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Order No. 12/10

THE HIGHWAYS PROTECTION ACT

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January 28, 2010

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

**APPEAL OF A HIGHWAY TRAFFIC BOARD DECISION:
PROVINCIAL TRUNK HIGHWAY 1A (BRANDON)**

SUMMARY:

By this Order, the Public Utilities Board (Board) overturns a Highway Traffic Board (HTB) decision that denied joint use residential access to Provincial Trunk Highway No. 1A (PTH 1A) from a property adjacent to the highway, and allows joint use residential access, subject to conditions.

BACKGROUND:

Burns Maendel Consulting Engineers Ltd. (Burns) applied to HTB seeking joint-use residential access to PTH 1A from Lots 9 & 10, Block 1 Plan 848 SE1/4 35-10-19W in the City of Brandon.

HTB denied the application noting: *"At the time these properties were being developed, it was agreed that there was to be no direct access of PTH No. 1A"*, and, *"These properties have alternate means of access available via the public lane to the west, Braecrest Drive and Centre Avenue"*.

The Board, by way of a public hearing held January 18, 2010 in the Councillor's Meeting Room, City of Brandon, heard Burn's appeal (conducted on a "hear and report" basis by Board Chairman Lane).

Prior to and following the hearing, Board Chairman Lane viewed the property, highway, adjacent roads and the general residential neighbourhood related to the appeal.

THE APPLICANT:

In its submission to the Board, Burns submitted that the HTB's rationale for denying the application was flawed. Burns submitted that the to-be-constructed traffic safety measures to be undertaken on PTH 1A must now be taken into account.

Burns noted that at the time HTB Permits 190-08 and 222-08 were issued, which prevented the joint use access now sought by Burns, the-then poor and expected continuing poor state of PTH 1A justified denying access to the highway from the properties. Burns opined that once Manitoba Infrastructure and Transportation (Highways) announced improvements to the highway, to involve raised centre medians and paved shoulders, there were grounds for joint use access onto an improved PTH 1A from the properties.

Burns cited that its application involves restricting access to "right turns only" (into and out of the properties), and opined that the proposed approach met safety concerns.

With respect to Highway's plans to upgrade the highway in the area of the subject properties, Burns noted plans for four lanes, two in each direction, divided by a median, with no left turn provided for either north or southbound traffic on PTH 1A between Braecrest Drive and Centre Avenue; paved shoulders; traffic signals at Centre Avenue;

access limited to only "right-in right-out" approaches on the west side between Braecrest Drive and Centre Avenue; and a speed limit of 70 kilometres per hour.

Burns also opined that with access to and from PTH 1A from the properties, emergency responders would be better served than the result if its appeal was denied.

In short, Burns submitted that Highway's planned changes to PTH 1A will, when completed, provide an entirely different road section profile compared to the conditions in place in 2008 when access to PTH 1A from and to the properties were denied by HTB.

Burns also noted the 2006/2007 "Brandon Area Road Network Development Plan", and suggested that the City of Brandon views PTH 1A as part of its municipal road network, while Highways perceives it as a limited access highway (ignoring, in essence, its urban location).

Burns submitted that its proposal for a "right-in right-out" access point to IA from the properties is essential if Brandon is to meet its mandate to be an adequate service provider for the region, while, concurrently, providing a comfortable degree of safety for a PTH.

Burns submitted that its proposal represented a reasonable compromise, one that accommodated both the views of the City and the safety concerns of Highways.

Burns sought that HTB's decision be reversed, and that the Board, by granting the appeal, provide for a joint access permit be issued for a joint use access to and from IA from the subject properties.

MANITOBA INFRASTRUCTURE AND TRANSPORTATION (Highways)

Highways' representation included Mr. Eric Christiansen, Director of Highway Planning and Design, and Mr. Kevin Nimchuk, A/Access Management Technologist, Highways Planning and Design Winnipeg.

Highways advanced its opposition to access to and from the subject properties to PTH 1A, for the following reasons:

- 1 The classification and function of PTH 1A does not provide for such an access;
- 2 Motorist/Traffic Safety concerns with such an access;
- 3 Precedent - Highways, supported by HTB and the Board, efforts to reduce access to PTHs; and
- 4 Access already exists to the property.

Highways noted that the portion of PTH 1A adjacent to the subject properties is within its jurisdiction and is classified as a Secondary Arterial highway, with its function being to move traffic with optimum mobility, maximum safety and minimal interruption.

Highways noted that access to adjacent lands is a secondary consideration and lesser function for PTH 1A.

Highways also noted this portion of PTH 1A is a core trade route under its proposed Strategic Highway System. Most of PTH 1A is a 2-lane high speed semi-urban highway, with a speed limit of 70 kilometers per hour.

Highways acknowledged that PTH 1A adjacent to the subject properties is to be upgraded, which, it submitted, is consistent with the highway's function as a busy, high volume access highway, leading to and from the City and the TransCanada Highway. Highways noted 2008 traffic counts for this section of the highway as being 7,240 average number of vehicles/day), and, when adjusted to account for recreational traffic, 7,960 vehicles each day.

Highways also noted that approximately 5-6% of the traffic is truck traffic. Highways also advised that its policy is to reduce the number of turning locations and maximize spacing between driveways. (The proposed access, if granted, would be 123 meters and 194 meters, respectively, from the nearest public road accesses.)

Highways submitted that allowing an access to and from PTH 1A, regardless of it being restricted to right-turn only, will increase safety hazard and movement delays, and, as well, likely lead to increased accidents while involving costly highway improvements.

Highways advised that it considers accesses as obstructions that increase the risk of collisions -- as vehicles leave and enter the highway. Highways plans, through land use and access control, to limit and reduce hazardous situations.

Highways submitted that 35% of all collisions on the provincial highway system occur at intersections and access points, and noted that each access granted that is opposed by Highways "sets a precedent" for other landowners, and leads to increased demands for further accesses, which result, when granted, in deterioration of highway functions.

Alternatives

Highways noted that, in its considered and experienced perspective, alternative access is preferred to direct access to the highway, and that the creation of frontage roads with minimum spacing for direct access is best with new accesses being approved only at safe locations and where spacing is acceptable.

With reference to the subject property and Burn's appeal, Highways noted the previous applications made to the HTB and the negative decisions issued, and asked that the appeal be dismissed and the decision of HTB be upheld.

Other comments

The Board was provided written information from Burns and Highways ahead of and during the hearing itself. As well, a representative of the City of Brandon supported the appeal, noting the City's housing demands and the plan of Highways to divert PTH 1A such as to make the present PTH 1A adjacent to the subject properties no longer a highway and subject to the City's requirements.

And, as well, neighbouring property owners provided oral comments at the hearing.

Property owners from Braecrest Drive and White Swan noted heavy traffic exiting onto PTH 1A from residential housing to the west of the subject properties, and suggested that depending on a current (and to be extended) lane to the west of the development, of about 20 feet wide, was inadequate, particularly taking into account the anticipated additional traffic that would arise with the full construction plans for the subject properties - approximately 150 condominiums.

It was noted that the City's jurisdiction as to setting the speed limit for the portion of PTH 1A adjacent to the subject properties started on Braecrest Drive, where the 70-kilometer per hour speed limit now ends.

Highways advised that the current upgrade would end at Centre Avenue and be completed in the summer of 2010, and that longer term plans call for a veering of the four lane highway leading to a cloverleaf to the east with the existing PTH 1A to Braecrest Drive to then be "no longer" a PTH, and then subject to the City's jurisdiction not Highway's.

A signal light is to be installed at Centre Avenue but, currently, there are no plans for installing a light at Braecrest Drive. There is to be a left turning lane from PTH 1A north at Centre Avenue to allow traffic to turn onto Centre Avenue.

It was also noted that the developer of the property on the south side had acquired a lot fronting on Braecrest Drive so as to be able to provide direct access from the subject properties to Braecrest Drive.

Board Findings and Discussions

The Board agrees with the "safety orientated" approach of Highways, all directed to protect motorists using Provincial Trunk Highways. Highways are costly yet necessary, and, unfortunately, are accompanied by an ever-present risk of accidents, injuries and deaths (from unsafe conditions and/or poor driving behaviour).

Accordingly, similar to the interests of Highways and HTB, the Board supports consistent, well-thought-out processes

towards preventing or reducing the degradation of highways from a safety perspective.

The position taken by Highways with regard to the classification of highways, traffic safety, precedents and alternatives to creating direct access generally find favour with the Board. Having said that, the Board, in its deliberations, considers not only the wise perspective of Highways and HTB, but also the wider public interest and perspective.

The Board agrees with Burns that the plans for upgrading PTH 1A adjacent to the subject properties should be considered, and the Board is concerned with safety issues that abound as the number of residential units increase on the site and in the neighbouring area.

In short, the Board must deal with "what is", and not reach conclusions based strictly on general principles and objectives.

The Board is concerned with the volume of traffic that is likely to exit an extended back lane from the subject properties upon completion of the entire project and given access to PTH 1A being closed, leaving only the lane to Centre Avenue and Braecrest Drive to handle traffic from the development, which is apparently significant during rush hours.

From the Board's review of the residential divisions to the west, and taking into account the fact that there are no current plans for signal lights at Braecrest Drive, the Board is concerned that if there is no PTH 1A access from the subject property, safety, in an overall sense, will be jeopardized rather than improved by rejecting the appeal.

The Board also notes that the paved shoulder will in fact act as a lane for merging into traffic on PTH 1A, meaning if Burn's appeal is granted and access to PTH 1A, though restricted to right turns, is provided, the situation with the PTH 1A access may well be safer than without.

The Board is of the opinion that an exit from the property can be accommodated without increasing the safety risks at the site, and will grant the appeal with conditions, to allow access to PTH 1A designed to allow for right turning exit only from the property.

The design should not allow for a right turn into the property from PTH 1A. This limited access to PTH 1A is to be constructed subsequent to the access from the south-end of the property onto Braecrest Drive being completed.

And, access onto PTH 1A is not to be allowed without both the completion of access to Braecrest Drive and the upgrade to PTH 1A now planned being completed.

As well, the Board recommends that traffic signals be also installed at Braecrest Drive and PTH 1A when resources permit.

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, www.pub.gov.mb.ca.

IT IS THEREFORE ORDERED THAT:

The appeal BE AND IS APPROVED SUBJECT TO THE FOLLOWING
CONDITIONS:

- a) the access will be a right turn only exit onto PTH 1A;
- b) the design and construction of the access will not allow for right turn from PTH 1A onto the property;
- c) the design is to be approved by Manitoba Infrastructure and Transportation;
- d) the planned access onto Braecrest Drive must be completed and available for use by residents prior to the exit access onto PTH 1A; and

e) Burns Maendel Consulting Engineers Ltd. and Manitoba Infrastructure and Transportation are to confirm with the Public Utilities Board that the conditions as set out herein have been met.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE, CA"
Chairman

"H. M. SINGH"
Acting Secretary

Certified a true copy of
Order No. 12/10 issued by The
Public Utilities Board

Acting Secretary

APPEARANCES :

Mr. Daniel Burns	The Applicant, Burns Maendel Consulting Engineers Ltd.
Mr. Eric Christiansen	Director of Highway Planning and Design, Highways Planning and Design (Winnipeg), Manitoba Infrastructure and Transportation
Ms. Denise Jubenvill	Manitoba Infrastructure and Transportation
Mr. Kevin Nimchuk	Manitoba Infrastructure and Transportation
Ms. Pauline Knight	Manitoba Infrastructure and Transportation
Mr. Harvey Stranger	Interested Party
Ms. Darlene Stranger	Interested Party
Mr. Ted Snure	Interested Party
Mr. Steve McMillan	Interested Party
Mr. Richard Rounds	Interested Party