

M A N I T O B A ) Order No. 3/03  
)  
THE HIGHWAYS PROTECTION ACT ) January 8, 2003

BEFORE: G. D. Forrest, Chairman  
S. Proven, Member

**APPEAL OF CLANDEBOYE/PETERSFIELD CONCERNED  
CITIZENS, CLANDEBOYE AMALGAMATED UNITED CHURCH  
AND WILLIAM S. PATTERSON PARENT COUNCIL, HIGHWAY  
TRAFFIC BOARD PERMIT NO. 103-02 - DRIVEWAY AND  
STRUCTURE - PROVINCIAL TRUNK HIGHWAY NUMBER 9 IN  
THE RURAL MUNICIPALITY OF ST. ANDREWS**

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**APPEARANCES:**

Mr. Paul Murphy	Representing the Clandeboye/ Petersfield Concerned Citizens, Clandeboye Amalgamated United Church and William S. Patterson Parent Council (the Appellant)
Mr. Ernie Pammer Mr. Gerald Massey	Representing the Permittee under Highway Traffic Board Permit No. 103- 02 (the Permittee)
Mr. E. Christiansen, P.Eng.	Director of Highway, Planning and Design Branch, Department of Transportation and Government Services; and
Mr. R. Nichol	Senior Access Management Analyst, Highway Planning and Design, Department of Transportation and Government Services (the Department)

## **Background**

An Application was made to The Highway Traffic Board (the HTB) by Mr. Ernie Pammer for the building of a structure within the control limits of Provincial Trunk Highway No 9 (PTH #9) as well as access onto the highway from property located in the community of Clandeboye in the Rural Municipality of St. Andrews.

By letter dated June 25, 2002, the HTB issued Permit No. 103-02 allowing the structure and the accesses with conditions and a plan of approval was attached to the Permit.

By letter dated June 25, 2002 the decision of the HTB was appealed to The Public Utilities Board (the Board) by Mr. Paul Murphy on behalf of the Clandeboye/Petersfield Concerned Citizens, Clandeboye Amalgamated United Church and William S. Patterson Parent Council.

The evidence in this appeal was taken by the Board at a public hearing held at 7:00 p.m., Thursday, November 14, 2002, in the Community Centre in the community of Clandeboye, Manitoba.

A summary of the major points is as follows:

1. Ernie and Lee Pammer were the owners of a parcel of land located in the community of Clandeboye with approximately 128.4 metres of frontage on PTH # 9 and 34.3 metres in the westerly direction.

2. The owners sought and obtained the approval of the HTB to build a commercial structure and two (2) accesses onto PTH # 9 subject to the conditions noted on the Permit.
  
3. The proposed structure, to be known as Butcher's Bar and Grill, is a two story building which includes a 250 seat beverage room on the second floor, a 60 seat restaurant, a 52 seat sports bar, a deli/fast food area and two (2) rental units, all on the main floor and a 10 suite complex in the lower level of which 5 will be rented (all as described on plans dated April 11, 2002 and filed with the Board).
  
4. By resolution dated February 12, 2002 the Rural Municipality of St. Andrews approved a rear yard variance application to accommodate the structure with the following conditions:
  - i/ Applicant obtain a building permit and occupancy permit from Selkirk and District Planning Area Board;
  - ii/ Applicant obtain approval from Highways;
  - iii/ Applicant obtain a business licence from the R.M. of St. Andrews;
  - iv/ Applicant enter into a development agreement at the applicant's expense to include, but not limited to: lighting, landscaping, fencing, parking and signage requirements and to include an approximate 2.4 metre high

fence on three sides of the property (south, west and north side).

The rear yard was varied from 7.6 metres to 4.3 metres. The resolution described the structure as a restaurant and bar and a twelve unit motel and noted the structure was to be located in a "CH" Highway Commercial Zone. The Application made by the Permittee to the R. M. of St. Andrews made reference to a 12.2 by 18.3 metre (40 by 60 feet) structure being relocated to the site. The motel structure was to be an addition.

5. On April 30, 2002 the Manitoba Liquor Control Commission approved the application for certificate of hotel registration, retail beer vendor, dining room, cocktail lounge and beverage room licenses, with seventeen (17) conditions. Condition (f) is noted below:

"(f) that seating capacity be as follows:

Dining room licence, based at 12 sq. ft. per person, approximately	60 persons
Cocktail lounge licence, restricted (washrooms)	50 persons
Beverage room licence, restricted (washrooms)	300 persons
Certificate of hotel registration	7 rooms, 3 suites

Retail beer vendor licence"

6. The Permittee advised that the plans provide for 88 parking stalls which were 12 more than requested under his interpretation of the zoning by-law.
7. While the property has been sold, the current owners plan to continue with the project unchanged.
8. Any pedestrian crossing in the vicinity of the project presents no greater risk than a pedestrian crossing in a fully urban environment where speed limits are 50 or 60 kph.
9. The project will be well lit and to that extent should increase highway safety in the area.
10. The fence on the south side of the property will not hamper motorist's site lines as it will stop west of the existing tree line which extends easterly to the edge of the highway.
11. It was noted that the community centre may also be used for events allowing for alcohol consumption and accordingly, the project presents no new or further risks when these events occur.
12. The project brings economic development to the community.

13. The filing of an application for a building permit is the last process to be followed and has not been made to date.
14. The Manitoba Liquor Control Commission approval has been withdrawn by the Permittee and that process needs to be re-started if the project proceeds.
15. The Permittee is willing to work with all parties to ensure the project meets the needs of everyone. Drinking and driving is illegal and to the extent possible, this will be controlled by the owners.

**Clandeboye/Petersfield Concerned Citizens, Clandeboye Amalgamated United Church and William S. Patterson Parent Council**

1. The Appellant appears before the Board to discuss the impact of the project on highway safety but feels the matter of land use policy is inter-twined.
2. While they have attempted to learn of the applications the Permittee was required to make to various agencies and any requisite approvals, the Appellant noted that the project has progressed through many changes and were unsure of the current status.
3. The Appellant does not oppose the project. However, they oppose the project at the proposed location.

Petitions have been gathered in support of this opposition.

4. The Appellant provided the following information and comments:

i/ The fact alcohol will be served in some parts of the structure is a concern to those with children at the William S. Patterson school.

ii/ There will be increased traffic risk in the immediate area of the proposed structure. The added traffic from the establishment, together with the already intense school traffic including school buses and vehicles of parents picking up or dropping off children, traffic from families visiting the cemetery located immediately south of the Permittee's property, and traffic from the community centre located nearby will increase traffic congestion.

iii/ While the speed limit on PTH # 9 through Clandeboye is reduced to 60 kph from 100 kph, typically motorists travel at higher speeds while on this short stretch of highway.

On April 13, 2002, in the afternoon, Manitoba Public Insurance had a speed board monitoring travelling speeds in the community of Clandeboye, both north and south bound. In a three hour period 486

vehicles passed the speed board, and 386 vehicles exceeded the posted speed limit. It was noted that April is prior to the heavy seasonal traffic flow months, and further, that evening traffic tends to travel at higher speeds.

iv/ A letter dated April 19, 2002, from the RCMP "D" Division to Whom it May Concern indicated that:

"Information collected from the RCMP PIRS data base indicates that the number of collisions that have occurred within Clandeboye during the previous two years are moderate. Between January 2000 and December 2000 the total number of collisions was eight, with only one being an injury accident. The number of collisions between January 2001 and December 2001 is 11, and of those collisions there were two injury accidents and one fatality. There has been an increase in the number of reported collisions within Clandeboye over the last two years and an area of concern is the increase in collisions resulting in fatalities."

and further,

"The traffic flow through Clandeboye is substantial and this is the area of most concern for the RCMP."

v/ The proposed 3.0 metre wide paved shoulder required by the Department of Transportation and Government Services across and beyond the front of the



Permittee's property will be used as a passing lane jeopardizing highway safety.

vi/ Vehicles leaving the property may run into the school grounds immediately opposite the project.

vii/ The proposed shoulder will be used for public parking which negates highway safety.

viii/ This is a narrow stretch of highway that has no room for expansion.

ix/ Once a permit is issued it is difficult to address other highway safety concerns if the project is changed.

5. When asked if a paved lane on the east shoulder would alleviate any safety concerns, Mr. Murphy indicated that, in his opinion, the safety issues are not diminished, but increased due to the nearness of the shoulder to the school ground.

6. While the community centre may host activities where alcohol is consumed, in his opinion, the usage is far less than the intended purpose of the new project.

**Mr. Dale Streich and Dr. Frank Baldwin, Lord Selkirk School  
Division Board of Trustees**

1. Mr. Streich, a previous RCMP officer for 29 years in the area of traffic and enforcement, noted that the

project increases the risk to highway safety for the following reasons:

- i/ increased traffic volumes created by the project increases highway risk;
- ii/ several serious accidents have already occurred along PTH No. 9 in the Clandeboye area;
- iii/ on a peak day traffic volumes are 8,000 to 10,000 vehicles;
- iv/ the highway is very narrow through Clandeboye;
- v/ the traffic pattern around the store located on the east side of the highway and near the project already presents traffic congestion;
- vi/ motorists leaving a licenced facility for alcohol just compounds already existing traffic risks;
- vii/ the merging of traffic from the school including pedestrian traffic and the church traffic together with the traffic from the project presents significant risk to highway safety;
- viii/ the number of parking stalls are a significant issue and full utilization of the project should be a design factor - a one patron per vehicle allowance would require a need for far more stalls than 100. If parking is not adequately provided for on the property then overflow will occur on the highway.

2. The Lord Selkirk School Division is not opposed to the project - only its location.
3. The Lord Selkirk School Division expressed concern about this type of facility being constructed in the vicinity of the school.
4. When asked if a signal light, a lower speed limit or a pedestrian cross walk with lights would offer the necessary safety precautions, they responded that they did not believe so because the traffic, which is beach traffic coming around a corner at highway speed would not have sufficient warning to slow down.

**Mr. Tim Fry - Parent Council of the William S. Patterson School**

1. The Parent Council is very concerned about highway safety because of the already congested traffic along the highway associated with the pick-up and drop-off of children.
2. In Petersfield, it has been observed that traffic leaving the liquor establishment have crossed the highway into the property directly opposite the driveway when leaving. In Clandeboye, this would result in vehicles entering the school yard.
3. They too are not opposed to the project just its location.

**Ms. Irene Foster - Clandeboye Church Board**

1. Highway safety is a concern because currently the highway shoulder is used for parking during funerals and weddings.
2. The Church agrees with Mr. Murphy's concerns related to highway safety and the negative influence the project will have on children attending William S. Patterson School.

**Other Citizens**

1. Other parents of children attending the school expressed concern for safety.
2. Some residents noted that the visitors to the community centre are for the most part local people who are aware of the roadways in the community whereas complete strangers attending one of the venues of the project will increase the risk to highway safety.
3. One person noted that during peak times a 10 to 15 minute wait is required to enter the highway.
4. The hotel owner must accept responsibility for not allowing patrons to drive vehicles impaired. The risk associated with drunk driving will be addressed by the owners.

**Mr. R. Nichol/Mr. E. Christiansen - Department of Transportation  
and Government Services**

1. The Department categorizes PTH # 9 through Clandeboye as a semi-urban piece of highway with generally slower moving traffic.
2. Properties in the area are located on the highway right-of-way currently which is not uncommon but this project provides an opportunity to re-design the highway to better define access onto PTH # 9 for a safer highway.
3. The distance between accesses for the project is acceptable and adequately allows for crossing traffic. A simple access to the property would detract from highway safety because congestion would increase at a single point on the highway.
4. The proposed 2.4 metre fence on the north and south side of the project property and near the access would present sight line problems for motorists leaving on the accesses. The Department noted that the fence shown on the plans attached to the Permit indicate a 0.2 metre high bumper fence along the front and north side of the property.
5. The northerly access lines up directly opposite a side street in Clandeboye which is desirable.

6. The number of parking stalls was found acceptable based on the project plans they were asked to review which provided for the following:
  - the establishment of an 8 room/3 ensuite motel,
  - a 225 seat beverage room with an additional 50 seat capacity on an attached deck and a sports bar with 50 for a total of 350 patrons,
  - 3 retail units at approximately 500 square feet each,
  - 86 onsite parking stalls

The Department understood more parking stalls were being considered including perhaps offsite parking as well.
7. The suitability of the project is a land use issue. The issues for the Department are only related to the impact the project has on highway safety.
8. Traffic lights are not justified for the area based on traffic counts, routing patterns and collision history.
9. The Department is unaware of any notable accidents in the area and is not aware of any collision issues.
10. A traffic impact study has not been done and would only be required when traffic counts exceed 100 vehicles per hour. The Department did not believe

that this particular part of the highway would qualify for a study.

11. Vehicle parking was the major issue for the Department. However, they were satisfied that the project met the Rural Municipality of St. Andrews' requirements for 60 to 70 parking stalls. While the number of stalls proposed exceeded this limit, the Department felt it was on the low side and accordingly, paid special attention to the traffic flow pattern on the property to ensure safe ingress and egress from the highway. They were aware 86 parking stalls were provided for in the plan.
12. If parking along the highway becomes an issue, a no parking zone could be required and with proper enforcement would be controlled.
13. In considering the project, the Department noted it was a multi-use facility including motel units, retail units and a facility with a potential use by 225 to 350 patrons in total.
14. The Department prefers these projects be located in communities rather than on the open highway where highway speeds are higher. The capacity of the highway is then unaffected.
15. The project is being planned in an approved highway commercial zone.

16. The Department was satisfied that the Rural Municipality of St. Andrews had issued the requisite approvals.

**Board Finding**

The Board thanks all parties for fulfilling the undertakings given at the hearing. Noting that an application had not been made for a building permit to the Selkirk and District Planning Area Board, this requirement could not be fulfilled. The Board noted that this was to be the last process followed.

From the information enclosed with the Permittee's application to the MLCC, the Board noted that the estimated cost for the project is approximately \$2.4 Million. While the Board is sensitive to issues of economic development including land use issues, the Board must be satisfied the project will not have a negative impact on highway safety.

It was evident to the Board that the new project including the increased size and use of the structure, the number of parking stalls and the fencing of the property was not fully definitive in the application processes followed by the Permittee. The Permit holder indicated that this was partially due to the Permittee's desire to make changes to accommodate the concerns of the citizens and others. Unfortunately, this changing nature of the project presented some anxiety in the community. Indeed the development originally approved by the



Rural Municipality, as well as the information provided to the Department of Highways and the Highway Traffic Board appear to now have been changed. The Board's decision is based on all the evidence obtained at the hearing and the subsequent undertakings and with respect to details of the project, the Board relied on the most recent information.

In the Board's opinion, the expanded project would reduce highway safety. The Board was satisfied that the project would compound already existing highway risks and introduce others that are unacceptable and accordingly, the permit will be set aside.

The Board accepted the evidence of the local residents that traffic volumes are heavy through Clandeboye, and that traffic congestion which exists on the highway, due to school use, church and cemetery use and service station and store use, would be worsened by the project. The Board further accepted the evidence that not all motorists currently obey the posted lower speed limit through Clandeboye. This together with the added congestion risk leads the Board to believe the increased risk to highway safety by the project is unacceptable. The Board accepts that the project would increase traffic volumes on the highway in Clandeboye in the late evening and early morning on a regular basis and accordingly found convincing the arguments that because of visibility concerns due to night driving, the bend in the highway south of Clandeboye and the sometime disregard for the posted speed limit, the project introduces new highway risks.

While the Board understood the reason for turning lanes, the Board is also cognizant of those arguments that such lanes would allow for passing on the highway at higher speeds thereby increasing the risk to motorists. The Board also did not accept the reasons for the need for two accesses onto PTH # 9. The southerly access increases traffic near the school property which could have been eliminated by a single access directly across from a street in Clandeboye.

Most parties had a concern related to the number of parking stalls on site even though in the Permittee's view they had met the zoning requirements in this regard. The Board noted from the evidence that the number of parking stalls provided for in the plan ranged from 61 stalls to 104 stalls and that the Permit was issued on the basis of 86 stalls. Overflow parking onto the highway was a serious concern for everyone. It is evident that the proponents of the project felt these issues could be addressed through the acquisition of further land for offsite parking. The Board noted that the current building in relation to the size of the property was quite extensive leaving little room for additional parking on the site and further, that the building set back from the ramp at the front of the building to the westerly edge of the highway right of way was 12.3 metres. In the Board's opinion the evidence did not provide a level of assurance that parking would be sufficient to avoid overflow parking along the highway. Further, offsite parking that is not adjacent to the project property or on the west side of the highway, would introduce a pedestrian risk as patrons cross the highway.

The Board noted the remarks of the Department and some citizens that some of the above risks may be addressed through proper signage and policing. In the Board's opinion these remedies may reduce risk but do not eliminate the risk to highway safety as noted by the report of the RCMP "D" Division. Accordingly, the permit will be set aside.

**IT IS THEREFORE ORDERED THAT:**

Permit No. 103-02 be quashed.

THE PUBLIC UTILITIES BOARD

"G. D. FORREST"

Chairman

"G. O. BARRON"

Secretary

Certified a true copy of  
Order No. 3/03 issued by The  
Public Utilities Board

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Secretary