



## Child Riding Bicycle on Residential Street Not “Intended User” and Village Entitled to Immunity

By Matthew Champlin on February 14, 2023  
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### Takeaways

- In Illinois, municipalities owe a duty to maintain their roads for use by intended *and* permitted users.
- Most of the time, bicyclists are considered *permitted* users of municipal roads, but they are often not *intended* users of the roads.
- If a bicyclist is not *both* an intended and a permitted user, he or she is barred from recovering damages incurred as a result of a municipality’s failure to maintain its roads.
- Proponents of changing this will not find help from the courts—they must make their case for change before the Illinois legislature.

### Introduction

As a child of the 80s, I have fond memories of jumping on my BMX bike and riding suburban Chicago streets with my brothers and neighborhood friends. Whether it was a trip to the park, to visit nearby friends and family, or to the mall, I was on my bike day and night. The quiet, tree-lined streets were ideal for our purposes—low speed limits, little car traffic, and a fresh coat of asphalt every few summers.

Nobody ever mentioned that these streets may not have been intended for our use. Sure, there were sidewalks available much of the time, but even the basic bicycle safety lessons taught in school focused on safely operating *on the road*. And this makes sense, because the Illinois Vehicle Code specifically sets forth rights and rules for bicyclists operating on roadways; some municipalities even prohibit bicycling on sidewalks.

Sixth-grader Denis Hodzic—like pre-lawyer me—probably didn’t appreciate that residential neighborhood roads may not be legally “intended” for bike traffic. Denis’s family had recently moved to a neighborhood in Lincolnwood, Illinois, and Denis was riding his bike to explore the area. Unfortunately for Denis, his bicycle hit a large sinkhole (1 foot in diameter and 2 feet deep), causing his bicycle to flip. He broke his wrist and had to have surgery.

Denis’s mother sued Lincolnwood, claiming that the village negligently maintained the street. Lincolnwood moved for summary judgment, however, arguing that a bicyclist was not an intended user of the road. The circuit court agreed and entered summary judgment in favor of Lincolnwood. The Appellate Court First District affirmed. *Babic v. Village of Lincolnwood*, 2022 IL App (1<sup>st</sup>) 210929.

## Distinguishing Between Intended and Permitted Users

Now, you may wonder why being a permitted and intended user of the road matters at all. After all, if Lincolnwood allowed a large sinkhole to remain on one of its streets and that failure caused Denis's reasonably foreseeable injury, shouldn't Lincolnwood be responsible? Well, it's not that simple. In Illinois, "local public entities"—which include municipalities—are immune from lawsuits where the injured person was not an "intended and permitted" user of the property in question.

Section 3-102 of the Local Governmental and Governmental Employees Tort Immunity Act limits a municipality's duty to maintain its property.

[A municipality] has the duty to exercise ordinary care to maintain its property in a reasonably safe condition for the use in the exercise of ordinary care *of people whom the entity **intended and permitted** to use the property in a manner in which at such times as it was reasonably foreseeable that it would be used.* 745 ILCS 10/3-102(a) (emphasis added).

Let's address that last bit first. If you can argue with a straight face that it wasn't reasonably foreseeable that a sixth-grader may ride his bike down a neighborhood street (where there were no sidewalks suitable for riding), kudos to you. I cannot. Indeed, Lincolnwood didn't argue that; nor did Lincolnwood argue that Denis was not a *permitted* user of the street. He was absolutely permitted to be where he was. Lincolnwood instead argued only that Denis was not an *intended* user of the street.

The statute says a duty is owed to "intended **and** permitted" users, and in the 1990s, the Illinois Supreme Court interpreted this language to mean that the use of the property must be *both* intended *and* permitted. *Boub v. Township of Wayne*, 183 Ill. 2d 520, 524 (1998); *see also, Vaughn v. City of West Frankfort*, 166 Ill. 2d 155, 160 (1995). An intended user of property will always be a permitted user, but a permitted user—like Denis—will not always be an intended user. While Denis's mother argued that the duty should be owed to those who are *either* intended *or* permitted users, the court could not depart from this precedent.

Certainly, Denis could have reasonably assumed he was an intended user of the roads in his residential neighborhood. There were no suitable sidewalks on which he could ride his bike, he was not prohibited from riding on the street, and bicycles are accepted as a form of transportation in both Lincolnwood's ordinances and the Illinois Vehicle Code. It certainly seems reasonable to conclude that if a municipality doesn't prohibit bicyclists from using neighborhood streets, doesn't provide sidewalks on those streets, and knows that people living in these neighborhoods ride bicycles, the municipality intends for those bicycles to be ridden on the street.

But since *Boub* was decided, the Illinois legislature has taken no action to change the text of Section 3-102. So, in Denis's case, the appellate court—again, following Illinois Supreme Court precedent—noted that to determine a municipality's intent, "it is necessary to look at pavement markings, signs, and other physical manifestations of the intended use of the property." Bike lanes? Intended user. Signs directing bicycle traffic? Intended user. A nearby Divvy bike rental station? Bicyclists are intended users of nearby streets. [See HeplerBroom attorney Stephanie Weiner's 2022 blog for analysis of previous cases]. Indeed, if Lincolnwood ordinances prohibited riding bicycles on sidewalks, the court may have

concluded that the village intended the roads to be used by bicyclists. But here, Lincolnwood ordinances permitted bicyclists to ride on both sidewalks and streets. In short, absent some physical or affirmative manifestation of intent by the municipality, Illinois courts hold that bicyclists are not intended users of roads.

If a car struck the Lincolnwood sinkhole, Section 3-102 would not require the same result. That's because it is a foregone conclusion that car drivers are permitted and intended users of roads. Proponents of change question why that rationale shouldn't apply equally to bicyclists. After all, both motorists and bicyclists are *permitted* to use the road, and both are required to follow traffic laws on the road, including those communicated through "physical manifestations of intent" like road signs (stop signs, speed limits, etc.). So why must Denis demonstrate that Lincolnwood specifically intended for bicycles to use the road, but the driver of a car does not?

Bikes are a part of American life. Whether it's children riding through neighborhoods, environmentally-conscious commuters, or people riding for exercise or enjoyment, bikes are here to stay. Illinois law permits bicyclists to use roadways, with certain exceptions (e.g., interstates). Bicycle safety advocates argue that where a municipality does not prohibit cycling on its roads, we should assume a municipality intends these roads to be used by bicycles and cars alike. Indeed, it's unlikely that an argument that motorcyclists are not intended users of residential streets (absent some express prohibition) would be as easily endorsed by courts. But how are "affirmative manifestations" of a municipality demonstrated in such a case, save for the fact that, like in the case of bicycles, the municipality allows such use?

## Municipal Immunities and Legislative Acts

Municipal immunities, in furtherance of keeping down governmental costs and liability, often breed harsh results. Under the plain language contained in Section 3-102, bicyclists are not entitled to recover for injuries sustained from negligently maintained roads unless they can show the municipality affirmatively intended for bicyclists to use the road in question.

There are compelling arguments to change this. The continued reliance on the "intended user" defense, at least as it relates to bicyclists, may disincentivize municipalities from maintaining their roadways for the benefits of these reasonably foreseeable users. Modifying the intended user requirement may encourage municipalities to maintain, upgrade, and improve bicycle routes throughout the state. This is a laudable goal—the Illinois Department of Transportation reports that nearly 1 in 5 roadway deaths are cyclists or pedestrians. Proponents of change argue that bicyclists inevitably use our roads, and the text of the Tort Immunity Act should reflect that reality and further a public policy of making roads safer for all reasonably foreseeable users.

On the other hand, doing away with the "intended user" requirement could require additional roadway maintenance in exchange for preventing liability for accidents. There are some roadway conditions which may pose hazards to bicycles that do not pose hazards for motor vehicles. And there is a concern that eliminating this defense may open the floodgates for litigation. But even absent an "intended user" defense, Section 3-102 only requires the maintenance of the road for the benefit of those using it *in the exercise of ordinary care*. Section 3-102 further *requires actual or constructive notice*

of a condition that *is not reasonably safe* prior to the injury occurring. Municipalities could still argue a plaintiff's contributory negligence, lack of notice, or that the condition was open and obvious. Proponents of change would argue that the only thing being eliminated would be a false notion that bicyclists are not intended to use streets absent some affirmative municipal expression to the contrary.

Merits aside, the fight of whether bicyclists should be uniformly considered intended users of roads unless expressly prohibited is not a fight that will be decided by the courts. The legislature determined what is required to impose a duty of roadway maintenance upon a municipality, and the legislature has thus far decided not to alter that determination in light of *Boub*. If proponents of a more bike-friendly Illinois want to effectuate change, this will have to be done at the state house.

## Want to Dive Deeper?

The Appellate Court's decision in *Babic v. Village of Lincolnwood*, 2022 IL App (1<sup>st</sup>) 210929 can be found here. You can read the full text of the Section 3-102 of the Local Governmental and Governmental Employees Tort Immunity Act here.

To learn more about initiatives to make Illinois safer for cyclists, or to review other resources on biking in Illinois, please visit [www.rideillinois.org](http://www.rideillinois.org).

**Tags:** Illinois Appellate Court, Intended Versus Permitted User, Municipal Law