

MANITOBA) Order No. 94/13
)
THE PUBLIC UTILITIES BOARD ACT) August 12, 2013

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

THE TOWN OF STONEWALL
PATRICK AND ANGELA GRANDMONT
REQUEST BY THE TOWN OF STONEWALL
TO RESCIND BOARD ORDER NO. 167/11

Executive Summary

The Public Utilities Board (Board) hereby denies the request by the Town of Stonewall (Town) to rescind Board Order Number 167/11. The Town may recover \$2,800 from Patrick and Angela Grandmont (Grandmont), this with respect to costs incurred by the Town of connecting water and sewer services to Grandmont's property, located at 371 3rd Street East, Stonewall, Manitoba.

Background

Grandmont purchased a vacant lot in the Town of Stonewall in November 2010, and, prior to the purchase, Grandmont was reportedly advised by their realtor that connecting to the Town's water and sewer would cost \$2,800. Grandmont claims to have confirmed the cost estimate directly with the Town ahead of purchasing the lot. The Town disputed this claim.

On February 1, 2011, Grandmont took possession of the lot and, later, signed a contract (on March 8, 2011) with a builder to construct a house; a building permit was issued on August 29, 2011 by the South Interlake Planning District.

On September 19, 2011, Grandmont was advised by their contractor that the Town had provided the contractor a quote of \$23,790 to provide utility services to the property line and an additional \$12,000 to extend the services from the property line to the house.

Grandmont noted that the overall \$35,000 fee to be charged by the Town was significantly more than the initial \$2,800 quote, on which their decision to purchase the lot was, in part, based.

Grandmont contacted the Town on September 20, 2011 to discuss the difference between the original quote and the later much higher estimate. Grandmont reportedly asked the Town's Chief Administrative Officer (CAO) if some of the \$35,000 cost to extend water and sewer services from across the street where the main Town lines are located could be shared with other lot owners located on the same side of the street as Grandmont.

At that time, Grandmont reportedly requested a copy of the Town's policy for connecting water and sewer services. The Town's policy is referred to in the Town's water and sewer rates by-law, and noted, as follows in Board Order 58/11:

"For a property within the Town of Stonewall limits to connect to the water and wastewater distribution and collection systems the cost of the connection from the mains to the property line including any boulevard and street restoration, and any permit fee, shall be as prescribed in Policy No. 16.2 in the Town's Policy and Procedure Manual."

Grandmont made multiple requests for a copy of Policy No. 16.2 and was not given a copy. Grandmont further reported that they have reviewed the Town's minutes (2010 and 2011) and were unable to find any reference to Policy 16.2. Grandmont contacted the Public Utilities Board as well as the Provincial Ombudsman to request assistance in getting a copy of Policy 16.2. All attempts to acquire a copy of the policy were unsuccessful.

On December 9, 2011, the Board issued Order No. 167/11 ordering

the Town to assess a connection charge of no more than \$2,800 against Grandmont for the property described as 371 3rd Street East, Stonewall, Manitoba for costs of connecting to water and sewer services. According to the Board's *Rules of Practice and Procedure*, an application for review must be made by a party within 30 days of the date of an Order (rule 36(4)); at that point, the Board will determine whether it is of the opinion that an Order should be reviewed (rule 36(4)). Reference to the Board's *Rules of Practice and Procedure* was made on page 6 of Order No. 167/11. The Town of Stonewall did not file an Application for Review in accordance with Rule 36(4).

The Town later adopted a copy of Policy 16.2 on April 12, 2012 which was made retroactive to June 1, 2011.

Request for Review and Vary

In a letter dated June 21, 2013, the Town requests that the Board rescind Order 167/11. The Board notes that this request comes approximately two years after the date of Order No. 167/11 during which time the Town has failed to comply with the Order. Grandmont has been charged \$8,777.32 (adjusted to \$6,582.77 by the Town in their letter dated June 21, 2013) an amount in excess of \$2,800, the amount approved in Board Order No. 167/11.

Grandmont was also advised in writing that a \$1,000 deposit being held to completion of their landscaping would not be returned until the water and sewer connection charge was paid, and that if the connection fee was not paid by May 31, 2013 the outstanding amount would be added to their property taxes.

In a letter dated June 14, 2013, the Board directed the Town to cancel the charges against Grandmont and comply with Order 167/11. The Town responded June 21, 2013 and requested that the Board rescind Order 167/11 and allow the Town to charge Grandmont a connection fee of \$6,582.77. This amount was based on charging 25% of the final, actual cost of the service connection work, which totaled \$26,331.33. The Town proposed that these costs were to be split equally between the Town and the three properties being serviced, lots #365, 375 and 371 3rd Street East.

Board Findings

The Board finds that the decision set out in Board Order No. 167/11 remains appropriate, given all of the evidence. Prior to issuing Board Order No. 167/11, the Board extended every opportunity to the Town to provide a copy of Policy 16.2 and supporting documentation with regards to the actual costs of the water and sewer connection for the property owned by Grandmont. Despite the best efforts of the Board, the Manitoba Ombudsman and Grandmont, this documentation was never provided.

Based on the evidence, the Board concludes that the policy did

not exist until April 12, 2012.

The evidence provided shows that Grandmont acted in a reasonable and straightforward manner throughout this matter.

The Town, over a period of two years, chose to ignore the directions of the Board and continued to demand payment from Grandmont in excess of that allowed by the Board. The Board received further communication from the Town only after a letter of enforcement dated June 14, 2013 was sent to the Town. Pursuant to the *Public Utilities Board Act*, the Board has available enforcement methods and can apply penalties. The Board will consider utilizing the means at its disposal if the Town fails to comply with this Order.

The Board urges the Town and Council to review its internal processes to determine how this matter was handled. The Town's actions have resulted in the utilization of resources best spent elsewhere.

Board Order No. 167/11 was specific to only the property described in the Order as 371 3rd Street East, Stonewall, Manitoba (the owners being Patrick and Angela Grandmont). The Order does not otherwise impose on the Town of Stonewall a requirement that it charges a flat fee for water and wastewater service connections, and as such, should have no impact or relevance to the connection charges for any other property.

Lastly, the Town of Stonewall requested that the Board provide

direction on the method by which the Town should determine the service connection charge for the vacant lots surrounding the Grandmont property. The Town should charge no more than \$6,582.77 for such water and wastewater service connections, the amount determined to be a fair and reasonable service charge for the relevant properties in their letter dated June 21, 2013.

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. 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 Town of Stonewall assess a connection charge of no more than \$2,800 against the property described as 371 3rd Street East, Stonewall, Manitoba (the owners being Patrick and Angela Grandmont) for costs of connecting to water and sewer services.
2. The Town of Stonewall refund to Patrick and Angela Grandmont the \$1,000 deposit being held for lot grade and driveway completion, on or before September 30, 2013.
3. The Town of Stonewall assess a connection charge of no more than \$6,582.77 against the properties described as 365 3rd Street East, Stonewall, Manitoba and 375 3rd Street East, Stonewall, Manitoba for costs of connecting to water and sewer services.

Fees payable upon this Order by the Town of Stonewall - \$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.94/13 issued by The
Public Utilities Board.

Acting Secretary