

M A N I T O B A ) Order No. 91/12  
 )  
THE HIGHWAYS PROTECTION ACT ) July 26, 2011

BEFORE: Régis Gosselin, MBA, CGA, Chair  
Susan Proven P.H.Ec., Member

APPEAL OF HIGHWAY TRAFFIC BOARD DECISION  
DATED APRIL 13, 2012 - FILE NO.  
3/010/028/B/12 (PROVINCIAL TRUNK HIGHWAY  
NO. 10, IN THE CITY OF BRANDON)  

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**SUMMARY:**

By this Order, the Public Utilities Board (Board) upholds a Highway Traffic Board (HTB) decision that denied the application for a Building Addition (Commercial) adjacent to PTH No. 10 (Service Road) at its intersection with PTH No. 1.

**BACKGROUND:**

Albert Kokonas, (the Applicant), applied to the Highway Traffic Board (HTB) for a Building Addition (Commercial) adjacent to Provincial Trunk Highway (PTH) No. 10 (Service Road) at its intersection with PTH No. 1 in the City of Brandon on March 1, 2012.

The HTB denied the application in its letter dated April 13, 2012 citing the Functional Design Study completed in 2002 and the need for the Department to acquire additional land for highway right-of-way improvements.

Evidence was taken by the Board at a public hearing held at 1:30 p.m., Monday, July 9, 2012 in the Council Chambers of the City of Brandon. Immediately prior to the hearing, Board Chair Gosselin and Member Proven reviewed the property, highway and service roads related to the appeal.

**ALBERT KOKONAS:**

Mr. Derek Cullen, representing Mr. Kokonas noted that the site was acquired by Mr. Kokonas prior to the development of the highway plan and that the land to the south was slowly parceled off and developed, with Mr. Kokonas keeping the existing location for personal and future development. A Subway and Albert's Bistro, as well as an addition to Albert's Bistro, were built on the site. The applicant is now proposing to construct four additional commercial units attached to the Subway structure.

Mr. Cullen noted that no structures were proposed on the existing or future road plan with no above grade development on the road plan on the right-of-way. Mr. Cullen noted that the future roadway is not in the current five year highway budget plan. Further, he noted that access to the premises is not dependent on the future road as the access is from the side and the back area. Mr. Cullen submitted that, if in the future expropriation is necessary, it could be confined to the parking lot only. Mr. Kokonas indicated he was led to believe that the development would not pose a problem for highways. Mr. Cullen raised the possibility of MIT not needing the land for a long time and, if needed at some time in the future, a slight adjustment to the line of the roadway could meet the requirements of MIT.

Mr. Cullen submitted that the *Highway Protection Act* speaks to structures, that the need for the land remains hypothetical and that, in any case, if approved, it is just the parking lot that would be affected, not the structure.

Mr. Cullen submitted that there would not be a radical change in the flow of traffic in the area and that the proposed commercial units and the Subway would not rely on the service road and that the applicant should be allowed to proceed with the construction.

**MANITOBA INFRASTRUCTURE AND TRANSPORTATION (MIT)**

MIT noted that PTH No. 1 is classified as an Expressway and that the function of this type of highway is to carry large traffic volumes at high speed under close to free flow conditions. PTH No. 1 is a core National Highway with the goal of achieving uninterrupted flow with a minimum travel speed of 90 km/h. MIT noted that two signalized intersections provide access to Brandon. While this arrangement meets the current needs for access to Brandon, as the City grows and traffic on PTH No. 1 increases, it will become necessary to provide additional roadway and intersection capacity replacing the traffic signals with interchanges. A functional design study was completed in 2002 and adopted by all stakeholders. MIT noted that there has been significant land development in the area since the study was approved in 2002 and the Province and local governments have worked together to ensure that the future upgrading plans for the highway are not compromised. MIT submitted that the lands need to be protected now before new development takes place and costs to the Province increase. MIT noted that the option to acquire part of the parking lot at the time of construction of the traffic circle is not feasible as the reduced parking area could

affect the viability of the business, thereby increasing the cost of acquisition. MIT noted that the department is acquiring land for the relocation of 18<sup>th</sup> Street in Brandon and it is prepared to purchase the portion of the Kokonas property needed for the highway, if a mutually agreeable value can be agreed to.

MIT recommended that the Board deny the appeal and uphold the HTB decision as the proposed development is in conflict with the Department's plans for upgrading the PTH No. 1 at this location.

#### **BOARD FINDINGS**

The Board thanks the parties for their contributions. The Board considered carefully both the positions of Mr. Kokonas and MIT and has decided in favour of MIT.

The Board understands the position of the applicant and the wish to further develop the property. However, the Board is of the opinion that it is in the public interest to ensure that the future upgrading plans for the highway are not compromised. It is not reasonable for this Board to approve development on the site, a site long identified in the highway development plans and which development would only serve to increase the ultimate cost of the highway development. The Board understands the frustration of the landowner stemming from the fact that there are no immediate plans for construction of the traffic circle. However, the Board acknowledges the long term view that

projects of this nature require. The Board is of the opinion that these matters, being of a long term nature, require consistency and adherence to an agreed to and accepted plan. The Board accepts the position of MIT with respect to the nature of the highway and the need to control development. With respect to the applicant's position that the development is not dependent on the service road and that the parking area required could be released at the time of construction of the traffic circle, the Board accepts the position of MIT that the viability of the four units with a compromised parking area could increase the costs to MIT.

For all the above reasons the Board will deny the application. The decision of the HTB dated April 13, 2012 is upheld.

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](http://www.pub.gov.mb.ca).

**IT IS THEREFORE ORDERED THAT:**

1. The appeal BE AND IS HEREBY DENIED.

THE PUBLIC UTILITIES BOARD

"RÉGIS GOSSELIN, MBA, CGA"  
Chair

"HOLLIS SINGH"  
Secretary

Certified a true copy of  
Order No. 91/12 issued by The  
Public Utilities Board

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Secretary