

M A N I T O B A

)
)

Order No. 112/11

THE HIGHWAYS PROTECTION ACT

)

August 30, 2011

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

**APPEAL OF A HIGHWAY TRAFFIC BOARD DECISION:
PROVINCIAL TRUNK HIGHWAY 34 (RM OF VICTORIA)**

SUMMARY:

By this Order, the Public Utilities Board (Board) upholds a Highway Traffic Board (HTB) decision that approved the relocation and change of use access driveway to joint use (agricultural/residential).

BACKGROUND:

Mr. Dean Berard and Ms. Marianne Parvais (Berard/Parvais) submitted an application to Manitoba Community Planning Services (CPS) to subdivide a parcel/lot from Ms. Parvais' parents (Roselie and Raymond Parvais). The proposed lot is located within SE 10-7-11 WPM in the Rural Municipality of Victoria (RM). Conditional approval was granted; one of the conditions was to acquire a permit from HTB for the change in land use and to relocate an existing access to the south boundary of the proposed parcel.

Berard/Parvais applied to HTB seeking such approval and Permit No. 139-10, dated August 5, 2010 was issued.

Berard/Parvais contacted Mr. Hollis Singh, Executive Director of the Board to begin a formal appeal of the HTB permit. In a letter dated September 23, 2010, Berard/Parvais outlined the details of their appeal the HTB decision to the Board.

The Board, by way of a public hearing held August 11, 2011 in the RM's Council Chambers in Holland, Manitoba, heard

Berard/Parvais' appeal (conducted on a "hear and report" basis by Board Acting Chair, Susan Proven).

Prior to the hearing, Acting Chair Proven viewed the property, highway, adjacent roads and the general area related to the appeal.

THE APPLICANT:

In their submission to the Board, Berard/Parvais provided that they would like to keep the existing access as it is level to the highway, has no blind spots, and they believe it to be safe as it has been there for a number of years.

Berard/Parvais had understood that if the access were to be moved, it would not be at their cost; no cost estimates were provided.

Where the access is proposed to be relocated (at the south end of the lot), the property is about 15 feet higher than the highway.

Berard/Parvais advised that the house has been built (foundation poured in March 2011) on the lot. Mr. Berard, who works in construction (carpentry) indicated a desire to build a shop on the yet to be subdivided lot. Ms. Parvais continues to work on her parents' farm, which is located adjacent to the lot.

MANITOBA INFRASTRUCTURE AND TRANSPORTATION (Highways)

Highways' representation included Mr. Eric Christiansen, Director of Highways Planning and Design, and Mr. Kevin Nimchuk, Senior Access Management Analyst, Highways Planning and Design.

Mr. Christiansen first sought clarification and a board decision with respect to if the applicants met the 30 day appeal date. Mr. Christiansen noted the permit was issued on August 5, 2010, with the written appeal dated September 23, 2010; outside the 30 day deadline.

Highways advanced its position to uphold the HTB decision for access to and from the subject property to PTH 34, for the following reasons:

- 1 Relocation of the existing access driveway to the south property lot line will incrementally improve highway safety by ensuring that should a future subdivision occur, it will not be necessary to add an additional access onto the highway.
- 2 Berard/Parvais are appealing what they applied for, and were granted. Should the Board not uphold the HTB decision, then the Board would be supporting landowners using a strategy of agreeing to Highways requests to get subdivision approval, and then renegeing on that agreement (condition).

Highways noted that statistical analysis of crashes in Canada (and the United States) establishes that the greater

the density of accesses per kilometre of highway, the greater the crash rate on the highway. To reduce access related crash exposure, Highways:

- a. Controls the location of accesses and does not permit or recommend accesses be established in high risk locations, i.e. poor visibility, or in the vicinity of intersections.
- b. Controls the density of accesses by limiting the number of accesses per kilometre. PTH 34 is classed as a secondary arterial highway with recommended spacing of 300 to 600 metres.

Highways noted the preference of many prospective land owners to be located on provincial highways which provides access to a paved road. This then creates demand for the subdivision of property along provincial highways in smaller and smaller parcels thereby creating a demand for more accesses along the highway. Land owners also prefer their own accesses.

All this creates a downward pull on functionality of the highway as the local residents (the new owners of the small parcels of land) consider the highway their local road and begin to demand the speed limit be lowered because of safety concerns when entering and exiting the highway.

To control this, Highways generally supports 'one off' subdivisions in one of the following ways:

- a. A new access (if none exists) or relocating an existing access to the joint property line; or

- b. Access from the municipal road where possible; or
- c. Providing easement agreement to adjacent property owners; or
- d. Parcels being large enough to meet the departments spacing recommendations.

In the case of this subdivision, Highways employed the above strategy (a) and its support was contingent on Berard/Parvais agreeing to relocate and applying to HTB on that basis.

Highways advised that they do not pay for the costs for an owner to relocate an access unless improvements are being made to that particular section of the highway and when change benefits Highways. In this case, the change from agricultural to agricultural/residential in land use and the relocation of the access is the result of an application for subdivision by Berard/Parvais.

Highways noted now with a home-based business being proposed on the lot, that this will further increase the number of times access to the provincial highway is used that with the residential/farm access originally proposed.

Highways summed up by noting that the Minister is responsible for highways in Manitoba, and while they understand the position of the appellants, safety for these highways is ultimately the responsibility of the Minister. Further, although the required change may seem minimal, it does make it incrementally better and therefore safer.

Other Matters

Highways noted that, ahead of its recommendations for subdivision approval, several meetings and conversations occurred with its staff and Mr. Berard. Several options were discussed to satisfy both Berard/Parvais needs and Highways access concerns.

Access to the north property lot line would have been at the quarter section line, and acceptable to Berard/Parvais. However, Highways noted that this would not allow access to future development to the south.

Creating a shared access to the north with the Parvais' (Roselie and Raymond Parvais) home and farm yard was discussed but it was thought to be too costly given the lay of the land.

Access from the municipal road on the south side of the quarter section was not feasible due to the large amount of wet/swampy land located between the lot and the municipal road.

The parcel of land to be subdivided is approximately 150 m frontage to the provincial highway and 220 metres deep. The current access is located 323.4 metres south of the existing dairy farm access.

Highways noted that where the access is to be relocated, there is a large drop (noted by Highways to be about six feet) from the property level to the road. Highways indicated that an acceptable grade for the access to be

three to four percent. Highways also indicated that much of the material to construct and bring the access to the appropriate grade would be available on site.

Other comments

Roselie Parvais, one of the property owners, advised that she has lived there for 33 years, and there have been no (safety) issues in the past. She indicated that her and her husband have no intention to sell the farm and intend to keep it for their children. Ms. Parvais commented that if population does increase in the area, and additional subdivisions occurs, Highways will need to deal with it instead of trying to stop it.

Reeve Harold Purkess of the RM of Victoria spoke on behalf of his council and submitted a letter of support for the Berard/Parvais appeal.

Reeve Purkess noted that in the RM's opinion:

1. The lines of sight in all directions are good (with the existing access);
2. The school bus currently enters the yard using the existing approach, and they have no concerns with the access;
3. Existing approach is level;

4. Restriction of access to the farmland is not a concern, as all farming activities are associated with the adjoining property;
5. Council has no concerns and recommends keeping the access.

Board Findings and Discussions

As to the first question of Highways with respect to the 30 day appeal deadline, the Board accepts first contact by the Appellant with the Board to be the date the appeal was launched. In this case, Mr. Berard contacted the Board's offices by phone prior to the 30 day expiry date.

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 respecting the classification of highways, traffic safety, precedents and alternatives to creating direct access, in this case find favour with the Board.

The Board is concerned with the evident change in use of the land and the additional daily entries and exits that result from school bus pick up and drop offs, and a home based business. This is a significant change from the former farm only access that was in place for the past number of years.

From the Board's review of the evidence filed, the Board will uphold the HTB decision and require the access to be relocated to the south property lot line to allow access to the residential lot. While access to the farmland to the south of the subject property may not be required now, it may be in the future as well as for future subdivision, should it occur.

The Board notes that relocating this access is a condition of approval for subdivision of the residential lot, and in the Board's view, Berard/Parvais agreed to this condition and indeed did file an application reflecting this condition.

As previously mentioned, the Board did inspect the property prior to the hearing, and notes the height difference between the south side of the property and the road, where the access is to be relocated. The Board notes that although concerns were expressed by the applicants of the slope, Highways cited no issues.

Further, Highways indicated that most of the material (dirt) would be useful to create the joint access. This, in turn, would likely reduce the cost of building the access, a cost Highways maintains, they never agreed to pay because the applicants initiated the need for it by applying for subdivision and building a residence on what was farmland.

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 DENIED.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE, CA"
Chairman

"KRISTINE SHIELDS"
Acting Secretary

Certified a true copy of
Order No. 112/11 issued by
The Public Utilities Board

Acting Secretary

APPEARANCES :

Mr. Dean Berard Ms. Marianne Parvais	The Applicants
Mr. Eric Christiansen	Director of Highway Planning and Design, Highways Planning and Design (Winnipeg), Manitoba Infrastructure and Transportation
Mr. Kevin Nimchuk	Manitoba Infrastructure and Transportation
Ms. Roselie Parvais	Interested Party
Reeve Harold Purkess	Interested Party
Councillor Ray Huggart	Interested Party
Mr. Y. Ivan Bruneau, CAO	Interested Party