

MANITOBA) Order No. 109/04
)
THE HIGHWAYS PROTECTION ACT) August 20, 2004

BEFORE: Graham F. J. Lane, C.A., Chairman

**APPEAL OF MR. JACQUES LAMBERT, CONCERNING HIS
APPLICATION FOR AN ACCESS DRIVEWAY
(RESIDENTIAL) ONTO PROVINCIAL TRUNK HIGHWAY
NUMBER 59 N.W. ¼ 12-4-4E IN THE R. M. OF DE
SALABERRY**

APPEARANCES:

Mr. Richard Nichol	Senior Access Management Analyst, Highway Planning and Design, Department of Transportation and Government Services (Highways)
Mr. Jacques Lambert	The Appellant
Mr. J. Glen Doney	Community Planner, Manitoba Intergovernmental Affairs, Community Planning Services (Planning)
Mr. Ray Bertrand	Councillor, R. M. of De Salaberry

ABSTRACT:

The Public Utilities Board (the "Board") heard an appeal by Mr. Lambert of a Highway Traffic Board ("HTB") decision denying Mr. Lambert access to Provincial Trunk Highway 59 ("PTH 59") from property adjacent to the highway. Following a public hearing, the Board granted the appeal and provided Mr. Lambert access to PTH 59.

BACKGROUND:

An Application was made to the HTB by Mr. Jacques Lambert for access to PTH 59 from N.W. ¼ 12-4-4E in the Rural Municipality of De Salaberry. The HTB denied his application, with the reason cited being that Mr. Lambert's proposed access did not meet the minimum distance requirement of 400 metres.

Evidence was taken by the Board at a public hearing held at 10:00 a.m., Thursday, August 12, 2004, in the Council Chambers of the R. M. of De Salaberry. Immediately prior to the hearing, Mr. Lane, Chairman of the Board, viewed the property, highway and municipal roads related to the appeal.

The Appellant:

Mr. Lambert noted that he had measured the distance to the nearest alternative access to the north and south, and his proposed access did meet the minimum spacing cited by the HTB. He submitted that his proposed access would not represent a significant safety risk as highway traffic volumes were not high compared to other portions of PTH 59 where access had been granted.

He indicated his intention to locate a mobile home on the property, and advised he had no plans for a further subdivision of the property.

Mr. Lambert reviewed the three access options suggested by Highways, those being through his neighbours' properties or by way through his father's property. Mr. Lambert opined that access via the neighbours to the North and Paul's road was impractical due to the distance, the nature of the land and the cost that would be involved.

He further opined that access via the neighbour to his south required the approval of his neighbour, which was not forthcoming as the neighbour operated a business involving heavy trucks. Mr. Lambert considered access through his father's property to Moose Creek Road impractical due to the high cost that would be entailed, the nature of his father's land (swampy in portions), and safety concerns related to Moose Creek Road.

In short, the appellant noted difficulty with each option suggested by Highways, and suggested that access to PTH 59 represented the only practical option from his perspective. Highways did not contradict Mr. Lambert's assertion that there were difficulties with each of the options.

As indicated, Mr. Lambert considered direct access to represent the most practical approach, from a cost and safety perspective. In support, he submitted that the traffic count south of St. Malo as compared to north of St. Malo was low, and, therefore, allowing for the driveway at the minimum standard of 400 metres would not create an undue safety risk, there being innumerable other private accesses to the highway.

Mr. Lambert further suggested that access to PTH 59 by means of a secondary road was potentially more dangerous than direct access, particularly with respect to the potential for children entering and embarking from a school bus.

In summary, Mr. Lambert submitted that direct access to PTH 59 was the only feasible route, from a relative perspective, and was the only one that would allow him to utilize the land given to him and his wife from his father.

Councillor Ray Bertrand supported Mr. Lambert's appeal, and indicated that at the point of the proposed access to the highway, the highway was straight with no obstructions to the driver's view. Mr. Bertrand also stated that he did not foresee any further applications for access along that part of the highway, no further subdivisions of the property were anticipated.

Highways:

Highways opposed the creation of an additional access onto PTH 59 to service Mr. Lambert's proposed residential subdivision of part of the NW $\frac{1}{4}$ 12-4-4E because of:

1. The classification and function of PTH 59;
2. Motorist/Traffic safety;
3. Concerns with respect to potential precedent; and
4. The availability of alternate access from the municipal road system bounding the west limit of the property being subdivided.

Highways noted that PTH 59 is a Primary Arterial Highway, and indicated that the primary function of these types of Provincial Highways is to move traffic with optimum mobility, maximum safety and minimal interruption. The provision of access to adjacent lands is a secondary consideration, a lesser function within the Primary Arterial Classification.

Highways further noted that to protect the primary functioning of PTH 59, and to minimize interference from land uses and developments adjacent to the highway system, Departmental Guidelines (Classification Study/Transportation Manual) recommend a minimum spacing of 400 metres and a desirable spacing of 800 metres between farm/agricultural driveways for Primary Arterials.

To facilitate the subdivision of his father's approximately 38 acres into 2 - 19 acre parcels of land, one of which was given to Mr. Lambert, residential access was required on the parcel fronting PTH 59. The residential access requested by Mr. Lambert did not strictly comply with the Department's guidelines of a desired spacing of 800 metres.

Highways submitted that the PTH 59 functions, in part, as a high-speed connection between the City of Winnipeg and the United States. Highways cited the number of small communities in southeastern Manitoba served by the highway. (The 2002 Average Annual Daily Count ("AADT") is in the +1000 AADT range north of PR 201 and closer to 2000 AADT south of PTH 23. Approximately 9% of the traffic on PTH 59 is truck traffic. Seasonally adjusted traffic counts (summer) on this portion of PTH 59 notes a traffic increase of 11% (1100 AADT and 2200 AADT) during peak summer periods.)

Highways noted that the consequence of allowing adjacent development to the highway would be to increase the degree of hazard and amount of delay for motorists, and to accelerate the need for future costly highway improvements. Highways further noted that each new access onto a high speed/major highway creates a potential safety hazard and is, thus, problematic.

1. A driveway is an obstruction in the Right of Way and increases the risk associated with vehicles leaving the highway and striking the crossing; and
2. Each additional driveway creates a potential safety hazard by creating an intersection where turning movements on and off the highway create/result in conflicts between turning and through traffic thereby increasing the accident potential of the highway.

Highways noted that approximately 35% of all collisions on the rural portion of the provincial highway system occur at intersections and access points. Highways submitted that the further proliferation of access along this highway would create an undesirable precedent, and could result in increased demand for similar concessions with respect to access.

Highways indicated that it is opposed to the creation of any additional access onto PTH 59, and recommended access to Mr. Lambert's property be achieved through a connecting road, to be constructed by Mr. Lambert, to an adjacent municipal road system rather than PTH 59. Highways submitted its opinion that the requirement for an additional access onto PTH 59 could have been avoided at the subdivision stage by:

1. Orienting the proposed lots in an east - west fashion with frontages onto Moose Creek Road; or
2. Providing a Plan of Easement or Declaration for Right-of-way across proposed lot one to service proposed lot 2; or
3. Relocation or joint use of an existing access onto PTH 59.

In conclusion Highways recommended that the Public Utilities Board dismiss the appeal, and uphold the Highway Traffic Board's decision denying Mr. Lambert's proposed access onto PTH 59, to service his proposed subdivision.

The hearing was further assisted by supporting comments with respect to the provision of information related to subdivision processes by Planning.

BOARD FINDINGS:

The Board considered the position of Mr. Lambert and Highways. The Board recognizes the importance of PTH 59, and the potential for future development of passing lanes and, eventually, a four-lane highway, though noting Highways comment that such future development may be many years off.

The Board also notes Mr. Lambert's concerns arising out of the topography of the land in question; the evident complication of requiring neighbouring property for the construction of an access road either to the north or south of the proposed access; and the difficulty of constructing a road to Moose Creek Road.

The Board also notes that with any of the access options, as with direct access, safety risks are present. Direct access perhaps being no worse, and perhaps better, than the other options.

The Board will therefore approve Mr. Lambert's application for a residential access to PTH 59.

In doing so, the Board is mindful that the access is for a single residential use only. The Board will approve the access on condition that only a single residential premise occurs on this site.

The location of any additional residential premises on this site will render this Board Order granting access null and void.

The Community Planning Services approved the subdivision subject to access to PTH 59. This Board will grant a conditional access only subject to the restriction of the subdivision to a single residential premise only.

In approving this application the Board notes that its decision should not be taken as a precedent. The Board supports the standards and principles used by the Department of Transportation to protect the highways of Manitoba, and users of the highways.

Safety is a concern to all citizens.

The Board notes the topography of the land makes the three options to direct access likely exceedingly costly and possibly impractical for a single residential owner. And, the ability to acquire land north or south to facilitate two of the options was uncertain. The Board also notes that while the desirable spacing for access to the highway is 800 metres, the appellant did meet the minimum requirement of 400 metres.

IT IS THEREFORE ORDERED THAT:

1. The application BE AND IS HEREBY APPROVED subject to the restriction of a single residential use only.
2. That the access be constructed in accordance with the specifications of the Department of Transportation.

THE PUBLIC UTILITIES BOARD

"GRAHAM F. J. LANE, C.A."

Chairman

"H. M. SINGH"

Acting Secretary

Certified a true copy of Order
No. 109/04 issued by The Public
Utilities Board

Acting Secretary