

M A N I T O B A) Order No. 26/05
)
THE HIGHWAYS PROTECTION ACT) February 16, 2005

BEFORE: Graham Lane C.A., Chairman
 Susan Proven P.H.Ec., Member

**APPEAL OF GERALD AND ANNA KREZANSKI ON THE
MATTER OF THE HIGHWAY TRAFFIC BOARD DENIAL OF
AN ACCESS PERMIT FROM THEIR PROPERTY S.E ¼
SECTION 31-19-4E IN THE RURAL MUNICIPALITY OF
GIMLI ONTO PROVINCIAL TRUNK HIGHWAY NUMBER 8**

ABSTRACT:

The Public Utilities Board (the "Board") heard an appeal by Gerald and Anna Krezanski (the "Krezanskis") of a Highway Traffic Board ("HTB") decision. The decision denied Krezanskis additional access to Provincial Trunk Highway 8 ("PTH 8") from land owned by Krezanskis and located adjacent to the highway. HTB's decision left open an option to relocate the existing access, so as to develop a shared access. Krezanskis appealed the HTB decision.

Following a public hearing, by this Order the Board upholds the decision of the HTB to deny Krezanskis additional access to PTH 8. The Board notes and supports the option provided by the HTB, by which Krezanskis may be able to obtain a permit for the relocation of the existing access.

BACKGROUND:

An Application was made to the HTB by Krezanskis for the granting of an access driveway onto PTH 8 S.E. ¼ Section 31-19-4E, in the Rural Municipality of Gimli.

The HTB, by way of a letter dated September 27, 2004, denied the Application. Krezanskis subsequently asked the HTB for a review of its decision. By way of a letter dated November 4 2004, the HTB reconfirmed its decision not to allow the additional access, and, by way of a letter dated November 19, 2004, Krezanskis appealed the reconfirmed HTB decision to The Public Utilities Board.

Evidence in this appeal was heard by the Board at a public hearing held at 1:30 p.m., Thursday, February 10, 2005. The appeal was heard in the Heritage Classroom of the Council Building of the Rural Municipality of Gimli, in the Town of Gimli. Immediately prior to the hearing, Mr. Graham Lane, Chairman of the Board, viewed the property involved, the highway and the existing access.

The public hearing was then conducted on a hear and report basis; accordingly, the Chairman reported and obtained the concurrence of Board Member Susan Proven for this Order.

Krezanskis reported that their family has been farming at the site since 1900. They indicated that that the additional access would allow for the construction of their retirement home, just north of the house on the site currently occupied by

their son. They reported that it would be too costly to use the existing access to gain access to their proposed new retirement home, and that the layout of the present buildings and septic field and trees did not allow for a shared access. They also noted that one of the structures was of log construction and could not be moved.

Krezanskis also indicated that the cost of constructing a connector road from the existing access would be too costly be problematic with respect to future maintenance and snow cleaning.

In response to safety concerns evidenced by Manitoba Transportation ("Highways"), related to any additional access from their property, Krezanskis submitted that they were safe drivers and that the amount of traffic using the proposed additional access would be minimal. Krezanskis are of the view that to facilitate their plan to build a retirement home the Board should grant a second access to PTH 8, leaving the existing access intact.

HIGHWAYS:

Manitoba Transportation ("Highways") is opposed to the creation of an additional access onto PTH 8 to service Krezanskis proposed residential subdivision on part of the NW¼ 12-4-4E, because of:

1. The classification and function of PTH 8;
2. Motorist/Traffic safety;

3. Precedent; and
4. The fact of existing access.

Highways submitted that granting the appeal would create an undesirable precedent that would promote other property owners seeking additional access to PTH 8, exacerbating highway safety risks.

On this issue of traffic safety, Highways noted that PTH 8 between PTH 17 and Hecla Island is classified as a Primary Arterial, and that from Winnipeg PTH 8 changes classification from a 4 lane Expressway, to a 2 lane Expressway, to Primary Arterial. Highways advised that PTH 8 is a high speed (100 kph) 2-lane highway, and, at the location under consideration, it is heavily travelled.

Highways indicated that the average annual daily vehicle traffic count was 1,730 in 2002, with a seasonally adjusted count of approximately 2,350 vehicles. Highways reported that for a highway classified as is PTH 8, highway access from adjacent lands should be obtained via a) service roads, b) joint use of existing access, c) rationalization of existing driveways, or d) where spacing between driveways is far enough apart to represent an acceptable risk.

Highways submitted that allowing access to a location only 123 metres north of the existing access and approximately 167 metres south of the driveway serving the neighbouring property, would be inconsistent with the requirements for the Primary Arterial Classification of this section of PTH 8.

Due to the classification of this highway and the traffic volumes, the Department indicated that it consistently opposes new access connections onto this portion of PTH 8. As well, the Department indicated that it has pursued the removal and rationalization of access driveways onto PTH 8; this by a) removing redundant driveways, b) promoting internal road systems, and c) the joint/relocation use of existing driveways to service new developments/subdivisions.

Highways advised its policy of reducing highway access by removing existing driveways, and through the development of internal roads or municipal roads wherever possible. In response to a question from the Board, Highways noted that over the past 38 years the Department has received only 25 applications for access to PTH 8 in the vicinity of the requested access, and that of those 25:

- a) seven new driveways were approved;
- b) seven were rationalized;
- c) seven were relocated;
- d) two were approved for change in use;
- e) one was approved only for temporary use; and
- f) one application was cancelled.

Highways noted its long range plans for upgrading PTH 8 required the rationalization of existing access and construction of frontage roads adjacent to PTH 8, so as to improve public road safety. Highways submitted that any future

access requirements should be accommodated through an internal street system.

In summary, Highways recommended that the Board dismiss the appeal, and uphold the HTB decision to deny Krezanskis additional access to PTH 8.

BOARD FINDINGS:

The Board has considered the submission of both Krezanskis and Highways, and reviewed two letters from neighbors of Krezanskis, one supportive of the appeal the other opposed.

The Board recognizes the importance of PTH 8 to the area, and notes Highway's plans to further develop, upgrade and reclassify this part of the highway to accommodate higher future volumes of high-speed traffic.

The Board will, in the interest of the safety of the motoring public, and in recognition of plans to upgrade the highway over time, uphold the decision of the HTB to deny an additional access to PTH 8.

In doing so, the Board is mindful and appreciative of the plans of Krezanskis to build their retirement home on the site of their family farm. The Board empathizes with Krezanskis over the difficulties they are experiencing with their plans to build a retirement home, and reminds them of the possibilities of either using the existing access or relocating the access and using an internal private roadway to access the new home.

The Board recognizes the dilemma posed by the legitimate interests of Krezanskis and the public interest represented by highways safety goals. Overall, the Board is of the view that continuing Highway's approach to access to busy highways is in the public interest. Promoting safety and maintaining the stated functionality of highways are important goals, and, in this instance, can best be achieved by maintaining a single access to this property.

Notwithstanding this view, the Board is not adverse to the Krezanskis relocating their existing driveway, and notes the assistance offered by Highways in its letter of August 30, 2004. The Board also notes the HTB letter of September 27, 2004, whereby the HTB indicated that it was prepared to issue a permit for the relocation of the existing driveway. Such a new access could serve as a joint access driveway between the existing dwelling site and the proposed new dwelling site. The Board also supports the granting of a permit to relocate the driveway on condition that Krezanskis provide to the HTB the necessary technical documentation.

APPEARANCES:

Mr. & Mrs. Gerald and Anna Krezanski The Appellant

Mr. Richard Nichol Senior Access Management Analyst,
Highway Planning and Design,
Department of Transportation and
Government Services (Highways)