

ASK THE LEAGUE, DECEMBER 2016

What roads are towns required to plow in the winter?

A town must keep its class 1 highways “in good and sufficient repair during all seasons of the year.” 19 V.S.A. §§ 310(a), 302(a)(3)(B). Accordingly, class 1 highways must be plowed and maintained through the winter. On the other hand, a town is only required to maintain its class 4 highways “to the extent required by the necessity of the town [or] the public good and the convenience of the inhabitants of the town.” 19 V.S.A. § 310(b). As such, a selectboard may decide which, if any, of the town’s class 4 roads will be plowed in winter. The Municipal Assistance Center recommends the adoption of a class 4 road policy that lists which, if any, class 4 roads will be plowed in the winter. A Model Class 4 Road Policy is available in the VLCT online Resource Library at <http://www.vlct.org/assets/Resource/Models/Model-Class-4-Highway-and-Trail-Policy-2015.pdf>.

When it comes to the town’s class 2 and class 3 highways, the selectboard has some discretion over whether to provide winter maintenance. However, the exercise of this discretion must be based upon “safety considerations for the traveling public and municipal employees.” 19 V.S.A. §§ 302, 310.

If the class 2 or class 3 town highway was not routinely plowed before July 1, 2000, the selectboard may decide not to provide winter plowing within the context of any duly-warned selectboard meeting and without particular notice to property owners. 19 V.S.A. § 310. On the other hand, if the highway is one that was routinely plowed prior to July 1, 2000, the selectboard’s decision may be made only after following the process described in 19 V.S.A. §§ 302, 310. That process starts when the selectboard schedules a time and date for a hearing and a site visit. At least 30 days in advance of the hearing, notice must be given by certified mail to “persons owning or interested in lands” through which the highway passes or abuts. This includes all those who own, lease, or hold a mortgage on land that is adjacent to or accessed by the highway, among others. 19 V.S.A. § 701(6). At least 10 days before the hearing, the selectboard must give notice to the town planning commission, post a copy of the notice in the town clerk’s office, and cause a notice to be published in a local newspaper of general circulation in the area. 19 V.S.A. § 709.

The open meeting law requires that both the hearing and site visit be open to the public. 1 V.S.A. §§ 310 et seq. However, evidence and argument about the highway may only be offered during the hearing and should not be allowed during the site visit. Evidence and argument should be limited to the “safety considerations for the traveling public and municipal employees,” since those considerations are the only permissible basis for the selectboard’s decision. 19 V.S.A. §§ 302, 310.

Because of the statutory requirements for notice and a hearing, we view this process as a “quasi-judicial proceeding” under the open meeting law. A “quasi-judicial proceeding” is defined as “a case in which the legal rights of one or more persons who are granted party status are adjudicated, which is conducted in such a way that all parties have opportunity to present evidence and to cross-examine witnesses presented by other parties, which results in a written decision, and the result of which is appealable by a party to a higher authority.” 1 V.S.A. § 310(5). Because this is a quasi-judicial proceeding, the selectboard is permitted to use a private deliberative session to come to a decision. 1 V.S.A. § 312(e). Such a deliberative session may take place after the site visit and hearing are concluded.

Minutes of the hearing must be kept and must include at least the following: a list of the selectboard members present and all other active participants in the hearing; all motions, proposals, and resolutions made, offered, and considered, and what disposition is made of them; and the results of any votes, if those votes are taken in public. 1 V.S.A. § 312(b)(2).

Because this type of hearing fits within the definition of a “quasi-judicial proceeding,” a separate written decision must be produced in addition to the minutes. This decision should be mailed to the parties that were given notice of the hearing as well as to any additional parties that participate in the hearing. State law allows that a property owner who is not happy with the decision may appeal to the State Transportation Board. 19 V.S.A. §§ 302(a)(3)(B), 310(a).

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