

M A N I T O B A) Order No. 16/00
)
THE HIGHWAYS PROTECTION ACT) February 3, 2000

BEFORE: G. D. Forrest, Chairman
D. T. Anderson, Q.C., Member

**APPEAL OF DEPARTMENT OF HIGHWAYS AND
TRANSPORTATION, HIGHWAY TRAFFIC BOARD
PERMIT NO. 198-99 - ACCESS ONTO P.T.H. NO. 9
R. M. OF WEST ST. PAUL**

APPEARANCES:

Mr. E. Christiansen, P.Eng.	Director of Highways Planning and Design
Mr. B. Magnusson	Senior Functional Design Engineer
Mr. R. Nichol	Senior Access Management Analyst
Mr. M. Dunn	Applicant Frontier Furniture and Cabinet Ltd.
Mr. Don Shaw	R. M. of West St. Paul
Mr. David Oster	Reeve, R. M. of West St. Paul
Sgt. Brian Linklater	Royal Canadian Mounted Police

BACKGROUND :

Mr. M. Dunn on behalf of Frontier Furniture and Cabinets Ltd. submitted an application to The Manitoba Highway Traffic Board on July 21, 1999 for permission to construct an access to Provincial Trunk Highway No. 9 (P.T.H. No. 9 the Highway).

By letter dated September 1, 1999, The Highway Traffic Board issued Permit No. 198-99 allowing for the construction of a public road access driveway 54.0 metres north of the existing access.

By letter dated September 29, 1999 that decision was appealed to The Public Utilities Board (the Board) by the Highways and Transportation Department (The Department).

The evidence in this appeal was taken by The Public Utilities Board at a public hearing held at 1:00 p.m., Wednesday, November 17, 1999, in the Council Chambers of the Rural Municipality of West St. Paul, Manitoba.

MAJOR TESTIMONY OF THE DEPARTMENT OF HIGHWAYS AND TRANSPORTATION (THE DEPARTMENT) :

1. The Department presented exhibits including Sketch Plan No. 1009020-23SACU-99 showing the location of the public road access approved by The Highway Traffic Board. The Department also provided as exhibits a map of the R. M. of West St. Paul showing

the approximate location of the proposed access, an aerial photo of the area, a video cassette simulating turning movements and sight lines at the location, plans showing sight lines and distances, still photos showing the visibility for Northbound vehicles and copies of 13 approved changes in land use and access adjacent to P.T.H. No. 9.

2. The Department is opposed to an additional access onto P.T.H. No. 9 at this location because of the potential hazard that will be created for the approximately 10,000 motorists on the highway and the motorists accessing the property of Frontier Cabinet.
3. The Department indicated that its field investigation indicate that the additional accesses will provide only a marginal improvement, if any at all, for the safety of vehicles entering the property.
4. The Department indicated that visibility for north bound motorists approaching the existing access is significantly greater (510 metres) than at the proposed access (275 metres). Visibility is slightly better for vehicles entering P.T.H. No. 9 at the current location (240 metres) than at the proposed access location (235 metres). The Department submitted that the inside of the curve is the best location for access onto the property given the restricted visibility created by the trees to the south.

5. From a traffic safety perspective the Department noted that this portion of Highway No. 9 is a heavily traveled (approximately 9,000 Average Annual Daily Traffic 1998) 4-lane undivided highway with a multitude of access connections and a high number of accidents. A significant number of accidents that occur on this highway are directly related to traffic entering and exiting the highway at the many driveways. The Department is opposed to the creation of new access at this location because of the inherent safety and operational problems associated with the proximity of the driveways and the high traffic volumes on P.T.H. No. 9.
6. The Department felt that allowing the access would set an unacceptable precedent for future developments in the region. The Department and past Boards have been consistent in not recommending or allowing additional public and private access onto this portion of P.T.H. No. 9 (i.e. 4-lane undivided portion), instead they have jointly pursued the removal of redundant driveways, the development of internal road system, and the relocation and joint use of existing access connections to service new developments.
7. The Department noted the various permits approved by the Highway Traffic Board over the last 15 years indicating that future developmental pressures will

lead to move intensive land use and greater numbers of access driveways.

8. The protection of this highway has resulted in the province being able to delay the construction of a costly by-pass or major highway upgrade.
9. The Department submitted that the safety benefits of this additional access onto P.T.H. No. 9 are overstated and recommended that the Application not be allowed and that Permit No. 198-99 be quashed.

MAJOR TESTIMONY OF MR. MURRAY DUNN, REPRESENTING THE APPLICANT:

1. The Applicant submitted that the video and the map did not accurately reflect the issue of lower sight lines as the motorists' vision would be distracted with the inclusion of traffic reducing sight lines to less than one hundred (100) feet. Mr. Dunn also submitted that vehicles waiting to turn in cannot be seen if there are vehicles heading south bound. This becomes a significant problem in winter in that the driver heading north does not have time to stop. Mr. Dunn submitted that by moving the driveway further north there would be a slightly better sight line.
2. Mr. Dunn questioned the Department's claim to treating applications consistently noting the department's decision to appeal the permit issuance

on the last day of the time allowed for the appeal and not notifying him until a week later.

3. Mr. Dunn further noted that there have been a number of accidents and vehicles in the ditch including his employees, and submitted that moving the driveway would improve the sight lines and increase safety.

4. Mr. Dunn noted that he did not have a joint use/share agreement of the driveway with the neighbour next door from whom he bought the land. He further indicated that the driveway was on his property and that while he was not opposed to the idea of closing the present access if the access to the north was approved he was unwilling to bear the costs of providing access to the new driveway to the neighbour.

Mr. Dunn was of the opinion that the access site to the north of the property was safer and in the best interest of his customers and his employees and should be allowed.

OTHER EVIDENCE:

Sgt. Linklater of the RCMP noted that their concerns were from a policing and public safety perspective. He also noted that access to any property on a curve is not safe. Additional access of this highway is not a desirable thing as there is a significant number of existing driveways on the highway and there are a large number of rear end collisions

caused by left turning vehicles. The Sgt. provided traffic statistics for that portion of the highway from Middlechurch to Parks Creek. To September 1999 there were 10 reportable collisions as compared to 21 for the previous year, 676 moving violations as compared to 595 for the previous year 1998. In 1998 calendar year there were 23 collisions compared to 29 for 1997. Also in calendar year 1998 634 moving violations compared to 2039 in 1997. Sgt. Linklater submitted that moving offences are actually increasing but they do not have the resources to detect them because of the lack of available enforcement staff. He further submitted that a service road with access opposite the St. Benedict's entrance would be appropriate.

Reeve Oster noted that every case scenario is relative to exactly what is actually happening at that point in time. He noted that the applicant was willing to spend about \$20,000 to relocate the driveway because of safety, and felt that the applicant was indeed primarily concerned about safety.

Reeve Oster questioned the sight lines as presented by the Highways Department. He further submitted that the Lister Rapids driveway is a significant element in terms of traffic clutter, sight lines and the ability to make safe turns. Reeve Oster further noted that the land between the railway track and P.T.H. No. 9, west of Mr. Dunn's property, about four square miles, is rented, too confined and not suitable for farming. This area is generally suited for commercial and industrial and additional access driveways are needed to provide for further business opportunities. Reeve

Oster felt that the drawings are hypothetical and not relevant to what is happening on the scene.

Reeve Oster noted that developments between the river and the Highway would be high density development and developments west of the railroad tracks would be 1.37 or larger lots. Reeve Oster also noted that there was potential to tie in access to Shaw Road but that there was no concept plan.

Reeve Oster noted that in another instance the Department's recommendation was accepted and that Mr. Schmidt immediately north of the applicant who had two access driveways removed one and realigned the other to Masters Avenue and is also providing a bit of a service road along the front for other businesses. Some public reserve was also requested in the development plan. In conclusion the Reeve noted that he and council were in support of the application.

BOARD FINDINGS

The Board would like to express its appreciation to those parties who expressed their views at the hearing. The Board recognizes that it may not be possible to address the competing interests of all the parties.

From a public interest perspective the Board must satisfy itself that the granting of an access serves the best interests of the municipality, its residents, the Department of Highways as well as the motoring public.

Having considered all the evidence and views expressed orally, and in writing, the Board will quash the decision of the Highway Traffic Board.

While the Board agrees with the applicant that the location of the proposed access may be safer than the existing access by reason of its distance from the corner, albeit just marginally; the Board however is of the opinion, that such increased benefits would be offset by the continuing use of the existing access and having two access points onto No. 9 at or near the curve of the Highway.

The Board recognizes that the current access is a shared access between the applicant and the southerly neighbour. While Mr. Dunn was not opposed to closing this access which is entirely connected to his property he was not prepared to pay for an access road connecting the proposed access with the neighbour's property along the front of his property.

While this would resolve the issue and increase the safety of the motoring public as noted earlier, the Board is not prepared to order a relocation because of the response of Mr. Dunn and the need for access for the southerly neighbour.

The Board notes that if Mr. Dunn decides to relocate the existing access while accommodating his neighbour he can seek a permit to do so from the Highway Traffic Board.

The Board also notes the nature of the developments that are occurring on the opposite side of the Highway and is of the opinion that there is an urgent need for landowners and developers, the Municipality, its citizens and Highways to do an area plan which amongst other matters, will identify future access points to Highway No. 9 that minimize the risks to the motoring public when this future development occurs.

The Board notes the issues of safety of the motoring public, the need for long term planning as raised by the Department and the high costs of developing a by-pass route which together with access needs for future development, present complex challenges to all parties. Accordingly, a sensitive and cautious approach to Highway access should be taken.

The Board accepts the Department's position as to safety and the need to protect the highway system. The Board is also of the opinion that this incremental approach to providing access will indeed set a significant precedent that in the long run will result in a costly solution to providing a safe highway. The Board would urge all parties to urgently proceed with the development of a sector or area plan to provide guidance on these issues for the future.

