Reynolds, Mitch" <reynoldsm@cityoflacrosse.org>
Date: September 1, 2021 at 3:49:27 PM CDT
To: Dylan M <dillbar14@hotmail.com>
Subject: RE: Fragmented sidewalks

Dylan,

I've checked with the project managers and have some answers.

Sidewalk infill is not part of this project. In the past, those have been budgeted separately and the funding for your sidewalks has not been established for next year. That also means that there will not be ADA ramps because there are no sidewalks for those ramps to go to. Also, curb and gutter isn't part of this project.

Removal of sidewalks is at the discretion of the Board of Public Works. It has been a longstanding policy not to allow. In recent years, the city's Green Complete Streets ordinance was adopted and that ordinance requires a focus on sidewalk infill so I would anticipate it would be highly unlikely a removal would be supported. Very likely, however, that you won't have to pay a snow shoveling ticket.



I passed your broken sidewalk pic on to our engineering department. That's where the Sidewalk and ADA tech is. I will also make sure our forester knows about the boulevard tree.

From a policy standpoint, I support adding sidewalks in neighborhoods like yours, primarily to improve access for all forms of transport. I'm working on it. Often, neighbors who don't have sidewalks also don't want them. Is that the case among your neighbors? Let me know

Mitch Reynolds

Mayor
City of La Crosse
400 La Crosse Street
La Crosse, WI 54601
(608) 789-7500
www.cityoflacrosse.org

From: Reynolds, Mitch
Sent: Wednesday, September 1, 2021 8:27 AM
To: 'Dylan M' <dillbar14@hotmail.com>
Subject: RE: Fragmented sidewalks

Dylan,

Thanks for the information and for sending pictures. Those are incredibly helpful for me. Your maple definitely looks pretty rough.

Streets projects should be undertaken with goals of increasing access and mobility for all users. I will check to see what the project on your street entails, exactly and find out where your sidewalk infill is on the list. I would like to believe it was planned to coincide with street project but we'll see.

I'll try to have an answer for you today.

Mitch Reynolds

Mayor
City of La Crosse
400 La Crosse Street
La Crosse, WI 54601
(608) 789-7500
www.cityoflacrosse.org

From: Dylan M <dillbar14@hotmail.com>
Sent: Wednesday, September 1, 2021 6:38 AM
To: Reynolds, Mitch <reynoldsm@cityoflacrosse.org>
Subject: Re: Fragmented sidewalks

***** CAUTION:** This email originated from an external sender. **DO NOT** click links or open attachments unless you recognize the sender and know the content is safe. ***

Hi Mitch,

I received a letter from the city stating my street is going to be replaced spring 2022.

Could this be a good time to make our neighborhood pedestrian friendly?

Our curbs are not even handicap assessable. Seeing people forced into the street/traffic on a daily basis is not right in my opinion. Something needs to be done.

If your plan does not include making our neighborhood pedestrian friendly, can I have permission to remove my sidewalks? They literally go no where, unless you finish, they are pointless.

I also have cracked cement and a rotten tree on my boulevard. I have attached photos. Please forward to whoever is responsible for correcting these issues. They can be found on the corner of 29th and Robinsdale.

Thank you.
-Dylan M