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METHUEN

The Boston Globe

Disabled take city to task

Two men point to sidewalk barriers

By Caroline Louise Cole, Globe Correspondent | April 14, 2005

A paraplegic since he was injured in a porch collapse 25 years ago, Robert Brearley cuts a familiar figure around Methuen as he zips along from place to place on a fire-engine-red electric motor scooter.

"With a full charge I can do 20 miles, which is more than enough to get me from home to Methuen Square and back again," said Brearley, who is proud that he still lives on his own. "I go up to the square two or three times a week for banking and when I need groceries, I head to the Loop."

But often, Brearley said, he must drive his scooter in the roadway, risking the chance of another injury, because of poor sidewalk maintenance. So Brearley has filed suit in US District Court in Boston in an effort to force city officials to remove the barriers that force him into the street.

The suit, which Brearley filed in partnership with Richard Smith, alleges the city is ignoring its responsibilities to provide reasonable access under the terms of the 1990 Americans With Disabilities Act. Smith must use a wheelchair due to muscular dystrophy.

While city officials acknowledge that not every sidewalk is currently accessible to those who use wheelchairs, they contend Methuen is in compliance with the terms of the federal disabilities law because the city has a schedule in place to upgrade the sidewalks.

"Under the ADA the city is required to have a program in place to make its facilities handicapped-accessible when we work on them," said interim city attorney Peter McQuillan. "We have that plan and we are making modifications on schedule. For instance, the Nevins Library was just renovated and is now entirely handicapped-accessible with the appropriate ramps and an elevator."

McQuillan added he is annoyed that Brearley and Smith didn't allow the city more of an opportunity to fix the sidewalks before filing a lawsuit.

"They could have been more diplomatic," McQuillan said. "The lack of communication has shocked everyone from the mayor on down."

City Councilor Kenneth Willette, who chairs the city's eight-member Disability Commission, said the lawsuit was also his first notice that someone thought the city's sidewalks were substandard.

"I've been working aggressively to make sure our city facilities, including Ranger Stadium and Forest Lake, more than meet the ADA requirements, so this was news to me," Willette said. "We would love to have these gentlemen attend our meetings. In fact, we just recently decided to move the meeting time from Friday mornings to the first Thursday night of the month because we didn't think enough members of the public were coming to our meetings."

But North Andover attorney Nicholas Guerrero, who is representing Brearley and Smith in the legal action, said he did attempt to have a conversation with McQuillan's predecessor in January but a letter to the city's Legal Department went unanswered.

"As far as the sidewalk work the city has done, we can point to recent upgrades of the sidewalks on Oakland [Avenue] which are not in compliance," Guerrero said. "We're not saying the city isn't doing the job but rather that they need to do a better job than they have been doing. The law says that the curb cuts have to be realigned to allow wheelchair access anytime the city works on a street other than filling a pothole. The law's been in place for

10 years and certainly many of the streets that my clients use on a regular basis have been repaved in that time."

Brearley said lack of ramped sections that allow him to roll up and down sidewalks in his scooter is just one problem.

"Often it's debris or sand that makes passage on wheels impossible so I have no choice but to go out into the street," Brearley said.

"I'm not in this for the money," Brearley said. "I just want the city to do what they need to do so I can get around more easily. Until you have been in a wheelchair, you cannot imagine how frustrating it is to drive up onto a sidewalk where there is a ramp and get to the other end and not be able to get off because they forgot the ramp."

Guerrera said he was driving on East Street in his 2001 Volvo S80 last fall when he had a near run-in with Brearley, who was on his scooter in the street heading toward Methuen Square.

"I nearly hit him because I didn't see him right off and since I was familiar with the ADA requirements, I pulled over and asked him why he was in the street," Guerrera said.

Guerrera said he suspected he already knew the answer, because Methuen is not alone in having problems with the upkeep of its sidewalks. Lawrence, he said, recently came to a settlement with another of his clients and has agreed to a range of modifications from making its sidewalks more accessible to the handicapped to providing city documents in a format which is accessible to the blind and deaf.

Brearley said that if the city is willing to make the modifications he and Smith seek without the force of a judicial order, that is fine with him, though he said he doesn't want the city to stop just at sidewalk maintenance.

"I'd also like to see them make the necessary improvements to the city's parks and other recreational facilities so that I can go fishing or even swimming," Brearley said. "What I really hope this lawsuit does is encourage the city to go after some federal grants to do this work, which is what other cities have done."

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