

M A N I T O B A) Order No. 93/12
)
THE HIGHWAYS PROTECTION ACT) July 26, 2012

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

**APPEAL OF A HIGHWAY TRAFFIC BOARD DECISION
DATED MARCH 14, 2012 - FILE NO.
1/052/007/5/12 (PROVINCIAL TRUNK HIGHWAY NO.
52, IN THE CITY OF STEINBACH)**

SUMMARY:

By this Order, the Public Utilities Board (Board) upholds a Highway Traffic Board (HTB) decision that denied the application for an "on-premises" sign.

BACKGROUND:

Bumpers on 52 Inc. submitted an application to the HTB for an on-premises sign (commercial) adjacent to PTH No. 52, SW¼-3-7-6E in the City of Steinbach on February 7, 2012. In its letter of March 14, 2012, the HTB denied the application as the proposed sign was not to be constructed on the property in which the business is located and therefore, was not an on-premises sign.

The proposed sign, located "off-premises", did not meet the criteria stipulated in the HTB "Advertising Sign Policy" for "off-premises" signs. Bumpers on 52 Inc., represented by Mr. M. Jodoin appealed the decision to the Board on April 11, 2012.

The Board heard the matter at a public hearing held at 1:30 pm, Wednesday, July 11, 2012, in the Council Chambers in the City of Steinbach, Steinbach, Manitoba. Immediately prior to the hearing, Board Chair Gosselin and Board Member Proven, viewed the property, highway and service roads related to the appeal.

BUMPERS ON 52 INC.:

Mr. Jodoin noted that Bumpers on 52 Inc. is a newly established restaurant and that, prior to construction, the land was owned by several principals of Bumpers who subdivided the land to allow Bumpers to be located on its own title.

As part of the subdivision process, a strip of land adjacent to the highway was transferred to the City for the future development of a service road. Mr. Jodoin submitted that had the

sign permit application been made prior to subdivision, the proposed sign would have been an "on-premises" sign and, thus, allowed. Mr. Jodoin also submitted that there were no plans for the development of a service road by the City at this time. Mr. Jodoin noted that the City had entered into an encroachment agreement with Bumpers and that the sign would be removed upon the request of the City, if the City ever developed the road allowance. Mr. Jodoin noted that the proposed sign would be located five to ten metres beyond the current property line and that if constructed on the proposed site would then be considered by all to be an "on-premises" sign.

Mr. Jodoin submitted that the HTB's strict interpretation of the definition of "on-premises" is inconsistent with the wording of the Act and also the ruling is inconsistent with the scheme, object and intention of the August 1991 Sign Policy of the Highway Traffic Board. The applicant further submitted that the Policy is not intended to be inflexible and meant to provide "guidelines for the approval of advertising signs" which contemplates that the policy would be applied more stringently in some areas and be more relaxed in other areas. As well, the applicant submitted that the "on-premises" and "off-premises" distinction in the policy must be read and interpreted in the entire context of the policy, that the policy does not address adequately areas within City limits and is no longer reflective of community needs.

The applicant submitted that the sign locator should be interpreted as an "on-premises" sign and not in a strict and narrow manner which is inconsistent with the scheme, object, and intention of *the Highway Protection Act*, its Regulations and Policy. The applicant submitted that safety is not an issue and that, given its location in a modified speed zone within the

City, the City's support of the proposed sign, the encroachment agreement, and the fact that the frontal property was recently transferred to the City, the sign should be allowed.

MANITOBA INFRASTRUCTURE AND TRANSPORTATION (MIT):

MIT noted that at this location PTH No. 52 is "a four lane divided roadway", a secondary arterial highway connection through Steinbach. Average annual daily traffic is 10,390 vehicles which increases by 9% in the summer. MIT noted the purpose of the *Highway Protection Act* Sec 2 (1), and indicated its support for the HTB's 1991 Advertising Sign Policy. MIT submitted that the primary purpose of any advertising sign 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 roadway environment.

MIT submitted that, notwithstanding the encroachment agreement, the proposed sign is on the right-of-way and therefore an "off-premises" sign which does not comply with the spacing requirements of the policy. MIT suggested that the sign could be set up on the Bumpers property without creating undue hardship for the business. MIT recommended that the appeal be denied on the basis of non-compliance with Section 7 of the Sign Policy.

CITY OF STEINBACH:

The City noted that the provision of a service road was a requirement for the approval of the subdivision. The City submitted that it is an undeveloped roadway owned by the City and that the City has jurisdiction and an encroachment agreement. The City submitted that there is no issue of safety, and that the sign policy of the City would be complied with. The City suggested that the service road would likely not be needed for a

long time, and recommended that because of the encroachment agreement, MIT should treat it as an "on-premises" sign, that MIT does make exceptions and that the PUB also should.

BOARD FINDINGS:

The Board thanks the parties for their contributions. The Board considered the position of Bumpers 52 Inc. and MIT, and has decided in favour of MIT.

The Board takes the matter of safety seriously and is persuaded by the research on the impact of safety caused by the distraction of advertising signs. The Board is aware of the long term planning horizon required for the development of highways. It understands the frustration stemming from the possibility that the service road may not be constructed for some time. However, the Board is satisfied that the policy is being administered fairly and that future development may result in the construction of the service road. The Board also notes that the applicant can have the sign located on the property by moving it a few metres back onto to the applicant's property.

With regards to the encroach agreement, the Board notes that while the City owns the land, the erection of signs on the right-of-way is within the purview of the *Highway Protection Act* and the HTB. In the Board's opinion, the proposed sign will not be located on the premises of the applicant, but on City property. Neither the City, through an encroachment agreement, nor the fact that the applicant previously owned the land can render it an "on-premises" sign.

For all of the above reasons, the Board denies the application. The decision of the HTB dated March 14, 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 at 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. 93/12 issued by The Public
Utilities Board

Secretary