

M A N I T O B A) Order No. 92/12
)
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 27, 2012 - FILE NO.
3/001/042/B/12 (PROVINCIAL TRUNK HIGHWAY
NO. 1, IN THE TOWN OF VIRDEN)

SUMMARY:

By this Order, the Public Utilities Board (Board) upholds a Highway Traffic Board (HTB) decision that denied the application for the construction of a Showroom and Service Shop and the removal of an existing building (Commercial) adjacent to PTH No. 1 (Service Road) at its intersection with Virden Access Road, Parcel A, Plan 1406, SE¼ 27-10-26W in the Town of Virden.

BACKGROUND:

Virden Recreation & Water Sports Ltd. (the Applicant) made application for the removal of the existing building and the construction of a new building at the aforementioned location. In its letter of April 27, 2012, the HTB denied the application as the proposed structure was to be constructed in the control zone on lands required for the future development of PTH No. 1 as identified on the existing Functional Design Study.

Evidence was taken by the Board at a public hearing held at 1:30 p.m., Wednesday, July 4, 2012, in the Council Chambers of the Town of Virden. The hearing was conducted on a "hear and report" basis by Susan Proven, Board Member. Immediately prior to the hearing, Board Member Proven, viewed the property, highway and service roads related to the appeal.

VIRDEN RECREATION & WATER SPORTS LTD.

Mr. Charles Chappell appearing on behalf of the Applicant noted the delicate nature of the matter as the control zone of Manitoba Infrastructure and Transportation (MIT) is an important tool in the development of highways. He noted, however, that there were not many alternatives available to expand business in the community and that, while he was not prepared to agree or disagree with the traffic circle, he was seeking relief for his client to be allowed to construct new premises.

Mr. Chappell noted the limitations of the site caused by the presence of an oil well and the requirement for an access road and turnaround. The proposed new building would be entirely in the control zone, the existing building would be relocated to the back.

Mr. Chappell noted that the Applicant currently operates out of two locations; the second location on King Street in Virden is owned by the Applicant. The proposal is to dispose of the King Street site and relocate to the proposed new building. The Applicant expects to realize further efficiencies by operating from a single site as well as to remove safety concerns stemming from employees crossing PTH No. 1 between the two sites.

The Applicant noted that, he, his sons and his partners, developed the business over twenty years; it currently employs fourteen people. The Applicant indicated that he

intends to further develop the business. He has looked at alternative sites to avoid the costs of continuing to run an inefficient business. The Applicant indicated that other sites were explored but were found to be cost prohibitive. Relocation to another town was explored but the Applicant is reluctant to leave Virden.

The Applicant noted that attempts were made to negotiate an arrangement with MIT. One would have limited any claim to \$2 million when the land was required by MIT. Another was to enter into a zoning agreement with the Town of Virden. Both arrangements were rejected.

The Applicant noted that, subsequent to purchasing the property, he met with officials from various levels of government and, at no time during the process, was he informed of the existence of the Functional Design Study showing the land as being required for a traffic circle. The Applicant noted that the Town had provided water and sewer services to the area anticipating further development.

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 the free flow conditions. MIT indicated that in 2010 traffic volumes averaged 4700 per day, that 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, with

the decision to extend the four lanes of the highway, engineering plans to develop the intersection at Virden were developed in 1994 and meetings were held with the Town of Virden and the Rural Municipality of Wallace, including public open houses in 1995 and 1996. This culminated with the Functional Design Study in 1997 and has formed the basis of the Department's long range plan for the highway through Virden.

MIT noted that the footprint of the proposed building is in the way of the proposed service road as per the Department's future plans for this intersection. MIT also noted that the proposed "no damage clause" is not acceptable to the Department and that it is not prepared to acquire the land at this time. MIT noted that, pursuant to the *Highway Protection Act* (HPA), the HTB controls access and erection of buildings to protect the public interest. MIT noted that the Province can, at any time, decide to upgrade the highway, requiring use of the land. MIT submitted that, while the traffic signals took care of some of the current safety problems, a highway upgrade will eventually come, requiring the land.

MIT indicated that it was prepared to discuss some refurbishing and improvements to the parking lot. MIT recommended that the PUB consider the long range plans for the highway and deny the Application.

MIT recommended the appeal be denied and the HTB decision be upheld.

TOWN OF VIRDEN

The Town of Virden appeared in support of the application to build a showroom, service shop and remove the existing building. While acknowledging the 1997 Functional Design Study which shows the proposed right-of-way and road layout plans, the Town submitted that the plans are outdated and need to be amended to reflect the current situation. The Town submitted that it is unlikely the proposed plans would be implemented in the coming fifty years and that, in the meantime, economic development should be encouraged on these properties. The Town noted the 1999 annexation of lands to the north of PTH No. 1, ostensibly to further development is now being restricted by MIT.

BOARD FINDINGS:

The Board thanks the parties for their contributions. The Board considered the position of Virden Recreation & Water Sports Ltd. and MIT, and has decided in favour of MIT.

The Board understands the need for economic development in the rural communities and the situation of the Applicant, in particular, given that the business is currently operated out of two locations, the need to consolidate the locations so as to realize efficiencies. As well, the Board appreciates the commercial benefits that will result

from having the business located within view of those travelling the highway.

The Board is also mindful of the responsibilities of those charged with the development of safe and efficient highways. The Board understands the need for long term planning and the frustrations that may result to citizens in the interim. The Board is of the opinion that it is not in the public interest to allow construction on land that will clearly be needed to complete the plans for the traffic circle at some time in the future. Given the importance of PTH No. 1 and it being part of the National Highway, the Board is of the position that it is in the public interest to adhere to the highway development plan, likely minimizing the cost of future highway development and this especially so since public consultations were held and the plans were known to the Town since 1997.

For all of the above reasons, the Board will deny the application. The decision of the HTB dated April 27, 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.

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. 92/12 issued by The
Public Utilities Board

Secretary