

M A N I T O B A ) Order No. 172/08  
)

THE HIGHWAYS PROTECTION ACT ) December 17, 2008

BEFORE: Susan Proven, P.H.Ec., Acting Chair  
Graham Lane, CA, Chairman

APPEAL OF HIGHWAY TRAFFIC BOARD PERMIT  
089-08: CHANGE IN USE (AGRICULTURAL TO  
JOINT USE RESIDENTIAL), ACCESS TO  
PROVINCIAL TRUNK HIGHWAY NO. 1, THE RURAL  
MUNICIPALITY OF STE. ANNE

**SUMMARY:**

By this Order, the Public Utilities Board (Board) grants the appeal of Manitoba Infrastructure and Transportation (MIT) and upsets a decision of the Highway Traffic Board (HTB).

As a result, the existing driveway at issue is to remain in place, with no change in the status of its use. The Board encourages the landowner to explore with MIT options for access to the residual property from PTH 1, in accordance with the Revised Conditional Approval of Subdivision.

**BACKGROUND:**

Mr. Gordon Huff made application to HTB seeking to change the use of an agricultural access to a residential joint use access [from S.E 1/4 23-8-7E onto PTH 1 in the Rural Municipality of Ste. Anne (RM)]. HTB approved the application by way of Permit 089-08, allowing the change in use of the access driveway to temporary joint residential use.

By way of a letter dated June 25, 2008 MIT appealed the decision of HTB to the Board.

The appeal was heard at a public hearing held on Thursday, November 27, 2008 in the Council Chambers of the RM. The hearing was conducted by Ms. Susan Proven on a "hear and report" basis, a process provided for in statute and requiring the subsequent agreement by another Board member. Immediately prior to the hearing, Ms. Proven viewed the subject property.

**THE APPEAL:**

**Manitoba Infrastructure and Transportation**

The subject property is 102.27 acres, with a dwelling on the western portion. The property has a frontage of 553.5 metres onto PTH 1, with a driveway approximately 740 metres west of the municipal road, but with no frontage to the municipal road to the east.

The change in use is part of the conditions necessary for approval of a two-lot subdivision, of 20 and 82 acres respectively.

MIT opposed HTB's decision, for the following reasons:

1. The change of use would contradict MIT's guidelines for the classification and function of the highway;
2. Motorist/Traffic Safety;
3. The current access has substandard spacing;
4. Plans to increase the speed limit of the highway to 110 kilometers per hour;
5. The risk of a precedent being established; and
6. The availability of alternatives.

PTH 1 is classified as an Expressway, a classification that does not allow for direct access onto the highway from the subject property. MIT's long term plans include having all accesses restricted to service and internal roads, with a spacing of one mile. The objective is to maintain the primary

function of PTH 1, that being to carry traffic safely and efficiently.

MIT noted that PTH 75 and PTH 1 are the two most important highways in Manitoba and are part of the National Highway system, and, in the case of PTH 1, it has been upgraded in stages over the past 50 years. MIT noted that the 2006 Average Annual Daily Traffic count for this section of PTH 1 was 7,130, with an increase of 33% to 9,500 vehicles during the summer.

MIT noted that the Provincial Government, through *the Highways Protection Act*, instituted land use and access controls to protect the highway system against premature obsolescence. MIT submitted that research conducted by the Transportation Research Board (U.S.) indicates that a strong positive relationship exists between increasing access density and increased accidents, and submitted that it would be reasonable to expect that if access density was to be decreased by increased spacing, a decrease in accidents is expected.

MIT noted that, for the period 2001-2005, Manitoba statistics indicate traffic collision at intersections and driveways on Provincial highways constituted 25% of all reported collisions.

MIT noted a Provincial Government initiative to increase the speed on PTH 1 to 110 kilometers per hour, where and when it was determined it would be safe to do so. MIT advised that it

takes a proactive approach to access issues, with the aim of eliminating all direct access to PTH 1 whenever the status quo changes as a result of development or intensification of use of driveways on lands adjacent to the highway.

In this instance, for MIT, a service road from the current driveway to the municipal road to the east along the right of way would represent the best solution. However, given cost considerations likely to accrue to the landowner, MIT is suggesting the development of a service road from the east side of the residual lot to connect to the municipal road to the east.

MIT further submitted that the Ste. Anne Development would permit the further subdivision of the twenty-acre yard site and the 82 acre residual property into 5 acre lots for hobby farm use, increasing the use of the present access unless a service road is constructed.

MIT further advised that increasing direct access connections along a major highway such as PTH 1 would create an undesirable and visible precedent. MIT suggested other landowners would seek further concessions, and advised that HTB's decision represented a contravention of MIT and HTB standards, and risks highway safety.

In summary, MIT recommended that the Board uphold MIT's appeal and vary the permit to allow for the existing driveway to remain in place with the construction of a 270-metre service

road on the right of way of PTH 1, to meet MIT standards, from the Municipal Road to the east limit of the residual property.

### **The Respondent**

Mrs. Jennifer Huff represented the landowner. Mrs. Huff noted the presence of a trailer on the site, where her family currently reside. She indicated that the second part of the property was earmarked for her son, and that they had plans to sell the residual part of the property of 80 acres as a hobby farm. She noted that there was an individual who had expressed interest, but, with the passage of time, may no longer be interested.

Mrs. Huff indicated that she understood the options presented by MIT but held that the cost of construction of a service road would be a barrier to finding buyers for the property, and that she would have to examine further the other options put forward by MIT.

### *Other comments*

The lack of service roads in Ste. Anne was noted, as was the fact that the proximity of the natural gas pipeline to the back of the property made it less desirable for the development into 5 acre plots. Current planning rules allow for future development of hobby farms.

**BOARD FINDINGS:**

The Board thanks the parties for their contributions to the Board's understanding of the situation and the development of options.

The Board has considered carefully the positions of Mrs. Huff, MIT and those other parties in attendance, and will vary HTB's decision and not allow the change to joint use residential of the existing driveway. The Board will encourage the landowner to consult with MIT and, as may be necessary, enter into an agreement with MIT for the development of a service road to serve the residual property -- preventing the intensification of use of the existing driveway.

The Board understands the financial implications for the landowner but is persuaded that highway safety is of paramount importance, particularly on a National Highway, with the notice of government intentions to increase the speed limit.

The Board understands that it is the intention of MIT to connect all existing driveways to municipal roads one mile apart along the particular section of highway at issue, as part of its plans to enhance safety. The Board further understands that the development of service roads and the spacing of accesses to the highway depends on the availability of funding, and that the changes may be implemented as changes to the status quo are sought by landowners.

The Board accepts MIT's argument and rationale with respect to the nature of highways and the need to control access. The Board also accepts the use of the general research findings of the U.S. Transportation Research Board, and finds the information relevant and useful.

In summary, the Board will not accede to a change in use of the driveway to joint residential use, and instead suggests that the landowner consider the options outlined by MIT.

The Board encourages the landowner to contact MIT to explore options.

Board decisions may be appealed in accordance with the provisions of Section 58 of the Public Utilities Board Act, or reviewed in accordance with section 36 of the Board's Rules of Practice and Procedure (Rules). The Board's Rules may be viewed on the Board's website, [www.pub.gov.mb.ca](http://www.pub.gov.mb.ca) .

**IT IS THEREFORE ORDERED THAT:**

1. The appeal is granted, the change in the allowable use of the existing access at issue BE AND IS HEREBY DENIED.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE, CA"  
Chairman

"H. M. SINGH"  
Acting Secretary

Certified a true copy of Order  
No. 172/08 issued by The Public  
Utilities Board

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Acting Secretary

**APPEARANCES:**

Mr. Eric Christiansen	Director of Highway Planning and Design, Manitoba Infrastructure and Transportation
Mr. Richard Nichol	Senior Access Management Analyst, Highway Planning and Design, (Winnipeg), Manitoba Infrastructure and Transportation
Heinz Lausman	Senior Highway Planning Engineer Manitoba Infrastructure and Transportation
Mrs. J Huff	Landowner
Edgar Faucher	Neighbour
Daniel Brunel	Councillor
Allison Driedger	Community Planner, Department of Intergovernmental Affairs