

Common Council meeting of February 5, 2018, Agenda #42: *Declaring the City of Madison's intention to exercise its police powers establishing the Winnebago and Merry Street Retaining Wall Assessment District - 2018*

Dear Alders,

I own the property abutting the proposed assessment district. This district would consist of one property, mine, for purposes of assessing me for the replacement of a City retaining wall on two sides of my corner property. I was told by Engineering that replacement of the City's wall would likely cost \$20,000-\$30,000 and that I would be assessed 50%, or \$10,000-\$15,000.

Summary of issues

This is basically an issue of fairness.

- Is it fair to replace a retaining wall, and assess the abutting property owner, when City walls in similar condition are not being replaced, especially when the condition of those walls is known to City Engineering (the walls are on a section of street reconstructed in 2017)?
- Is it fair to replace an entire retaining wall, and assess the abutting property owner, when Building Inspection only identified a portion of the wall as a problem?
- Is it fair to assess an abutting property owner for 50% of the cost when the property is a corner property and when sidewalks and curbs for corner properties are assessed at 25% (half the standard rate)?
- Is it fair to assess an abutting property owner \$10,000-\$15,000 for a retaining wall when state law provides (1) that the abutting property owner must be benefited and (2) the assessment must be reasonable?
- Is it fair to create an assessment district at this time when there are plans that may require an ADA compliant curb ramp, which would mean that the City would pay 100% for at least 2/3 of the retaining wall?
- If all the above questions can be answered that yes, it is fair, is it fair to provide an 8-year repayment period? Homeowners receive an 8-year repayment period for assessments that generally are under \$2-3,000. MGO 4.09 provides the Council the authority to set "the number of installments in which the special assessments may be paid" and the Council has approved a 15-year repayment schedule in the past.

Does the City wall surrounding my property need replacement?

The City has a very clear policy listing criteria for when sidewalk squares need replacement. There is not a comparable policy for retaining wall replacement. Such criteria are important when residents are being assessed for a public improvement: it is important that residents be treated equally and that residents know the potential future costs. Criteria for replacement of retaining walls may even be more important than criteria for sidewalk replacement due to the far greater cost -- sidewalk removal and replacement is currently assessed at \$5.00 per square foot, or \$100/square. The retaining walls on Gregory Street, a 2017 street reconstruction, were bid at \$38/square foot (which is a low bid compared to the projected costs for the City wall around my property).

The City wall surrounding 1704 Winnebago does not appear to be in great shape. [See **Attachment A**] However, the Official Notice that I received from Building Inspection only addressed the tilting portion of the wall [see page 2 of Attachment A]. I was also verbally told the tilt was impermissible because a blind person might walk into it and stumble.

“A portion of the wall is currently protruding over the sidewalk in the public right of way. Completed repairs must move the structure back so that it remains completely on your property with no protrusions into the public right of way.”

The non-tilting portion of the City’s wall at 1704 Winnebago is in no worse condition than City retaining walls on Gregory Street.¹ [See **Attachment B**] The wall at 1704 Winnebago and the Gregory Street walls have spalling, cracks, and gaps.

The tilting portion of the City’s wall at 1704 Winnebago is no worse than City retaining walls on Gregory Street. [See **Attachment C**] Retaining walls on Gregory Street protrude over the sidewalk and in some cases the sidewalk was shifted out to accommodate existing retaining walls. The City even approved a new retaining wall that was built in the normal path of the sidewalk, thus requiring shifting of the sidewalk. [See **last page of Attachment C, C-4**]

Should I be assessed for the replacement of the City retaining wall?

1. Walls constructed/replaced due to ADA compliance are not assessed.

Gregory Street retaining walls were not assessed to the abutting homeowners. At the Board of Public Works meeting, City Engineering stated that was because of ADA requirements –the sidewalk needed to be lowered due to the ADA curb ramp, so the replacement retaining wall was not assessable. [See **Attachment D** for an example]

This practice of not assessing homeowners for public improved necessitated by ADA requirements makes sense – residents are not charged for sidewalk replacement needed by an ADA-compliant curb ramp, so they should not be charged for retaining walls.

Currently City Engineering is proposing a diagonal bike crossing at Winnebago/Riverside. The original concept had the project ending at Merry Street. This project has been expanded to include options to widen the sidewalk in front of my home, 1704 Winnebago, by one foot and by two feet. Legistar 50160. (At the November meeting Commissioner Rewey asked to have the north side sidewalk widened because, in reality, bikes will be using that sidewalk until the connection to the rest of Winnebago is solved.)

If the sidewalk is widened an ADA curb ramp will be required (per City Engineering email to me on 1/25/2018). The sidewalk at the corner of Merry and Winnebago would need to be lowered to accommodate the ADA curb ramp. If the sidewalk is lowered, the retaining wall would need to be lowered. This would put me in the same situation as the Gregory Street residents with a new retaining wall: I should not be assessed for a new wall that results from ADA compliance. [See **Attachment E** for details and photos]

¹ Gregory Street is important because the City reconstructed Gregory Street in 2017. Thus, City Engineering spent a great deal of time on that street and was fully aware of the condition of City retaining walls on that street. Yet the City determined those walls did not need replacement, and even constructed a new wall that protrudes into the sidewalk.

2. *It appears that the City paid 100% of a wall in 2017 that was not due to ADA compliance.*

One retaining wall in the Gregory Street reconstruction project, at 520 Sheldon, does not appear to have been constructed in connection with an ADA compliant curb ramp. Though a curb ramp was constructed at the corner, the retaining wall could have just wrapped the corner rather than running the length of the frontage to the driveway: there is not a sidewalk in front of 520 Sheldon and a new retaining wall met with a boulder wall in another location in the reconstruction project. [See [Attachment F](#)]

3. *How am I benefitted by a new retaining wall?*

The resolution refers to the "benefitted properties." I have not been informed how I am being benefitted. A lawyer told me that, unlike sidewalks where assessment can be made even if the abutting homeowner does not benefit, I need to benefit from the public improvement before I can be assessed.

"The assessment district is being established in accordance with MGO 4.09. MGO 4.09(1) provides, in part:

"The construction and reconstruction of sanitary sewers and appurtenances, streets including sidewalks constructed or reconstructed as a part of street improvements and related landscaping and amenities may be charged in whole or in part to the property **benefited** thereby in accordance with the provisions of Wis. Stat. § 66.0701 ..." (emphasis added)

You can only be assessed for the cost (in whole or in part) of the retaining wall if you receive some benefit from that wall. The Wisconsin Supreme Court has said: "The benefits necessary to sustain a special assessment must be substantial, certain and capable of being realized within a reasonable time." How you will benefit has not been addressed.

Many people might equate assessments for retaining walls with assessments for sidewalks. Not true. Under state law, 100% of the cost of sidewalk can be assessed to a resident regardless of whether the resident benefits, and the Council decided more than 25 years ago to assess abutting property owners for 50% of the cost. MGO 10.09(1). The Council also determined more than 25 years ago that residents benefit from curbs/gutters. MGO 10.09(2). The Council has not addressed retaining walls in the same way that sidewalks/curbs/gutters have been addressed. Rather, back in 2014 the Council adopted, via the consent agenda, a street use assessment policy."

If I am assessed for replacement of the City wall, how much should I be assessed?

1. 50% or 25%?

I was told I would be assessed 50% of the cost of the City's retaining wall, in accordance with the City's policy on street assessments. Yet sidewalks and curbs assessments for corner properties are only assessed at 25% of the cost.

The *City of Madison Policy for the Assessment of Street Improvements* was adopted by the Common Council on November 18, 2014 as part of the consent agenda. Relevant sections:

The cost of removing and replacing existing sidewalk associated with a City of Madison initiated project shall be shared 50% by the City and 50% by the adjacent property owners.

The cost of removing and replacing existing retaining walls which were initially constructed by the City and are located on the property side of the public sidewalk and associated with a City of Madison initiated project shall be shared 50% by the City and 50% by the adjacent property owners.

Lots that abut more than one street and are single-family or two-family residential dwellings shall be assessed at a discounted rate for curb & gutter and sidewalk work. The rate shall be 1/2 (one-half) of the rate of a mid-block parcel.

If the City recognizes the basic fairness of charging corner homeowners half the regular rate for sidewalks and curbs/gutters, it is only fair that corner retaining walls be similarly treated.

I was told I could not have such a reduction because the policy does not include corner retaining walls in the 1/2 rate provision. Yet the City already, in the interest of fairness, deviates from the adopted policy: the practice is to not assess homeowners for ADA-related improvements, but the policy does not provide for this.

2. What is a reasonable assessment for retaining walls?

MGO 4.09(3) provides that the resolution being considered by the Council tonight "may limit the proportion of the cost to be assessed." Is it fair to charge homeowners \$10,000 or more for a retaining wall? The Council may wish to consider whether a cap should be placed on the assessment. For example, 50% (25% for corner properties) up to a maximum of \$3,000.

Thank you for this opportunity to present my views on this proposed wall. On a final note, when it comes time to prepare the plans, I look forward to working with City Engineering on finding the least expensive and most durable option that will perform well in a location that experiences high levels of salt and freeze/thaw cycles.

Anne Walker
1704 Winnebago Street

ATTACHMENT A



Merry Street



Corner Merry/Winnebago



Winnebago looking east.

The tilted portion is the far eastern end, beyond the gap (steps) in the wall.



Winnebago looking west



Winnebago looking east. This is the same section of wall as the preceding photo but from the other direction.

ATTACHMENT B

Examples of the condition of City retaining walls on Gregory Street, a street reconstructed in 2017.











ATTACHMENT C



Tilt



Tilt



Sidewalk built around wall



Sidewalk built around wall



Google Maps image taken July 2007



New wall

New wall from prior page looking west



ATTACHMENT D

Example of ADA curb ramp requiring lowering of the sidewalk and a new retaining wall.



ATTACHMENT E

Map of Concept Option B for the Riverside/Winnebago diagonal bike crossing.



<https://madison.legistar.com/View.ashx?M=F&ID=5743799&GUID=04548FFB-5BA7-43A0-847F-6B442FE49E83>

The green X added to the above engineering concept reflects where an ADA curb ramp will be required. ADA requires a running slope of 8.33% or less, which results in a one-inch rise for every 12 inches of run.

<https://www.ada.gov/pcatoolkit/chap6toolkit.htm>

The following photos reflect existing conditions at the location of the green X. The difference between street level and sidewalk level is about 11 inches. The existing terrace is about 30" wide. Add another 24" for the possible widening of the sidewalk, and that would bring the total terrace width to about 54". At most, the ADA curb ramp can rise 5-6", which means the sidewalk will need to be dropped approximately 5-6".



September 2014 Google Maps image of 520 Sheldon:



Retaining wall at 520 Sheldon constructed in 2017:



520 Sheldon, from the Gregory/Sheldon curb ramp.



A new retaining wall, just wrapping the corner, could have met up with the boulder hillside at 520 Sheldon, as was done at this location on Gregory.

