

M A N I T O B A) Order No. 172/03
)
THE HIGHWAYS PROTECTION ACT) December 2, 2003

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

**APPEAL BY ELECTRA SIGN LTD., OF THE HIGHWAY
TRAFFIC BOARD DECISION AND LETTER DATED JUNE
21, 2003 - ON PREMISES COMMUNITY ELECTRONIC
MESSAGE SIGN - PROVINCIAL TRUNK HIGHWAY
NUMBER 30 IN THE TOWN OF ALTONA**

APPEARANCES :

Mr. Ken Devine	Represented Electra Sign Ltd.(the Appellant)
Mr. Richard Nichol	Senior Access Management Analyst, Highway Planning and Design, Department of Transportation and Government Services (Highways)
Mr. Glenn Cuthbertson	Traffic Signing Engineer, Department of Transportation and Government Services (Highways)

Presenters:

Bill Brillinger	Altona & District Chamber of Commerce
Earl Dick	Councillor, Town of Altona
	Rhineland Car Co Ltd.
John Falk	R. M. of Rhineland

Curwin Friesen	President, Friesens Corp.
Jim Spencer	CAO, Town of Altona
Donny Weisz	Store Manager, Sobeys/IGA
David Wiebe	Councillor, Town of Altona
Terry Wiebe	Deputy Mayor, Town of Altona
Susan Yakabowich	Manager, Altona & District Chamber of Commerce

Background

An Application was made to The Highway Traffic Board (the HTB) by Altona and District Chamber of Commerce for an On-Premise Community Electronic Message Sign adjacent to PTH 30 and located in the S.W. ¼ of Section 9, Township 2, Range 1 West, in the Town of Altona.

The HTB by way of letter dated June 21, 2003 denied the application.

Mr. Frank Shymko of Electra Sign Ltd., by letter dated August 5, 2003, appealed the decision of the HTB to The Public Utilities Board (the Board). Mr. Ken Devine spoke on behalf of Mr. Shymko who was unable to attend the appeal hearing.

The evidence in this appeal was taken by the Board at a public hearing held at 10:00 a.m., Wednesday, October 1, 2003, in the Altona Civic Centre, in the Town of Altona, Manitoba.

Electra Sign Ltd.

A summary of the major points raised by the Appellant are as follows:

Mr. Devine noted that the appeal was not about whether or not the sign itself should be allowed, as the original sign was previously approved by the HTB. Instead, according to Electra Sign Ltd., the issue to be considered was the changing

of the sign's capability to that of changing electronic message board.

Mr. Devine described the project as replacing a static message centre to one that allowed for rolling changes to the information posted. Mr. Devine cited several examples of signs with the same capability currently in use in other locations in the province.

Mr. Devine submitted that the burden of proof was on Highways and that they have not shown any danger arising as a result of having the sign. Mr. Devine suggested that at best Highways may be able to show that the sign is a distraction. Mr. Devine cited a number of reports which were in support of his position. Mr. Devine noted a report from Constable Eric Edmonds of the "D" Division Traffic Services which indicated that the RCMP "have no data to show that highway signs have caused any fatal or serious injury collisions in this Province". Mr. Devine also cited the proceedings from the U.S. National Highway Traffic Safety Association Annual Meeting of 1996 noting that "outdoor advertising is not named as a factor in driver inattention accidents". Mr. Devine also cited the Indiana Tri-Level study of 1979 on crash causation and noted that the 4% of accidents caused by external distraction "can be defined as: attention to traffic information signs, people in nearby cars or on roadside, geographical objects, sunsets, mountains, water and many external distractions other than outdoor advertising". Mr. Devine also cited the Australian Road Research Board Report of 1984 which indicated that "no usable cause and effect relationships were established such that one could say that

advertising signs constitute a traffic hazard". Mr. Devine also noted Highway Safety Research Centre study of 1974 which in a study of the report narratives of 200,000 traffic crashes found no indication "that billboards were the cause of distraction in these crashes". Mr. Devine also noted the 1980 Annual Report of the U.S. Federal Highway Administration entitled, Safety and Environmental Design Considerations in the use of Commercial Electronic Variable-Message Signage which stated "the available evidence remains statistically insufficient to scientifically support a demonstrable relationship between commercial electronic variable message signs and accidents". Mr. Devine noted the findings of the body of research on Outdoor Advertising which noted "no authoritative evidence that billboards are linked to traffic accidents", "no correlation between billboards and traffic accidents" and "no evidence that drivers' accidents were caused by billboards".

The appellant also noted the use by transportation authorities of "Gantry Signs" to communicate road conditions messages and community service messages. The appellant also noted that in Ontario similar signs are not regulated as to frequency or number of messages per second. The appellant recommended that the subject sign be allowed to change every 10 seconds. The appellant submitted that most motorists would see only one message given a 10 second cycle of a message and asked the Board to apply common sense and good judgement given the density of traffic, the speed of traffic and our ability to ignore a distraction in favour of safety and to allow the change in the sign's capability to that of a changing electronic message board.

Highways

Highways indicated that it was in agreement with the decision of the HTB. Highways noted that its position was based on the HTB 1991 approved Advertising Sign Policy for all provincial trunk highways. Highways noted that the policy arose out of Amendment to *The Highways Protection Act* and that there was significant community consultation on the matter in the late 1980's. The Sign Policy was subsequently adopted by the HTB in 1991. Highways indicated that the reasons for its position were as follows:

1. The speed and relatively high traffic volumes on PTH 30.
2. The proposed electronic message Board does not comply with the Highway Traffic Board/Manitoba Transportation's Sign Policy.
3. The potential impact on motorist safety due to the distraction that would be created for motorists on PTH 30, its proximity to the curve on PTH 30 and its location adjacent to the intersection of 10th Ave NE and PTH 14.
4. The precedent that is established for other property owners and businesses wishing to place signs adjacent to the Provincial Highway system.
5. The Highway Traffic Board in its denial of the application provided the appellant with reasonable alternatives.

Highways noted that PTH 30 handles traffic flowing to and from the United States, to PTH 14, and carries relatively high volumes of traffic. The 2001 Average Annual Daily Traffic (AADT) in the vicinity of Altona is 2380 taken north of PR 201 and 3050 AADT south of the PTH 14/PR 201 intersection. Approximately 10% of the traffic on PTH 30 is truck traffic (240 - 300) trucks/day) and the seasonally adjusted traffic counts (summer) on this portion of PTH 30 sees traffic increase by 7 - 8% i.e. 2570 Average Summer Daily Traffic (ASDT) north of PR 201 and 3294 (ASDT) south of PR 201.

Highways also noted that PTH 30 is designed to a rural highway standard at this location and should function as a high-speed by-pass to the Town of Altona. However, due to the curvilinear nature of PTH 30, proximity to the built up portion of the community, adjacent development on either side of PTH 30 and municipal street connections onto the highway, the speed limit has been reduced to 70 km/h north of sign location.

Highways submitted that the proposed electronic message board does not comply with Section 5(2) of the HTB's Sign Policy and is considered a potentially dangerous distraction on the highway because of the potential to be extremely bright, rapidly changing and distracting to motorists.

Highways further noted that the Policy in it's current form has been in place since the late 1980s and is used by both the Highway Traffic Board and Department in the evaluation of applications for advertising signs adjacent to the Provincial highway system. Since the approval and adoption of the policy

both the Department and Traffic Board have been consistent in not approving signs containing running or changing messages within the controlled areas adjacent to Provincial Trunk Highways and Provincial Roads under their jurisdiction.

On the matter of traffic safety, Highways noted that the electronically changing message board adjacent to the roadway is intended to attract the driver's attention and if successful the sign distracts drivers from concentrating on the driving task and the road way environment. Highways noted the implications for motorists' safety that is created by distraction can be significant as studies have shown that:

1. Driver inattention and improper lookout are major factors in accidents.
2. In a study by the National Highway Traffic Safety Administration 3.2% of accidents were caused by driver distraction from sources external to the vehicle.
3. The most frequently cited sources of distractions were people, objects or events outside of the vehicle (30%).
4. On average 50% of personal injury accidents and 26% of fatalities occur at intersections.

Highways noted that in this particular instance the application involves the replacement of a "static" reader board with an electronic message board with a number of changing messages. The sign will face north and is intended to provide information for southbound motorists on PTH 14. Highways noted that based on the information provided to the Highway Traffic

Board by Electra Sign, the sign will consist of 4 lines of text with 14 characters/line with 7" high letters. The sign would be visible for some distance and the message readable by motorists from approximately 100 metres. It was estimated that it would require approximately 20 seconds to read the entire 4 lines of text in the message.

Highways considers the sign to be an unacceptable and unsafe distraction for motorists for the following reasons:

- South bound motorists are exiting a curve on PTH 30 and approaching the PTH 30 and 10th Avenue NE intersection.
- The location of the sign and changeable message board requires motorists to concentrate on reading the sign while passing through the intersection and draws their attention away from the roadway for an unacceptable period of time (Potentially 20 seconds).
- A vehicle travelling on PTH 30 at 70 - 80 km/h covers approximately 20 - 22 m/second (4 - 5 seconds to cover 100 metres) and cannot read the full message without slowing down significantly.
- The sign location will draw motorists' attention to the west side of the highway and away from traffic that may be using the access on the east side of PTH 30.

Highways also indicated its concern with the precedent that would be established if this message board was approved. This situation would be a highly visible contradiction of the attempts to maintain standards and a level of safety on the

province's major highway system and an example of what other property owners and businesses can expect when applying to place advertising signs adjacent to Provincial Highway system. The consequence is that each successive application for signs with electronically changing messages becomes more difficult to refuse, resulting in an overall deterioration of motorist safety.

Highways submitted many studies arrive at conflicting positions on the causes of accidents, that the recording of accidents does not necessarily reflect those accidents as the driver may not cite a distraction as the cause.

Highways noted a staff report of the Toronto City Council which commented as follows: "The purpose of advertising is to attract the attention of all those whose field of vision embraces the advertising medium. However, case studies of crashes show that inattention is the most frequent human error contribution to collisions. Therefore, it is prudent to limit distractions to drivers, particularly in areas where the driving task is particularly demanding, and a second or two lapse in attention could have serious consequences."

Highways also noted in that report that four (U.S.) states have prohibited dynamic or flashing displays and that only in Dallas and Milwaukee is there documentation relating to an increase in collisions.

Highways also noted the Transportation Synthesis Report on Electronic Billboards and Highway Safety which stated

the following: "In 1998, the Office of Real Estate Services reaffirmed its policy that off-premise signs using animated or scrolling displays that are dependent on flashing, intermittent or moving lights were not conforming signs." This decision was made after careful review of a videotape showing a full-motion Electronic Bulletin Board erected in Scottsbluff, Nebraska. It was concluded that such signs raise "significant highway safety questions because of the potential to be extremely bright, rapidly changing and distracting to motorists".

Highways recommended The Public Utilities Board deny the appeal and uphold the Highway Traffic Board's decision denying the installation and operation of the electronic messaging board.

A number of presenters from the community including members from the Chamber of Commerce and the Town Council spoke in support of allowing the sign.

Board Findings

This appeal by Electra Sign Ltd., of a Highway Traffic Board decision, has proceeded as a "hearing de novo", where this Board has heard directly from the various parties and is not bound, in whole or in part, by the decision or the record of the Highway Traffic Board. In this appeal, the onus of proof rests with the Appellant, Electra Sign Ltd. to convince the Board that the proposed sign meets the objects of *The Highway Protection Act*, such that a permit should be granted.

The Board has considered all of the information and the submissions of the Appellant (Electra Sign Ltd.), Highways and a number of representatives of the community. The Board notes, with thanks, the extensive research done by the parties. The Board also appreciates the contributions that signs can make to the economic well-being of a community and also, to community service. This contribution is one factor to be considered along with the legislated objects of protecting the interests of the public in the highways, promoting the safety of persons using the highways, and generally furthering the amenities of travel on the highways.

The Board has also considered the Highway Traffic Board Policy, which has been established since 1991, which provides:

"5(1) An on or off-premises sign which is a potentially dangerous distraction to the operator

of a motor vehicle on a highway shall not be erected or located in the controlled area.

5(2) The following types of on or off-premises signs may be deemed to be a potentially dangerous distraction:

- A) signs which have variable illumination, including any moving, flashing, scintillating, blinking or travelling lights, or reflective paint or material;
- B) a sign, any portion of which is capable of, or is intended to move;
- C) signs containing running or changing messages;
- D) signs containing chevrons or arrows, whether or not lighted;
- E) a sign which is located so close to another sign as not to allow a reasonable reader to read and understand it when travelling at the maximum rate of speed permitted on the highway."

With respect to The Highway Traffic Board Policy the Board notes that electronic signs, with changing information, such as the type proposed by the Appellant, are not prohibited along highways. However, Section 5 of the Policy requires the consideration of highway safety before such signs are permitted.

The purpose of the old sign and the new sign is the same, that is, to provide information to the motoring public. The issue in this particular instance is whether the proposed sign, with a changing electronic message board, at this location is a potentially dangerous distraction to the operators of motor vehicles on PTH 30.

Some of the information presented by both the Appellant and Highways, assessing the impact of signage along highways, was dated and most of it did not deal with electronic signs which provide for changing messages. The data in the Board's opinion was helpful but not conclusive.

Electronic signs provide extensive flexibility to change the size and amount of information and the speed at which the information changes. No information was provided to the Board with respect to the specific operation of the sign although a description of its capability was provided. The Board notes The Highway Traffic Board indicated, in its decision, that if the sign information was stationary and changed only on a daily basis, the sign proposal would have been more acceptable.

The Board notes that the highway is a major north/south route into and out of the Town of Altona carrying considerable car and truck traffic. Further, the south bound motoring public is already required to deal with other issues at this location including a reduced speed limit from 100 km/hr to 70 km/hr, a curvature in the highway and an intersection with a stop sign on the community access road.

Having considered all of the information and submissions, the Board is not convinced that the electronic sign and its location, as proposed by the Appellant is in the best interests of a safe motoring public as such a sign is potentially a dangerous distraction for motorists. In considering the safety of persons using the highway, the Board does not find the proposed sign to be in the public interest.

Therefore the Board finds that a permit for the proposed sign, at the subject location, should not be granted, and accordingly upholds the decision of The Highway Traffic Board.

The Board notes that Advertising Sign Policy of Highways adopted by The Highway Traffic Board was formulated following province wide consultations in the late 1980s. The Board also notes substantial advances have been made in technology supported sign advertising since the adoption of the current Advertising Sign Policy. Given this technological advancement and research which now may be available to quantify the benefits and risks to the motoring public, the Board believes it may be timely to re-examine the current Advertising

