

M A N I T O B A

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Order No. 72/10

THE HIGHWAYS PROTECTION ACT

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July 13, 2010

BEFORE: Graham Lane, CA, Chairman
Susan Proven, P.H.Ec., Member

APPEAL OF A HIGHWAY TRAFFIC BOARD
DECISION: PROVINCIAL TRUNK HIGHWAY 9,
RURAL MUNICIPALITY OF ST. ANDREWS

SUMMARY:

By this Order, the Public Utilities Board (Board) overturns a Highway Traffic Board (HTB) decision denying the construction of a commercial On-Premises sign by Electra Sign Ltd. (Electra) on the property of Harry's Foods.

The sign would be constructed adjacent to Provincial Trunk Highway No. 9 (PTH 9) on a property adjacent to the highway, and reflect an agreement between Electra and Manitoba Infrastructure and Transportation (MIT) concerning the operation of the sign.

BACKGROUND:

Electra applied to the HTB seeking a permit for the construction of an on-premises advertising sign adjacent to PTH 9, to be located on property adjacent to the highway, Lots 5 & 6, Plan 1966, R.L 63, Parish of St. Andrews in the Rural Municipality of St. Andrews (RM).

In denying the Application the HTB noted:

"Under the Manitoba Infrastructure and Transportation's Draft Policy for Electronic message centres a sign shall not be closer than 200 metres to a signalized intersection;

and

The proposed electronic message centre and its' location would be a potentially dangerous distraction to the motorists [section 5 of the Highway Traffic Board's Advertising Policy]."

The Board conducted a "hear and report" *de novo* hearing of Electra's appeal by Board Chairman Lane, this by way of a public hearing held on April 26, 2010 in the Council Chambers of the City of Selkirk.

Present at the Hearing were Electra, MIT and the RM of St. Andrews (the latter represented by Mr. Don Forfar). Prior to the hearing, Board Chairman Lane viewed the property on which the sign would be located, the highway, and the general area related to the appeal.

THE APPLICANT:

Electra, represented by Mr. Matt Voth and Mr. Dennis Larson, reviewed its submission of April 22 and noted MIT's submission which indicated that the proposed sign would be 44 meters from the nearby traffic control device. Electra provided photographs of two locations where electronic signs were recently installed on PTH 9, and reported having visited those locations and measured the distance from the signs and the nearby traffic control devices.

Electra noted that the sign belonging to the RM of West St. Paul is 37.7 meters from the traffic control device, and a sign belonging to the Middlechurch House of Winnipeg is 61.8 meters from the traffic control device. Electra submitted that these two instances provided a strong precedent suggesting its appeal should be granted.

Electra also noted that the traffic count in the area of the proposed sign is approximately 9,400 vehicles a day, whereas the traffic count in the vicinity of the two existing signs reported on by Electra, as reported by the City of Winnipeg, is approximately 19,500.

Electra indicated that the proposed sign would not represent a traffic hazard and proposed that a compromise was possible with regards to the frequency with which the sign would change and the hours of operation.

Electra submitted that there are no studies confirming the danger of electronic signs, and that its appeal should be granted, particularly given the precedent set by the two existing signs on PTH 9.

MANITOBA INFRASTRUCTURE AND TRANSPORTATION

MIT's representation included Mr. Glenn Cuthbertson, Director, Traffic Engineering, Mr. Kevin Nimchuk, A/Access Management Technologist, and Pauline Knight, Access Management Permit Administrator Highways Planning and Design Winnipeg.

MIT submitted on April 19, 2010 an area map and an aerial photo, as well as traffic collision data, 2004 Traffic Count information and the Draft Departmental Sign Criteria for Changeable/Variable Messages on Private Advertising Signs.

MIT agreed with HTB's decision to deny Electra's application, on the grounds of the sign's proximity to a signalized intersection and, as well, the proposed sign representing a potentially hazardous distraction to the motoring public.

MIT noted the increasing volumes of traffic on PTH 9 and submitted that motorist approaching a set of traffic signals should not be subjected to unnecessary distractions such as rapidly changing message boards.

MIT further submitted that the proposed 30-second message board interval would be a potentially hazardous distraction on this section of the highway, and would raise significant highway safety concerns given the potential to be extremely bright, rapidly changing and, accordingly, potentially very distracting to motorists.

MIT also indicated its' concern for precedent. In response to Electra's willingness to arrive at a compromise, MIT agreed to discuss a compromise solution with Electra and would advise the Board of the results.

Other comments

Don Forfar representing the RM indicated support for the sign.

Board Findings and Discussions

The Board reviewed the application for the permit as submitted by Electra and the subsequent decision of HTB, that dated December 4, 2009. In addition, the Board reviewed the submissions of both parties provided to the Board prior to the oral hearing, including the Departmental Draft Conditions for Electronic Message Centres (of May 23/06).

The Board notes that the RM has indicated its support for the sign.

The Board also notes that Electra has indicated that a timer will be attached to the sign, and that the lighted aspect of the sign would not be in continuous twenty-four hour operation.

The Board proposed that Electra and MIT "work out a compromise" if possible and, subsequently, received a proposed agreement between the parties on July 7, 2010. The compromise involves a requirement that the proposed two-sided electronic variable message board would operate on a minimum of one minute duration per message change basis. Furthermore, the sign would be in compliance with all other conditions normally recommended by MIT, and generally imposed by HTB.

The Board notes the specific conditions listed under the heading "Proposed conditions" in the Departmental Draft Conditions for Electronic Message Centres (May 23/06) and will expect full compliance, except that the "30 second duration" will be varied

to require that the sign message be of at least 60 seconds duration.

On the matter of the Sign Policy, the Board, in Order 172/03, recommended a review of the sign policy, which was developed in the 1980's. The Board notes that the electronic policy provided to the Board at this hearing was developed in 2006, and commends MIT for its action.

The Board in Order No. 73/10, concurrently released this day, notes that HTB also considers permit applications for non-electronic signs, and does so based on a policy developed by the HTB.

The Board notes that the HTB policy was developed in 1988 and recommends that it be updated and be integrated with the Electronic Message Centre policies of MIT, and that the new comprehensive policy, when developed, be widely circulated before implementation, and then reviewed at least on a triannual basis.

The Board encourages MIT to expedite this process in order to meet the changing needs of the sign industry and the obligations under *the Highway Protection Act*.

Conclusion

The Board will accept the compromise arrived at by both parties, and will grant permission for the sign sought by Electra. This, based on the sign meeting with all the requirements of the

agreement and the sign policy. In accepting the "compromise" the Board independently considered what was in the public interest and concluded that traffic safety would not be unduly compromised by the solution arrived at by the two parties.

Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with section 36 of the Board's Rules of Practice and Procedure (Rules). The Board's Rules may be viewed on the Board's website, www.pub.gov.mb.ca.

IT IS THEREFORE ORDERED THAT:

The appeal BE AND IS HEREBY GRANTED SUBJECT TO THE FOLLOWING
CONDITIONS:

- a) the sign is to meet with all the requirements of the Departmental Draft Conditions for Electronic Message Centres (May 23/06) signs policy, other than the duration of messages is to be no less than 60 seconds.

The agreement proposed by both parties is accepted and approved by the Board.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE, CA"
Chairman

"H. M. SINGH"
Acting Secretary

Certified a true copy of Order No.
72/10 issued by The Public
Utilities Board

Acting Secretary

Appendix "A"

APPEARANCES :

Mr. Matt Voth	The Applicant, Electra Signs Ltd.
Mr. Dennis Larsen	Electra Signs Ltd.
Mr. Glenn Cuthbertson	Director of Highway Engineering, Manitoba Infrastructure and Transportation
Mr. Kevin Nimchuk	A/Access Management Technologist, Manitoba Infrastructure and Transportation
Ms. Pauline Knight	Access Management Permit Administrator, Manitoba Infrastructure and Transportation
Mr. Don Forfar	Reeve, Rural Municipality of St. Andrews

Appendix "B"

Exhibit List

Exhibit 1	Electra Sign's application to the Highway Traffic Board submitted November 2, 2009 with Manitoba Status of Title No: 2253033, attached.
Exhibit 2	Note dated November 4, 2009 from Glenn Cuthbertson with a recommendation against approving Electra Sign's application.
Exhibit 3	Letter dated December 14, 2009 from The Highway Traffic Board denying Electra Sign's application.
Exhibit 4	Letter from the Public Utilities Board of January 15, 2010 acknowledging Electra Sign's appeal, of January 14, 2010.
Exhibit 5	Submission of MIT dated April 12, 2010.
Exhibit 6	Electra Sign submission dated July 7, 2010.
Exhibit 7	Letter dated July 7, 2010 indicating terms of agreement.

**Board Order No. 72/10
July 13, 2010**

Appendix "C"

Draft Conditions for Electronic Message Centres (May 23/06)

**Draft Departmental Sign for Changeable/ Variable Messages
on Private Advertising Signs.**

DRAFT CONDITIONS FOR ELECTRONIC MESSAGE CENTRES
(May 23/ 06)

Applies to:

- Highways under the jurisdiction of MTGS
- Areas with 50 – 80 km/hr posted speeds;
- fully urban/ suburban areas only;
- 80% or more developed frontages;
- on premises advertising only.

Location/ Site Considerations:

Changeable Variable Message signs will be restricted to urban and suburban locations only:

- off the highway right-of-way
- where adjacent highway speed limits are 80 km/h or less
- on the right side of the highway (message centres can be double sided in fully urbanized locations???)
- where they can be placed a minimum of 200 metres from major driver "decision points" such as:
 - traffic signals
 - advance warning devices
 - signed/marked crosswalks
 - yield or merge areas
 - traffic interchanges or roundabouts
- without a high incidence of collisions/crashes, compared with other similar locations on the highway system
- where such devices are not prohibited according to local by-laws, etc.

Proposed Conditions:

- located entirely on private property at a minimum of 3 metres from the edge of right of way to the leading edge of the proposed sign;
- a minimum of thirty seconds duration per message without changing;
- a maximum of 6 words per message;
- minimum font size of 16 cm;
- no "running", flashing, blinking messages, changes in colour, etc.;
- no lighted or animated backgrounds, only the message text may be illuminated;
- require message elements which automatically dim during night time operation;
- no time and temperature displays unless they comply with the "30 second duration" criterion

- include only white or yellow/ amber luminous elements
- all sign permits are subject to compliance with future sign policies with respect to electronic message boards;
- costs associated with bringing the sign into compliance will be the applicants/ owners responsibility