

Order No. 6/17

**APPEAL OF THE HIGHWAY TRAFFIC BOARD DECISION:
DATED SEPTEMBER 12, 2016 – FILE NO.
3/010/052/S/16 (UP IN THE AIR MEDIA)**

January 24, 2017

BEFORE: Robert T. Gabor, Q.C., Chair
Karen Botting, B.A., B.Ed., M.Ed., Vice Chair

SUMMARY

By this Order, the Public Utilities Board (Board) sets aside the Highway Traffic Board (HTB) decision, dated September 12, 2016 and finds in favour of the appellant, Up in the Air Media (UAM) on behalf of the Onanole & District Recreation Corporation.

BACKGROUND

The UAM, on behalf of the Onanole & District Recreation Corporation, submitted an application to the HTB for a fixed print and LED message double faced electronic sign to be erected on-premises (commercial) adjacent to PTH No. 10, Parcel 7, Plan 5151, N.W.1/4 7-19-15-18W in the town of Onanole on June 06, 2016. In its letter of September 12, 2016, the HTB denied the application as the erection of the proposed sign was not considered to be on 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. PCC, represented by Ms. Delene Minty appealed the decision to the Public Utilities Board (PUB).

The PUB heard the matter at a public hearing held at 2:00 PM, Thursday January 9, 2017, in the RM Council Chambers in the R.M. of Harrison Park, Onanole, Manitoba. Immediately prior to the hearing, Chairperson Gabor and Vice Chairperson Botting, viewed the property, access roads, PTH #10, and areas related to the appeal.

UP IN THE AIR MEDIA:

Ms. Minty testified that the Onanole & District Recreation Corporation (ODRC) are the owners of the property where the proposed sign is to be erected. She argued that since ODRC are the owners of the property, the HTB decision was in error and inconsistent with its own policies.

The sign is intended to be used to advertise community events at the Onanole Recreation Centre as well as other locations where teams from Onanole are playing. In addition it is intended to be used to advertise local businesses. This commercial purpose is especially important as she and other witnesses indicated that local businesses have limited ways to make their presence known to people who reside in the community and even less opportunity to make their presence known to people who visit or drive through the community, especially if their premises is not on the main highway that passes through the community. She stated that, in this way, the sign will be a benefit to the community and local businesses. The advertising revenues are intended to off-set the approximately \$125,000.00 cost of the sign which is anticipated to take 10-years to pay off. Ms. Minty stated that if the application is denied the community will be unable to afford the sign.

Ms Minty noted that the location of the sign will be erected north of the Elk statue, approximately 3 meters, southwest of the PTH #10. In her testimony, she stated that PTH 10 speed limit, at the proposed sign location, is reduced thus the sign will not be a safety concern. She committed that the ODRC will comply with section 7(2) of the Highway Traffic Board's sign policy for on-premises signs.

MANITOBA INFRASTRUCTURE (MI):

MI, represented by Senior Access Management Analyst, Ms. Karen Toews-Therrien, testified that there is existing HTB policy respecting these types of applications. She referenced Sec 7(2) of the policy. She stated that the following conditions are pertinent to the HTB decision: The sign be,

- located entirely on private property at a minimum of 3 metres from the edge of right of way to the leading edge of the proposed sign;
- minimum of thirty seconds duration per message without changing;
- a maximum of 6 words per message;
- minimum font size of 16 cm
- no “running”, flashing, blinking messages, changes in colour, etc.;
- no lighted or animated backgrounds, only the message text may be illuminated;
- require message elements which automatically dim during night time operation;
- no time and temperature displays unless they comply with the “30 second duration” criterion;
- include only white or yellow/ amber luminous elements;
- all sign permits are subject to compliance with future sign policies with respect to electronic message boards;
- costs associated with bringing the sign into compliance will be the applicants/ owners responsibility.

Ms. Toews-Therrien stated that in accordance with the existing sign policy, the sign could only advertise messages for events to take place in the community of Onanole. She testified that the HTB sign policy is older and in need of review. The 1991 policy was last revised in 2006. She mentioned that the proposed sign is a new type of sign for Manitoba and MI does expect to see more of these types of signs in the future. Ms. Toews-Therrien stated that MI has no objection to a community sign as long as safety is not compromised. Upon questioning from the panel, she was unable to advise if the proposed location would result in driver distraction. She offered that sign placement must allow for 76.2 meters from a control area in order to protect a right-of-way necessary for future expansion.

COMMUNITY STAKEHOLDERS:

The panel received into evidence testimony of support for ODRC from Councillor Doreen Stapleton who also presented a Council Resolution in support of the permit, Harold Minty, Chad Davis, Jane Brown, Dale Wallace, Nigel Kerr, and Ryan Little.

BOARD FINDINGS

The Board thanked the parties for their contributions. The Board considered the position of Up in the Air Media and Manitoba Infrastructure, and has decided in favour of the Up in the Air Media, representing Onanole & District Recreation Corporation.

The Board is satisfied that the ORDC is the owner of the property and thus the off-premises sign policy was applied in error by the HTB.

In addition, the conditions set out in the MI policy appear to be intended to promote the safety of the travelling public. However, MI did not provide compelling evidence nor was able to provide any rationale on why the sign would affect public safety because of advertisements of local businesses or events outside the community while, at the same time, have no impact on public safety for events at the local recreation centre. In this way the position of MI appears to focus on the content of the electronic sign rather than issues of public safety.

The Board feels the erection of the sign does not pose a safety risk or increase the risk to the local or travelling public and it will have significant positive benefits to the community of Onanole. The Onanole & District Recreation Corporation and the RM of Harrison Park have agreed to be in compliance with Section 7(2) of the Highway Traffic Board sign policy.

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. Without further delay, the HTB approve and grant the Up in the Air Media, representing the Onanole & District Recreation Corporation, a permit for a fixed print and LED message electronic sign to be erected on-premises (commercial) adjacent to PTH No. 10, Parcel 7, Plan 5151, N.W.1/4 7-19-15-18W in the town of Onanole.
2. Up in the Air Media, representing the Onanole & District Recreation Corporation comply with the following permit conditions: The sign be,
 - i. located entirely on private property at a minimum of 3 metres from the edge of right of way to the leading edge of the proposed sign;
 - ii. minimum of thirty seconds duration per message without changing;
 - iii. a maximum of 6 words per message;
 - iv. minimum font size of 16 cm
 - v. no “running”, flashing, blinking messages, changes in colour, etc.;
 - vi. no lighted or animated backgrounds, only the message text may be illuminated;
 - vii. require message elements which automatically dim during night time operation;
 - viii. no time and temperature displays unless they comply with the “30 second duration” criterion;
 - ix. include only white or yellow/ amber luminous elements;
 - x. all sign permits are subject to compliance with future sign policies with respect to electronic message boards;

- xi. costs associated with bringing the sign into compliance will be the applicants/ owners responsibility.
3. The Highway Traffic Board (HTB) undertake a review and amendment exercise to address the out-of-date sign policies concerning animated LED signs, on-premises signs and off-premises signs in an effort to better balance community needs with safety requirements.

THE PUBLIC UTILITIES BOARD

"Robert T. Gabor, Q.C."

Chair

"Darren Christle, MPA, BA., CCLP, P.Log, MCIT"

Secretary

Certified a true copy of Order No. 6/17 issued
by The Public Utilities Board

Secretary