

MANITOBA ) Order No. 123/02  
 )  
THE HIGHWAYS PROTECTION ACT ) July 2, 2002

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

**APPEAL OF MANITOBA TRANSPORTATION AND  
GOVERNMENT SERVICES, HIGHWAY TRAFFIC  
BOARD PERMIT NO. 294-00 - RELOCATE PUBLIC  
ROAD ACCESS DRIVEWAY**

---

**APPEARANCES:**

Mr. E. Christiansen, P.Eng.	Director of Highways, Planning and Design Branch (Winnipeg)
Mr. R. Nichol	Senior Access Management Analyst, Highways Planning and Design (Winnipeg)
Ms. Sofia Wojciulan	The Appellant
Ms. Helen Wojciulan	On behalf of the Appellant
Mr. Tom Scoular	Development Officer, Rural Municipality of Headingley

## **Background**

An Application was made to The Highway Traffic Board on October 4, 2000 for the removal of an existing access, the construction and change in use of a new access and the construction of a public frontage road onto Provincial Trunk Highway No. 1 ("P.T.H. No. 1" or the Highway) on property previously owned by the Appellant. The Application was made by Manitoba Highways (the "Department") on behalf of the Rural Municipality of Headingley.

By letter dated November 21, 2000, The Highway Traffic Board issued Permit No. 294-00 allowing the relocation of the existing access driveway and the construction of a public frontage road as shown on Plan No. 1001220-61-AARSCU-00.

By letter dated December 20, 2000 that decision was appealed to The Public Utilities Board (the Board) by Ms. Sofia Wojciulan.

The evidence in this appeal was taken by The Public Utilities Board at a public hearing held at 1:00 p.m., Thursday, June 6, 2002, in the offices of the Board, 400 - 330 Portage Avenue, Winnipeg, Manitoba.

## **Major Testimony of Ms. Wojciulan**

1. Ms. Helen Wojciulan made the presentation on behalf of Ms. Sofia Wojciulan. Ms. Wojciulan presented to the Board a number of photographs on pages numbered 1 to

14 as well as copies of a number of documents labelled A to H.

2. Ms. Wojciulan indicated that she had agreed with the Rural Municipality as to the development plan as per documents labeled A, B and C but did not agree with the design of the road. She noted that the road connected directly with her driveway and that although this issue was discussed prior to the signing of the agreement nothing was done about it by the Rural Municipality.
3. She noted that shortly after the agreement was signed the ditch between the subject property and the Husky was filled. This had the effect of misleading drivers and indeed encouraged traffic between her property and the Husky property.
4. Ms. Wojciulan submitted that the drivers often mistook the frontage road entrance to be the service road entrance to the Husky Station leading them to a dead-end private road. Ms. Wojciulan noted that on several occasions semi trucks got stuck blocking the entrance or exit. Ms. Wojciulan submitted that was a safety hazard as emergency vehicles would not be able to enter if required.
5. Ms. Wojciulan submitted that the traffic caused their private driveway unnecessary wear and tear and transferred public safety and liabilities on to a

private landowner. Ms. Wojciulan submitted that the Department and the Highway Traffic Board should now take steps to redirect general public traffic to another location.

6. Ms. Wojciulan submitted that the Department and the Rural Municipality of Headingley did not have a signed agreement of the implementation of the Access Management Plan at the time that the Wojciulan agreement was signed and as such there was an agreement to extend the service road on to the Husky property, or to put a fence on the east side of the property. Ms. Wojciulan further submitted that the requirements for development and not implementing the Access Management Plan equally among landowners have caused this unacceptable situation.
7. Ms. Wojciulan submitted that she was not asking The Public Utilities Board to intervene in and arbitrate in a dispute between property owners but rather to consider the impact on the value and use of Wojciulan's land resulting from the decisions of the Department and the Rural Municipality of Headingley.
8. Ms. Wojciulan asked that the Department prevent general public traffic from entering onto the private driveway, provide for an emergency exit and maintain access to the private driveway and Roger's Wireless. Ms. Wojciulan also asked that the Department reinstall

a temporary west access to P.T.H. No. 1 for emergency use only from the service road.

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

1. The Department submitted seven (7) exhibits, including Sketch Plan No. 1001220-61-AARSCU-00, showing the Public Road and Access Relocation approved by The Highway Traffic Board, November 21, 2000. The Department also provided as exhibits a map of the Rural Municipality of Headingley showing the approximate location of the approved access, an aerial photo of the area, and a copy of the Memorandum of Understanding between Manitoba and the Rural Municipality of Headingley.
2. The Department indicated that it is opposed to the recreation of an access onto PTH No. 1 at the west limit of the frontage road and is requesting The Public Utilities Board uphold the Highway Traffic Board's permit.
3. The Department noted that the Rural Municipality of Headingley acquired the land from the appellant for the purpose of establishing a public road, and submitted that with the creation of the public road the previous owners interests in the property were relinquished. The Department submitted that the adjacent property owner, Ms. Wojciulan, does not have

an interest in the land in respect of which the permit is issued, and as such any right to appeal under The Highway Protection Act.

4. The Department noted the nature of the highway, a 4-lane undivided highway with a high traffic count, and the associated accidents at access connections.
5. The Department submitted that the re-establishment of a driveway at the west limit of the frontage road 33 metres from the entrance to the Husky is unacceptable from a safety perspective given the nature of and traffic volume of the Highway, and inconsistent with the approach taken by the Department and the Rural Municipality of Headingley to rationalize access to the Highway, and would not comply with the Headingley Access Management Plan.
6. The Department noted that significant expenditures have been incurred for the construction of frontage roads, intersection improvements, and the removal and relocation of existing driveways.
7. The Department submitted that the matter of some drivers making the wrong turn on to the frontage road to access the Husky is not an issue, and does not warrant the reintroduction of the access which was removed.

8. The Department noted that it has provided a number of options to Ms. Wojciulan but they have all been rejected.
9. The Department submitted that the matter of traffic between the Wojciulan's property and the Husky is a matter of a dispute between private landowners, and should not require intervention by The Public Utilities Board, or the Department, or the Rural Municipality.
10. The Department asked that the appeal be denied, and that the Highway Traffic Board permit be upheld.

#### **Rural Municipality of Headingley**

Mr. Scoular noted that the Rural Municipality does not have the power to impose traffic containment where rezoning has already occurred which in this case applies to Husky. The Rural Municipality noted that it had sent a letter to Husky asking for their co-operation. The Rural Municipality indicated that it would follow-up the matter with Husky by way of a letter and advise the Board of the results.

#### **Board Findings**

The Board notes that the safety of the motoring public is a significant issue in this matter as Highway No. 1 is a 4 lane non meridian roadway with a very high density of traffic. The Board is in agreement with the Department and the Rural

Municipality of Headingley that the reduction of entrances onto the Highway is a most desirable long-term plan. The Board also supports the construction of frontage roads in such circumstances which reduces the number of crossing points and increases safety for the motoring public. The Board notes that an Access Management Plan has been drawn up and approved by both the Rural Municipality and the Province. The Board further notes that that plan calls for the continuation of the service road which currently ends at the west side of the Wojciulan property on through the front of the Husky property. The Board notes that the Department has indicated that this construction is expected to occur within the next five years. In light of the existing Access Management Plan, the nature of this Highway, and the attendant issues of the safety of the motoring public the Board will not agree to the applicant's request for an egress onto the Highway at the west end of the frontage road immediately south of the applicant's private road. To do so, would put three access points within 150 metres which is not in keeping with the Management Access Plan.

The Board understands the applicants' concerns about the use of the frontage road and the potential for the use of the private driveway. While the Board sees the diminution of this issue with the further construction of the frontage road through Husky, the Board would ask the Department to consider the need for additional signage to minimize this issue at the approach to the entrance to the frontage road.



