

MANITOBA) Order No. 100/02
)
THE HIGHWAYS PROTECTION ACT) June 7, 2002

BEFORE: G. D. Forrest, Chairman
M. Girouard, Member

**APPEAL OF MANITOBA TRANSPORTATION AND
GOVERNMENT SERVICES, HIGHWAY TRAFFIC BOARD
PERMIT NO. 048-02 - ACCESS ONTO P.T.H. NO. 9**

APPEARANCES:

Mr. R. Nichol	Senior Access Management Analyst, Highways Planning and Design (Winnipeg)
Mr. John Molinski	Regional Planning Technologist, Manitoba Transportation Eastern Region (Steinbach)
Mr. Murray Chornoboy	Technical Services Support Technician, Manitoba Transportation Eastern Region (Steinbach)
Mr. Don Forfar	Reeve, Rural Municipality of St. Andrews
Mr. and Mrs. Debbeler	Adjacent landowners
Ms. Tyra Heinrichs	The Permittee and the Appellant

Background

An application was made to The Highway Traffic Board on August 20, 2001 for permission for change in use of an existing access from Agricultural to Residential on property owned by Curtis and Tyra Heinrichs (the subject property) to Provincial Trunk Highway No. 9 ("P.T.H. No. 9" or the Highway).

By letter dated April 9, 2002, The Highway Traffic Board issued Permit No. 048-02 requiring the removal of the existing access driveway serving the subject property exclusively and the widening of an existing access driveway located approximately 55 metres north for joint use serving the subject property and the adjacent property belonging to Mr. Debbeler. A change of use from agricultural to residential was also approved.

By letter dated April 24, 2002 that decision was appealed to The Public Utilities Board (the Board) by the Permittee Curtis and Tyra Heinrichs.

The evidence in this appeal was taken by The Public Utilities Board at a public hearing held at 1:30 p.m., Thursday, May 23, 2002, in the Council Chambers of the Rural Municipality of St. Andrews at 500 Railway Avenue, Clandeboye, Manitoba.

Major Testimony of Ms. Heinrichs

1. Ms. Heinrichs submitted that she was not in support of the decision of the Highway Traffic Board to require the removal of the existing driveway serving the subject property and the widening and sharing of the

existing access driveway on the property line with the adjacent landowner, Mr. Debbeler.

2. Ms. Heinrichs indicated that her father planned to move to the site where he plans to live and fix and store vehicles. She does not live at that location but she noted that there would be a mobile home on the site.
3. Ms. Heinrichs stated that the existing access has been at its present location for many years and that there has never been an accident at the site. She indicated that there were good sight lines from the bridge to and from the subject property. Ms. Heinrichs indicated that the existing access allows for quick access to land beyond the bridge limiting the use of the highway which increases public safety.
4. Ms. Heinrichs noted that the adjacent property was being sold and expressed concern as to how a shared access would be accepted by the new owner, how gravel and snow blowing costs would be shared, and how late night traffic and parking on the driveway would be handled.
5. Ms. Heinrichs submitted that if the existing access had to be removed and the joint access widened she would ask that the top part be made as wide as possible to accommodate passing vehicles and with maximum slopes to the side. She also noted that if the proposed widening was not significant then

bringing in machinery will mean stopping traffic both ways in order to "line up" to enter the driveway.

Major Testimony of Manitoba Transportation and Government Services (Manitoba Transportation or Department)

1. The Department submitted seven (7) exhibits, including Sketch Plan No. 1009070-12-ARAWCU-01, showing the removal of the existing access and the widening of the joint access approved by The Highway Traffic Board. The Department also provided as exhibits a map of the R. M. of St. Andrews showing the approximate location of the approved access, and an aerial photo of the area.
2. The Department indicated its concurrence with the Highway Traffic Board's decision with respect to the widening of the existing joint use access at the north limits of the subject property and the removal of the existing access.
3. Manitoba Transportation noted that PTH No. 9 is a two lane high speed highway at this location, undivided with a seasonally adjusted traffic count of 3,400 vehicles/day.
4. Manitoba Transportation submitted that the desirable spacing between driveways is 600 metres. The subject driveway is only 54.9 metres from an existing joint access north of the property and does not meet the current spacing standards.

5. Manitoba Transportation noted its active promotion of the relocation and joint use of existing access to serve new development and to minimize safety hazard. The Department also noted the distance of the access from the Bridge, the less than desirable visibility for motorist, and conflicts with future guard rail installations.
6. The Department also noted that alternative access existed at the common property line. The Department noted that as per its current policy it was prepared to remove the access at no costs to the applicant and to install a longer culvert with sloping sides at the joint access.
7. The Department noted that the driveway would be widened to a maximum of 9.1 metres top width for joint use with the standard 4:1 side slopes. The cost of installing a wider top width would have to be borne by the landowner.
8. Manitoba Transportation asked that The Public Utilities Board uphold the decision of the Highway Traffic Board.

Reeve Don Forfar

Reeve Forfar indicated his support for the Appeal. He understood the position of the Department on additional accesses to the Highway and submitted the high traffic count was an issue only on Sundays. He noted the support of the neighbours for the existing access on the subject property and submitted that the

removal of the access should only be examined at the time of the upgrade of the guardrails.

Mr. Debbeler

Mr. Debbeler submitted that the issue of safety was caused partly by the fact that at the time of construction the Highway was not built at a high enough elevation. Mr. Debbeler asked that the access be widened on his side and the slopes made less steep. He also noted that water went through in a rush and suggested that a bigger pipe be put in. Mr. Debbeler indicated that he was not objecting to what has to be done.

Board Findings

The Board supports the decision of the Highway Traffic Board and in this case, the Department for the elimination of the existing access serving the subject property exclusively and the widening of the joint existing access to serve the subject property and the property immediately north. The Board notes that the risks posed by the existing access is compounded by practical concerns of slope, visibility and proximity to the bridge. The Board also notes the Department's program to install bridge end treatments and guardrails on unprotected bridges and the impact that this would have on visibility and the removal of the subject access. In the Board's opinion the elimination of the access will increase public safety notwithstanding, to date no accidents have occurred at this site. The sharing of joint accesses is highly recommended wherever feasible.

In doing so the Board would urge the Department to ensure that the top width of the access and the slopes address the concerns of the landowners who will share the driveway. The Board would also ask the Department to consult with the landowners on the matter of costs for installing a wider driveway if they so wish.

Having considered all of the evidence the Board will deny the appeal of the Permittee and so uphold the decision of the Highway Traffic Board as indicated in Permit No. 048-02.

IT IS THEREFORE ORDERED THAT:

1. The Appeal of Ms. Tyra Heinrichs concerning Highway Traffic Board Permit No. 048-02 BE AND IS HEREBY DENIED.

THE PUBLIC UTILITIES BOARD

"G. D. FORREST"

Chairman

"H. M. SINGH"

Acting Secretary

Certified a true copy of
Order No. 100/02 issued by
The Public Utilities Board

Acting Secretary