



# AMERICANS WITH DISABILITIES ACT (ADA)

SELF EVALUATIONS AND TRANSITION PLANS

FOR PUBLIC RIGHTS OF WAY

# DELAWARE T<sup>2</sup>/LTAP CENTER

- T<sup>2</sup> Centers or LTAPs located in all 50 states
- Funded by FHWA and state DOTs
- Mission – provide training, technical transfer, technical assistance at local level
- Delaware T<sup>2</sup> hosted by University of Delaware, part of Delaware Center for Transportation
- Delaware T<sup>2</sup> funded by FHWA and DeIDOT



# OUTLINE

- ADA background/origins
- Enforcement
- Why ADA matters
- Civil case summary
- The standards, the specs, the guidelines, the policies
- Self-Evaluations
- Transition Plans
- Action – post Transition Plan
- Case study

# CREDITS

- Lots of photos and illustration in here
- Unless noted otherwise, photos are by Matt Carter, Delaware T<sup>2</sup> Center, or the public domain
- Thanks to those who granted permission for use of their photos and illustrations
- We're not picking on anyone
  - Every jurisdiction has sidewalks that are brilliant and probably some that...fall short
- We learn by looking at examples
  - So lighten up



# ADA ORIGINS

- The Equal Opportunity for Individuals with Disabilities Act
  - Better known as the Americans with Disabilities Act, ADA
  - Signed into law July 26, 1990
  - It is a civil rights act
- Predecessors, Foundations
  - Rehabilitation Act of 1973 – applies to fed funded facilities
    - Frequent reference to Section 504
  - Architectural Barriers Act of 1968 – applies to fed funded facilities
  - Civil Rights Act of 1964

# ADA – WHAT IS IT?

- ADA – the Act/Law

- Five Parts

- Title I: Employment
    - Title II: Public entities and public transportation
    - Title III: Public accommodation and commercial facilities
    - Title IV: Telecommunications
    - Title V: Miscellaneous provisions

Our Focus

- Regulations

- Scattered – particularly relevant examples

- Title II, Subtitle A – 28 CFR Part 35 (DOJ's territory)
    - Title II, Subtitle B – 49 CFR Part 37 (DOT's territory)

E.G.,  
Clubhouses,  
Restaurants,  
Shops

- Standards

- Uniform Federal Accessibility Standards (UFAS) – from ABA (1968)
  - ADA Accessibility Guidelines (ADAAG)
  - (Draft) Public Right of Way Accessibility Guideline (PROWAG) – coming soon?

# SOME “NO-NOS”



No Ramps – the most basic of ADA requirements



# SOME “NO-NOS”



No detectable warnings (raised truncated domes)

Required wherever the PAR crosses a hazardous vehicular way





# SOME “NO-NOS”

## Accessible routes?



Photo: Kelly Mannering

# SOME “NO-NOS”



Ponded water or  
debris at a ramp



# SOME “NO-NOS”

Poor pedestrian management during construction



# ENFORCEMENT – WHO'S IN CHARGE?

- U.S. Department of Justice
  - Settlement negotiations first
  - Federal lawsuits second - \$55,000 civil penalty first offense
- U.S. Department of Transportation and other federal agencies

# ENFORCEMENT – WHO'S IN CHARGE?

- U.S. Access Board
  - 1968 Architectural Barriers Act
  - Section 502 of Rehabilitation Act of 1973 creates Access Board
  - Min Guidelines and Requirements for Accessible Design (1982)
  - 1990 Americans with Disabilities Act
  - ADAAG published 1991
  - Public Rights of Way Accessibility Guidelines
    - Drafted 2002...revised 2005...revised 2011...but not adopted
    - Coming soon?
- Citizens and citizen groups
  - Citizen suits similar to those under the Clean Water Act

# WHY ADA SHOULD MATTER TO YOU

- It's the right thing to do
- It helps everyone, benefits all pedestrians
- Some 12.4% of Delawareans disabled
- Nearly half of those 75+ disabled
- 13% of Delawareans are 65+
- Some disabilities are temporary and can affect anyone briefly – ever broken your leg?
- Desire to encourage visitors to the State, to your Town
- It's the law
- The great equalizer – the civil courts

# NOT JUST WHEELCHAIRS

## Disability Types – Delaware (2012)



- 2.0% reported a Visual Disability
- 3.2% reported a Hearing Disability
- 7.2% reported an Ambulatory Disability
- 4.4% reported a Cognitive Disability
- 2.4% reported a Self-Care Disability
- 5.4% reported an Independent Living Disability

# LANDMARK CIVIL ACTION

- Kinney v. Yerusalim (1993)
  - Established “alteration”
  - City was resurfacing streets but not installing ramps
  - Court established broad definition of “alteration”
  - Court narrowly limited ADA’s “undue burden” language – applies only to existing facilities and the cost of providing accessible ramps is of no issue once an alteration is undertaken





# LANDMARK CIVIL ACTION

- Barden v. Sacramento (2004)
  - Went beyond just curb ramps – removal of barriers, narrow pathways, abrupt level changes, excessive slopes, overhanging obstructions and improvement of crosswalk access
  - 20% of annual Transportation Fund for 30 years allocated to make pedestrian ways accessible
  - Upgrades to ramps as part of alterations would be outside of the 20%

# LANDMARK CIVIL ACTION

- CDR v. Caltrans (2008)
  - Californians for Disability Rights, Inc.
  - Ninth Circuit Court addressed Sovereign Immunity, finding that ADA's language suitably trumps the 11th Amendment to the Constitution
  - CDR also asserted that Caltrans had failed to survey its 2500 miles of sidewalk and therefore could not know what access barriers exist
  - Lack of a Transition Plan constituted a violation of ADA by itself

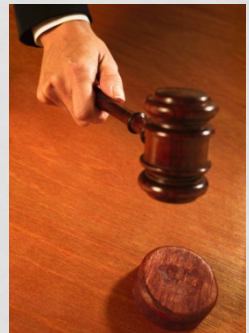


# LANDMARK CIVIL ACTION

- CDR v. Caltrans – Round 2 (2009)
  - \$1.1. Billion over 30 years
  - Install 10,000 curb ramps, retrofit 50,000 existing ramps
  - Reconstruct hundreds of miles sidewalk
  - Modify 15,000 intersection pedestrian crossings
  - Audible signals for the blind
  - Temporary pedestrian routes

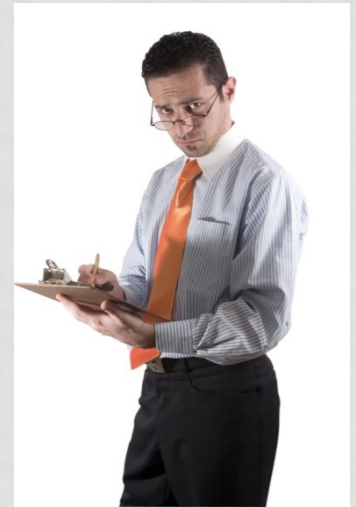
# LOCAL CIVIL ACTION

- Community Legal Aid Society, Inc. (CLASI)v. DeIDOT (2004)
  - DeIDOT agreed to retrofit 100 curb ramps per year – in addition to any ramps installed/upgraded as part of roadway alterations (mill/pave, improvements, etc.)
  - 1,500 non-conforming sites identified
- DOJ v. State of Delaware (2001)
  - Buildings and building sites
    - Dover
    - Wilmington
    - Georgetown



# DOJ PROJECT CIVIC ACCESS

- U.S. DOJ
- Reviews in 50 states, Puerto Rico, Washington, DC
  - 207 settlement agreements with 192 localities
  - Buildings, building sites
  - Public rights of way/sidewalks/ramps
  - Parking
  - Communications, websites, and signage
  - Processes
  - Programs
- Goal is ADA compliance by counties, cities, towns, villages



# DOJ PROJECT CIVIC ACCESS

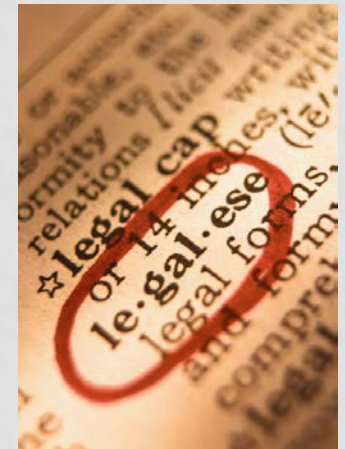
## Other states

- DOJ v. City of Frederick, Maryland (2004) – Pop. 66,382
  - 30 months – fix all curb ramps for roadways altered since January 1992
- DOJ v. Prince George's County, Maryland (2005)
  - 3 years – fix curb ramps for roadways altered since January 1992
- DOJ v. Worcester County, Maryland (2003) – Pop. 51,454
  - 3 years – fix curb ramps for roadways altered since January 1992
  - Specific parking issues
  - Specific pedestrian access route issues



# DOJ PROJECT CIVIC ACCESS

- Other states
  - DOJ v. District of Columbia (2001)
    - Building and building site issues
  - DOJ v. Newark, New Jersey (2006)
    - 3 years – fix curb ramps for roadways altered since January 1992
  - DOJ v. Cape May County, New Jersey (2004)
    - 3 years – fix curb ramps for roadways altered since January 1992
  - DOJ v. Town of Warrenton, Virginia (2011) – Pop. 9,611
    - 3 years – fix the curbs, training, etc.
  - DOJ v. Suffolk, Virginia (2004) – Pop. 84,585
    - 2 years – fix curb ramps at many buildings
  - DOJ v. Craig County, Virginia (2002) – Pop. 5,190
    - 1-3 years – install curb ramps at a host of buildings
- Penalties, fees, external control of priorities



# STANDARDS, SPECS, GUIDELINES

- There are lots
- Too many
  - ADAAG
  - UFAS
- Generally, we look to PROWAG (draft)
  - Public Right of Way Accessibility Guidelines
- Which ones apply to your assets require careful look
  - Details are beyond the scope of today's session
  - Look to two-day Designing Pedestrian Facilities for Accessibility (DPFA) workshop for more



# SELF-EVALUATIONS

- Required – all public agencies - 28 CFR Part 35.105
- Due date: January 26, 1993
- Public agencies shall:
  - Evaluate:
    - Current services, policies, practices
    - Effects thereof that do not or may not meet ADA requirements
  - Proceed to make necessary modifications
    - As determined to be required by self-evaluation
  - Provide opportunity for participation in self-evaluation process
    - Including individuals with disabilities and organizations representing them



# SELF-EVALUATIONS

Public agencies employing  $\geq 50$  employees shall:

- Maintain SE on file and make available for inspection:
  - List of interested persons consulted
  - Description of areas examined and problems identified
  - Description of modifications made
- And, as we shall see, prepare a Transition Plan

# SELF-EVALUATIONS

Public agencies <50 employees?

- Still have to do the self-evaluation
- Should be documented
  - List of interested persons consulted
  - Description of areas examined and problems identified
  - Description of modifications made
- Doesn't have to be a big deal
  - Nothing fancy
  - A couple pages in the file
  - Something that substantiates that you know your barriers and you are working on them

# PUBLIC AGENCY

- You work in the Streets Department
  - There are six of you in the department
  - So, <50 right?
  - No transition plan, right?
- Nice try
- Ask yourself – who signs your paycheck?
- Your public agency is more than likely the town, city, county, etc.
- You have to be pretty small to stay under 50
  - Don't overthink this – a transition plan is good for you

# TRANSITION PLANS

- 50 or more employees?
- Transition plan required - 28 CFR §35.150(d)
- Deadline to complete – July 26, 1992
- Oops is the wrong response to that
  - If not done, you really, really, really should do one now
- Remember CDR v. Caltrans?
- Update periodically
- Less than 50 employees – exempt from ADA? NO

# TRANSITION PLANS

Transition plan contents:

- Physical obstacles that limit accessibility
- Description of methods that will be used to remedy
- Schedule of upgrades in each following year
- Identify the official responsible for implementation
  - i.e., responsible employee (28 CFR PART 35.107)



# OVER 50 EMPLOYEES?

Other things you must do

- Designate an "ADA Coordinator"
  - Responsible Employee – 28 CFR Part § 35.107
- Development & postings of an ADA Policy Statement
  - 49 CFR §27.15 & 28 CFR §35.106
- Development & postings of Grievance Procedures/Complaint Procedures
  - 28 CFR Parts § 35.107 & § 35.170

# ADA COORDINATOR

§ 35.107 Designation of responsible employee...

- Public entity  $\geq 50$  persons shall
  - Designate responsible employee
    - Coordinate efforts to comply with ADA
    - Carry out responsibilities under ADA, including investigation of any complaint
  - Public entity shall make available to all interested individuals
    - Responsible employee name
    - Office address
    - Telephone number



# COMPLAINT PROCEDURE

## § 35.107 ...Complaint procedure

- Public entity  $\geq 50$  persons shall
  - Adopt and publish grievance procedures
  - Provide for prompt and equitable resolution of complaints alleging any action that would be prohibited by ADA

## § 35.170 (et seq.) Compliance procedures

- Specifies who may file, time for filing, where to file
- Receipt/acceptance of complaints
- Investigations and compliance reviews
- Voluntary compliance agreements
- Referral (you do not want this)

# AND IF I DON'T DO THIS?

What happens, who enforces?

- DOJ can visit you
- Transportation complaints are investigated by FHWA or DeIDOT
- Lawyers visit you



# AND IF I DON'T DO THIS?

## Frederick County, Maryland

- Complaint from resident
- MDSHA & FHWA investigates (Frederick is a subrecipient)
- SHA warns
  - Fix the accessibility problems
  - Or risk losing federal and/or state funding
- Self-evaluation - noncompliant with ADA
  - 97% of 2,296 curb ramps
  - 13% of 154 miles sidewalk
- \$10 million estimated price tag

# AND IF I DON'T DO THIS?

## Merced County, California businesses

- Complaint from citizen - at least 170 ADA cases filed
  - Marie's Mexican Kitchen - \$60K settlement sought
    - Parking, steeply sloped entrance, cracked/uneven pavement, no accessible route to restroom
    - \$50,000 in repairs, attorney fees
- Complaint from citizen – at least 375 cases filed
  - Two Shell stations
- Complaint from citizen
  - Bar B-Q Pit - \$75K sought
    - \$31,500 in repairs, attorney fees

# CURB RAMP PRIORITIES

- Generally, curb ramps first
- DOJ curb ramp priorities, descending order
  - Ramps constructed/altered post-ADA (July 26, 1990) but not ADA-compliant
  - Ramps serving state/local government facilities
  - Ramps serving bus stops/other transportation services
  - Ramps serving public accommodations
  - Ramps serving business districts
  - Ramps in residential areas

Source: ADA Best Practices Tool Kit for State and Local Governments

# AFTER SELF-EVAL/TRANSITION PLAN

- Follow the plan
  - Fund it
  - Issue work orders or contracts to make remedies
  - Document your work/progress
- Must show continuous, reasonable, good faith effort
  - Never use the term “can’t afford it”
- If conditions change, change your plan
  - Funding changes
  - Priority changes
  - Community input
- Maintain the facilities

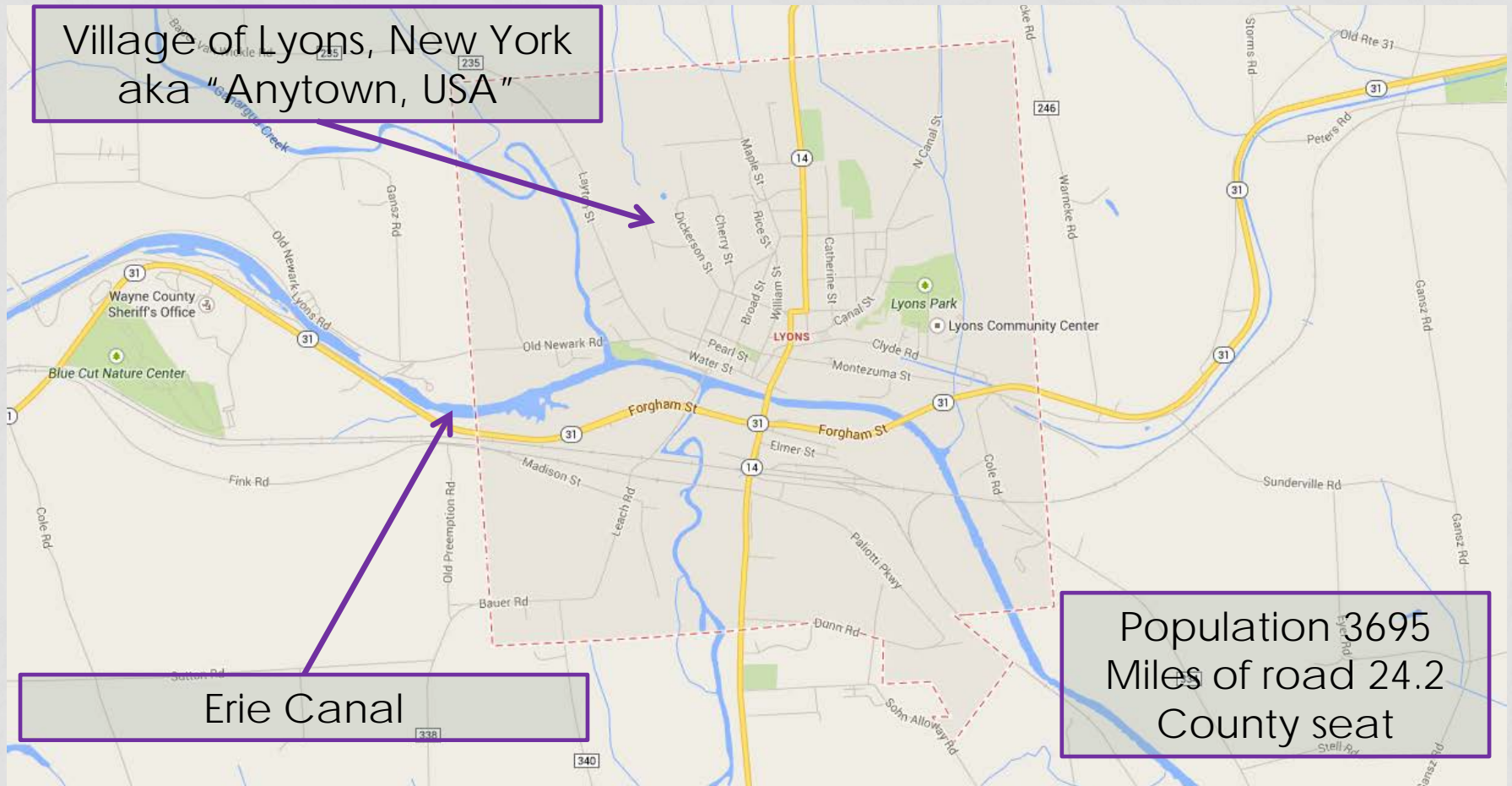
# CASE STUDY



Source: Google Maps

# CASE STUDY

Village of Lyons, New York  
aka "Anytown, USA"



Erie Canal

Population 3695  
Miles of road 24.2  
County seat



# CASE STUDY



Source: Google Earth

# CASE STUDY



Source: Google Earth

# CASE STUDY



Source: Google Earth

# CASE STUDY

- “Whistleblower” files complaint with FHWA and/or NYS DOT
- FHWA requests copy of Village transition plan
- None can be found – exhaustive, protracted search
- Dec 2008 – Mayor submits intersection inventory to FHWA – map coded red, green, yellow
- March 2009 – FHWA advises need for transition plan

# CASE STUDY



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

New York Division  
September 24, 2008

Leo W. O'Brien Federal Building, Suite 719  
Clinton Avenue & North Pearl Street  
Albany, NY 12207

RECEIVED  
SEP 25 2008  
VILLAGE OF  
LYONS

In Reply Refer To:  
HPC-NY

The Honorable Corrine Kleisle  
Mayor of Lyons  
76 William Street  
Lyons, NY 14489

Dear Mayor Kleisle:

I am requesting information as to the status of the village's transition plan to provide pedestrian access for persons with disabilities in compliance with Americans with Disability Act (ADA) Title II. All State and local governmental agencies must provide pedestrian access for persons with disabilities in compliance with ADA Title II, 42 United States Code (U.S.C.) §12131(1). Federal, State, and local governments must provide pedestrian access for persons with disabilities in compliance with Section 504 standards.

The ADA requires any public agency with more than 50 employees to make a transition plan setting forth the steps necessary to make its facilities accessible to persons with disabilities. The transition plan should have been completed by January 26, 1992, and should be based on updates of the self-evaluation conducted to comply with the requirements of Section 504. Changes to the plan shall be made available to the public for comment. The ADA deadline for completing the improvements listed in the transition plans was January 26, 1995. For those State and localities that have not completed their self-evaluation and transition plans, it is critical that they complete this process.

The transition plan must include a schedule for providing access features, including curb ramps for walkways. The schedule should first provide for pedestrian access upgrades to State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas. The transition plan should accomplish the following four tasks:

1. Identify physical obstacles in the public agency's facilities that limit the accessibility of its programs or activities to individuals with disabilities.
2. Describe in detail the methods that will be used to make the facilities accessible.
3. Specify the schedule for taking the steps necessary to upgrade pedestrian access to meet ADA and Section 504 requirements in each year following the transition plan.

MOVING THE  
AMERICAN  
ECONOMY



*refer*

Mayor Kleisle

2

4. Indicate the official responsible for implementation of the plan.

If you have any questions regarding this matter, you may contact Tom Herritt at 518-431-4125 Extension 233.

Sincerely,

Jeffrey W. Kolb, P.E.  
Division Administrator

The transition plan should have been completed by January 26, 1992, and should be based on updates of the self-evaluation conducted to comply with the requirements of Section 504. Changes to the plan shall be made available to the public for comment. The ADA deadline for completing the improvements listed in the transition plans was January 26, 1995. For those State and localities that have not completed their self-evaluation and transition plans, it is critical that they complete this process.

Pleasant enough...but this is  
not a friendly inquiry

# CASE STUDY

- Inventory/map
  - Green — have curb cut
  - Red — do not have curb cut
  - Yellow — no sidewalks and therefore no intersections requiring curb cuts
- Good start, says FHWA, but not a transition plan
- Transition Plan effective date September 10, 2013

# CASE STUDY

## Village of Lyons

76 William Street, Lyons, NY 14489  
Phone: 315-946-4531, Fax 315-946-6206  
Website: www.lyonsny.com  
August 15, 2013

Americans with Disabilities Act Transition Plan:  
Pedestrian Facilities in the Public Right-of-Way



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Let's explore this example  
and see what we can  
learn from it...

# CASE STUDY

...will be performing a project in the Village of Lyons that will retrofit existing sidewalk ramps constructed under a previous Department project with detectable warning fields. Construction will begin in July, 2010 and is expected to be completed December 2010. The Department of Transportation is funding this project. Your municipality will not incur any installation cost.



STATE OF NEW YORK  
DEPARTMENT OF TRANSPORTATION  
REGION FOUR  
1530 JEFFERSON ROAD  
ROCHESTER, NEW YORK 14623-3161  
www.nysdot.gov

ROBERT A. TRAVER, P.E.  
ACTING REGIONAL DIRECTOR

April 26, 2010

Hon. Corrine Kleisle, Mayor  
Village of Lyons  
76 William Street  
Lyons, NY 14489

Dear Hon. Kleisle:

The New York State Department of Transportation will be performing a project in the Village of Lyons that will retrofit existing sidewalk ramps constructed under a previous Department project with *detectable warning fields*. Construction will begin in July, 2010 and is expected to be completed December 2010. The Department of Transportation is funding this project. Your municipality will not incur any installation cost.

Attached is a copy of our specification for ADA *detectable warning fields* on sidewalk ramps. Also included are location maps showing the ramps to be retrofitted. The Department of Justice has required all ramps constructed since 2001 to include, or be retrofitted with, *detectable warning fields*. This contract will address ramps constructed prior to 2001 to provide improved safety for pedestrians with visual impairments.

Please be advised that, upon completion of this project, the Village of Lyons will have continued maintenance jurisdiction of the sidewalk ramps, including the newly installed detectable warnings. To reduce maintenance expense, it is suggested that sidewalk snow plow drivers slightly raise their blades, as they approach these detectable warning fields, to minimize any unintended damages.

If you have any questions about this project or you would like additional information, please contact Jan Harman, Project Designer by email or phone at [jharman@dot.state.ny.us](mailto:jharman@dot.state.ny.us) or at 272-3358.

Sincerely,

Kevin Miller, L.A.  
Senior Landscape Architect

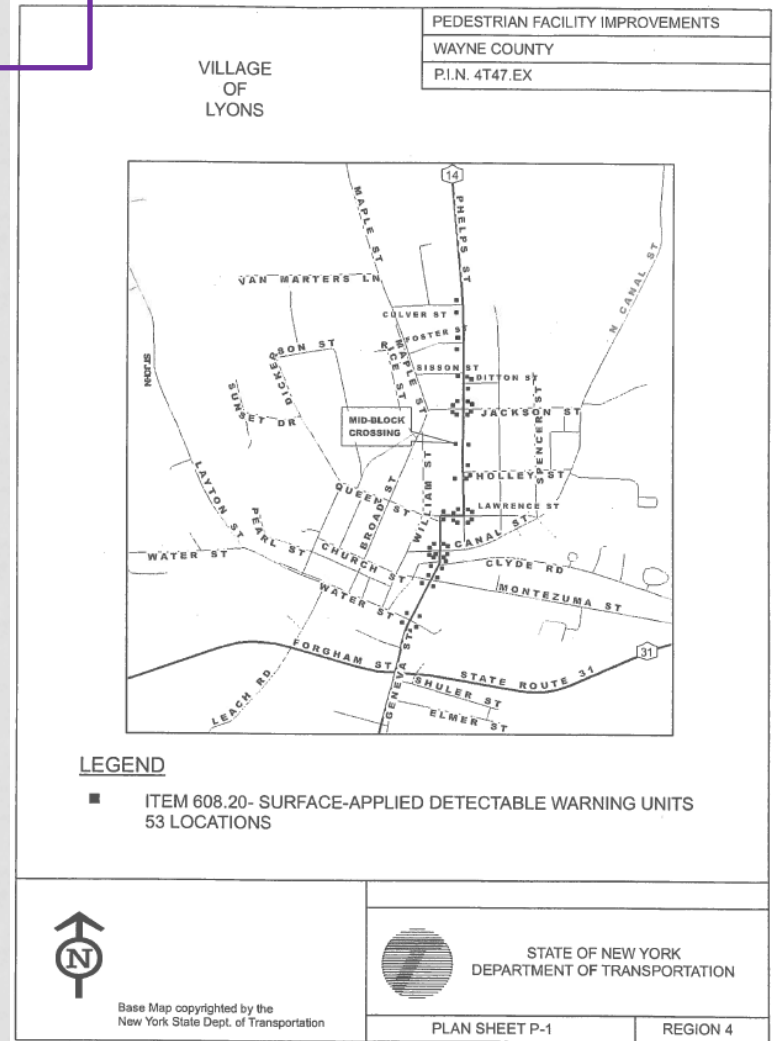
Enclosures

cc: Lori Maher, Region Public Information Officer

RECEIVED  
APR 21 2010  
VILLAGE OF LYONS

STANLEY GEE  
ACTING COMMISSIONER

NYS DOT does their part





# A WORD ABOUT PROGRAM ACCESS

- Referenced in Lyons TP
- Agencies must ensure accessibility to services, programs, activities
- Public buildings, sidewalks, shared used paths, etc.
  - Available to one, available to all
- Need not remove all barriers everywhere – provided facilities are accessible
  - So – if there is a fully accessible pedestrian access route on one side of the street, is it okay if the other side has some barriers, at least for now?
  - As always, that depends...but possibly yes
  - Highest standard of accessibility reserved for new facilities

# A WORD ABOUT PROGRAM ACCESS

- Can provide services, programs activities through alternative methods if physical barriers not removed
  - Relocate to accessible facility
  - Move meeting/information place from 3<sup>rd</sup> floor to 1<sup>st</sup>
  - Provide an aide to assist the individual
  - Provide service at individual's home or alternate location
  - May not physically carry an individual
    - Except "manifestly exceptional" circumstances
  - Not required to take actions that fundamentally alter nature of the service, program, activity or result in undue financial or administrative burdens (decision by agency head only)
    - Be careful with this undue burden defense...and document

# WHAT SHOULD YOU DO?

- Self-evaluation done?
  - No?
  - Start that...tomorrow
- Transition plan required/desirable?
  - Done?
  - No?
  - Tomorrow
- Self-evaluation/transition plan outdated?
  - Update it
  - Assess progress
  - Public involvement

# WHAT SHOULD YOU DO?

- Grievance/complaint procedure
- Designate ADA coordinator
  - Think about who he/she reports to
  - Independence?
  - Authority?
- Public involvement
  - Including/particularly those with disabilities and those representing them
- Educate all staff
  - Policies (internally and externally)
  - Resources and who to call for assistance

# WHAT SHOULD YOU DO?

- Fund improvements
  - Get started on that backlog (back to January 1992)
- When you alter a street, upgrade the curb ramps

<b>MAINTENANCE</b>		
Chip Seals	Fog Seals	Scrub Sealing
Crack Filling and Sealing	Joint Crack Seals	Slurry Seals
Diamond Grinding	Joint repairs	Spot High-Friction Treatments
Dowel Bar Retrofit	Pavement Patching	Surface Sealing

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<b>ALTERATION</b>	
Addition of New Layer of Asphalt	Mill & Fill / Mill & Overlay
Cape Seals	New Construction
Hot In-Place Recycling	Open-graded Surface Course
Microsurfacing / Thin-Lift Overlay	Rehabilitation and Reconstruction

- Follow up on complaints
- Fulfill requests for facilities (curb ramps, sidewalks, ped signals, detectable warnings, etc.)

# WHAT SHOULD YOU DO?

Once you've built it, maintain it!

- Ocean City, Maryland
  - Elderly woman fell from wheelchair
    - Open fracture to left arm
    - Caught chair on "rubber warning mat" (detectable warnings)
    - DW worn at center and edge - not flat/uniform as per ADA
  - \$750,000 lawsuit
    - Negligence, strict liability, violation of ADA
    - Originally filed with MD Treasurer's Office
    - State said no thanks – designated OC as appropriate party
    - Suit alleges City failed to properly maintain

# STUCK GETTING STARTED?

- Delaware T<sup>2</sup>/LTAP Center
  - We're from the government
  - And we really are here to help you
- Let's sit down and come up with a plan
  - Like many, you're probably far behind
  - So, let's get started

"The best time to plant an oak tree was 25 years ago.  
The second best time is today."

- widely quoted, origin unknown

# QUESTIONS

Matheu J. Carter, P.E.  
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Delaware T<sup>2</sup>/LTAP Center  
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