

M A N I T O B A ) Order No. 153/07  
)  
THE HIGHWAYS PROTECTION ACT ) November 30, 2007

BEFORE: G. Lane, Chairman  
S. Proven, Member

**APPEAL OF MS. HELEN BROWN AND MR. HARRY PENNER  
REGARDING HIGHWAY TRAFFIC BOARD PERMIT NO.  
165-07 (LOWE FARM CO-OP (1959) LTD.)**

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**EXECUTIVE SUMMARY**

By this Order, the Public Utilities Board (Board) provides for a variance of Highway Traffic Board (HTB) permit 165-07, and by so doing addresses the safety concerns advanced by Ms. Helen Brown and Mr. Harry Penner (Appellants).

The traffic flow on the site is to be restricted to one direction and signage in the vicinity of the subject property is to be installed to both warn motorists of slow turning traffic and clearly demark the presence of sidewalks to enhance the safety of pedestrians. As well, Lowe Farm Co-op (1959) Ltd. (Co-op) is to consult with Manitoba Infrastructure and Transportation (MIT) and the Rural Municipality of Morris (RM)

with respect to the signage. Finally, the Co-op is to file a site plan for approval by the Board.

The Board shares MIT and the Appellant's concerns related to both present and future traffic safety, and acts to mitigate the risk to be associated with increased traffic on the Co-op's property with access to PTH 23.

The appeal was heard on "a hear and report basis" by Board member Susan Proven. Immediately prior to the hearing Board Member Proven visited the site.

**BACKGROUND:**

Pursuant to *The Highway Protection Act*, the Co-op made an application to the HTB seeking approval of various structures and an access driveway (commercial) onto Fifth Street, setback 49.1 meters from the centre line of Provincial Trunk Highway (PTH) No. 23. The subject property is adjacent to PTH 23, Lots 1 - 10, Block 5, Plan 522, Sec S.W. ¼ 6 Township 5, Range 1 West in the RM of Morris.

There currently exists a direct block access to the property from PTH 23, and HTB issued Permit 165-07 on August 7, 2007.

The Permit allows for the removal of fuel pumps, propane tanks and a canopy, and the construction of underground fuel tanks, pump islands and a propane tank and skid stand. An access Driveway from Fifth Street allowing for two-way traffic to

enter and leave the site, as well as entry and exit from the site onto PTH 23 was also approved by the permit.

On August 28, 2007, the Appellants appealed the permit to The Public Utilities Board pursuant to Section 21 of *The Highway Protection Act*

**APPLICATION**

The Co-op outlined a number of proposed developments with respect to the gas bar situated on the subject property, citing changes slated to occur.

With regards to parking, the Co-op noted that their customers currently park on Fourth Street and PTH 23, and suggested that this will continue to be the case. The Co-op also noted the planned relocation of its tandem axle petroleum delivery trucks to the lot east of Fourth Street (off the site), to provide additional parking for restaurant patrons on the subject property. The Co-op submitted that the proposed approach north of the restaurant may eliminate one parking stall, while up to four stalls will be created because of the overall moves.

The Co-op noted that it owns the restaurant building and property, and leases the restaurant to an operator. As the owner, it is in the best interest of the Co-op to see the restaurant succeed; the Co-op seeks to provide an appropriate number of parking stalls.

Currently customers access the existing gas bar pumps from off of Fourth Street and PTH 23. When fuelling, larger trucks block Fourth Street as the trucks are unable to get completely on to the property, and this has created a hazard, with others obliged to wind around parked trucks. Currently, exiting vehicles have insufficient space to right themselves perpendicular to the roadways, and are often partially parallel or completely parallel to a roadway when exiting.

The proposed layout has the fuel pumps located well within the subject property, ensuring that entering, exiting and fuelling, for all vehicle types, will not involve blocking traffic lanes.

The existing gas bar has two underground storage tanks and the Co-op receives fuel deliveries with large tandem delivery units between 180-200 times per year. The Co-op plans to build additional underground storage, to reduce the number of annual deliveries to 25 and 30.

The Co-op expects additional sales as a result of the improvements. Traffic numbers are expected to increase by 16.4 vehicles per day.

The Co-op indicated that the options of either closing or relocating outside of the community had been considered and rejected. The option of relocating was not acceptable since a number of Co-op members require assistance while fuelling and relocation would require staff to travel to an alternative site to provide assistance. The option of closing was not acceptable since the Co-op's fuel service represents a community benefit.

The Co-op noted that its proposed gas bar upgrade is similar to improvements of other communities, such as Treherne, Carman, Deloraine, Pierson, Glenboro, Hartney, Leaf Rapids, Cypress River, Pilot Mound, St. Claude, Manitou, Swan River, Rosenort, Birtle, and Fisher Branch. While the other locations differ in their layouts, the intent of those amendments, just as with the Lowe Farm plan, is similar - improve service and reduce traffic safety risks.

The Co-op submitted that its business will continue to be essentially a gas bar, rather than a truck stop. The cardlock facility is to be included to serve customers who wish to use the service after hours, and will be a valuable service to the members of the Co-op. The Co-op indicated it had 900 members, with many of the 250 residents of Lowe Farm being members of the Co-op.

#### **APPEAL APPLICATION**

In a letter, the Appellants noted they were appealing the permit pursuant to Section 21(2) of *The Highways Protection Act*, "as other persons having an interest in the land on which the permit is issued".

In outlining their interests, the Appellants noted that the Co-op owns the land, while Lowe Farm Country Café operations are owned by the community. The Appellants noted that although the restaurant building had been built by the Co-op, the community

invested in extensive renovations to the building, using money raised by fundraisers and donations

The Appellants submitted that safety was the key reason for their appealing the decision of the HTB, suggesting that safety had been overlooked by the Co-op and HTB. In particular, the Appellants cited the need to assure the safety of the over twenty children that live and play in and around the proposed cardlock site, as well as seniors that regularly walk on all three sides of the proposed site (Fifth Street, Highway 23 (Main Street) and Fourth Street).

The Appellants submitted that allowing the alteration of the property will greatly increase traffic flow onto the adjacent streets, Fifth Street (residential), Fourth Street (residential) and Highway 23 (Main Street) to accommodate vehicle traffic, which will endanger lives.

The Appellants advised that they had been informed the vehicles using the gas bar would include not only passenger vehicles, but also large trucks (semis, etc., to have access 24 hours a day every day of the year).

The Appellants submitted that vehicles would access the cardlock site by driving over the sidewalks, impeding pedestrian traffic in and around this cardlock site, and ultimately causing the destruction of the cement sidewalks - therefore making it unsafe for pedestrians of any age.

The Appellants also raised the issue of the flow of traffic, submitting that two-way traffic would create a bottle neck at the entry and exit points of the site, allowing for spill-over onto the sidewalks, this to create difficulty for pedestrians and local vehicle traffic.

The Appellants also suggested that the proposed changes would negatively affect the Lowe Farm Country Café as patrons would find it unsafe to park and deal with the increased traffic flow.

Mr. Penner asked why the Co-op could not develop the site on the other side of PTH 23, once the railway removed the rail lines. He submitted that the planned changes were not compatible with the existing residential area, citing a likely increase in exhaust, dust, pollution and traffic noises. He also raised the potential for fuel leaks and projected that with the planned changes property values may fall.

The Board received a number of letters from residents of Lowe Farm and also heard from a number of citizens who attended the hearing and presented their positions on the matter. Concern for safety and interest in the continued operation of the Co-op were noted.

**MANITOBA INFRASTRUCTURE AND TRANSPORTATION (MIT)**

MIT provided three exhibits:

Exhibit 1: Copy of Highway Traffic Board permit no. 165-07 and sketch plan 2023110-10-SA-07 approved August 7, 2007 (Appendix 1).

Exhibit 2: Map of Lowe Farm showing the approximate location of the Lowe Farm Co-op (Appendix 2).

Exhibit 3: Aerial photography showing the subject property (Appendix 3).

MIT noted that the Co-op applied for and received approval from the Highway Traffic Board to decommission their existing 2-pump/2-lane retail gasoline and diesel dispensing operation and replace it with a modern 4-pump/3-lane card lock facility. MIT records indicate that the Co-op's current operation has existed on this property for a number of years with access directly onto Fourth Street and PTH 23.

The existing fuel pumps, underground fuel tanks and canopy that are being removed are located in front of the Co-op's building at a setback 3.4 metres from the north limit of the right of way of PTH 23 and close to the Fourth Street/PTH 23 intersection. The new pumps and underground tanks are to be constructed on the west side of the building at a minimum setback of 10.424 metres from the right of way of PTH 23 with a new driveway onto Fifth Street approximately 50 metres north of PTH 23 and access onto PTH 23 from an existing block crossing that spans most of the Co-op's frontage along PTH 23.

At the Highway Traffic Board hearing of this application, MIT did not object to the proposed relocation and upgrading of the Co-op's gasoline operation as proposed.

MIT noted that PTH 23 is a 2 lane, high-speed rural highway (100 km/h) that extends from PTH 59 east of the Red River to PTH 21 in the western Manitoba. PTH 23 functions primarily as

east-west commercial route and alternative to PTH 2 and PTH 3/14 in serving a number of smaller agricultural communities in the south central and south western parts of the province. As such the primary function of PTH 23 is to move goods and people at high speeds (100km/h) between the various communities it serves and regional service centres.

MIT noted that PTH 23 has been designated a Secondary Arterial in the Department's Functional Classification System. The desirable spacing of low volume infrequently used agricultural/ field driveways for this classification of highway is 800 metres, the minimum spacing of agricultural/ field driveways is 400 metres. It is generally recognized these spacing standards will apply to the majority of PTH 23 in fully rural areas. However, MIT also recognizes that there are sections of PTH 23 where historical development has occurred making it very difficult and often impractical to fully apply these standards.

Provincial Traffic Counts on PTH 23 in the vicinity of Lowe Farm indicate that traffic volumes were 1450 Average Annual Daily Traffic (AADT) on PTH 23 west of PR 332 which is approximately 500 metres west of the Co-op property. Approximately 10% of this traffic (145) is truck traffic. The seasonally adjusted (ASDT) traffic counts (summer) on this portion of PTH 23 sees traffic increases by 10% resulting in an ASDT of approximately 1600 (160 Trucks) on PTH 23 through Lowe Farm during the summer period.

MIT noted that the portion of PTH 23 situated in the community of Lowe Farm, beginning at the point where the centre line of P.R. 332 crosses the highway and continuing in an easterly

direction for a distance of 950 metres is designated as a modified speed zone and the maximum speed for vehicles being driven in that zone is fixed at 60 km/h

The portion of PTH 23 through Lowe Farm is unique:

- a) the development of the community has occurred on the north side of the highway, with the majority of businesses and residences that front PTH 23 historically having undefined and direct access to the highway;
- b) PTH 23 from PR 332 on the west to First Street (approximately 700 metres) to the east is a two-lane roadway with approximately 12.5 metres of the highway right of way on the north side of the highway;
- c) the portion of PTH 23 east of First Street to Reimer Street is a more traditional roadway with open ditches and defined driveways, while east of Reimer is a typical rural highway.

The current situation between PR 332 and First Street has existed since the 1950s, and is potentially problematic from a highway safety perspective for a number of reasons:

- The large amount of pavement on the north side of PTH 23 when entering Lowe Farm from the rural portions of east and west of Lowe Farm has the potential to disorient and confuse drivers.
- The paved area, although convenient for parking and the local residents/ businesses promotes the use of the right of way for unrestricted and inconsistent parking practices often resulting in unsafe vehicle movements.
- The mixture of parking techniques (parallel, diagonal and double parking) by a variety of vehicle sizes and types creates potentially unsafe situation for motorists

backing into traffic or entering the highway at acute angles and through traffic on PTH 23

- Diagonal parking in close proximity to municipal road intersections and driveways obstructs the visibility for motorists exiting and entering the highway from the municipal road and for through traffic on the highway.
- There are increased conflict points at undefined access points.
- A conventional 2 lane driveway on a two lane roadway will result in a total of 9 conflict points, while a four legged intersection such as the PTH 23 and PR 332 intersection results in 32 potential collision points.
- In instances where driveways are extremely wide and/ or access essentially unrestricted, as it is through Lowe Farm the result is a continuous area of potential conflicts with through traffic that is created by allowing a number of vehicles to enter the highway at the same time from anywhere along the north side of PTH 23.
- In similar fashion the unrestricted access across the sidewalks has the potential to increase pedestrian vehicle conflicts.

MIT recognized that the historic and unique pattern of development within Lowe Farm has resulted in numerous private driveways/street connections, resulting in unrestricted access onto PTH 23 and development in close proximity to the highway.

Consequently, the application of access management principles, development guidelines and engineering standards is not straightforward in these instances. However, since the majority of traffic on PTH 23 is through traffic, MIT attempts to manage access and adjacent development on this portion of PTH 23 in a manner that maximizes the safe movement of vehicles through this area, maintains the primary function of PTH 23 improves existing problem areas, and ensures that development does not further degrade the operation of the highway

It was within this context that MIT supported Lowe Farm Co-op's retrofitting of their site, and the relocation of the existing fuel operation. It is MIT's position that the relocation of the current operation is beneficial for the community and represents an improvement from a highway operations perspective, for the following reasons:

- It moves the current gas operation away from the right of way of PTH 23 and
- provides better circulation on the property
- Eliminates the "tight turning "movement for vehicles entering the site from Fourth Street.
- Visibility will be improved at the PTH 23 and Fourth Street Intersection.
- The relocation of the facility to the west side of the building at a greater setback provides for a better separation and reduces potential conflicts between pedestrians using the sidewalk and the gas bar operation.
- The operation and vehicle movements on and off the property will be restricted to one location on PTH 23.
- The access connection/ driveway will operate more efficiently than the current situation.
- The upgrade is intended to provide better service to the Co-op's local client base and Co-op representatives have indicated that they do not expect a significant increase in business as a result of the upgraded facility.
- From a land use perspective the current location is consistent with MIT's practice of recommending that these types of land uses be located within the limits of developed areas and urban centres.

MIT submitted that the Highway Traffic Board was correct in its assessment of the application and the potential impact a relocation and modernization of the subject property would have on the safety and operation of a portion of PTH 23, and recommended that the Public Utilities Board uphold the Highway Traffic Board permit and deny the appeal.

**BOARD FINDINGS**

The Board thanks the Co-op, MIT, the Appellants and the citizens who contributed to the hearing. The Board notes the over-riding concern of all parties with respect to the issue of safety, and concludes a sincere concern for the well being of the community exists.

The Board finds the safety concerns raised by the Appellants to be valid and significant. The Board is concerned about the safety of pedestrians in and around the site, as well as that of the motoring public using PTH 23 in the vicinity of the proposed access.

However, the Board concludes that a well designed, well-marked traffic flow, with adequate warning signs, will sufficiently enhance public safety in the area to allow the development to occur, and, thus, will accordingly vary Permit No. 165-07 solely to enhance safety measures.

With regards to traffic flowing in two directions, the Board is concerned with the adequacy of the surface area available for the safe movement of traffic on the subject site, and at turning points. The Board notes the drawings submitted by the Co-op indicating by way of a computer generated diagram, the possibility of traffic flowing in both directions. The Board is however, mindful of the likelihood of human error in close traffic situations, involving the operation of large vehicles. The Board is also mindful of the safety risks of vehicles

attempting to enter PTH 23 simultaneously from the site, from Fifth Street and Fourth Street, with all three accesses in very close proximity.

The Board is also concerned about the risk to pedestrians from traffic flowing in both directions in close quarters to the adjoining street, the café and the sidewalk on PTH 23 and concurs with the concerns of the Appellants about the safety risks to pedestrians using the surrounding sidewalks. This situation would be aggravated in the case of larger vehicles turning when entering and exiting, and obscuring the view of others.

The Board is not satisfied that having east bound vehicles turning into Fifth Street to access the site is safe, a situation compounded in cases where another vehicle is concurrently exiting the site via Fifth Street.

The Board finds that the flow of traffic using the site should be redesigned to allow for traffic to flow only in one direction that is, entering the site from PTH 23 and exiting the site on Fifth Street, ultimately accessing PTH 23 at right angles and with a clear view of the traffic flowing in both directions on PTH 23.

This Board is also of the view a number of other issues need to be addressed to further enhance safety.

Sight lines may be compromised for traffic proceeding straight through which must slow down to accommodate vehicles turning

into the site. And, it will be necessary to mitigate the risks associated with truck rather than passenger vehicle traffic, as trucks require greater stopping distances, particularly if they are travelling at speeds greater than the posted rates.

Accordingly, the Board will direct that MIT review the need for the installation of signage indicating slow turning vehicles in the proximity of the site, and act to have such signage installed.

With regards to the fence to be constructed at the rear of the property, the Board will require that the last 20 feet of the fence just prior to the side walk on Fifth Street be of such material that both drivers exiting the site via Fifth Street and pedestrians walking south on Fifth Street can be visible to each other. In addition, the Board will require that prominent no entry signs be posted at this exit point.

The Board notes from its site visit and the photographic evidence provided, that the sidewalks in the area surrounding the site on Fourth Street, Fifth Street and PTH 23 are not always clearly demarked. The Board asks the Co-op, to, in consultation with the RM of Morris, improve the demarcation of the sidewalks in the vicinity, in whatever way possible.

The Board also asks that the Co-op, in consultation with MIT and the RM of Morris, review street parking in the vicinity with a view to improving safety.

With regards to entry to the site from PTH 23, the Board is concerned about the large block crossing adjoining PTH 23, which results in unfettered access to the site. The Board prefers a more focused point for entry onto the site, since unfettered access with ill-defined egresses increases safety risks. Since both east and west-bound traffic will be turning in at that point, the Board asks that a more focused entry point be developed in consultation with MIT.

The Board notes the significant length of the block crossing in Lowe Farm adjoining PTH 23. The Board encourages MIT to review this, with a view to minimizing the safety issues arising from the extended block crossing and the separation of the business sector from PTH 23. In the specific case of the site at the Co-op, the Board asks that in developing the site plan emphasis be placed on minimizing unfettered access to the site and the separation from PTH 23. The Co-op indicated that it intends to pave the surface area, and the Board supports this plan, to reduce dust pollution.

In closing, the Board will direct the Co-op to develop a site plan, including all of the above requirements, in conjunction with MIT, and file the plan with the Board for approval.

The Co-op and MIT may seek further clarification on the implications of this Order from the Board, if necessary.

**IT IS THEREFORE ORDERED THAT:**

1. HTB Permit No. 165-07 be varied to include additional conditions, these conditions to follow.

2. Vehicles using the site be restricted to movement in one direction only, entering from PTH 23 and exiting on Fifth Street.
3. The exit, entry and no entry signs be prominently posted.
4. In conjunction with the RM sidewalk areas be clearly marked.
5. The last 20 feet of the fence adjoining Fifth Street allow for clear visibility of pedestrian and vehicles using Fifth Street.
6. The block crossing adjacent to PTH 23 be adjusted to provide for a focused entry for east and westbound traffic accessing the site.
7. The surface of the site be paved.
8. MIT to examine the need for the installation of slow turning traffic signs be posted on PTH 23 in the vicinity of the Co-op.
9. The Co-op file with the Board for approval of a site plan reflecting all of the above and developed in consultation with MIT.

THE PUBLIC UTILITIES BOARD  
"GRAHAM F. J. LANE, C.A."  
Chairman

"H. M. SINGH"  
Acting Secretary

Certified a true copy of Order No.  
153/07 issued by The Public Utilities  
Board

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Acting Secretary

**APPEARANCES:**

**DEPARTMENTAL REPRESENTATIVES:**

**Krista Molinski**, Access and Utilities Technologist, Highways Planning and Design (Winnipeg)

**Richard Nichol**, Senior Access Management Analyst, Highways Planning and Design (Winnipeg)

**PRESENTERS:**

Mr. Harry Penner