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Order No. 170/08

THE HIGHWAYS PROTECTION ACT

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December 17, 2008

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

**APPEAL OF HIGHWAY TRAFFIC BOARD DECISION:
RELOCATION AND CHANGE IN USE OF AN
EXISTING ACCESS TO PROVINCIAL TRUNK
HIGHWAY NO. 8,
THE RURAL MUNICIPALITY OF GIMLI**

SUMMARY:

By this Order, the Public Utilities Board (Board) denies Gimli Redi-Mix Ltd.'s (applicant or Gimli) appeal of Highway Traffic Board's (HTB) denial of a proposed relocation of an agricultural access onto Provincial Trunk Highway No. 8 (PTH 8).

This Order allows for a change in use of the existing driveway, subject to the applicant meeting certain conditions of the Manitoba Department of Infrastructure and Transportation (MIT).

BACKGROUND:

Gimli made application to the HTB to relocate and change the use of an agricultural access to a new commercial access from N.E.1/4 31-19-4E onto PTH 8 in the Rural Municipality of Gimli (RM).

HTB denied the application, stating the following reasons:

- the proposed access driveway location did not meet the minimum spacing requirements between accesses, and
- a willingness to issue a permit for the relocation of the access to the north property line, for joint use, with removal of the adjacent northerly access -- if the arrangement would be agreed to by the adjacent landowner.

The appeal was heard by the Board at a public hearing held on Wednesday, November 26, 2008, in the Council Chambers of

the Rural Municipality of Gimli, Manitoba. The hearing was conducted by Ms. Susan Proven on a "hear and report" basis, a process provided for in statute requiring subsequent agreement by another member of the Board.

Immediately prior to the hearing, Ms. Proven viewed the subject property and the current access to PTH 8.

THE APPEAL:

Mr. Scot Devlin represented Gimli and, in his submission, he reported that the subject property had been recently acquired by Gimli and that the firm was in the process of relocating its concrete batch plant to the property (the plant was located on the adjacent property, north of the subject property).

Mr. Devlin reported that the current driveway requires reconstruction in a circular manner to join to the current access to the residence, this in order to accommodate large cement trucks entering and exiting the site. He submitted that a safer and more efficient driveway to the relocated plant would be a straight driveway constructed along the north boundary property line. Under his plan, the existing driveway would be removed and a new access constructed at the northern boundary of the property line -- to keep the driveway away from the front of a rented-out house, the renters being plant workers.

Mr. Devlin noted that he could not accept with HTB's suggestion for a shared access with the neighbour, as the neighbour was not agreeable. His preference was to either have the driveway run straight out along the property line or to use the current residential access.

Manitoba Infrastructure and Transportation

MIT supported HTB's decision and opposed Mr. Devlin's appeal. However, MIT indicated that it would not object to a change in use of the existing driveway to commercial, providing that certain conditions were met.

MIT reported that the subject property was acquired by Gimli in May 2007 following the approval of a conditional use permit (to establish "a contractors establishment" on the property) by the RM of Gimli (RM). In January 2008, Gimli applied to HTB to relocate the existing driveway to the northern boundary line (with a planned nine metre top width).

MIT opposed the appeal for the following stated reasons:

1. Neither the existing nor the proposed accesses comply with MIT's policy, as they do not meet the required spacing of driveways accessing highways. MIT advised that PTH was classified as a primary arterial highway, for which MIT strives to ensure reasonable mobility and safety through minimum accesses.

2. Departmental guidelines require a minimum spacing of 400 metres, and a desirable spacing of 800 metres between accesses to highways such as PTH 8.

In conclusion, MIT submitted that Mr. Devlin's proposed access did not meet its guidelines, and that departmental practice is to limit access to highways. MIT noted that an access to Mr. Devlin's property already exists, and suggested it could be upgraded.

MIT submitted that the high speed and traffic volumes associated with PTH 8 made it advisable for driveways to be consolidated, in this instance with the driveway to Mr. Devlin's neighbour to the north. MIT submitted that relocation of the existing access to one 101 metres south of an existing access would not enhance highway safety.

MIT submitted that if the guidelines were violated, the primary function of the highway, that being safe conduit, would be negatively impacted, and that safety would be reduced, traffic delays increased, and future highway improvements would be more costly. MIT noted that 5-8% of the traffic on this section of the highway is truck traffic, and 2006 average daily traffic counts North of PR 231 for 2006 were 1,930.

MIT noted that the Provincial Government, through *the Highways Protection Act*, has 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.) has 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, traffic collision at intersections and driveways on Provincial highways constituted 25% of all reported collisions.

MIT further advised that it was concerned that, if the Board granted Mr. Devlin's appeal, other landowners would seek further contraventions of the department's safety-based guidelines, and represent a direct and serious contradiction of MIT and HTB standards, and risk highway safety.

In summary, MIT recommended that the Board deny the appeal and uphold HTB's decision. Again, MIT indicated that it would not object to a change in the use of the existing driveway, subject to the following conditions:

1. Gimli Redi-Mix provides MIT information to allow MIT to assess the likely impact on the highway system and as to the nature of the on-highway improvements that may be required:
 - Description of proposed building/ commercial uses on site,

- Estimate of Traffic Volumes/ Trips that will be generated by the development,
- Type of vehicle mix i.e. semi-trailers, "A" Trucks, "B" Trucks, passenger vehicles, delivery vehicles,
- Largest Vehicle size and type expected to use the facility,
- % Directional Splits of traffic,
- Number of employees and hours of operation, and
- Any additional information that may be helpful; e.g. gross tonnage of raw and finished product entering and exiting the site, onsite storage capacities, alternative transportation modes being used, etc.

MIT noted that the minimum intersection/ access treatment on the Provincial Highway System requires a minimum three metre paved shoulder for sixty metres on both sides of an existing or proposed public road, industrial, residential or commercial access, where the following conditions apply:

- The proposed or existing access, public road or municipal road is connecting onto any paved PTH or PR;
- PTH/ PR has Annual Average Daily Traffic of 500 or more;
- PTH/ PR are high speed i.e. Posted speeds of 80 km/h or more; and

- Proposed connection/ Municipal road is to serve any proposed industrial, commercial or residential (10 or more dwellings/units) development entering and/or exiting the highway.
2. An outline of the costs to be associated with meeting the minimum standards required to accommodate the proposed change of use of the existing access, with all of those costs to be the responsibility of the applicant(s).
 3. Gimli would be required to enter into an agreement with MIT to cover the costs of the planning, design and construction of highway improvements required to accommodate the operation.
 4. Gimli would be required to provide MIT with a performance guarantee, this to ensure that the location and construction of the required on-highway improvements conform to MIT's standards of construction.

An alternative proposal

MIT suggested an alternative to developing the existing access, that being to relocate and consolidate the two existing driveways into the S½ of Section 31, as a joint use commercial access for the two properties.

This approach would further traffic safety objectives by eliminating one access point along PTH 8.

If this option was to be agreed to by the adjacent landowners, MIT indicated that it was prepared to investigate the possibility of removing and relocating the driveways at departmental expense and cost-share any additional on-highway improvements required to accommodate joint use commercial access.

MIT further advised that without the agreement of the affected property owners, maintaining the current spacing may be all that can be done.

Other Comments

The Board acknowledges receipt of a letter from Ms. Mary Wishnowski, an adjacent landowner on the opposite side of the highway.

Ms. Wishnowski noted a concern that with the driveway relocated opposite to her driveway, increased volume of vehicular activity would lead to increased accidents. Also, from her perspective, there would be an increase in noise and dust, and that this would negatively affect the use of her property.

This issue was also raised by another neighbour, one located to the south of the property.

Mr. Don Buchko, on behalf of Glenko Enterprises, advised of plans for another concrete batch plant on the property to be vacated by Gimli Redi-Mix Ltd. Mr. Buchko agreed that a shared driveway at the property line, with gates to each property, makes sense, even though the current access to his property was adequate.

Mr. Buchko undertook to discuss the matter with his brother, the other shareholder in Glenko Enterprises; he subsequently advised the Board that Glenko Enterprises was not willing to have a shared driveway.

BOARD FINDINGS:

The Board thanks the parties for their contributions to the Board's understanding of the situation and the implications of the identified options.

After carefully considering the positions of Mr. Devlin and MIT, and the comments of the other parties present at the hearing, the Board will uphold HTB's decision. That said, the Board will allow for a change in use of the existing access, subject to Gimli Redi-Mix agreeing to the conditions stipulated (and listed above) by MIT.

Highway safety concerns over-rule the inconvenience to Gimli Redi-Mix that accompanies denial of its appeal. The

applicant currently has access from its property to PTH 8, and that access can be upgraded and designed to meet the commercial use of the access.

Nonetheless, the Board encourages Mr. Devlin and Mr. Buchko to come to an agreement to share one consolidated driveway. A shared driveway with paved shoulders on both sides of the access would be expected to significantly enhance general traffic safety at this location on the highway.

The Board notes the technical specifications required for a commercial access, which are applicable to Gimli Redi-Mix and Mr. Buchko. The Board notes MIT's offer to remove and relocate the driveways to a consolidated driveway at MIT's expense, and its further offer to cost share any additional improvements required to accommodate joint commercial use.

Accordingly, the Board encourages both parties to take advantage of MIT's offer, and, achieve both cost savings and an upgrade of traffic safety for their employees and others.

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 the information relevant and useful. General public safety issues are of paramount importance when highway disputes arise.

In summary, while the Board will not accede to the request of the appellant, and HTB's decision will stand, the Board is prepared to allow for a change in use of the driveway under the terms indicated above.

IT IS THEREFORE ORDERED THAT:

1. The application to relocate the existing access BE AND IS HEREBY DENIED.
2. The application TO ALLOW FOR A CHANGE IN USE IS APPROVED, SUBJECT TO Gimli Redi-Mix meeting conditions specified by the Manitoba Department of Infrastructure and Transportation.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE, CA"

Chairman

"H. M. SINGH"

Acting Secretary

Certified a true copy of
Order No. 170/08 issued by
The Public Utilities Board

Acting Secretary

APPEARANCES :

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

OTHERS

Ann & Gerald Krezanski	Neighbour
Don Buchko	Neighbour