

M A N I T O B A ) Order No.161/07  
)

THE HIGHWAYS PROTECTION ACT ) December 17, 2007

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

APPEAL OF DENIAL OF AN APPLICATION FOR  
HIGHWAY ACCESS (PROVINCIAL TRUNK  
HIGHWAY NO. 6 N.W. ¼ 13-16-4 WEST, IN  
THE RURAL MUNICIPALITY OF ST. LAURENT

**SUMMARY:**

By this Order, the Public Utilities Board (Board) denies an appeal of Mr. Patrick Futros of a Highway Traffic Board (HTB) decision that denied access to Provincial Trunk Highway No. 6 (PTH 6) from a property adjacent to the highway.

**BACKGROUND:**

Mr. Futros made application to the HTB for access to PTH 6 from N.W. ¼ 13-16-4W in the Rural Municipality of St. Laurent (RM). HTB denied the application on the grounds that the proposed access did not meet the minimum distance requirement of 400 metres between access points. HTB suggested that alternate access may be available to the property from Twin Beaches Road, which is located on the northerly side of the property.

Evidence was taken by the Board at a public hearing held at 1:30 p.m., Tuesday, October 30, 2007, in the St. Laurent Parish Hall, 119 Parish Lane, St. Laurent, Manitoba. The hearing was conducted on a hear and report basis by Susan Proven, Board Member. Immediately prior to the hearing, Board Member Proven, viewed the property, highway and municipal roads related to the appeal.

**The Applicant:**

In his submission to the Board received August 30, 2007, Mr. Futros provided the Board with photographs of the site, a copy of Board Order 109/04, a number of drawings depicting the present and planned site, and an aerial photograph of the site.

Mr. Futros indicated that his mother, who was reported to be experiencing significant health issues, wants to have a new residence built for herself and her son Patrick on the west parcel of the proposed subdivision. Mr. Futros noted drainage problems causing the flooding of the property and indicated that given the time frame necessary for addressing and correcting the constant flooding problem, it had become necessary to apply for the relocation of the current access/driveway.

He suggested that relocation would eliminate the spring flooding that occurs on the front part of the subdivision and provide an economical and easy access to PTH 6 from the subdivided lots.

Mr. Futros noted that in rejecting the application, the HTB suggested that access be gained via Twin Beaches Road and submitted that HTB's suggestion was not feasible; as such an access would have to be built over swamp land.

Mr. Futros submitted that his appeal and the circumstances surrounding it were similar to the matter considered in Board Order 109/04.

Mr. Futros noted that an application for a subdivision had been made and that access is being sought prior to any sales taking place.

He identified two options:

- a) relocation of the access on the north side of the property. (It was noted that road connections were already in place and have been utilized for years.);  
or
- b) development of an access road on the south side of the property for access to the planned subdivision, an option providing easy and economically feasible access.

Mr. Futros submitted that removal of the present access on the north side of the property would eliminate concerns over the spacing requirements, and that the neighbouring property, Lot 1 would continue to have access to PTH 6 via Twin Beaches Road. In addition, he submitted that there are safety concerns for children using the school bus at the shared entrance.

In summary, Mr. Futros requested that either relocation of the access currently located on the north side to the south

side of the property occur, or an additional access be provided from the south side of the property to PTH 6. .

**Manitoba Infrastructure and Transportation (MIT)**

MIT provided the following exhibits to the Board:

- Exhibit 1: copy of Highway Traffic Board sketch plan 2006030-8-A-06.
- Exhibit 2: RM and Community of St. Laurent municipal maps showing the approximate location of the Futros property.
- Exhibit 3: Aerial photography showing the subject property.
- Exhibit 4: Sketch of Proposed Subdivision and MIT's August 20, 2007 comments to Community Planning Services.

MIT noted that in June 2006 Ms. Katie Futros applied to HTB for an additional access onto PTH 6, that to be within 300 metres (276) of an existing access onto PTH 6, and to service approximately 54 acres of land adjacent to the west limit of PTH 6 and south of the Twin Beaches Road/St. Laurent access road, which is a Provincial Road.

At the August 8<sup>th</sup> and September 6<sup>th</sup> 2006 HTB hearings of the application, MIT opposed approval of the proposed access, while the applicant indicated that the driveway was necessary both to resolve a flooding/drainage issue on the property and to service the commercial portion of the property that the applicant wished to sell.

It was suggested that access could be obtained either from Twin Beaches Road, if the flooding of the property was resolved, or by relocating the existing joint use driveway serving Lots 1 and 2, Plan 35617 WLTO. The relocation of the joint access onto PTH 6 to the requested location required the consent of affected property owners, which was not provided.

On September 19, 2006, HTB denied the application for additional access onto PTH 6 and suggested it would facilitate a meeting to find a solution to the applicant's drainage problem.

November 5, 2006, Katie and Patrick Futros submitted an "Application to Subdivide" the subject property (54 acres) to the Community Planning Services office in Selkirk. The application involved the creation of a 6.77 acre lot fronting PTH 6, 470 foot wide; a 12.49 acre lot fronting the St. Laurent Access Road; and the residual of the property, consisting of 34.87 acres. The intended uses of the proposed lots were reported to be agricultural, commercial, industrial and other. The applicants indicated that access existed to the property, and an intention to build a driveway onto a Provincial Trunk Highway.

MIT was informed, by the Board, of the applicant's appeal of HTB's decision, and on November 22, 2006, representatives of MIT met with the RM of St. Laurent, representatives of Water Stewardship and John and Patrick Futros.

At that meeting, it was agreed that the flooding of the property adjacent to Twin Beaches Road may be resolved if traps/floodgates were installed on an existing through grade culvert on PTH 6 in front of the Futros property and a field crossing on the west side of PTH 6 south of the Futros property. As the drainage authority, the RM of St. Laurent was to apply to Water Stewardship for a 2-year water licence for installation of the floodgates.

In the spring of 2007, MIT regional staff installed the two floodgates on the 900 mm through grade culvert on PTH 6 and the 450 mm culvert in a field crossing south of the Futros property, and on July 18, 2007, MIT received the November 5, 2006 Application for Subdivision from Community Planning Services requesting comments.

An August 9, 2007 Board letter advised MIT that in a June 26, 2007 letter to the applicant that "...unless I was advised that they intend to proceed with the matter, the Board's file would be closed."

By letter of August 24, 2007, MIT formally responded to Community Planning with respect to the proposed subdivision, and recommended the proposed subdivision not be approved. MIT advised it would reconsider its position if the proposal was resubmitted with no new connections onto PTH 6, and if access was to be obtained from the Twin Beaches Road/St. Laurent Access.

By letter of August 30, 2007, MIT acknowledged Katie and Patrick Futros' August 28, 2007 correspondence indicating that they wished to proceed with an appeal of the HTB decision.

By letter of October 29, 2007, MIT was advised by Community Planning Services in Selkirk that the Futros' proposed subdivision had not proceeded to the Council of the RM of St. Laurent, because Community Planning required additional information regarding the intended uses of the proposed new lots before it would submit a report to Council.

In its submission to the Board, MIT recommended against approval of the creation of an additional access onto PTH 6 to service this property for the following reasons:

- The proposed access does not comply with the Department's policy with respect to the spacing of driveways for this type of highway.
- A direct access to this property conflicts with Departmental practice of limiting access to high speed provincial highways where alternate access is available from a lesser highway or the municipal road system.
- The high speed nature and relatively high traffic volumes on PTH 6.
- The potential impact on motorist safety.
- A perceived need to maintain the primary function of PTH 6 to carry traffic safely and efficiently.
- The risk of a precedent being established for other land



owners adjacent to PTH 6, and the need to maintain the equitable practice that had been established by both MIT and the Highway Traffic Board with other developments along PTH 6.

- The access is not required since access is available from another provincial highway of lesser importance than PTH 6.
- Approval of access to PTH 6 to facilitate subdivision of the property before the subdivision has been conditionally approved or the proposed land uses considered acceptable is premature.

PTH 6 is a 2 lane, high-speed rural highway (100 km/h) that extends from the City of Winnipeg to the City of Thompson. PTH 6 is the primary commercial route serving northern Manitoba and connecting Southern and Northern Manitoba with numerous communities in the western Interlake. As such, it carries relatively high volumes of high-speed traffic for a two lane undivided highway and has the primary function of moving goods and people safely and efficiently over long distances at high speeds.

2006 traffic counts indicated traffic volumes were 2440 Average Annual Daily Traffic (AADT) on PTH 6, 1.0 km South of Twin Beaches Road (south of the property), with approximately 13% of the traffic being truck traffic. Seasonally adjusted (ASDT) traffic counts (summer) on this portion of PTH 6 noted a 22% traffic increase, resulting in an ASDT of close to 3000 (2977) AADT.

PTH 6 is designated a Primary Arterial at this location and a 2-lane expressway between PTH 100 and PTH 67, in the Department's Functional Classification System. As such, the desirable spacing of low volume infrequently used agricultural/field driveways for this classification of highway is 800 metres, whereas the minimum spacing of agricultural/field driveways is 400 metres.

In this particular instance, the subject property is located adjacent to a portion of PTH 6 outside of the community of St. Laurent and within a 100-km/h-speed zone. Although the applicant indicated in their HTB application that the proposed use of the access/land is for agricultural purposes, they advised HTB and Community Planning Services that the intended uses of the property are agricultural, commercial, residential, industrial and other. In this context, and with current traffic volumes on PTH 6, the minimum spacing of 400 metres between driveways would not apply.

The majority of traffic on PTH 6 is through traffic as evidenced by the traffic volumes in the previous section. MIT regulates access to this portion of highway in a manner to maximize the safe movement of vehicles and maintain the primary function of PTH 6, which is to move people and goods efficiently. This is accomplished in a number of ways when dealing with "new" development and changes to existing uses adjacent to the highway that require new driveways onto PTH 6, for example:

1. Maintain the status quo by maintaining the spacing between existing driveways wherever possible.
2. Relocation and/or joint use of existing driveways to meet emerging or new access needs.
3. Redesigning/reconstruction of existing driveways to bring them into compliance with current engineering standards.
4. Moving/approving driveways onto the lower classification of roadway such as PTHs to Provincial Roads, Provincial Roads to municipal roads etc., wherever possible.
5. Moving driveways away from intersections and not allowing driveways in close proximity to intersections to interfere with the safe operation of the intersection.
6. Promoting the development of internal road systems to provide access to proposed and adjacent development.
7. Separating traffic movements from the travel lanes of a highway by requiring developers to provide the necessary highway improvements to mitigate the impact traffic from their proposed development will have on motorist safety and highway efficiency.

MIT recognizes that the safety of motorists is dependent upon a well-managed roadway environment and that as the number of access points per mile increases, so does the frequency and rate of total highway collisions. Research indicated that for each additional access added to the highway system, the accident rate increases by 4%. In

addition, access related crashes occurring at driveways and intersections represented over 55% of all traffic crashes, i.e. over 40% in rural areas and 65% in urban areas. Left turns at intersections and driveways accounted for 74% of those crashes.

Past analyses of Manitoba collision data, conducted by MIT, indicated approximately 35% of all collisions on rural provincial highways occurred at intersections and access points. This figure rose to over 50% if off road collisions (hitting approaches) and collisions outside the "functional area" of the access/intersections were factored in.

The consequences of allowing additional driveways and adjacent development to interfere with highway function are to increase the degree of hazard (safety) and amount of delay for motorists (efficiency) and to accelerate the need for costly highway improvements (economics).

Each new access onto a high speed/major highway creates a potential safety hazard and is problematic in the following ways:

1. A driveway is an obstruction in the right-of-way and increases the risk associated with vehicles leaving the highway and striking the crossing. The greater the number of driveways into a highway the higher the risk of errant vehicles striking the crossing and causing severe personal (injury) and property damage.

2. Each additional driveway creates a potential safety hazard by creating an intersection where nothing existed previously and results in turning movements on and off the highway creating new conflict points between turning and through traffic thereby increasing the accident potential on the highway. Driveways such as the one being proposed result in a minimum of 9 potential conflict/collision points on a highway where none existed previously.

To prevent the creation of potentially hazardous situations on the highway system and the premature obsolescence of the highway infrastructure the province through the *Highways Protection Act* has instituted land use and access controls to protect the provincially funded highway system within Manitoba. This is in recognition of the fact that many of the accidents and problems associated with highways can be traced directly to the lack of access control.

It is within the general framework outlined above that MIT is opposed to the creation of any additional access onto PTH 6 to service this property.

The guidelines used by the department in assessing subdivisions, developments and requests for new access connections onto the Provincial Highway System are based on the following very general criteria and preferences:

1. Access is to be obtained off the adjacent minor or

- lesser provincial/municipal road system wherever possible.
2. Joint use of an existing access onto the highway through the relocation of existing access connections to the common property line, declaration of rights of way, creation of frontage/internal roads with maximum spacing between existing and proposed connections to ensure compliance with Departmental spacing standards for the classification of the highway.
  3. New access onto the highway is to be approved only at safe locations, i.e. no visibility or safety issues and where the spacing between driveways and proposed land/access uses are acceptable.
  4. New driveways are to be approved (wherever possible) as a joint use access or at locations that minimize the future requirement for additional driveways and maximize/maintain minimum and preferably desirable spacing standards between driveways that is consistent with the proposed use of the access and adjacent lands it is intended to serve.
  5. Rationalization of existing access connections through the removal and relocation of existing driveways to meet minimum and preferably desirable spacing criteria.

The Futros' indicated that their 54 acre property is already serviced by an existing driveway, presumably from the St. Laurent Access Road, and of a need for access to PTH 6 that is generated by their desire to subdivide and develop the property. Until the subdivision and proposed land uses are approved, there would be no "need" to access this property from PTH 6.

Alternatively, the need to access PTH 6 could be resolved by amending the proposed subdivision to allow one lot fronting the St. Laurent Access Road with the remaining property (including the frontage on PTH 6) being the residual.

As an alternative to creating an additional access to PTH 6, it was suggested that the driveway onto PTH 6 that jointly services Lots 1 and 2, Plan 35617 WLTO be relocated to the proposed location. To accomplish this, the affected property owners would have to provide written confirmation of agreement and that an appropriate/legal means of access would be provided to Lots 1 and 2 to ensure that it does not become "land locked".

It is MIT's position that if this occurs, the legal means of access should be a public road right of way across the frontage of all three properties. This would necessitate the removal of the existing driveway onto the St. Laurent Access Road and the creation of a new connection onto the St. Laurent Access Road at an appropriate/better setback

from PTH 6. The southern terminus of the public road would be the south limit of the NW 13-16-4W. It should be noted that any access onto PTH 6 at this location would require appropriate on highway improvements funded by the property owners to mitigate the impact on PTH 6.

**PRECEDENT:**

The proliferation of access along a major highway creates an undesirable and very visible precedent for other landowners/sub dividers/developers adjacent to the highway system resulting in increased demand for similar concessions with respect to access (i.e. direct access onto the Province's main highways, changes in the use of farm/field crossings to accommodate residential/commercial development, the reductions in spacing, etc.).

Consequently, MIT is concerned with the precedent that will be established since this situation is 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 will expect when developing adjacent to the Provincial Highway system. The consequence is that each successive application for access or demands to retain potentially unsafe driveways and developments becomes more difficult to refuse, resulting in an overall deterioration of motorist safety and the primary function of highways such as PTH 6.



**MIT'S RECOMMENDATION:**

MIT opined that the Highway Traffic Board was correct in their assessment of the application and the potential impact the creation of an additional access onto PTH 6 would have on the safety and operation of this portion of PTH 6.

And, given this, MIT recommended the Public Utilities Board dismiss the appeal and uphold the Highway Traffic Board's decision denying access onto PTH 6 at this location.

**BOARD FINDINGS:**

The Board thanks the parties for their contributions. The Board considered carefully both the positions of Mr. Futros and MIT and has decided to uphold the Decision of the HTB.

In doing so, the Board notes the applicant currently has access from the property to PTH 6. That the access is shared, jointly serving Lots 1 and 2, Plan 35617 WLTO and is secured by means of a Caveat registered to the said properties for an easement for the right of way. To relocate the existing access the affected property owners would have to provide written confirmation that they are in agreement with this alternative and that an appropriate/legal means of access is provided to Lot 2 to ensure that it does not become "land locked". The Board is not aware of any such agreement.

The Board accepts the position of MIT with respect to the nature of the highway and the need to control access. The Board notes the key role of this highway in accommodating traffic to the North to the City of Thompson and the western Interlake. Also the Board notes the speed limit in this portion of the highway is 100 kilometres.

The Board is of the opinion that the spacing requirements for access to the highway should not be compromised. The Board also notes that alternative access to the property can be gained through Twin Beaches Road.

The Board notes the applicant's concerns with regards to the topography of the land and the efforts made by the various authorities to mitigate the problem of flooding. The Board is of the opinion that given that the Applicant currently has shared access to PTH 6 it is not unreasonable for further access to the property, as it is developed, be limited to the Twin Beaches Road to which the applicant has direct access.

In his presentation the applicant noted that access was granted in the application referred to in Board Order 109/04. In that Order, access was permitted for a single residential use only, and that any additional residential premises on this site would render the Board Order null and void. Furthermore, the Board then noted that its decision should not be taken as a precedent and, as in this Order, the Board indicated support for the standards and

principles used by the Manitoba Infrastructure and Transportation to protect the highways of Manitoba, for the users of the highways.

**IT IS THEREFORE ORDERED THAT:**

1. The application BE AND IS HEREBY DENIED.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE, CA"

Chairman

"H. M. SINGH"

Acting Secretary

**APPEARANCES :**

Mr. Richard Nichol	Senior Access Management Analyst, Highway Planning and Design, (Winnipeg), Manitoba Infrastructure and Transportation
Mr. Chuck Lund, P.Eng.	Technical Services Engineer, West Central Region (Dauphin), Manitoba Infrastructure and Transportation
Patrick Futros and Tara Polhill	The Appellants