

M A N I T O B A) Order No. 160/08
)

THE HIGHWAYS PROTECTION ACT) December 8, 2008

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

APPEAL OF HIGHWAY TRAFFIC BOARD
DECISION DATED MAY 22, 2008 PERTAINING
TO AN ADDITIONAL ACCESS (AGRICULTURAL)
TO PROVINCIAL TRUNK HIGHWAY NO. 67,
THE RURAL MUNICIPALITY OF St.ANDREWS

SUMMARY:

By this Order, the Public Utilities Board (Board) denies the appeal of Mr. Marc Gauvin and upholds the decision of the Highway Traffic Board (HTB) which denied the creation of an agricultural access to Provincial Trunk Highway No. 67 (PTH 67).

BACKGROUND:

Mr. Gauvin made application to the HTB for an agricultural access to PTH 67 from N.W ¼ 30-13-4E in the Rural Municipality of St. Andrews (RM).

HTB denied Mr. Gauvin's application for the following reasons:

- the proposed access (a driveway) does not meet the minimum spacing requirements between accesses, and
- an alternate means of access to Mr. Gauvin's property is available through the existing yard site.

The appeal was heard by the Board at a public hearing held on Wednesday, November 26, 2008 in the Council Chambers of the City of Selkirk. 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 the Board to Ms. Proven's decision.

Immediately prior to the hearing, Ms. Proven viewed the subject property and its current access to PTH 67.

THE APPEAL:

In his submission, Mr. Gauvin noted that the subject property has been in his family since 1942. Further, he noted that he leases out the agricultural land of about 60 acres and that his proposed access would be 385 metres from the intersection and 128 metres from his neighbour's driveway.

Mr. Gauvin reported that his current driveway is 21 feet wide, bounded on one side by a drain. He submitted that the required farming equipment for the leased land is too large to access the subject property by way of the existing driveway. Mr. Gauvin indicated that, in order for the farm equipment to access the leased land, dirt is placed in the drainage ditch in the spring and removed in the fall, at a cost to Mr. Gauvin. He suggested that if the proposed access was allowed, it would only be used in the spring and in the fall (for farming purposes).

Mr. Gauvin reported that the RCMP had indicated to him that accidents that have occurred in the vicinity of his proposed access had been due to human error, not to the number of driveways in the area. He also advised that he did not accept the rationale for the Manitoba Department of Infrastructure and Transportation's (MIT) current 400 metre spacing requirement for accesses.

Mr. Gauvin commented that while it had been suggested that he increase the width of his existing driveway access, that this would require the cutting down of trees and a hedge, and the purchase and placement of dirt, the latter representing a costly option. He further submitted that the continued access of heavy farm equipment by way of his driveway would damage the driveway.

Mr. Gauvin also indicated of his concern that the use of the driveway by heavy farm equipment would risk the safety of his children.

Mr. Gauvin further reported that he was not privy to all of the information presented by MIT at the HTB hearing, and that, in particular, he did not understand the applicability of the statistics and other research presented as related to his property. He submitted that what should be relevant to his proposal are the number of accidents in the area, the cause of those accidents, and the safety of his children.

He contended that any safety issues that could arise with an additional access would be better met by a reduction to the highway speed limit.

Manitoba Infrastructure and Transportation.

MIT supported HTB's decision and opposed Mr. Gauvin's appeal.

MIT reported that the subject property comprised of approximately 60 acres and had been acquired by Mr. Gauvin and Ms. L. Roels in 1996. MIT further reported that in 2002 HTB denied an application by Mr. Gauvin to install an agricultural access to be located approximately 350 feet from a PTH 8 intersection.

MIT further reported that a similar application by Mr. Gauvin was again denied by HTB, in May of 2008. MIT also indicated that when PTH 8 was widened that an access driveway from the subject property onto PTH 8 was removed, giving rise to Mr. Gauvin's application to HTB for an access from the subject property to PTH 67.

MIT opposed the appeal of Mr. Gauvin, for the following reasons:

1. The proposed access does not comply with the Department's policy with respect to the spacing of driveways on highways. MIT advised that PTH was classified as a Primary Arterial highway, for which MIT strives to ensure reasonable mobility, safety and minimum accesses.
2. For MIT, access to adjacent lands is a secondary consideration to matters of safety. MIT advised that PTH 67 functions as an east-west connector, with two lanes and a speed limit of 100 km/h.

3. MIT advised that its departmental guidelines require a minimum spacing of 400 metres and a desirable spacing of 800 metres between accesses to highways such as PTH 67.

In conclusion, MIT submitted that Mr. Gauvin's proposed access does not meet its guidelines, and that departmental practice is to limit access to this type of highway, particularly whenever alternative access is available. MIT noted that access to Mr. Gauvin's property already exists, and could be upgraded to accommodate the farm equipment.

MIT submitted that the high speed nature and traffic volumes associated with PTH 67 advised against allowing additional access on to the highway, accesses not meeting departmental guidelines.

MIT submitted that if the guidelines were violated, the primary function of the highway, safe conduct, would be negatively impacted, safety would be reduced, traffic delays increased, and future highway improvements would be more costly.

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.) indicated 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 is decreased by increased spacing, a decrease in accidents may be 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 further advised that it would be concerned if a precedent was established through the granting of Mr. Gauvin's appeal, and that in such a case other landowners would seek further contraventions of the department's safety-based guidelines.

MIT submitted that if the Board accepted Mr. Gauvin's appeal and allowed an additional access the action would represent a contradiction of MIT and HTB standards, and risk highway safety.

In summary, MIT recommended that the Board deny the appeal and uphold the decision of HTB.

Other Comments

Questions were raised at the hearing as to the relevance of the research information provided by MIT, as the information did not deal directly with the specific access being sought. In addition, the reality of HTB decisions that were not appealed to the PUB were raised, and the

suggestion made that these decisions set precedents should be relevant to the Board's decision with respect to Mr. Gauvin's appeal.

It was also noted that the current use of Mr. Gauvin's land for agricultural purposes could change, and that such a change could result in a change in use of the present driveway at a later date. As well, the present practice of filling the ditch with dirt to allow for access of farm equipment was noted as causing drainage problems which require a remedy.

BOARD FINDINGS:

The Board thanks the parties for their contributions to the Board's understanding of the situation and the implications of the range of options that are available to the Board.

The Board has considered carefully the positions of both Mr. Gauvin and MIT, and has decided to uphold the decision of the HTB.

The Board is persuaded that highway safety concerns should over-rule the inconvenience and cost to Mr. Gauvin that accompany a denial of his appeal. The Board notes the applicant currently has access from his property to PTH 67 and suggests that the present access can be upgraded and designed to deal with both the safety issue as it relates

to Mr. Gauvin's children and to better accommodate the occasional use of the access for farm equipment.

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 that the information was both relevant and useful.

The Board appreciates that accident statistics related to Mr. Gauvin's specific driveway and PTH 67 in the vicinity of that driveway are not available, but, nonetheless, finds it reasonable to apply the findings of generic and objective highway safety research to issues concerning the protection of Manitoba highways.

In determining these matters, the Board proceeds by way of a hearing *de novo*, and is not limited to consider only the evidence presented at or from the HTB hearing. The Board is also not bound to follow the direction of decisions of the HTB, whether or not those decisions were appealed. The Board is statutorily bound to hear and conclude on each matter that comes before it on the merits of the specific information and circumstances that are attached to the matter.

General public safety issues are of paramount importance when highway disputes arise. Whether or not there has been an accident or accidents in the vicinity of a particular

APPEARANCES :

Mr. Eric Christiansen	Director of Highway Planning and Design
Mr. Richard Nichol	Senior Access Management Analyst, Highway Planning and Design, (Winnipeg), Manitoba Infrastructure and Transportation
Mr. Marc Gauvin	The Applicant

Others in Attendance

Mr. Bentz Aldinge
Mr. Wayne Boch
Mr. Robert Lang
Mr. Theobald