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MANITOBA) Order No. 165/11
)
THE HIGHWAYS PROTECTION ACT) December 12, 2011

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

APPEAL - HIGHWAY TRAFFIC BOARD DECISION
(PROVINCIAL TRUNK HIGHWAY NO. 10, SWAN RIVER)

SUMMARY:

By this Order, the Public Utilities Board (PUB or Board) approves, on an interim basis, Pattison Outdoor Advertising's (Pattison) two advertising signs (hereinafter "the signs") placed along Highway No. 10 and within the Town of Swan River (Swan River).

By way of a decision dated September 27, 2010, the Highway Traffic Board (HTB) denied Pattison's application to maintain the signs in their present location. This interim Order allows the signs to remain in place (as relocated as promised by Pattison) until either PUB has reviewed HTB's planned revision of its Sign Policy and determined whether its interim order should be made final, or until such other time as PUB may issue an Order finalizing or varying this Order.

BACKGROUND:

In 2009, Pattison obtained permits from Swan River to construct and put in place the subject signs.

Subsequent to the construction of the signs, Pattison was advised by Manitoba Infrastructure and Transportation (MIT) that a HTB Order was required, pursuant to *The Highways Protection Act*, prior to the construction of the subject outdoor advertising signs. Subsequently, Pattison applied to HTB for approval of the two signs, but the application was rejected by HTB on September 27, 2010

In denying the applications, HTB advised:

"The Highway Traffic Board has denied your request as it does not meet the following criteria of the Highway Traffic Board's Advertising Sign Policy:

- a sign must not be erected or located closer than 3.0 metres to the nearest boundary of a highway;*
- an off-premises sign must be single faced, facing on-coming traffic on the same side of the highway as the direction of that traffic;*
- an off-premises sign must be 200 metres from any other sign."*

Following Pattison's appeal to PUB, and subsequent to a public notice, PUB held a public hearing on November 8, 2011 in PUB's Winnipeg offices; the hearing was conducted on a *de novo* and "hear and report" basis.

Present at the hearing were Pattison and MIT, both of which accepted that PUB had jurisdiction to proceed as the Board determined and that the Board would rule on all matters with respect to the signs.

THE APPLICANT:

Pattison was represented by Mr. Rob Sedgwick and Mr. Charles Chappell, the latter being legal counsel for Pattison.

Pattison noted that the signs in question are "off premises" signs located within Swan River, where the maximum speed limit is 60 kilometers per hour. Pattison further advised that it will move the signs to a placement that will be at least three metres from the highway, as

required by HTB and MIT, this best to ensure the signs will not constitute a safety concern.

Pattison submitted that the separation distance adopted by HTB, which requires a minimum distance of 200 metres of separation between signs located on a highway, whether on premises (of the property owner) or off premises, was unreasonable, noting that the signs are located 60 and 70 meters, respectively, from the next nearest sign, all located in a limited maximum speed zone of 60 kilometers an hour.

Pattison also submitted that HTB's requirements that off premises signs must be single faced and face oncoming traffic on the same side of a highway as the direction of that traffic are unreasonable, given that the signs in question are within Swan River and located within a modified (lower) speed zone.

Pattison further submitted that HTB's existing Advertising Sign Policy (which applies to all Provincial Trunk Highways under *The Highway Protection Act*), and dated August 19, 1991, is out-dated, not reflective of community needs and thus not binding on PUB, as the said policy is not contained either within statute or a regulation.

Pattison also opined that the PUB granting approval of the appeal and the relocation of the signs, to be moved three metres from the highway, will not constitute a precedent

that will bind either HTB or PUB, but simply would reflect the exercise of discretion allowed the Board.

MANITOBA INFRASTRUCTURE AND TRANSPORTATION

MIT's representation included Mr. Eric Christiansen, Director of Highway Planning and Design and Mr. Kevin Nimchuk, A/Access Management Technologist, Highways Planning and Design Winnipeg.

MIT indicated that there were no arguments as to the facts, that MIT and Pattison were agreed as to the facts of the case.

MIT noted that Highway 10 is the primary highway connection through Swan River and, at the location of the two signs subject to the appeal, is a four lane divided roadway. MIT indicated that the records show that traffic along this portion of the highway has increased 14% between 1989 and 2009, and that traffic volume is expected to grow in a similar fashion for the foreseeable future.

MIT indicated that it supports HTB's Sign Policy primarily because of the safety benefits it expects are derived from the Policy. MIT noted that signs may distract drivers from concentrating on driving. MIT submitted that regulating the number and location of advertising signs adjacent to provincial highways is an important mechanism for HTB and MIT, in providing safe highways.

MIT noted that the two signs at question do not meet two of the provisions of HTB's Sign Policy. Firstly, the signs are located closer than three (3) meters from the nearest boundary of a highway and, secondly, the signs are located less than 200 meters from any other sign. MIT recommended that PUB deny the appeal.

Board Findings

PUB reviewed the applications for the permits, as submitted by Pattison; the subsequent decisions of the HTB, dated September 27, 2010, the appeal by Pattison and the submissions of both parties.

All parties attending the hearing accepted PUB's jurisdiction and intention to rule on both of the signs, as constructed by Pattison within the boundaries of Swan River.

PUB also reviewed HTB's sign policy (with respect to appeals of HTB decisions, as PUB gives serious consideration to published, relevant and transparent HTB and government policy), and while accepting that HTB's policy was representative of government policy when it was drafted some twenty years ago, notes that twenty years later HTB itself has acknowledged a need to revisit the policy, to ensure it still reflects the public interest.

Safety is the primary interest of not only MIT and HTB, but also for PUB when considering signs adjacent to provincial highways.

PUB notes that MIT has informed it and Pattison that HTB's Sign Policy is to be amended, and that HTB will be consulting with Rural Municipalities and towns, through the Association of Manitoba Municipalities. MIT has advised that it expects these consultations to occur in the spring of 2012, and because of the complex nature of the issues involved opined it is unlikely to result in a change in the current 200 meters spacing requirement.

PUB notes the intended review of the Sign Policy by HTB and MIT, and is encouraged and expects that the Sign Policy review will also address electronic signage. A revised policy would best take into account matters such as, the size of such signs, the nature of highways (4 lanes versus 2 lanes, divided or not), the speed limit in place at the location, the needs of business, the views of the municipalities and towns, and the likely impact of the policy on accident levels.

PUB will therefore grant, on an interim basis, Pattison's appeal, provided Pattison relocates the signs as promised. The Sign Policy currently under review is outdated having been put in place now more than twenty years ago. PUB notes that Pattison has or will relocate the signs to be at least three meters from the highway. The Board also notes that the signs are located within Swan River, where the speed limit is 60 kilometers an hour and the highway is divided.

On an interim basis, PUB will allow the signs to remain in place (if relocated as promised by Pattison) until such time as either HTB releases a new advertising policy (at which time Pattison is

to apply for a final order), or as PUB may determine to finalize or vary this Order.

The hearing was conducted on a "hear and report basis"; accordingly, the Board's Chairman heard the appeal and gained the concurrence of another Board member for the decision included herein.

PUB 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 PUB's Rules of Practice and Procedure (Rules). PUB'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 ON AN INTERIM BASIS

SUBJECT TO THE FOLLOWING CONDITIONS:

- a) Pattison relocates the signs as indicated in the hearing.
- b) The signs to remain in place (if relocated as promised by Pattison) until such time as either HTB releases a new advertising policy (at which time Pattison is to apply for a final order), or as PUB may determine to finalize or vary this Order.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE CA"
Chairman

"HOLLIS SINGH"
Secretary

Certified a true copy of Order No.
165/11 issued by The Public
Utilities Board

Secretary