

**Order No. 83/17**

**APPEAL OF THE HIGHWAY TRAFFIC BOARD DECISION:  
DATED MARCH 2, 2017 – FILE NO. 3/083/260/A/16  
(SHERRY ALLAN)**

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**August 2, 2017**

**BEFORE: Allan Morin, B.A. (Econ), ICD.D, Acting Chair  
Carol Hainsworth, CBA, Member**

## 1.0 Executive Summary

By this Order, the Public Utilities Board (Board) sets aside the Highway Traffic Board (HTB) decision, dated March 2, 2017 and finds in favour of the appellant, Ms. Sherry Allan.

## 2.0 Background

Ms. Allan, submitted an application to the HTB to retain an existing access driveway onto PTH No. 83, N.E.1/4 18-6-26W in the Municipality of Two Borders on December 15, 2016. In its letter of March 2, 2017, the HTB denied the application because the access is a primary arterial route within 800 meters of other access points, and because there is alternate means of access available.

The PUB heard the matter at a public hearing held at 2:00 PM, Tuesday July 11, 2017, in the RM Council Chambers in the R.M. of Two Borders, Melita, Manitoba. Immediately following the hearing, Acting Chairperson Morin and Member Hainsworth, viewed the property, and both accesses onto the property which were related to the appeal.

### **MS. SHERRY ALLAN:**

Ms. Allan testified that she is a Constable with the Royal Canadian Mounted Police (RCMP) and as a result is an emergency first responder.

She testified that she purchased the property on August 29, 2016 and was unaware that the previous owners had committed to Manitoba Infrastructure, to remove the access onto PTH #83 when the land was sub-divided. She presented evidence that the alternate access is continually unusable due to hard packed snow or surface water in the winter and spring months. Due to her position with the RCMP, she is often required to respond to emergency situations and is unable to wait for the alternate access on grid road #33, to be usable. She argued that PTH #83 is an all weather road and she

requested consideration for not removing the access and being able to use the PTH #83 access on days when the alternate access is unusable.

### **MANITOBA INFRASTRUCTURE (MI):**

MI was represented by Director of Engineering, Mr. Brant Magnusson and by Regional Technical Services Engineer, Ms. Denise Jubenvill. Mr. Magnusson testified that there is existing HTB policy respecting these types of applications and MI's only opportunity to correct safety concerns is when applications, such as the sub-dividing of the property, are brought to MI for approval. Mr. Magnusson presented evidence which demonstrated that:

- There was an existing condition since 2014 for the PTH #83 access to be removed;
- PTH is an arterial highway with significant daily traffic of over 1000 vehicles per day;
- MI has a safety obligation to all Manitoba motorists;
- MI does not want a precedent established where accesses are retained when there are legitimate safety concerns.

Mr. Magnusson testified that there is empirical evidence that suggests that there is a 30% greater risk of crashes occurring at accesses that are not located at controlled intersections.

**COMMUNITY STAKEHOLDERS:**

The panel received into evidence testimony of support of Ms. Allan from Councillor Tom Dickson. Councillor Dickson confirmed that the alternate access from the property is often unusable at certain times of the year and the RM has been unable to mitigate this issue. He confirmed that Ms. Allan is often responding to emergency calls due to her RCMP position and that the community believes there is a greater risk to public safety in the event that she is unable to respond to an emergency in a timely manner due to access obstructions. Testimony was presented that MI is unable to assist the RM with clearing this section of municipal road.

### 3.0 Board Findings

The Board thanked the parties for their contributions. The Board considered the position of Ms. Allan and Manitoba Infrastructure, and has decided in favour of Ms. Allan, albeit with specific caveats and conditions.

The Board is satisfied that MI has made a compelling and logical argument to remove the PTH #83 access from the property. The Board also finds that it is only Ms. Allan's active position with RCMP that has influenced the decision not to order the access removed at this time.

MI provided compelling evidence and rationale on how the motoring public safety can be negatively impacted by access points at uncontrolled intersections.

The Board strongly recommends that the R.M. of Two Borders use this opportunity to investigate and implement appropriate countermeasures to insure that the owner of this property has acceptable access from grid road #33.

The Board feels that the P.T.H. #83 access point does pose an increased the risk to the local or travelling public however, in this specific case, it must be balanced against the risk to the community if a serving member of the RCMP is unable to respond to emergent situations.

#### 4.0 IT IS THEREFORE ORDERED THAT:

- 1) Without further delay, the HTB approve Ms. Allan's application to retain the residential access point onto P.T.H. No. 83, N.E.1/4 18-6-26W in the Municipality of Two Borders with the following conditions:
  - i. At the time when Ms. Allan ceases to be employed as a serving member of the RCMP the access will be permanently removed; and
  - ii. At the time when Ms. Allan ceases to reside on the property, whether she be a serving member of the RCMP or not, the access will be permanently removed; and
  - iii. At the time when Ms. Allan ceases to own the property, whether she be a serving member of the RCMP or not, the access will be permanently removed.
  - iv. Ms. Allan use the P.T.H. #83 access only on occasions when the grid road #33 access is unusable due to weather.

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. The Board's Rules may be viewed on the Board's website at [www.pubmanitoba.ca](http://www.pubmanitoba.ca).

THE PUBLIC UTILITIES BOARD

"ALLAN MORIN, B.A. (Econ), ICD.D"  
Acting Chair

"Darren Christle MPA, BA, CCLP, P.Log, MCIT"  
Secretary

Certified a true copy of Order No. 83/17  
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Secretary