

M A N I T O B A                    )     Order No. 65/07  
  )  
THE HIGHWAYS PROTECTION ACT       )     May 15, 2007

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

**APPEAL OF HIGHWAY TRAFFIC BOARD PERMIT NO. 127-06  
(ACCESS TO PROVINCIAL TRUNK HIGHWAY NO. 52)**

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### **Executive Summary**

By this Order, the Public Utilities Board (Board) denies a citizen's appeal of Highway Traffic Board (HTB) Permit No. 127-06. The permit requires the removal of the existing access driveway serving the subject property and relocating the driveway to the east limit of the property,

Given evident safety concerns as well as the significant costs associated with upgrading highways, the Board notes the significant volumes of traffic both current and expected, and fully supports the need to rationalize access to high speed highways.

As two of the three properties in the involved subdivision have been sold, the Board, in noting the request of Manitoba Transportation and Government Services (Department) to have the access relocated, will allow up to ninety days from this date for the removal of the existing access.

### **Background**

An application was made by Mr. and Mrs. Harder to HTB on May 1, 2006 for:

- a) approval of a change in use of an existing access from a residential driveway to a public road; and
- b) construction of a public road on property owned by Kelly and Stacy Harder (subject property) connecting that road to Provincial Trunk Highway No. 52 (PTH 52).

By letter dated July 11, 2006, HTB issued Permit 127-06 requiring the removal of an existing access driveway serving the subject property and relocating the driveway to the east limit

of the property. Approximately 270 meters of public roadway was to be constructed to Municipal standards to service three residential properties, including the subject property. A change of use from residential to Public Road was also approved.

By letter, received by the Board on July 20, 2006, HTB's decision was appealed by Mr. and Mrs. Harder. The Board held a public hearing on Thursday, April 19, 2007 in the Council Chambers of the Rural Municipality (RM) of LaBroquerie in LaBroquerie, Manitoba.

#### **Summary of Testimony of Mr. Harder**

Mr. Harder submitted that he did not support HTB's decision to require the removal of the existing driveway serving the subject property and requiring the construction of a frontage road.

He indicated he would be financially disadvantaged by having to construct the road and submitted that the driveway at its present location could adequately serve the three residential lots resulting from the subdivision. He submitted that, from a safety point of view, the moving of the access as required by HTB would not represent an improvement, and that the existing driveway was the most suitable approach for the new owner of one of the lots.

Mr. Harder noted that there were a number of other PTH 52 accesses in close proximity to the present access for the subject property, and that moving the access further east would decrease rather than increase safety. Mr. Harder further noted that, as the present driveway access to PTH is located in the middle lot, it could serve all three lots.

**Summary Testimony of the Department**

In support of its position, the Department noted:

- **January 2003** - Alain Nadeau applied to HTB, receiving approval for a change in use of land and access to finalize a subdivision of the northerly 21 acres of the east half of the NW 27-6-7E.
- HTB's permit issued to Mr. Nadeau was subject to a condition, that being: **"Existing access is now temporary and subject to removal and/or relocation should the property be further developed."**
- **March 2003** - Kelly and Stacy Harder purchase the subdivided property.
- **March 2005** - Mr. and Mrs. Harder applied to further subdivide the subject property into three lots of approximately 6.2, 6.5 and 8 acres.
- **March 2006** - The subdivision of the 21 acre parcel into 3 smaller parcels was approved by the Municipal Board subject to the conditions set by the LaBroquerie Council in Resolution 130-2005, which requires an access road adjacent to PTH 52 and a development agreement with the RM of LaBroquerie.
- **May - July 2006** - Mr. and Mrs. Harder applied for and received the permit, later appealed.
- **September 2006** - The subdivision plan was registered as Plan 45426 WLTO; three new titles were created.
- **December 2006** - Lot 3 was sold to Mr. Robert Wall. (The Board understands that another lot was sold to Mr. Shane Schroeder.)

The Department submitted eight (8) exhibits, including Sketch Plan No. 1052025-6-SACUARL-06 (Appendix 1), modeling the removal of the existing access, the proposed public road and the relocated access approved by HTB. The Department also provided a map of the RM of LaBroquerie showing the approximate location of the approved access and an aerial photo of the area. As Exhibit 5, the Department submitted HTB permit No. 006-03 issued in 2003 to Mr. Alain Nadeau, the previous owner of the property.

The Department indicated its concurrence with HTB's decision, noting that PTH 52 is a two-lane high-speed highway (with a 100 kilometer per hour speed limit), undivided with a seasonally adjusted traffic count of between 2600 and 3200 vehicles/day. The Department noted that the traffic count has grown by 150% since 1989, and that truck traffic accounts for 9% of all traffic. The Department also noted that 50,000 acres has been designated to accommodate hobby farms and other developments by the RM of LaBroquerie, suggesting traffic will increase further in the future.

The Department noted its active promotion of the relocation and joint use of existing accesses to serve not only the subdivision but future new development located adjacent, so as to minimize safety hazards. The Department contended that the relocation of the access and construction of the frontage road, as approved by HTB, is essential towards:

1. Maintaining the primary function of PTH 52, that being to carry traffic safely and efficiently;

2. Facilitating orderly development of the lands adjacent to PTH 52, in light of the RM of LaBroquerie's current land use and development policies;
3. Reducing and minimizing the number of driveways onto PTH 52, thereby improving motorist safety;
4. Establishing a pattern of access connections onto PTH 52 that can safely accommodate the expected residential growth in the municipality;
5. Maintaining the precedent and equitable practice established by the Department, HTB and RM of LaBroquerie, with respect to other developments along PTH 52; and
6. Minimizing the future cost of upgrading PTH 52.

The Department recommended that the Board deny the appeal and direct the applicant to proceed with the relocation of the existing access to the approved location within 30 days.

**Summary of Testimony of Mr. Kelly Holliston, Representing Mr. Shane Schroeder.**

Mr. Holliston appeared on behalf of Mr. Shane Schroeder, the purchaser of one of the lots in the subdivision. Mr. Holliston indicated that Mr. Schroeder was not in favour of moving the driveway, as the current driveway afforded him a straight and direct access to his yard. Mr. Schroeder is a long distance trucker with a large vehicle, making easy access an important matter. A relocated access would cause him great difficulty with respect to parking his truck.

### **Board Findings**

The Board, even with the help of the Department, was unable to find the third owner of the subdivision, Mr. Robert Wall, but is satisfied that the representations made by the other two owners are adequate for its understanding of the matter before it.

The Board supports the decision of the HTB, and agrees with the Department that relocation of the existing access serving the subject property should take place.

The Board notes the concerns raised with regards to the functionality of the existing access, now and with respect to the potential for future development, and the financial requirements associated with constructing the proposed public frontage road. That said, the Board understands and has empathy with the particular concerns of Mr. Schroeder, who apparently acquired his lot at least in part on the premise that the existing access would continue.

The Board notes the history of the development of the subdivision and, in particular, HTB Permit No. 006-03, Condition 5, which states:

*"(The) Existing access is now temporary and subject to removal and or relocation should the property be further developed".*

Mr. and Mrs. Harder subsequently acquired the property and proceeded to develop it, obtaining conditional approval from Manitoba Intergovernmental Affairs (March 26, 2006). Condition G of that approval requires written confirmation of a permit from HTB for the establishment of the access road alongside PTH

52 and for access to PTH 52 from the public road, as required by the RM of LaBroquerie.

The Board is satisfied that the appellant was in a position to fully understand the requirements for a public road and relocated access. The Board is satisfied that HTB (by Permit 006-03), the Department of Intergovernmental Affairs, and the RM of LaBroquerie have provided a clear indication of their requirements.

The Board notes the important responsibilities of HTB and the Department pursuant to the *Highway Protection Act*, an Act that also has relevance to the Board. The Board notes the significant development and plans for development occurring in the area in conjunction with the overall designation by the RM of LaBroquerie of 50,000 acres for development.

The Board notes the significant volumes of traffic both current and expected, and fully supports the Department in its objective of rationalizing access to high-speed highways given safety concerns and the significant costs associated with upgrading highways. For the Board, notwithstanding the difficulty this position may hold for some members of the public, safety concerns trump self-interest financial concerns.

Having considered the evidence, the Board will deny the appeal and uphold the decision of the Highway Traffic Board, as represented by Permit 127-06.

The Board also notes the request of the Department to have the access relocated in 30 days. The Board is sympathetic to the request, especially in light of the fact that two of the three



**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)
Mr. Murray Chornoboy	Technical Services Support Technician, Manitoba Transportation Eastern Region (Steinbach)
Mr. Gary Toews	Crossing Application Technician, Highways Planning and Design (Steinbach)
Mr. Alain Nadeau	Adjacent Landowner
Mr. Kelly Holliston	Real Estate Agent Representing Mr. Shane Schroeder
Mr. Kelly Harder	The Permittee and the Appellant