

M A N I T O B A) Order No. 145/01
)
THE PUBLIC UTILITIES BOARD ACT) September 20, 2001

BEFORE: G. D. Forrest, Chairman
S. Proven, Member

**THE RURAL MUNICIPALITY OF WEST ST. PAUL
LOCAL IMPROVEMENT DISTRICT NO. 4 (RIVERGATE)
SEWER RATES
BY-LAW NO. 1/2001**

On May 30, 2001, the Rural Municipality of West St. Paul (the "Municipality") made application to The Public Utilities Board ("Board") for approval of revised sewer rates for Local Improvement District No. 4 (Rivergate) as set out in By-law No. 1/2001 certified as to having been read the first time on February 22, 2001 - Exhibit 3 (the "Application").

Pursuant to the instructions of the Board, the Municipality did mail and post a copy of the Public Notice of public hearing. Proof of same was filed by the Municipality by way of an affidavit filed by Mr. M. E. Didyk dated September 4, 2001 - Exhibit 5.

A public hearing of the Application was held on September 5, 2001 in the Council Chambers of the Rural Municipality of West St. Paul.

The following persons were in attendance:

1. Rural Municipality of West St. Paul represented by:

Mr. David Oster, Reeve
Mr. Don Shaw, Councillor
Mr. Joe Ferenc, Councillor
Mr. Clifford Dearman, Councillor
Mr. Gord Kraemer, Councillor
Mr. M. E. Didyk, Chief Administrative Officer

2. Rivergate Properties Inc. represented by:

Mr. Brad Minuk, Counsel with Cassidy Ramsay
Mr. W. Arndt, President, Rivergate Properties Inc.
Mr. Ron Schulz, Vice-President, Rivergate Properties Inc.

3. Mr. Reg Pfeifer
Ms. Hilda Pfeifer
Mr. Paul Venton
Mr. Reg Ripley
Ms. Elsie Ripley
Mr. Roland Pokorny
Mr. Chris King

In a letter dated July 19, 2001, the Municipality responded to a list of pre-asked questions by the Board - Exhibit 7.

The following historical information was obtained from Board Order No. 110/99 dated June 15, 1999 wherein the Board, following its last review of the rates charged by the Municipality for Local Improvement District No. 4 (Rivergate), approved the existing rates:

In 1992 the Municipality and Rivergate Properties Inc. entered into a development agreement to establish a 44 residential lot sub-division to be known as Rivergate. The Waste Water Treatment Plant was oversized by approximately 41% for future growth for the use of Rivergate Properties Inc. The Waste Water Treatment Plant commenced operation in September 1995 and was transferred to the Municipality in December 1999.

All lot owners in Rivergate pay \$400.00 per year for the operating costs of the utility.

The following is the information provided by the Municipality at the hearing or in correspondence:

1. The utility incurred a revenue deficit in 2000 in the amount of \$4,268.52 which, with the Board's approval, was recovered from the utility reserve fund.

2. The Municipality determined that the rates should be reviewed and prepared a rate study dated April 2001 - Exhibit 2. After a thorough review of its operating costs, it was determined that without a rate increase a revenue shortfall of \$1,502.00 would result for 2001.

3. On the basis that the Waste Water Treatment Plant was oversized for Rivergate Properties Inc., the Municipality proposed to recover the shortfall from Rivergate Properties Inc. only, by way of a separate charge. The Municipality determined Rivergate Properties Inc. should pay this portion of the overall operating costs of the plant and also, all direct costs related to oversizing. The only direct costs related to oversizing identified by the Municipality was electricity costs in the amount of \$164.00. The Municipality believes that the proposed separate charge on Rivergate Properties Inc. was appropriate to reflect the full benefit Rivergate Properties Inc. obtains from operation of the plant. The estimate of this benefit was based on a verbal report from Dalco Wastewater Specialists Inc. (Dalco). In a letter from Dalco to Mr. M. E. Didyk dated March 1, 2001, Dalco identified the electrical cost.

In the letter to the Board dated May 30, 2001, the Municipality advised as follows:

"In providing maintenance to the plant so that the developer is able to utilize the oversizing capacity of the plant for future use, Council has suggested 15% of the applicable cost be applied to the developer.

15% of labour and General Maintenance = \$1,338.00 plus Hydro extra costs of \$164.00 as per Dalco letter = \$1502.00"

This decision is reflected in Resolution of Council #167/01.

4. The following table reflects actual expenditures of the utility for 2000 and a forecast for 2001.

Expenditures	2000	2001	% Change
Manitoba Hydro	\$ 2,638	\$ 2,900	10
Labour	8,269	6,130	(35)
Mileage	355	360	1
General Maintenance & Materials (Lift Station)	2,122	2,790	31
Lab Fees - Lift Station	1,577	1,600	1
Pump-outs (Life Station)	1,254	1,400	12
Flushing lines	2,281	-	(100)
Administration Fees	400	400	0
Capital Purchases	347	800	130
Interest Charges	80	122	53
Transfer to Reserve	3,000	3,500	17
Total Costs	\$22,323	\$20,002	(10)

5. With respect to labour costs the Municipality provided diary sheets of the utility staff for 2000 and actuals for 2001 to June 25, 2001. The Municipality indicated that the hourly rate charged is consistent with the union contract and that it does not include employee benefits. The reduction

in labour costs for 2001 in the amount of 35% reflects an extensive review of labour costs conducted by the Municipality.

General Maintenance and Materials costs increased by 31% with the largest component being bio-jet supplies, insurance, bulbs, filters and diaphragms.

While \$2281 was spent in 2000 for flushing of lines, no amount was included in the 2001 budget. The utility continues to experience problems with sewage flows.

The administration fee is a flat charge of \$400 per year and reflects the time spent by office staff on administration for the utility.

The Municipality advised that while approximately 40% of the capacity is reserved for Rivergate Properties Inc., only 15% of the operating costs totalling \$1,338 was proposed to be recovered from Rivergate.

6. The reserve fund for the utility as July 1, 2001 was approximately \$9,884.00. The utility has no cash surplus.

The following is the information provided by Rivergate Properties Inc. as set out in a letter to the Board dated September 5, 2001 and read at the hearing:

1. Rivergate Properties Inc. met with a representative of Dalco Wastewater Specialists Inc. who confirmed that they had not done any calculations to support the estimate associated with the oversizing which was verbally provided to the Municipality. Further, Dalco confirmed that the oversizing provides operating efficiencies to the plant during peak periods of operation or "surge" periods.

2. Dalco also confirmed that the plant requires one half hour of maintenance per day (Monday to Friday) which mainly consists of simple checks and record keeping and once per week for chamber wall scrubbing, ultra violet (UV) bulb cleaning, and for conducting a settling test.

Based on Rivergate Properties Inc.'s discussion with Dalco, the following amount of labour time actually spent at various other plants was provided:

	<u>Operation Time</u>	<u>Capacity USGPD</u>
i) Rivergate Plant	2 - 3 hours per day	22,500
ii) Middlechurch Home Plant	1/2 hour per day	40,000
iii) Larter's Golf Course and St. Andrews School	1 - 2 hours per week	10,000

Labour costs are the highest cost component for the Rivergate utility.

3. The infiltration problems faced by the Municipality are related to the drainage of private pools in the subdivision.
4. Rivergate Properties Inc. sought an engineering opinion from Manengco Engineering and provided a letter dated September 5, 2001 wherein Manengco indicated that the following maintenance schedule was required for Rivergate:

Plant check-up, testing and recording	1 hour per day
Wall scrubbing	1 hour per week
UV Bulb cleaning	1 hour per week

Further, Monengco indicated that a sewage treatment plant which is operating at less than its design capacity should not require any more maintenance than a plant operating at full capacity.

5. Rivergate Properties Inc. confirmed that they have no difficulty paying their pro rata fair share of operating costs as stipulated by the Board in Order No. 50/96.

Other presenters questioned the level of the utility's reserve fund and the management of the utility.

Mr. Minuk on behalf of Rivergate Properties Inc. made the following submission:

1. With respect to the proposed \$1,502.00 levy on Rivergate Properties Inc., there is no support for the argument that the Municipality is incurring extra costs related to the oversizing of the plant. The Municipality relied on a verbal estimate from Dalco with no supporting evidence. Rivergate Properties Inc. provided an engineering opinion that contradicts that view. The allocation of 15% of operating costs is arbitrary.
2. There is a current court proceeding related to the utility which is bringing into question the entitlement or usefulness of the oversizing to Rivergate.
3. The assessment of a special levy related to ongoing operating costs of the utility is discriminatory and in fact, inconsistent with the Board's decision of Order No. 50/96 dated April 3, 1996 wherein the Board stated that it accepts the principle that all properties pay the utility charges regardless of occupancy. The Municipality's authority to assess such a levy under The Municipal Act was also questioned.

Board Finding

The Board reviewed carefully the positions of the parties and will not approve the Application of the Municipality for a separate charge on Rivergate Properties Inc. Except for a

small amount of electricity costs, the Municipality did not demonstrate a relationship between the oversizing of the plant and the cost of operating it. In fact, the information suggests there is no further relationship. The Board noted that there are issues in court related to the sewage treatment plant over capacity and if such costs can be demonstrated through further evidence, no application should be brought forward until this matter is resolved through the courts.

The Board noted that the proposed charge was based on an arbitrary assignment of costs because of a perceived benefit to Rivergate simply because the plant is operating. In the Board's opinion, all costs need to be confirmed costs based on an engineering assessment and not on a perception of benefit.

With respect to the operation of the utility, the Board noted there remains some operational difficulties even after an exhaustive investigation by the Municipality. The Board notes further work is to be done in this area. While the Board notes that the reserve fund provision of \$3,500 per year forms approximately 17% of the total operating costs, it will not make any change to this provision at least until there is clearly no demonstrated need for the continuous building of the reserve fund.

The Board noted that the Municipality does not fully allocate all costs to the utility, for example, the fringe benefits, vacation allowance, etc. with respect to labour costs and also, administrative costs. Notwithstanding this may understate labour costs, the Board determined that the

Municipality should conduct a further review of labour costs and file a report with the Board by no later than November 15, 2001. The Board will not make any adjustments for labour costs at this time.

The Board noted that the time sheets appear to confirm that more time is being spent at the Rivergate plant when compared to other plants in the area. This will require further explanation in the report.

The Board noted that the 2001 budgeted expenditures are 10% less than the actual expenditures in 2000 which is largely attributable to a saving related to sewer line flushing. In absence of approval of the separate charge, a \$1,502.00 shortfall is forecasted for 2001. As utility rates should be designed to breakeven, the Board will allow this to be recovered in the same manner as all other costs of the utility. This will equate to \$34.14 increase per lot per year. In the Board's opinion the small amount of the electrical cost related to oversizing should be rolled into this charge at this time.

As the utility's rates provide for a sum of money to be placed in a utility reserve account, the Board will require that the Municipality require prior authorization from the Board for withdrawals.

Finally, as the Board is not approving the special levy, there is no need to consider the legal argument presented by Counsel for Rivergate Properties Inc.

IT IS THEREFORE ORDERED THAT:

1. By-law No. 1/2001 be amended:
 - i) By deleting Clause numbered 1 and by adding
THAT commencing in the year 2001, the sum of four hundred and thirty four dollars and 14 cents (\$434.14) per year, for maintenance of the sewer system in Rivergate be levied against each of the building lots in L.I.D. No. 4 and shall include any lots not sold by the Developer;
 - ii) By deleting Clause numbered 2.
2. The Rural Municipality of West St. Paul examine its labour costs and provide a report to the Board by no later than November 15, 2001.

Fees Payable upon this Order - \$202.02

THE PUBLIC UTILITIES BOARD

"G. D. FORREST"

Chairman

"G. O. BARRON"

Secretary

Certified a true copy of
Order No. 145/01 issued by
The Public Utilities Board

Secretary