

TOWN OF BROOKFIELD
SELECTMEN'S MEETING
TOWN HALL, SELECTMEN'S OFFICE

MINUTES OF JANUARY 13, 2011

EMERGENCY SESSION

Chairman Rudy Heller called the meeting to order at 1:05 pm. Other members present: James Allen and Peter O'Connell.

Camera Operator: None
Press: None
Public: Herbert Chaffee, Highway Superintendent

Chairman Rudy Heller declared the need for this emergency meeting about 12:10 pm and the meeting was posted with the Town Clerk about 12:15 pm. The purpose of this meeting is to deal with the clearing of sidewalks within the town.

Mr. Heller began the meeting with reading the e-mail from the Town's insurance agent relative to the town's liability if the sidewalks are not cleared. See e-mail chain below:

From: Larry Joseph [mailto:larry@josephins.net]
Sent: Thursday, January 13, 2011 11:21 AM
To: 'Donna Neylon'
Subject: RE: excerpt from last Selectmen's (1/4/11) meeting

Donna, unfortunately, I disagree with the premise that if the equipment doesn't work, there can't be any liability when you fail to clear the sidewalks. My understanding is each town must make reasonable efforts to clear sidewalks from all ice, snow, etc. Failure to make a reasonable effort will expose the town to liability. Choosing not to clear the sidewalks will not in and of itself negate any insurance, but it makes defense of such cases nearly impossible. I do not recommend the town do nothing here. Broken equipment is one thing, but not making an effort is quite another. Please see what you can do to make every attempt to clear whatever sidewalks are within your purview. Thanks – not the answer you want.

Larry Joseph, Principal/Owner
Joseph Insurance Agency, Inc.
71 Angela Way
West Barnstable, MA 02668
Cell: 508-451-7752
Fax: 508-362-1503
Email: larry@josephins.net

From: Donna Neylon [mailto:dneylon@brookfieldma.us]
Sent: Thursday, January 13, 2011 10:55 AM
To: 'Larry Joseph'
Subject: FW: excerpt from last Selectmen's (1/4/11) meeting
Importance: High

Larry,
Further to the e-mail below, I've been asked to find out from you if the Town has liability if they make NO ATTEMPT to plow the sidewalks. Our sidewalk plowing equipment is "dead" and Cindy has been on the phone all morning trying to find one that can be rented, borrowed or purchased and she isn't having any luck. We need your advice! Thanks.
Donna

Donna L. Neylon, Administrative Assistant to the
Board of Selectmen
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From: Donna Neylon [mailto:donnalee@charter.net]
Sent: Friday, January 07, 2011 11:54 AM
To: 'Larry Joseph'
Cc: dneylon@brookfieldma.us
Subject: excerpt from last Selectmen's (1/4/11) meeting

Larry,
I thought I'd send this to you so it would be one less thing for me to follow up on when I get back from vacation!

Old Business:

1. SIDEWALK PLOWING AND SANDING POLICY

The Board deferred any consideration of an ordinance or by-law relative to the responsibility of the Town and/or property owners to clear and sand sidewalks (as authorized by MGL Chapter 26, Section 40U) and of the purchase of a sidewalk sander until Ms. Neylon can inquire of the Town's insurance company whether the Town's current policy of plowing only designated sidewalks and not sanding most sidewalks (except in the case of an ice storm when it must borrow a sidewalk sander) places the Town at greater liability than in the past. Mr. Allen will ask the Highway Superintendent for a list of sidewalks that are not plowed and the reasons for that.

Discussion continued:

Mr. Heller reported that he had suggested to the Highway Superintendent that they attempt to locate some equipment that they could rent that would clear the sidewalks and make them safe. Mr. Chaffee reported that Cindy Thompson had spend the entire morning on the telephone trying to locate equipment that they could rent that would safely and adequately remove the heavy and deep snow from the sidewalks. There was nothing available to rent but they had located one piece of used equipment at Route 146 Supply in Millbury that could be purchased. Mr. Chaffee explained that the plow was a ride-type and not a walk-behind type. The cost was \$10,600; the plow has 26 horsepower and is 47" wide and could be adapted to mow lawns with the additional purchase of a mower deck. It could also tow a sander.

Other telephone calls had resulted in the loan of the rider-sidewalk plow from the Elementary School (as soon as it is repaired later today) and the loan of a walk-behind snow blower from Tantasqua Regional School District. The later cannot be picked up until about 7: 30 am tomorrow. Some of the urgency, other than the liability matter, is that the very heavy snow fall of Wednesday would be "crusting and packing in" and then the Highway would not be able to clear the sidewalks. Because of newly established liability laws, all sidewalks must be cleared within a reasonable time of a storm.

The current sidewalk snow clearing equipment, the Bombardier, will clear the sidewalks but because of the design of the plow and the depth of the snow (close to two feet) the snow will fall back in afterwards.

Highway Superintendent Chaffee explained that he was reluctant to purchase any equipment that would not have other purposes. He also said that he had sent an employee up to the elementary school to pick up their snow blower and, using two employees, it would follow behind the Bombardier to clear the sidewalks. He expected this to take most of two days and would resolve the emergency. The Highway will use their own fuel and conduct any repairs that may be needed to the school's equipment.

In the discussion, it was learned that the purchase of a snow blower and cab for the tractor that the Cemetery owns would be too expensive and the machine is too wide for the sidewalks.

Mr. Allen said that he had spoken with the insurance agent earlier this morning and was now convinced of the need to create and present a new by-law to the voters regarding sidewalk safety liability.

Mr. O'Connell said that the Town is more liable than it was three months ago and that if someone would sue they would likely win so it is important that the sidewalks be taken care of. He then recommended the purchase of the sander as that purchase, combined with the use of the Bombardier and the school's equipment gives the Town a good defense if sued.

Sanding without a tow sander is done manually from the back of a truck. This method uses more sand than an automatic sander, is labor intensive, and requires more clean up time in the spring.

Mr. Allen felt the purchase of the sander was unnecessary at this time.

Mr. O'Connell felt that if the Town invested in snow blower equipment and the by-law passed, there would then be little use for the equipment. All agreed that the plowing emergency was being solved with the use of the Bombardier and the school's equipment and that the situation did not warrant an emergency purchase of a plow.

Mr. O'Connell moved to authorize the purchase of the Epoke Sander from American Truck at a cost not to exceed \$3,500.00, to be purchased from the Snow and Ice Account with the understanding that any unexpended overage in the Highway Department Accounts equivalent to that amount will be applied to the Snow and Ice Account at the end of the budget year; Mr. Heller seconded; so voted with Mr. O'Connell voting aye; Mr. Heller voting aye; and Mr. Allen voting nay.

Mr. Chaffee was thanked for coming before the Board and, as there was no further business, Mr. O'Connell moved to adjourn at about 2:00 pm; Mr. Allen seconded; so voted.

Respectfully submitted,

Donna L. Neylon, Administrative Assistant

Date approved by Board: _____