

M A N I T O B A) Order No. 77/07
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THE HIGHWAYS PROTECTION ACT) June 5, 2007

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

**APPEAL OF HIGHWAY TRAFFIC BOARD (ACCESS TO
PROVINCIAL TRUNK HIGHWAY NO. 15)**

Executive Summary

By this Order, the Public Utilities Board (Board) denies an appeal of a Highway Traffic Board (HTB) decision that denied an application from homeowners to relocate a driveway with access to Provincial Trunk Highway 15 (PTH 15) to the western limit of Lot 2 of their subdivided property.

However, the Board establishes conditions to the denial. The denial will be reconsidered unless Manitoba Infrastructure and Transportation (Department), in conjunction with the Rural Municipality of Springfield (RM), install signage adjacent to the subject property to protect the existing driveway access from inadvertent use from motorists mistaking the driveway for the Northerly continuation of Pleasant Road South.

The Board supports and shares the Department's concerns related to present and future traffic safety, and notes the significant volumes of traffic both present and expected for PTH 15. The Board, assuming the Department meets the conditions for the denial herein established, denies the relocation of the driveway. This will mitigate the risk of significantly increased access to PTH 15 arising from future further development of the adjacent property.

Background

Mr. and Mrs. Domareski (Appellant) made application to HTB on October 23, 2006 seeking approval to relocate an existing residential driveway access to PTH 15 to a new access to be constructed to the west of the existing driveway, to serve as a shared residential driveway.

On November 30, 2006, HTB denied the application and Mr. and Mrs. Domareski subsequently appealed the decision to the Board (December 12, 2006). On May 24, 2007, the Board held a public hearing of the appeal in the Oakbank, Manitoba Council Chambers of the Rural Municipality of Springfield.

The Department provided the following background information, not disputed by the Appellant:

- March 1998 - Mr. and Mrs. Domareski (the owners of 75.8 acres of land adjacent to PTH 15 and Pleasant Road North) applied to subdivide a 10-acre parcel of land (726 feet x 600 feet), containing their current home and fronting PTH 15, from their overall landholding. The existing driveway access connecting their existing home to PTH 15 was to remain.
- June 1998 - Community Planning Services deferred consideration of the proposed subdivision, pending completion of a review of the Rural Municipality of Springfield's (RM) land use policy and Development Plan.
- September 25, 2001 - RM approved a revised Development Plan (RM By-Law 98-22).
- June 27, 2005 - RM amended the revised Development Plan (By-Law 04-03). The amendment to the Development Plan replaced "Rural and Agricultural Area 2 Policies" with a "Mixed Rural and Agricultural Area" designation.
- June 2005 - Mr. and Mrs. Domareski requested a revision to their subdivision application, and sought the creation of two residential lots, (in accordance with the RM's amended Development Plan). The revision included an additional proposal to sub-divide the overall holding to also include a 5-

acre lot of 300 feet x 726 feet, located immediately north and adjacent to the 10-acre parcel, the 5-acre lot to have 300 feet of frontage on Pleasant Road North. The application was approved.

- October 23, 2006- Mr. and Mrs. Domareski applied to HTB to relocate their existing driveway access to PTH 15 to a location to the west of the current location (concurrent with the closure of the existing driveway), to serve both the 10-acre property and the remaining property fronting PTH 15. The homeowners plan to construct a new home to the west of the 10-acre lot and sell their existing home.
- November 30, 2006- HTB denied the application.

The Department also provided Sketch Plan No. 1015030-5-ARL-06, which simulated the removal of the existing access and its relocation as requested by the Appellant. The Department also provided a map and aerial photo of the area which indicated the location of the existing and proposed access and other area details.

The Board visited the subject property adjacent to PTH 15 and Pleasant Road North, prior to the hearing.

Summary of Testimony of Mr. and Mrs. Domareski

The Appellant opposed HTB's decision to deny their application, noting that the relocation would provide for access to PTH 15 from both parcels of their subdivided property fronting onto PTH 15.

The Appellant also noted that Pleasant Road South, a municipal road intersecting with PTH 15, is located directly opposite the current driveway. The Appellant reported that their existing access driveway was often inadvertently mistaken by motorists, travelling east on PTH 15 just past Anola, as the continuation of Pleasant Road South. The Appellant indicated that a significant volume of traffic, including heavy trucks, turn into their driveway in error, and opined that this has placed at risk individuals and children in their yard and represents a major safety risk. (As well, there is an increased safety risk arising from vehicles backing out or driving from the driveway upon determining it is not Pleasant Road North.)

The Appellant further submitted that the driveway access relocation denied by HTB would allow the current access driveway to be closed, reducing the risk now posed by the immediately adjacent Pleasant Road South. Relocation would reduce the risk of traffic turning inadvertently into their driveway.

Along with being safer, they noted that a relocated access would adequately serve the two residential lots created by the subdivision.

In further support of their appeal, the Appellant noted the existence of a number of other residential driveway accesses to PTH 15 in the area, granted after applications by their respective owners. The Appellant claimed that denying the relocation would be unfair, given the access to PTH 15 available to other property owners in the area.

Summary Testimony of the Department

The Department supported HTB's decision, indicating safety concerns with the Appellant's proposal.

The Department noted that:

- PTH 15 is a two-lane undivided high-speed highway with a 100 kilometer per hour speed limit;
- daily traffic counts at or near the location of the disputed access have ranged between 3,190 vehicles and 4,400 (summer peak);
- truck traffic accounts for 12% of all traffic on PTH 15;
- the highway also services summer vacation travels to the east;
- the traffic count has grown by 25% since 1992, and
- further considerable growth in population density and traffic volumes was expected to occur.

The Department largely attributed traffic count growth to rural residential development.

The Department suggested that population and traffic increases would follow, given the RM's designation of 58,000 acres to accommodate rural residential developments, urban areas and hamlets.

The Department accepted the Appellant's claim that some other residents in the area had access driveways to PTH 15, indicating that it had been unable to convince other authorities that such accesses were unsafe and should not be granted.

The Department indicated its expectation that eventually the accesses cited by the Appellant would be closed and additional service roads constructed to allow safer access.

The Department further suggested that, given the traffic growth forecasts prove accurate, at some point in the future, portions of PTH 15 were likely to be widened if not changed to a divided highway, and that access from driveways rather than service roads would not be permitted under these circumstances.

The Department noted its ongoing active promotion of service roads, to facilitate safe highway access for not only current housing subdivisions but also future development.

Department's Preferred Outcome

The Department stated its preference to be:

- a) closure of the existing access driveway;
- b) construction of a service road, giving access to PTH 15 via Pleasant Road North to service the properties involved in the appeal; and
- c) with regard to such further adjacent development as may be facilitated by further subdivisions, the Department would leave access as it currently exists, and have the Subdivision plan revised to show a public road across the entire frontage of the property with the understanding that direct access on PTH 15 is temporary and subject to removal; in other words, future access will be from Pleasant Road North should there be additional subdivision of the property.

The Department indicated that if the Appellant were to agree to the Department's preferred arrangement, the Department would seek approval to meet the costs of closing the current driveway access on PTH 15 and building a connection from the Appellant's property fronting on PTH 15 to Pleasant Road North. However, the Department indicated it would be the responsibility of the owner(s) of lots to be serviced from the service road to meet the cost of constructing the service road. (The Department also indicated that if a service road was subsequently required to allow access to Pleasant Road North (to PTH 15) due to further development, the developer would be responsible for the cost of the service road.)

The Department indicated that a service road would have to meet the Department's design requirements, and that approximately 100 feet of the Appellant's current property fronting PTH 15 would be required.

Department's Secondary Preference

The Department indicated it would accept the existing driveway remaining in place until further PTH 15 development occurred.

The Department contended that the Appellant could secure access to the driveway from the new home they plan to construct, to be located on the subdivided property to the immediate west of their existing home, through a legally binding joint use arrangement that could succeed their current ownership, noting however, that the access could be temporary.

The Department indicated concern that if the relocation of the access as requested by the Appellant was allowed, it would

establish a further precedent that would hinder its efforts towards:

1. maintaining the primary function of PTH 15 (conveying traffic safely and efficiently);
2. facilitating orderly development of the lands adjacent to PTH 15 (considering current land use and development policies);
3. reducing and minimizing the number of driveways onto PTH 15, thereby improving motorist safety;
4. establishing a pattern of access connections onto PTH 15 that will safely accommodate expected residential growth;
5. maintaining equitable practices as being established by the Department, HTB and RM, with respect to other developments along PTH 15; and
6. minimizing the future cost of upgrading PTH 15.

With respect to the last objective cited by the Department, the Department advised that given the development likely to occur in the area, service roads will eventually supplant direct driveway access. The Department suggested that to relocate accesses or provide new accesses direct on PTH 15 at this time could be expected to result in wasted expenditures, by the Department and the landowners, when service roads are eventually mandated and existing accesses ordered to be closed.

Accordingly, the Department recommended that the Board deny the appeal.

Board Findings

The Board appreciated the assistance provided to the Board by the Appellant and the Department, furthering the Board's understanding of the situation, options and implications. The Board respects the views and interests of both parties.

The Board's mandate is to determine the public interest in matters that come before it. The Board is independent in its decision making and has no biases other than the public interest. The Board considers the public interest to include a wide range of factors, including economics, safety, law and the environment. And, the Board considers the interests of the appellant as well as those of the wider community in determining the public interest.

In considering appeals of HTB decisions, the Board proceeds on a *de novo* basis, that is, as if the application was made directly to the Board and the facts were made evident through the application. In short, the Board is not required to concern itself only with evidence that came before the HTB; it considers the evidence that arises during the Board's proceeding, including new evidence.

The Board notes the important responsibilities administered by HTB and the Department pursuant to the *Highway Protection Act*, an Act that also has relevance to the Board in its representation of the law and public policy.

Following a thorough consideration of the Appellant's appeal and the evidence brought before it, the Board concludes that it is

in the public interest to uphold HTB's denial of the Appellant's application for a relocated access to PTH 15.

The Board agrees with the Department that relocation of the existing access, as requested by the Appellant, would not best serve the long-term public interest, that lies in part in the rationalization of highway access to both retain and improve safety.

In reaching this conclusion, the Board accepts the Department's concern that relocation of the Appellant's driveway to the west of the existing access would bring undue risks that are best avoided. The risks are associated with the potential for future increased traffic to and from PTH 15 through a relocated access from potential future development to the north and west of the Appellant's current house.

The Board, after considering development that has already occurred in the RM and the RM's most recent Development Plan (58,000 acres for development), agrees with the Department that there is a strong if not likely potential for future development.

The Board notes the increased traffic flow on PTH 15 in the vicinity of the property in question, and has little doubt given the experiences of other communities located fairly close to Winnipeg (let alone being the route in this case to "cottage country"), that volumes will continue to increase. Eventually, existing accesses will have to be closed and service roads relied upon.

For all these reasons, and notwithstanding the difficulty that lies ahead for the Appellant, safety concerns should trump individual self-interest, however that self-interest is fairly formed.

As to the Department's preference for the construction of a service road to provide access to the Appellant's property from Pleasant Road North, while the Board also prefers this solution, it understands that the service road would be very expensive. Construction of the road at the Appellant's cost may not be justified, considering the Appellant's situation and plans.

If the Department were prepared to meet the cost of the service road as well as access to Pleasant Road North, that would be a different matter. However, the Board appreciates the costs and prioritization associated with highway enhancement, and understands why the Department finds itself not in a position to fund the development of the service road to enable their preferred solution to be affected.

All this said, the Board understands and has empathy with the position of the Appellant who plan to sell their current premises and construct a new home on the adjacent sub-divided property. The Board also notes and shares the concerns of the Appellant concerning the location of the existing access across from Pleasant Road South.

In fact, the Board considers the existing situation as one posing at least as great a current safety risk as would the relocation of the driveway, at least ahead of further development.

The Board concludes that in upholding HTB's denial of the Appellant's proposed relocation, it should require improvements to the existing situation.

Accordingly, the Board will deny the Appellant's appeal on the condition that the Department act to reduce the incidence of traffic turning into the existing driveway due to confusion over the northerly continuation of Pleasant Road South.

Signage is required to clearly advise motorists headed east on PTH 15 and approaching Pleasant Road South (and the Appellant's driveway) that Pleasant Road North is further ahead. Signage at the intersection of the Domareski's driveway and PTH 15 should also clearly restrict traffic to local access only.

Having considered the evidence, and upon the Department meeting the signage conditions set out herein, the Board will deny the appeal.

Recommendations

The Board suggests to the Appellant that appropriate shared access to PTH 15 for their intended new home be secured through a joint use agreement with respect to the existing driveway, and this be obtained prior to the disposal of the property they now reside on. Also, the Board respectfully suggests to the Appellant that they consider:

- a) the likelihood of an eventual service road being required and effected, and the effect that would have on the distance of their current and possible future home from the service road in concluding their plans; and

APPEARANCES :

Mr. R. Nichol	Senior Access Management Analyst, Highways Planning and Design (Winnipeg)
Mr. H. Lausmann	Senior Highway Planning Engineer, Highways Planning and Design (Winnipeg)
Ms. Krista Molinski	Access and Utilities Technologist, Highways Planning and Design (Winnipeg)
Ms. Mary Domaratzki	Project Planning Technologist, Highways Planning and Design (Winnipeg)
Mr. and Mrs. Domareski	Appellant