

THE MUNICIPAL BOARD OF MANITOBA

DECISION AND ORDER

DECISION DATE: December 7, 2016

Order No. E-16-171

File No. 16E8-0018

MATTER: Local Improvement and Borrowing (objection)
The Municipal Act, Sections 176, 320(4) and (5)

LOCAL AUTHORITY: Rural Municipality of Rosser

BY-LAW NO: 3-16

HEARING DATES: August 3, 4 and 5, 2016, Grosse Isle

PANEL: Lori Lavoie, Vice Chair
John Blewett, Member
Herm Martens, Member

PARTIES AND APPEARANCES:

for the Rural Municipality of Rosser

Orvel Currie, Legal Counsel, D'Arcy & Deacon LLP
Jennifer Hanson, Legal Counsel, D'Arcy & Deacon LLP
Frances Smee, Reeve
Scott Corbett, Councillor
Beverley Wells, Chief Administrative Officer
Bob Brown, Consultant
Brett Ransom, Senior Project Manager, Stantec

for Community and Regional Planning, Department of Indigenous and Municipal Relations

David Neufeld, Director

for Manitoba Water Services Board

Dave Shwaluk, General Manager

for CentrePort Canada

Diane Gray, President & Chief Executive Officer
Chris Lorenc, Chair, Board of Directors

presenters

Paul Graham, Maxim Trucks
Richard Jones, MoveMobility
Craig Logan, Acculift
Dave Myer, Comet Leasing Inc.
Bruce Roche
Pankaj Sharma, TransX
Rick Suche, Fort Garry Fire Trucks
Bill Wilton, Big Rig Collision

INTRODUCTION

The Council of the Town of Rosser ("Rosser") proposes By-law No. 3-16 (the "Proposed By-law") to authorize the expenditure and borrowing of money to construct wastewater collection and water distribution systems to service 520 acres of developed land, as shown in Schedule "C" of the Proposed By-law (the "Local Improvement Area), including feeder mains from the Cartier Regional Water Cooperative (the "Water Co-op") reservoir located in Rosser and a low pressure sewer connection to The City of Winnipeg (the "City") wastewater line (the "Proposed Project") as a Local Improvement. The Proposed Project is estimated at \$22,560,070, of which Rosser is to borrow \$16,360,070.

Objections to the Proposed By-law were filed with The Municipal Board (the "Board"), and a public hearing was held from Wednesday, August 3, 2016 to Friday, August 5, 2016 in the Gross Isle Community Hall.

ISSUE

Whether the Proposed By-law should be approved, approved with conditions, refused or amended.

THE LEGISLATION

The Municipal Board Act:

Duty of board

64 In dealing with an application the board shall consider

- (a) the nature of the work, undertaking, or object proposed;
- (b) the necessity or expediency thereof;
- (c) the financial position of the local authority; and
- (d) any other relevant matters;

and may refuse the application or require the local authority to vary the application, or may grant the application in whole or in part, or subject to conditions.

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The Municipal Act:

Local Improvement

311 If approved by by-law, a municipality may undertake, as a local improvement for the benefit of all or part of the municipality,

(a) the acquisition, development, upgrading or replacement of one or more of the following:

- (i) sewage collection and treatment facilities,
- (ii) water supply, treatment and distribution facilities,
- (iii) waste management facilities,

Municipal Board decision

321(2) The Municipal Board must consider each proposed by-law submitted to it under subsection 320(4) and by written order

(a) approve the by-law as submitted, with or without conditions;

(b) refuse to approve the by-law; or

(c) require that the by-law be amended in one or more of the following ways:

(i) subject to subsection (3), by adding or removing one or more businesses or properties to or from the businesses or properties to be taxed under the by-law,

(ii) by changing

(A) the amount or rate of tax, or

(B) the method of calculating the tax,

to be levied in respect of one or more businesses or properties.

Notice and opportunity to be heard

321(3) Before ordering a change under subclause (2)(c)(i), The Municipal Board must

(a) direct the municipality to give notice of the proposed change to the potential taxpayers who would be affected by the change; and

(b) give those taxpayers and the municipality an opportunity to be heard by the Board.

PRESENTATIONS

Rosser:

Orvel Currie is Rosser's Legal Counsel. Giving evidence for Rosser is Bob Brown, Consultant, and Beverly Wells, Chief Administrative Officer.

- *The CentrePort Canada Act, C.C.S.M. c. C44* provides: "Whereas it is desirable to designate approximately 20,000 acres of land in the vicinity of the James Armstrong Richardson International Airport for development of a Manitoba inland port to serve as a transportation, trade, manufacturing, distribution, warehousing and logistics centre" ("CentrePort").
- 11,000 acres of CentrePort land is located in Rosser and has been identified as the Rosser CentrePort Phase 1 Stage 1A Area ("Rosser CentrePort Area").
- As early as October 1, 2009 ratepayers and residents were informed about the implications of CentrePort to Rosser.
- With strong public support, Rosser agreed to be the municipal government partner in developing and servicing the Rosser CentrePort Area.
- Under Section 311(a) of *The Municipal Act* Rosser is responsible to provide new and upgraded municipal services to the Rosser CentrePort Area, consistent with CentrePort's vision.
- Rosser is also involved in other CentrePort activities including land use planning and infrastructure construction for transportation networks.
- In 2011 Rosser began negotiations with the City to provide sewer and water services to the Rosser CentrePort Area.
- Although the City was unable to provide water to a neighbouring municipality, it agreed to provide sewer service.
- A sewer interceptor line is being constructed along Inkster Boulevard to connect the City's sewer system to the Rosser CentrePort Area.
- The Water Co-op is the source for potable water to the Rosser CentrePort Area.
- Beginning August 2015, Rosser gave an overview of the proposed construction, funding and timelines of the projects to bring water and wastewater services into the Rosser CentrePort Area.
- The first stage was Local Improvement No. 15/1 ("LI No. 1") that included the construction of a treatment plant, water transmission line and reservoir at a total cost of \$37,000,000.

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- After funding was applied, Rosser financed \$4,933,333 over 25 years on the assessments of all properties in the municipality in By-law No. 12-15.
- The Proposed Project includes installing water and sewer lines to serve the Local Improvement Area and installing service lines from the mains to the property lines of each property in the Local Improvement Area.
- The Local Improvement Area is part of a larger 832.3 acre area, LI No.2, of which 300 acres of undeveloped property was removed, leaving 520 acres.
- Long and short term benefits of the Proposed Project:
 - Development of the Rosser CentrePort Area will accelerate as water and sewer services arrive.
 - Potable water, enhanced fire protection and access to sophisticated wastewater treatment facilities will increase the desirability to develop in the Rosser CentrePort Area.
 - Tax contributions from the Rosser CentrePort Area have grown to yield the majority of Rosser's tax revenue.
 - Future developments in the Rosser CentrePort Area will increase tax contributions.
- The estimated cost of the Proposed Project is \$22,560,070, of which the Water Co-op will contribute \$5,000,000 and the Manitoba Water Services Board (the "WS Board"), \$1,200,000.
- Rosser proposes to borrow \$16,360,070 by debenture over 25 years at an estimated interest rate of 6.0%, creating an annual debt payment of \$1,279,794.59. The borrowing will be financed by local improvement levy on all taxable, grant-in-lieu and otherwise exempt properties receiving water and sewer services in the Local Improvement Area.
- The 117 properties in the Local Improvement Area are identified by roll number (the "Benefitting Properties"). They are owned by approximately 85 taxpayers (the "Potential Taxpayers").
- Rosser looked at three approaches to calculate local improvement levies, acreage, frontage and portioned assessment, and compared the levies generated from each approach using a 2.05 acre property as an example:
 - Acreage at \$31,457.44/acre: \$64,487.75 (lump sum).
 - Frontage at \$1,236.22/meter: \$113,731.69 (lump sum).
 - Assessment: \$50,321.45 (financed over 25 years).
- Rosser decided that calculating local improvement levies on acreage is best because:
 - It allows pre-payment.

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- It includes all properties.
- It produces a uniform revenue rate on every acre.
- New subdivisions will not change the acreage tax requirement.
- Tax allocation on assessment is inequitable between bare and developed land. Landowners may also be discouraged from developing land to avoid higher taxes.
- Tax allocation on frontage, where lot sizes and configurations vary, results in a range of inequitable tax contributions.

CentrePort Canada:

Chris Lorenc, Chair of CentrePort Canada Board of Directors and Diane Gray, CEO of CentrePort Canada advise:

- The Board of Directors supports the Proposed By-law.
- Without urban levels of sewer and water services the development of CentrePort cannot proceed.
- If the Proposed By-law is refused, Rosser, the Capital Region and the Province of Manitoba (the "Province") will be denied the economic benefits of CentrePort.
- The Province has already upgraded transportation infrastructure. All partners, including Rosser, have to participate to make CentrePort the transportation hub it is meant to be.

Community and Regional Planning, Department of Indigenous and Municipal Relations, Province of Manitoba ("Provincial Planning"):

David Neufeld, Director speaks for Provincial Planning.

- On March 8, 2016 the Province amended *The Planning Act* and created The Inland Port Special Planning Area (the "Special Planning Area") and The Inland Port Special Planning Authority (the "Planning Authority") to deal with all land use matters in CentrePort.
- This provides a process for streamlined review of new industrial uses in CentrePort.
- The Planning Authority is a board with representatives from Rosser, CentrePort Canada, Winnipeg Airports Authority, the City and the Province.
- The Planning Authority holds public hearings on planning proposals, within the Special Planning Area, and makes recommendations to the Minister, who is the final decision-maker. Applications for zoning variances are delegated to staff and are appealable to the Planning Authority.

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- The current status of development in CentrePort is as follows:
 - Since March 2016, the Planning Authority received five planning applications affecting 53 acres of land; two applications are subdivision/rezoning and three are rezoning.
 - Between 2015 and March 2016, five planning applications affecting 243 acres were processed; three applications are subdivision and two are rezoning.

Stantec:

Brett Ransom, Senior Project Manager speaks for Stantec:

- In 2010 the Province hired AECOM to determine wastewater collection and water distribution needs for CentrePort.
- AECOM recommended construction staging in a 2012 report (the "AECOM Report").
- Among other things, the AECOM Report established the Rosser CentrePort Area and the Local Improvement Area.
- Rosser and the WS Board hired Stantec to refine the water and wastewater servicing requirements for the Local Improvement Area.
- The AECOM Report set the foundation for Stantec's analysis and recommendations.
- Stantec recommended a wastewater collection system including low-pressure sewer mains for the Local Improvement Area. The proposed discharge point is at the interceptor pipe being constructed on Inkster and will terminate at Rosser's boundary west of Brookside Blvd.
- The proposed water distribution system began with the expansion of the Water Co-op in LI No. 1, a new water treatment plant in Headingley, a new reservoir and pump house in CentrePort and a water supply pipeline connecting the two facilities.
- The reservoir and pump house will distribute water to the Rosser CentrePort Area, which includes the Local Improvement Area.
- Stantec estimated the construction costs of the Proposed Project, which was reviewed by WS Board engineers.
- In response to questions, the sewer portion of the Proposed Project is sized and constructed for the Local Improvement Area. The water line feeder mains are over-sized and may accommodate development in other parts of the Rosser CentrePort Area.

Cartier Regional Water Co-op:

Dave Shwaluk speaks for the Water Co-op:

- The WS Board provided all technical information and operational experience to the Water Co-op.
- The merits of the Proposed Project include:
 - Softened water supply.
 - Fire flow rated at 285 L/s.
 - Municipal servicing will attract and spur economic development in the Province.
 - The Province is responding to requests from businesses wanting to expand/relocate to CentrePort. Servicing is a requirement.
 - If approved, the Proposed Project can be tendered quickly. Contractors are eager to work and bids are very competitive.
- If the Proposed Project includes over-sized feederlines, outside the Local Improvement Area, the upsizing costs can be removed.
- If refused, funding will be cancelled/re-profiled or lost.

Rosser:

Reeve Smee and Councillor Corbett speak for Rosser:

- CentrePort is not Rosser's idea or decision; it was presented as a great opportunity for the municipality.
- CentrePort brought many challenges to Rosser such as the potential annexation of the Rosser CentrePort Area to the City.
- Rosser decided to become CentrePort's municipal partner after annexation was met with resistance.
- Incurring debt and raising taxes is difficult but, in the long run, CentrePort will benefit Rosser, the Capital Region and the Province.
- The Proposed Project will benefit properties in the Local Improvement Area. Existing businesses may not fit in with CentrePort's long range plans and may leave Rosser to find better suited property. It is likely these businesses will sell for a big profit.
- Rosser is a small agricultural municipality, unserved before CentrePort.
- At a community meeting in 2009 there was overwhelming public support for Council to take on CentrePort; it is a solid investment.

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- The number of requests for new subdivisions in Rosser is surprising and will result in continuous growth and development; an increasing assessment base will support that growth.
- Rosser may not have to take on additional borrowing because future development is to be "green", meaning development costs are recoverable from the developers themselves.

Potential Taxpayers:

Eight Potential Taxpayers speak against the Proposed By-law and the Board received 17 objection letters.

- Many of the Benefitting Properties have viable private sewer and water systems, installed at significant cost. One Potential Taxpayer said his company paid \$42,000 in 2008 to install services, as required by a Development Agreement with Rosser.
- Another Potential Taxpayer discussed the state-of-the-art reverse osmosis sewer and water system on his property. "How is the Proposed Project a benefit to properties that have adequate private systems?" A solution might be to remove these properties.
- Rosser did not consult Potential Taxpayers about whether they wanted a municipal sewer and water system. Consulting the Potential Taxpayers would not have been difficult.
- There isn't proof the Proposed Project will increase the values of Benefitting Properties.
- The Proposed By-law establishes a per acre rate to calculate the local improvement levies. Examples of the estimated levies: a 2.3 acre Benefitting Property - \$72,036; the Potential Taxpayer who paid \$42,000 in 2008 to install a private system, estimates \$72,000; another Potential Taxpayer estimates a pre-paid levy of \$1,300,000; and another estimates a pre-paid levy of \$920,000. "How can property owners sustain these costs?"
- Although some Potential Taxpayers appreciate the growth that CentrePort has brought to Rosser, they question why CentrePort is not paying for its own infrastructure or, at the very least, why the cost of the Proposed Project is not shared by all Rosser ratepayers.
- Because Rosser is required to install infrastructure in keeping with CentrePort's vision, the benefit of the Proposed Project is not limited to the Local Improvement Area; it extends to the 11,000 acre Rosser CentrePort Area.
- "Why should a \$16,000,000 debt be leveraged over 117 properties when the Proposed Project infrastructure is necessary to get CentrePort off the ground?"

- "It is not ethical to force 85 property owners to pay for infrastructure required by CentrePort."

SUMMARIES AND LEGAL SUBMISSIONS

Rosser:

Mr. Currie submits there are certain undisputed facts and principles:

Principle No. 1: "He who uses services pays for services".

Principle No. 2: "Developers pay capital lot levies, which are passed on to purchasers."

Applying the Principles to the Proposed By-law:

- The Benefitting Properties will be recipients of sewer and water services.
- When the 117 Benefitting Properties were developed, the developers paid capital lot levies to Rosser. Such levies were inadequate and do not cover the cost of the Proposed Project.
- LI No. 2 was therefore created to pass on the costs of the sewer and water services to the users.

Rosser significantly increased its capital lot levies to \$19,986 per acre, which will be deposited into a reserve fund and used for the benefit of all properties in LI No. 2. Developers will also pay for the installation of sewer and water infrastructure, to bring sewer and water services to developed lots and possibly charges for upsizing i.e. front-end loading.

As to whether the Proposed Project is necessary from the perspective of the Proposed Taxpayers, Mr. Currie says they are not. Determining necessity includes planning considerations, engineering requirements and cost implications, which are equally as important.

The Board must also be satisfied that Rosser has the financial means to undertake the borrowing. Rosser's assessment base is growing and will continue to grow.

Once the Proposed Project is finished, the development of the Rosser CentrePort Area will move quickly and be a huge economic driver for Rosser. As delay is a big deterrent for developers, the expedited

application process for properties in CentrePort will encourage development. Five developments have recently been approved in just over one month.

Mr. Currie suggests the Board has the following options:

1. Refuse the Proposed By-law.
2. Amend the Proposed By-law to include the 11,000 acre Rosser CentrePort Area.
3. Amend the Proposed By-law to remove \$1.2 million from Proposed Project costs for up-sizing of water infrastructure to service land outside the Local Improvement Area.
4. Approve the Proposed By-law but order Rosser to credit the Potential Taxpayers who pre-paid sewer and water services under previous development agreements.

Potential Taxpayers:

- In response to "users of the service must pay" the users have "already" paid. Benefitting Properties do not have municipal sewer and water services but, they have private sewer and water systems that are fully functional and meet codes and regulations.
- From a cost perspective, "Is it cost efficient for owners to pay for existing services and the cost of local improvements?"
- The process leading up to the Proposed By-law was flawed because of insufficient notice. Owners learned more at this hearing than anywhere else.
- The value of the up-sizing of water service infrastructure is \$1.6 million, not \$1.2 million.
- Because the Proposed Project includes a low pressure sewer system, Potential Taxpayers will still have to maintain and pump out septic tanks at their cost.
- Rosser's assessment base is uncertain because of outstanding assessment appeals.
- There has never been a partnership between Potential Taxpayers and Rosser; the partnership is between CentrePort and Rosser.
- Potential Taxpayers are not opposed to the Proposed Project; they are opposed to the huge cost of the Proposed Project.
- Potential Taxpayers do not want to "get in the way" of CentrePort; there must be options other than putting \$16,000,000 on the shoulders of the Potential Taxpayers and Rosser.

ANALYSIS

Section 64 of *The Municipal Board Act* requires the Board to consider the Proposed By-law in the context of the nature of the proposed project; the necessity or expediency thereof; the financial position of the municipality; and other relevant matters.

Rosser has explained the nature of the Proposed Project as the construction of wastewater collection and water distribution systems to service 520 acres of developed land in the Local Improvement Area, including feeder mains from the Water Co-op reservoir located in Rosser and a low pressure sewer connection to the City wastewater line.

With respect to determining the necessity and expediency of the Proposed Project, the Board considers Section 311 of *The Municipal Act* the starting point. It authorizes a municipality to undertake, as a local improvement, the development of water supply, treatment and distribution facilities, and waste management facilities for the benefit of all or part of a municipality.

On its face, the Proposed By-law is straightforward in its intent and application. It identifies 117 Benefitting Properties in the Local Improvement Area as benefitting from the Proposed Project because they will receive urban standard sewer and water service and it requires the owners of those properties, as the Potential Taxpayers, to pay for the Proposed Project.

Despite the Proposed By-law limiting the scope of the Proposed Project to the Local Improvement Area, the bulk of Rosser's presentation focused on the necessity and expediency of the Proposed Project to service and develop the Rosser CentrePort Area. The Board made several rulings early in the proceedings about the relevance of this evidence.

It wasn't clear until the hearing progressed, that Rosser's main impetus in proceeding with the Proposed Project, was to fulfil its servicing responsibilities in the Rosser CentrePort Area, in keeping with CentrePort's vision. Rosser acknowledged that the Benefitting Properties do not need the Proposed Project; and that, had it not been for CentrePort, no part of its primarily agricultural municipality would be serviced, including the Local Improvement Area.

Rosser advised that it appreciates the unique opportunity to be CentrePort's partner. Development in the Rosser CentrePort Area has already increased Rosser's tax and assessment base to the extent it

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makes up the majority of Rosser's tax revenue and additional development applications in the Rosser CentrePort Area have been approved which will continue this upward trend. Rosser also advised that it recognizes that the economic benefits of CentrePort extend beyond its boundaries to the Capital Region, the City and the Province.

Although a proud CentrePort partner, Rosser admitted that it faced many challenges in fulfilling its servicing responsibilities. This was due to Rosser's inexperience in large-scale developments, sophisticated municipal servicing plans and local improvement plans involving multi-million dollar capital expenditures.

Rosser relied on engineering expertise which recommended that the urban standard sewer and water servicing for the Rosser CentrePort Area commence in the Local Improvement Area. The Board understands that although this may be a logical starting point to service the Rosser CentrePort Area, it questions how Rosser, CentrePort partners or the Board of Directors could conclude that the benefit of the Proposed Project was solely for 117 Benefitting Properties and should be paid by 85 Potential Taxpayers.

In the Board's opinion, the Proposed Project is necessary and expedient to move the development of the Rosser CentrePort Area forward, and from this perspective, the Board supports the Proposed By-law. The Board does not support Rosser's decision to limit the benefit of the Proposed Project to the Local Improvement Area and the payment of the debenture to the Benefitting Properties. In the Board's opinion, the benefit of the Proposed Project, within Rosser, is much broader.

The Board suggests that a more equitable approach would be a blended taxation scheme which recognizes the following:

- the benefit of developing the Rosser CentrePort Area to Rosser as a whole;
- the increased development potential of the 11,000 acre Rosser CentrePort Area;
- the immediate servicing of the Local Improvement Area;
- the existing services in place in the Local Improvement Area and the cost of constructing those private services;
- the duplication of services in the Local Improvement Area if the Proposed Project proceeds;
- the possible credit of prepayments from the Potential Taxpayers for sewer and water services under previous development agreements;

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- the increased benefit to the 300 undeveloped acres in LI No. 2 which are presently unserviced; and
- the possible removal of the \$1.2 million upsizing infrastructure to service land outside the Local Improvement Area.

Rosser gave evidence as to its inexperience in this area and given the magnitude and significance of servicing to CentrePort, it is incumbent on all partners to ensure a fair and equitable method by which Rosser will impose the levies. The Board encourages CentrePort as well as the Province to take an active role in assisting Rosser to develop and analyse more equitable debt servicing options that better reflect the beneficiaries of the Proposed Project, both direct and indirect.

The Board recognizes that the Proposed By-law cannot be changed without following Section 321(3) of *The Municipal Act* which states:

- (a) direct the municipality to give notice of the proposed change to the potential taxpayers who would be affected by the change; and
- (b) give those potential taxpayers and the municipality an opportunity to be heard by the Board.

After Rosser has given notice, the Board will reconvene the hearing on a date to be determined to hear submissions from the potential taxpayers who would be affected by the change, Rosser and any other interested parties. At that time, the Board will also require evidence respecting how Rosser proposes to manage a potential debt that exceeds the Board's established debt payment to revenue ratio of 20%.

THEREFORE, THE BOARD DIRECTS:

1. THAT the Rural Municipality of Rosser draft proposed changes to By-law No. 3-16 which recognizes the following:
 - the benefit of developing the Rosser CentrePort Area to Rosser as a whole;
 - the increased development potential of the 11,000 acre Rosser CentrePort Area;
 - the immediate servicing of the Local Improvement Area;
 - the existing services in place in the Local Improvement Area and the cost of constructing those private services;
 - the duplication of services in the Local Improvement Area if the Proposed Project proceeds;

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- the possible credit of prepayments from previous development agreements to properties in the Local Improvement Area;
- the increased benefit to the 300 undeveloped acres in LI No. 2 which are presently unserved; and
- the possible removal of the \$1.2 million upsizing infrastructure to service land outside the Local Improvement Area.

2. THAT prior to ordering any proposed changes to By-law No. 3-16:

- (a) The Rural Municipality of Rosser give notice of the proposed changes, as per Section 420(1) of *The Municipal Act*, to the Potential Taxpayers in Rosser who would be affected by these proposed changes.
- (b) The Board will reconvene the hearing on a date to be determined to give all interested parties an opportunity to be heard.

December 7, 2016
Date

Lori Lavoie
Lori Lavoie, Vice Chair

Rose Gibbons
Rose Gibbons, Secretary

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