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Coates' Canons Blog: Mowing the Grassy Strip

By David Lawrence

Article: https://canons.sog.unc.edu/mowing-the-grassy-strip/

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A recent discussion among local government attorneys concerned whether a city may adopt an ordinance that requires abutting property owners to mow or otherwise maintain the grassy strip that often lies between a public sidewalk and the curb. The discussion was inconclusive, and because I was a part of it I thought I'd investigate any relevant case law. There wasn't much, but I've concluded that such an ordinance is valid. Actually I couldn't find *any* cases directly involving a grassy strip ordinance. But there are a great many cases involving a comparable sort of ordinance – one that requires the abutter to clear and maintain the sidewalk itself, and especially to clear ice and snow from the sidewalk within a specific number of hours after a storm. This sort of ordinance has been almost universally upheld, beginning long ago with an influential 1835 decision from the Supreme Judicial Court of Massachusetts. In *In re Goddard* (16 Pick. 504) the long-time chief justice of that court, Lemuel Shaw, concluded that an abutter enjoys a special interest in and special benefits from the sidewalk abutting his or her property and therefore Boston was reasonable to impose on the abutter the duty of clearing ice and snow. Abutters, the court noted, are so placed "that they can most promptly and conveniently perform" the obligation. This case has been widely followed and was endorsed by Thomas Cooley, in his treatise on constitutional law, and John Dillon, in his on municipal corporations.

There has been no North Carolina case in which an ice-and-snow ordinance was attacked as invalid, but in *Browder v. City of Winston-Salem* (231 N.C. 400, 1950) the court suggested that adoption and enforcement of such an ordinance would tend to show that the adopting city had taken appropriate steps to fulfill its duty to maintain safe passage on city sidewalks. (In that regard, it should be noted that the courts are also almost unanimous in holding that adoption of such an ordinance *does not* transfer to the abutter the city's liability for injuries arising from icy sidewalks, including the North Carolina supreme court in *Hartsell v. City of Asheville* (164 N.C. 193, 1913). Of course, if an abutter creates a dangerous situation, such as excavating under the sidewalk so that it collapses, that person can be held liable for any injury resulting from the situation.)

Getting back to the grassy strip, it is normally part of the street easement; indeed, a number of courts have specifically held it is part of the sidewalk (e.g., *Labruzza v. Boston Ins. Co.*, 198 So.2d 436 – La. App. 1967). Chief Justice Shaw's rationale in support of Boston's ice and snow ordinance seems to apply as well to an ordinance requiring an abutter to mow and otherwise maintain such a strip – the abutter also has a special interest in and gains benefit from the strip, both in providing access to the abutting property and in promoting the aesthetics of that property. In addition, the clear validity of city ordinances requiring periodic mowing of vacant lots, and the more recent judicial endorsement of ordinances adopted for aesthetic purposes, each provide additional support for grassy-strip ordinances. For all these reasons they seem an appropriate and reasonable exercise of a city's police power.

David Lawrence is retired from the faculty of the School of Government. For questions about the subject of this blog post, please refer to our **list of faculty expertise** to identify the appropriate faculty member to contact.

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