

Order No. 14/17

**APPEAL OF THE HIGHWAY TRAFFIC BOARD DECISION:
DATED NOVEMBER 20, 2015 – FILE NO.
2/067/015/A/16 (Daniel Kleinsasser O/A Danny's Whole Hog Inc.)**

February 2, 2017

BEFORE: Robert Gabor, Q.C, Chair
Karen Botting, B.A., B.Ed., M.Ed., Vice Chair
Allan Morin, B.A., ICD.D., Member

Summary

By this Order, the Public Utilities Board (Board) sets aside the Highway Traffic Board (HTB) decision, dated November 17, 2015 and finds in favour of the appellant, Daniel Kleinsasser O/A Danny's Whole Hog Inc.

Background

Mr. Douglas Grantham, legal counsel for Daniel Kleinsasser, submitted an application to the HTB for a new access driveway (commercial) onto PTH No. 67, N.W.1/4 30-13-3E in the RM of Rockwood. In its letter of November 20, 2015, the HTB denied the application due to the proposed access driveway not meeting the 800 meter spacing requirement, in addition to the property having alternate access available via P.T.H. No. 67.

Daniel Kleinsasser, represented by Mr. Douglas Grantham appealed the decision to the Public Utilities Board (PUB).

The PUB heard the matter at a public hearing held at 2:30 PM, Monday January 16, 2017, in the RM Council Chambers in the R.M. of Rockwood, Stony Mountain, Manitoba. Immediately prior to the hearing, Chairperson Gabor, Vice Chairperson Botting, and Member Allan Morin viewed the property, access roads, PTH #67, and areas related to the appeal including Ammeter Road.

Daniel Kleinsasser:

Mr. Kleinsasser testified that he is the owner of the property where the proposed access is to be erected. The proposed access would be approximately 347 meters east of the current access onto PTH 67.

He explained to the Panel that there has been significant unanticipated growth at his business, Danny's Whole Hog (DWH), over the last several years. The business shares that same property as two residential dwellings. The play area for the children includes

structures, a field, and a trampoline and close to the residential dwelling. The children also use the existing road repeatedly to access the play area. Mr. Kleinsasser argued that there is a safety concern whereby his six children and 22 grandchildren are in too close proximity with the commercial traffic and there have already been two close calls. Currently, DWH has 10 employees which use the existing driveway daily. The number of employees increases during the summer months. He testified that the commercial traffic significantly increases in the summer. Between May-October, the commercial traffic is approximately 50-60 pick-ups (Friday's) from his catering operation, in addition to on-going employee traffic. Employee and delivery traffic occurs through-out the day including the same period of time where the school bus arrives to pick-up or drop off children at the property. He requested the panel allow a second access point from PTH No. 67, which would completely separate commercial traffic from the residential traffic. He stated that he did not want to create a traffic problem for his neighbour, thus an access from Ammeter Road is not being considered.

Manitoba Infrastructure (MI):

MI, was represented by Director of Highway Planning and Design, Brant Magnusson and by Senior Access Management Analyst, Ms. Karen Toews-Therrien. Mr. Magnusson testified that MI remains opposed to DWH's application for the access Permit from three reasons. The three reasons: the classification of PTH No. 67; safety concerns; and the establishment of precedent. Mr. Magnusson explained that PTH No. 67 is considered to be on the upper end of traffic volumes. Roadway classification(s) are based on traffic volumes and posted speed limits. Access points are considered as secondary issues to the previous points. He testified that PTH No. 67 is a two lane non-divided highway where the posted speed is 100 km/hr. MI data has revealed that there is an average of 2600 vehicles per day. This is an increase from 2300 vehicles per day in 2010. This volume increases to 3147 vehicles per day in the summer months. He explained that the departmental guideline requires 800 meters between access points. Additionally, he explained that the allowance of a 400 meter access point, is specifically intended as a farm access whereby farm equipment could move between fields. Mr.

Magnusson said that MI's position is meant to manage potential hazards. An increase in access structure could result in increase traffic collisions with the structures. MI acknowledged that PTH No. 67 is a low collision corridor. A new access point affects the efficiency of the roadway by causing delays to motorists using the PTH because speed differentials change. Potentially, MI would need to make additional infrastructure investments to accommodate an increase in access points. He testified that there is a direct relationship between access density and crash points. He offered that MI's position is consistent with *The Manitoba Highway Protection Act*. He stated that MI was concerned that there could be fairness arguments, if some applicants are allowed multiple access points and others are not. This would establish a difficult precedence for future decisions with similar facts. Based on those arguments, MI recommended to the Panel that the permit not be approved.

Community Stakeholders:

The panel received into evidence testimony of support for Mr. Kleinsasser's application from Reeve Jim Campbell, Chris Lullman, and neighbour Merv Penowweek. Reeve Campbell testified that the RM does not want to restrict local business and DWH is asking for a new commercial access, not a second residential access. He stated that there are no water restrictions that would impact the construction of the commercial access point. He believed that separating commercial traffic from residential traffic would benefit safety by reducing the largest risk. He offered that in his 32-year engagement with the RM's fire service, there has not been any accidents on this section of PTH No. 67. The increase in traffic on the PTH between 2010 and 2016, is due to the increased traffic from DWH. A new access point would not result in an additional increase in traffic nor negatively impact safety.

BOARD FINDINGS

The Board thanked the parties for their contributions. The Board considered the position of Mr. Kleinsasser and Manitoba Infrastructure, and has decided in favour of Daniel Kleinsasser / Danny's Whole Hog Inc.

The Board is satisfied that Mr. Kleinsasser is the owner of the property, and that a significant safety risk exists through blended commercial, residential and pedestrian traffic at the current shared access point.

MI's position appears to be intended to promote the safety of the travelling public, but its evidence is based on highway research data exclusively from the United States. The panel would have assigned greater weight to this evidence if it had been current and from Canada. The Panel accepts the argument that safety will not be compromised by granting an access point which separates the DWH commercial traffic from the residential traffic. The panel further accepts the argument that the increased traffic between 2010 – 2016 is largely as a result of the growth of Mr. Kleinsasser's business. The panel feels that with specific conditions imposed on Mr. Kleinsasser permit, safety will be increased from the present situation and thanks Mr. Magnusson and Ms. Toews-Therrien for their dialogue with the panel in this area.

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 at www.pub.gov.mb.ca.

IT IS THEREFORE ORDERED THAT:

1. Without further delay, the HTB approve and grant Daniel Kleinsasser O/A Danny's Whole Hog Inc., a permit to construct a new access driveway (commercial) onto PTH No. 67, N.W.1/4 30-13-3E in the RM of Rockwood, 400 meters east from the existing access point.
2. Mr. Kleinsasser erect an appropriate sign, consistent with existing HTB signage policy, which states that the existing access driveway is "Private Access Only".
3. Mr. Kleinsasser erect an appropriate sign, consistent with existing HTB signage policy, which states that the new commercial access driveway is for "Danny's Whole Hog Inc." traffic only.
4. Mr. Kleinsasser take all reasonable steps to ensure that employees and customers do not use the private residential driveway.
5. Mr. Kleinsasser consult with and follow construction directives of MI concerning adequate visibility and lines of sight pertaining the PTH No. 67 and the new commercial access point.
6. Mr. Kleinsasser construct the new access point no less than 400 meters east of the existing access point, to route commercial traffic behind the DWH commercial buildings.
7. Mr. Kleinsasser bear all costs for the construction and maintenance of the new access point.

THE PUBLIC UTILITIES BOARD

“Robert Gabor Q.C.”

Chair

“Darren Christle MPA, BA, CCLP, P.Log, MCIT”

Secretary

Certified a true copy of Order No. 14/17
issued by The Public Utilities Board

Secretary