

MANITOBA) Order No. 05/13
)
THE PUBLIC UTILITIES BOARD ACT) January 10, 2013

BEFORE: Susan Proven, P.H.Ec., Acting Chair
Marilyn Kapitany, B.Sc. (Hons.), M.Sc., Member

GRAND PINES DEVELOPMENT CORPORATION
APPLICATION FOR SALE OF
GRAND PINES WATER SYSTEM UTILITY TO
B. J. TRAINOR HOLDINGS LTD.

Summary

By this Order, the Public Utilities Board (Board) approves the sale of the Grand Pines Water System Utility (Utility) from Grand Pines Development Corp (GPDC) to B.J. Trainor Holdings Ltd. (Trainor).

Background

On September 16, 2011, the GPDC initially advised the Board of the proposed sale of the Utility to Trainor. The application, including a copy of the signed agreement between the two parties, was received by the Board July 30, 2012. The agreement was conditional on Board approval and the RM of Alexander entering into a Permission Agreement with GPDC. A copy of the Permission Agreement, assignable to Trainor, was received on December 21, 2012.

The Public Utilities Board Act requires Board approval for a utility to sell, dispose of or merge with that of another utility. Board staff received separate confirmation that all customers had been advised of the proposed sale by direct mail.

Additional Information

Agreements and Financial

The Board requested the GPDC file copies of all agreements entered into with regards to the sale. Three agreements were filed; the first between GPDC and Trainor, the second between

the Rural Municipality of Alexander (RM) and GPDC and the third between GPDC, Trainor and the RM. The first was the agreement to purchase the Utility, the last two agreements being Permission Agreements.

The agreement between GPDC and Trainor, dated July 2012, includes details of, among other things, GPDC transferring and delivering to Trainor, infrastructure and services for:

- The Drinking Water System and related facilities of the Grand Pines Development, located in the Rural Municipality of Alexander.
- Assets being sold consisting of: a well, pump house, three pumps, three pressure tanks, electrical power source, miscellaneous equipment, and all water lines for distribution of potable water to 147 residential properties, one golf course clubhouse and one golf maintenance building.

The agreement includes a number of conditions regarding the operation of the water utility and binds the purchaser to the original agreement between GPDC and the residents of Grand Pines Development. In addition, the agreement states:

- Purchaser is required to hold a minimum of \$2 million in liability insurance.
- Purchaser needs permission from GPDC to sell the Utility to a 3rd party.
- Purchaser must provide uninterrupted service of water to

residents, maintain the purchased assets in good working order and pay the cost of all maintenance, repairs and replacements required with respect to the purchased assets.

- GPDC retains the right to opt out of the water supply for the golf course.
- Clifton Trainor is currently the licensed water works operator for the Utility and the sole shareholder and director of B.J. Trainor Holdings Ltd. The agreement states he must personally maintain a valid operator's certificate pursuant to the *Water and Wastewater Facility Operators Regulation* and is to personally continue providing the water testing services and will not engage the services of the third party service provider without permission from GPDC.
- GPDC retains the option to purchase the Utility back from Trainor in the event that Clifton Trainor dies, or suffers from physical or mental disability or infirmity, as well as the right of first refusal in the case of Trainor receiving an offer to purchase from a third party.
- The offer to purchase is for a purchase price of \$30,000; \$10,000 down and a promissory note for \$20,000. Two payments of \$10,000 each to be made on the first and second anniversary of the agreement. No interest will be charged, as long as payment is not in default.

The agreement between the RM and GPDC dated November 30, 2012 grants the Utility access to municipal roads for the purpose of operating and maintaining the water lines. The agreement

between GPDC, Trainor and the RM, dated December 12, 2012 then granted the Utility permission to assign the November 30, 2012 agreement to Trainor upon transfer of ownership of the Utility.

The Water System

The Grand Pines Water System Utility is a privately owned water utility which currently services 147 residential properties, one golf course clubhouse and one golf maintenance building.

The Utility is currently regulated by the Public Utilities Board, and will continue to be regulated under the terms of the sale. The Utility is regulated on a "Complaint Based Regulatory Model" and Trainor will be required to comply with the Minimum Annual Filing Requirements as set out in the attached "Schedule A", including forwarding the annual financial statements of the Utility and notification to the customer and the Board of any pending rate changes.

Assets being sold consist of; a well, pump house, three pumps, three pressure tanks, electrical power source, miscellaneous equipment, and all water lines.

Board Findings

The Board, by this Order, will approve the sale as proposed.

The Board commends the GPDC for the protections extended to the residents of Grand Pines Development through the extensive obligations and provisions of the agreement to purchase, noting

the information submitted provided the Board with a clear understanding of the agreement.

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 at www.pub.gov.mb.ca.

IT IS THEREFORE ORDERED THAT:

1. The application by the Grand Pines Development Corporation for the sale of the Grand Pines Water System Utility from to B.J. Trainor Holdings Ltd. BE AND IS HEREBY APPROVED.

Fees payable upon this Order - \$500.00

THE PUBLIC UTILITIES BOARD

"Susan Proven, P.H.Ec"
Acting Chair

"Jennifer Dubois, CMA"
Acting Secretary

Certified a true copy of Order No.
05/13 issued by The Public
Utilities Board

Acting Secretary

SCHEDULE "A"

TO BOARD ORDER NO. 05/13

**Complaint Based Regulatory Model
Minimum Annual Filing Requirements
(Private and Cooperatively Owned Public Utilities)**

1. Number of customers served and the nature of service i.e. water (potable or non-potable water), sewer (gravity-based, pump-out).
2.
 - i) Current rates, date of last rate change. Also, if rates are to change within the next year provide justification to the Board 60 days before implementation.
 - ii) Customers are to be notified of the intended rate change at least 30 days ahead of the change, with the reasons outlined and notice of their right to file any complaint with the Board.
 - iii) A copy of the Notice in 2 (ii) is to be filed with the Board, with information advising as to how the Notice was distributed and the date of distribution.
3. Latest financial statements, with notes and auditor's comments (if applicable).
4. Details of operator qualifications/certification.
5.
 - i) Confirmation that the Utility is duly licensed under the Drinking Water Safety Act. If not applicable, explain.
 - ii) If providing potable water, details of water testing and confirmation that water meets Drinking Water Standards.
6. If a sewer utility, details of service with confirmation environmental licenses if applicable are being complied with.
7. The due date for the annual reports is six months following the end of the prior fiscal year.
(REVISED AS OF JUNE 11, 2010)
8. Certificate of Insurance from your insurance provider. **(NEW REQUIREMENT)**