

Order No. 92/18

**APPEAL OF MANITOBA HIGHWAY TRAFFIC BOARD PERMIT: 043-18
HTB File: 2/002/016/A/18
DATED MARCH 27, 2018**

July 19, 2018

**BEFORE: Shawn McCutcheon, Panel Chair
Mike Watson, Member**

SUMMARY:

By this Order, the Public Utilities Board (Board) sets aside the Highway Traffic Board (HTB) decision, dated March 27, 2018 and finds in favour of the appellant, Manitoba Infrastructure (MI).

BACKGROUND:

Mr. Paul Gaultier submitted an application to the HTB for an access driveway (agricultural) onto P.T.H. No.2, S.W. ¼ 22-8-7W in the R.M. of Grey (St. Claude), on February 22, 2018. In its letter of April 20, 2018, the HTB approved the application and issued HTB Permit 043-18. On May 18, 2018, Ms. Karen Toews Therrien, on behalf of Manitoba Infrastructure (MI) appealed the HTB decision.

The PUB heard the matter at a public hearing held at 13:00, Wednesday July 11, 2018, in the RM Council Chambers in the R.M. of Grey, Elm Creek, Manitoba. In conjunction with the hearing, Chairperson McCutcheon and Member Watson, viewed the property, and areas related to the appeal.

MR. PAUL GAULTIER:

Mr. Gaultier testified that he has owned the property for 30-years. He has been using the driveways of both neighbours (St. Claude Autobody and Ironworks Industries) since he purchased the property. He has a grain dryer on the property and access to natural gas as an energy source which is more cost effective than using electricity. As part of exhibit #8, Mr. Gaultier presented letters from Mr. Norm Bruneau of St. Claude Autobody and Mr. William Knibbs of Ironworks Industries. Mr Bruneau's letter request's Mr. Gaultier to either "stop using the driveway or start paying for some of the repairs"

that have been caused by his heavy farm equipment. A letter written by Mr. William Knibbs of Ironworks Industries indicated that he would like to build a fence around his property and thus, driveway access for Mr. Gaultier may no longer be available if that occurs.

MANITOBA INFRASTRUCTURE (MI):

Ms. Karen Toews Therrien provided a written submission as exhibit #9. Her testimony presented MI's concerns from three perspectives. They were: The classification of PTH #2 and its function; motorist and traffic safety; and concerns with establishment of precedent in the event that the access permit is approved. Additionally, the MI exhibit and Ms. Towes Therrien's testimony offered three potential alternative solutions that Mr. Gaultier could consider. The alternate solutions were: widening an existing joint driveway with a neighbour; relocating one of the existing driveways to the property line; and lastly, using the legal system to pursue a prescriptive easement.

BOARD FINDINGS

The Board thanks both parties for their contributions. The Board did attend and observe the site of the proposed access driveway (agricultural) onto P.T.H. No.2, S.W. ¼ 22-8-7W in the R.M. of Grey (St. Claude).

The Board considered the position of Manitoba Infrastructure and Mr. Gaultier, and has decided that MI has presented compelling rationale for opposing the permit, and reasonable potential options for Mr. Gaultier to consider.

IT IS THEREFORE ORDERED THAT:

1. HTB Permit 043-18 is quashed.

IT IS RECOMMENDED THAT:

1. Mr. Gaultier pursue the alternative options as presented by MI;
2. Mr. Gaultier consult legal counsel in initiate a prescriptive easement in co-operation with the principles of St. Claude Autobody and Ironworks Industries.

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.

THE PUBLIC UTILITIES BOARD

"Shawn McCutcheon"

Panel Chair

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

Secretary

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issued by The Public Utilities Board



Secretary