

M A N I T O B A                    )     Order No. 116/07  
  )  
THE HIGHWAYS PROTECTION ACT       )     August 31, 2007

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

**APPEAL OF HIGHWAY TRAFFIC BOARD PERMIT NO. 110-07:  
(ACCESS TO PROVINCIAL TRUNK HIGHWAY NO. 6)**

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### **Executive Summary**

By this Order, the Public Utilities Board (Board) denies 3245021 Manitoba Ltd.'s (appellant) appeal of Highway Traffic Board (HTB) Permit No. 110-07 and upholds the permit.

The permit requires, at the expense of the Province, the removal of an existing block crossing onto Provincial Trunk Highway No. 6 (P.T.H. 6), which currently provides access to and serves as a potential parking lot for property owned by the appellant, and the construction of an access driveway onto the Municipal Road known as Chartrand Road North, St. Laurent.

The Board rejects the appeal for two primary reasons:

- a) safety concerns; and
- b) to avoid significant costs expected to be required to upgrade P.T.H. 6 such as to "safely" accommodate the continuation of the block crossing within the context of an operating restaurant and lounge.

The Board notes reports of significant traffic volumes, both current and expected, and supports Manitoba Infrastructure and Transportation's (MIT) objective of improving the safety of the Province's highways.

### **Background**

In September 2006, the appellant applied to HTB for approval of:

- a) continuation of block crossing access from the appellant's property onto P.T.H. No. 6, adjacent to Chartrand Road, a Municipal road; and

b) an addition to an existing building, requiring repair and owned by the appellant, that borders Chartrand Road and P.T.H. 6 at the block crossing.

On June 20, 2007, HTB issued Permit 110-07 effectively allowing the building addition while requiring the removal of the existing block crossing, the latter to be replaced by the construction of access to the appellant's property from Chartrand Road at the cost of the Province.

The appellant's subsequent appeal to the Board sought the reversal of the HTB directive that the block crossing be removed, and was heard on Tuesday, August 21, 2007 in the Council Chambers of the Rural Municipality of St. Laurent (RM) in St. Laurent, Manitoba.

**Summary of Testimony on behalf of the Appellant**

Representing the appellant, Ms. Carmen Combot opposed HTB's decision to require the removal of the existing block crossing access, requesting that Condition 5 of Permit No: 110-07, which requires the removal, be struck.

She reported the appellant's intention to rebuild and add to the building on the subject property, which was a restaurant until severely damaged by fire approximately ten years ago, with the addition to increase the restaurant's capacity. Ms. Combot also noted of a need for the continuation of access to the property from the block crossing.

Ms. Combot opined that in the absence of the block crossing and the parking space it provides, truckers would likely bypass a rebuilt and expanded restaurant, and this would likely make the venture unviable for the appellant.

In response to a suggestion that parking could be provided on the appellant's property and accessed from Chartand Road, access to the Municipal road to be developed by the Province at no cost to the appellant, Ms. Combot advised that without the block crossing there would be limited parking space on the property due to the presence of a septic field.

Ms. Combot indicated that while the business plan for the restaurant had not been finalized, the appellant's intention was to develop a restaurant and a lounge (with liquor license), the business to be furthered through the expected presence of four Video Lottery Terminals (VLTs). The restaurant's capacity would be, according to Ms. Combot, roughly twice that of the previous restaurant, and would operate year-round from 6:00 a.m. to 3:00 a.m., employing two shifts of workers. Supported by RM Councillors Chartrand and McKay, as well as by Ms. D Rioux, Chief Administrative Officer of the RM, Ms. Combot suggested that significant economic benefits would arise for the community if the Board accepted the appeal and the restaurant development proceeded.

Ms. Combot also submitted that if access to the redeveloped restaurant was restricted to access only from the Chartrand Road, and the restaurant/lounge project was proceeded with, serious congestion would occur on Chartrand Road as traffic associated with the general store located on the other side of the Municipal Road would add to the significant traffic volume expected from the development.

In response to the suggestion that allowing continuation of the block crossing would be unsafe, Ms. Combot advised her understanding that no fatality or serious accident had occurred

at that location over the several decades the restaurant had operated prior to the fire, and suggested that providing access to a redeveloped restaurant from Chartrand Road would be more dangerous than allowing the continuation of past practice, i.e. allowing the block crossing off P.T.H. 6 to remain.

**Summary Testimony of MIT**

MIT supported the conditions of the Permit and opposed the appellant's appeal. In support, MIT provided four Exhibits:

- Exhibit 1: Copy of Highway Traffic Board Permit No. 110-07 and sketch plan 4006040-8-SADARAW-07 as approved by HTB on June 20, 2007;
- Exhibit 2: RM and Community of St. Laurent municipal maps disclosing the approximate location of the subject property;
- Exhibit 3: aerial photography showing the subject property; and
- Exhibit 4: Concept plan showing the long-term realignment of P.T.H. 6 to the east.

Mr. Richard Nichol, representing MIT, used the exhibits to support MIT's position that the permit should be upheld, the block crossing closed and a new access be built to the appellant's property from Chartrand Road. He cited significant traffic safety risk if the block crossing remained and allowed trucks to pull on and off the crossing, to and from P.T.H. 6.

Mr. Nichol indicated that traffic in the area was already relatively busy with the operation of the general store located across Chartrand Road from the appellant's property and the block crossing.

MIT noted that the appellant had received approval to construct an addition to the existing and currently significantly damaged structure, indicating that the existing building had been employed as a restaurant from circa 1975 up to the time of a fire in the late 1990's. MIT recommended the permit be upheld, and the large block crossing removed, for the following specific reasons:

- the block crossing is located adjacent to the municipal road connection onto P.T.H. 6, which does not comply with MIT's policy of maximizing the spacing of driveways onto highways to separate vehicle turning movements and reduce vehicular conflicts onto and from highways;
- the block crossing, which extends along the entire frontage of the appellant's property fronting P.T.H. 6, was historically used for parking purposes, and while no known fatalities arose, it resulted in the obstruction of visibility for motorists exiting and entering the highway from Chartrand Road, for through traffic on P.T.H. 6, and that of motorists parked on the block crossing;
- the use of the block crossing (right of way) for parking in close proximity to the two lanes of P.T.H. 6 requires motorists to park "diagonally", and to back into traffic to exit the area;
- large driveways/block crossings promote unsafe vehicle movements by not providing well-defined, restricted access to property from adjacent highways, resulting in the increased potential for accidents;
- the planned expansion of the building and the location of the existing septic field on the property precludes the minimization of the block access and the provision of

access for any amount of onsite parking on the south side of the property;

- access to the appellant's property is available from Chartrand Road on the north side of the property;
- MIT does not generally permit the use of right of way land for parking, and promotes the provision of onsite parking rather than having businesses rely on the use of highway rights of way for parking to assist their economic viability;
- the previous restaurant has not been operational for some time, and, with plans to undergo expansion and reopen, it is an appropriate time to remove the block access and provide a new access from Chartrand Road; and
- to minimize the economic impact of the removal of the block access on the appellant, MIT has agreed to remove the driveway at no expense to the applicant and construct a new access off Chartrand Road.

MIT reported that P.T.H. 6 is a two lane, high-speed rural highway (maximum speed, 100 km/h) that extends from the City of Winnipeg to the City of Thompson, and that P.T.H. 6 is the major commercial route serving northern Manitoba and connecting Southern and Northern Manitoba with numerous communities in the western Interlake. MIT advised that the highway carries relatively high volumes of high-speed traffic for a two lane undivided highway, and that such highways have the primary function of moving goods and people over long distances.

MIT provided traffic counts for the year 2006 indicating average traffic volumes of 2,010 on P.T.H. 6, 2.5 km North of PR 415 (north of the property) and 2,440 on P.T.H. 6, 1.0 km South of

Twin Beaches Road (south of the property), and estimated that approximately 13% of the traffic on P.T.H. 6 is truck traffic. MIT also indicated that the seasonally adjusted summer traffic counts on P.T.H. 6 surrounding St. Laurent has experienced significant increases.

MIT advised that as P.T.H. 6 is designated as a Primary Arterial Highway, department policy states that the desirable spacing for this classification of highway is 800 metres, with a minimum spacing of 400 metres. MIT noted that the appellant's property is located adjacent to the portion of P.T.H. 6 within the built-up portion of the community of St. Laurent, with a modified speed zone permitting 60 km/h.

MIT reported that the historic pattern of development within St. Laurent has resulted in numerous private driveways and street connections onto P.T.H. 6, and that MIT has attempted to manage access to the highway in a manner to maximize the safe movement of vehicles, while maintaining the primary function of P.T.H. 6, that being to move people and goods efficiently.

MIT advised that its objectives have been met in a number of ways when dealing with "new" development adjacent to a highway, including requests to construct new driveways onto P.T.H. 6, these being by:

1. maintaining the spacing between existing driveways wherever possible;
2. relocating or establishing joint use of existing driveways, to meet emerging or new access needs;
3. redesigning or reconstruction of existing driveways to bring the accesses into compliance with current engineering standards;

4. moving/approving driveways on the lower classification of roadway, such as municipal roads, from highways, wherever possible;
5. moving driveways away from intersections, and not allowing driveways in close proximity to intersections;
6. promoting the development of internal road systems (such as service roads), to provide access from highways to adjacent developments;
7. separating traffic movements from the travel lanes of a highway; and
8. prohibiting dangerous situations such as parking on the right of way (block access) in the vicinity of driveways or potentially unsafe movements, such as backing into traffic.

MIT noted that it considers the safety of motorists to be dependent upon a well-managed roadway environment, and that the majority of all vehicle collisions (approximately 55%) on provincial highways occur at driveways and intersections, such as driveways and municipal roads as now serve the appellant's property. Further, MIT noted that 74% of collisions at such locations result from left turns at intersections and driveways.

MIT advised that its objection to the appeal was within this context. MIT opined that the appellant's request involved the potential perpetuation of an unsafe situation i.e. the potential reopening and expansion of the restaurant with direct access to P.T.H. 6.

MIT further asserted that the appellant's request for retention of the block access from P.T.H. 6 was problematic from a traffic safety perspective in a number of ways, including that:

1. vehicles parked on the right of way of P.T.H. 6 would obscure visibility of vehicles entering and exiting the highway at Chartrand Road, as well as obscuring visibility for other vehicles exiting the area in front of a redeveloped building; and
2. traffic on P.T.H. 6 would have limited visibility of traffic entering and exiting the restaurant and the intersection.

MIT suggested that the Chartrand Road intersection represents 32 potential collision points. MIT advised that where the driveway (existing block access) is extremely wide and access is unrestricted the entire length of the driveway (50 metres), this results in a continuous area of potential vehicle conflicts by allowing for the possibility of a number of vehicles entering or leaving the highway at the same time.

MIT further advised that the portion of P.T.H. 6 near the proposed restaurant is further complicated by the limited amount of right of ways that could be used for parking (approximately 21 metres from the property line to the travel lane), and that this would result in motorists backing into oncoming traffic or entering the highway at acute angles on certain occasions, particularly when the traffic area was congested.

MIT also suggested a similar situation (large undefined access) exists on the north side of Chartrand Road, at the general store. When combined with the situation in front of the appellant's property and Chartrand Road, MIT noted there is now approximately 130 metres of unrestricted access onto P.T.H. 6 adjacent to the north bound travel lanes of the highway.

MIT noted that although the appellant's property is located within a 60 km/h speed zone, the speed zone maximum on P.T.H. 6 changes to 100 km/h only approximately 200 metres to the north of the appellant's property and the existing block access, and that the abrupt change in speed zones from 100 km/h to 60 km/h and a relative lack of local traffic enforcement tend to result in motorists travelling at speeds in excess of the posted speed well into the speed zone before slowing down. MIT suggested that this increases the potential for more serious higher speed accidents in the vicinity of the P.T.H. 6/Chartrand Road intersection.

*Precedent Concern -*

As previously indicated, MIT submitted that the maintenance of the existing access arrangement would promote unrestricted turning movements in close proximity to the municipal road intersection, and this would be undesirable and would adversely affect motorist safety.

Furthermore, MIT opined that if the Board were to accept the appeal, it would establish an undesirable precedent for new or expanded developments on highways. MIT advised that such a precedent would be particularly troublesome in that the continuation of the current hazard by Board Order, would represent a highly visible contradiction of the standards MIT attempts to maintain on the province's major highway system, and an example of what other commercial property owners may then expect when planning developments adjacent to provincial highways.

MIT suggested that one of the consequences for allowing unsafe conditions to remain is the difficulty to be faced by HTB in dealing with new applications for access or demands to retain potentially unsafe driveways, and that the result of a Board acceptance of the appeal would be the risk of an overall deterioration of motorist safety.

*Other Issues -*

MIT presented a conceptual highway design plan showing a future realignment of P.T.H. 6 to the east of its present location, though it noted that the plan is conceptual only and unlikely to be acted on in the near to mid-term. In response to a Board query, MIT advised that if the highway alignment had already taken place, it would not have opposed the appeal.

*MIT Conclusion -*

MIT submitted that HTB was correct in its assessment of the application and its determination of the potential impact the reconstruction and expansion of the restaurant would have on the safety and operation of P.T.H. 6.

MIT concluded that HTB, in making its approval of the appellant's construction plans conditional upon the existing driveway onto P.T.H. 6 being removed with the property to be accessed from Chartrand represented an improvement to road safety.

MIT recommended that the Board uphold the HTB permit and deny the appeal to have Condition 5 of the permit removed.

### **Board Findings**

The Board visited the site of the proposed development ahead of the hearing and immediately following it.

The Board found it quite difficult to come to a decision with respect to the appeal, in that:

- a) the Board appreciates the importance of small business development, particular in smaller communities such as St. Laurent;
- b) notwithstanding an awareness of a unsafe situation, the block access has remained in place for decades (the highway right of way was used by the previous business both for access and for parking, a parking lot attached to a major highway with no control points for turning onto or off of the highway);
- c) there have been no reports of fatalities or serious accidents to the Board's knowledge at the site, even through the years when the restaurant was operating; and
- d) MIT advice of long-term plans to relocate the highway, and, with the relocation, of no objection to the continuation of the block access.

In this case, the proposed restaurant and lounge is planned to provide employment not only on an ongoing basis but as well as in the construction phase. While the Board is concerned that the development may well not proceed with the upholding of the Permit, a decision to be made by the appellant over which the Board has no control, the safety aspects of the matter is considered of primary importance.

The Board notes the intended increase in size of the proposed business and the significant change in the nature of the business, one to include a liquor lounge license, VLTs and increased seating capacity for the restaurant. The Board accepts MIT's contention that safety risks would be unduly heightened if the Board were to accept the appeal and amend or set aside the Permit and allow the block access from P.T.H. 6 to remain.

Notwithstanding the understanding that no serious accident has occurred in the past as a result of the block access, the Board accepts MIT's contention that the continued use of the block crossing following the redevelopment of the restaurant will represent a serious traffic safety risk.

Vehicles, including trucks, are likely to turn directly off the highway into the block crossing/access "parking lot", without a defined entry or exit point. Vehicles would be exiting from the parking lot onto the highway, perhaps by first reversing onto the edge of the highway and then slowly pulling away. Vehicles, including school buses, would also be entering and exiting the municipal road just a few meters away.

Slowing and turning traffic, in search for a space to park, would significantly increase the risk of accidents. The Board concludes that such a situation would result in a very unsafe highway condition.

In searching for a solution that would facilitate the redevelopment of the restaurant, the Board explored with MIT the concept of reducing the size of block crossing to an entrance at the south side of the property, and allowing for the development of parking spots on the east side of the building.

MIT remained concerned for reasons of safety, noting the presence of the septic field as an impediment to such a plan.

The nature of the intended business suggests that adequate parking off the highway is important, though such may only be able to be accommodated by the appellant acquiring additional space on the east side of the building, to facilitate a developed access from Chartrand Road.

The Board notes that the appellant has not completed the business plan and suggests that, with a decision in this matter, plans may be able to proceed with a sense of certainty as to the situation relates to access and parking potential.

For all of the above reasons, and despite the Board's interest in not impeding economic development in St. Laurent, the Board finds it not advisable and will not accede to the request of the appeal.

The Board will not grant the appeal and remove Condition 5 from HTB Permit No: 110-07; the Permit will be upheld as issued. The decision is based in part on the assumption that MIT will proceed expeditiously towards removing the block crossing and providing the appellant's property with proper access from Chartant Road, at MIT's expense.

**IT IS THEREFORE ORDERED THAT:**

1. The appeal of 3245021 Manitoba Ltd. to have Condition 5 of Highway Traffic Board Permit No: 110-07 removed from the said permit is HEREBY DENIED.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE, CA"  
Chairman

"H. M. SINGH"  
Acting Secretary

Certified a true copy of  
Order No. 116/07 issued by  
The Public Utilities Board

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Acting Secretary

**APPEARANCES :**

Mr. R. Nichol	Senior Access Management Analyst, Highways Planning and Design (Winnipeg)
Ms. K. Molinski	Access and Utilities Technologist, Highways Planning and Design (Winnipeg)
Mr. Chuck Lund, P. Eng.	Technical Services Engineer, West Central Region (Dauphin)
Ms. Carmen Combot	Applicant
Ms. Denise Allard	Applicant
Mr. Albert Combot	Applicant
Kelly McKay	Councillor, R. M. of St. Laurent
Marc Chartrand	Councillor, R. M. of St. Laurent
Ms. Danielle Rioux	Chief Administrative Officer, R. M. of St. Laurent