

M A N I T O B A) Order No. 166/11
)
THE HIGHWAYS PROTECTION ACT) December 12, 2011

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

APPEAL OF HIGHWAY TRAFFIC BOARD PERMIT NO.
195-11 (PROVINCIAL TRUNK HIGHWAY NO. 5A,
IN THE CITY OF DAUPHIN)

SUMMARY:

By this Order, the Public Utilities Board (Board) grants the appeal of Manitoba Infrastructure and Transportation (MIT) and amends a Highway Traffic Board (HTB) decision that allowed for both a change in the use and the temporary retention of access to Provincial Trunk Highway No. 5A (PTH 5A) from a property adjacent to the highway.

BACKGROUND:

Kelleher Ford Sales (Kelleher, the applicant) made application to HTB for a change in use of a highway access from residential to temporary commercial access, this with respect to access to PTH 5A from Lot 1 & 2, Plan 46353, Section S.W.¼ 3, Township 25, Range 19 W in the City of Dauphin.

HTB approved the change in use with the condition that the access be temporary, and subject to removal when future highway improvements and a service road has been completed.

Evidence was taken by the Board at a public hearing held at 1:00 p.m., Tuesday, November 27, 2011, in the Council Chambers of the City of Dauphin. 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 service roads related to the appeal.

Kelleher Ford Sales Dauphin

In his submission to the Board, Mr. Chuck Burton on behalf of Kelleher noted that he had no disagreement with the long-term planned changes to the service road presented by MIT but rather with how the plans would be implemented.

Kelleher's request is for approval to continue its use of the existing driveway access, widening it to 9.1 metres so as to allow direct access to the southern portion of the dealership's lot. The existing service road would also be extended 22.86 metres giving access to the northern side of the dealership's property.

Kelleher acknowledged that with the development of the highway the driveway access located at the south end of the property would be removed, the service road extended the full distance of the frontage of the property, and all traffic would be required to access its property by using the improved approach in front of Dean Cooley GM.

Kelleher noted the safety concern expressed, that allowing the widened approach to remain would create a hazard given its proximity to the approach in front of Dean Cooley GM and submitted that increasing the traffic to an approach that has already been deemed unable to handle the current traffic would also pose an equal, if not greater safety concern given the expected increase in customer and commercial vehicles. Retaining the approach he submitted would minimize the increased strain on an already inadequate approach.

Kelleher submitted that traffic congestion would also become a problem as the tractor trailer units require a larger turning radius. If they are required to use the current approach (in front of Dean Cooley GM) as the only entrance they would be forced to wait for any vehicles wanting to turn onto Main Street to clear causing further congestion with traffic being backed up on Main Street.

Kelleher further noted the intersection is used by a Hotel and two busy restaurants on the west side of Main Street adding to the congestion in an intersection with minimal control measures. It was further submitted that retaining the access on a temporary basis allowing direct access to the south side of the property the likelihood of unwanted congestion at an already busy intersection will be reduced.

Kelleher opined that both the matter of safety and congestion could be addressed further by reducing the speed limit to fifty kilometers per hour.

Kelleher noted MIT was unable to indicate when the service road and intersection would be rebuilt; submitting that if it was rebuilt shortly after construction by him it would amount to an undue waste of his resources. The changes requested are for the good of a new and important addition to the commercial foundation of the community.

In summary, Kelleher requested that HTB Permit No. 195-11 be upheld.

MANITOBA INFRASTRUCTURE AND TRANSPORTATION (MIT)

MIT was represented by Mr. Eric Christiansen, Director Highways Planning and Design (Winnipeg) and Mr. Kevin Nimchuk Senior Access Management Analyst.

In appealing the decision, MIT submitted the retention of the access does not support the PTH 5A/PTH 20A Functional Design Study for the area and the property would have adequate/satisfactory access via the 22.86m extension of the existing service road approved by HTB.

MIT noted its concern with the precedent which would make it difficult to implement The Functional Design Study recommendations in the future.

MIT noted PTH 5A is an urban/semi urban, highway (50 and 70 km/h, that it is a major commercial route into and within the City of Dauphin. The location carries relatively high volumes of traffic for a two lane undivided highway with the 2010 traffic counts of 2850 Average Annual Daily Traffic (AADT) taken North of South Junction PTH 5A. Approximately 4.3 % of the traffic on PTH 5A is truck traffic and seasonally adjusted (ASDT) traffic counts (summer) on this portion of PTH 5A increases by 12% resulting ASDT of 3192.

MIT noted the PTH 5A/PTH 20A Study was initiated to develop an access management plan as a result of the growth of commercial development adjacent to the highway and that prior to the adoption of the 2011 Functional Design Study and in recognition of the need to control access in this area, the adjacent property was required to remove two direct accesses and construct a service road in a similar manner.

Kelleher's proposal is with respect to an access that is adjacent to that portion of PTH 5A that is affected by the PTH 5A Functional Design Study. MIT along with the City of Dauphin have accepted the PTH 5A/PTH 20A Functional Design Study Report.

The access connections to PTH 5A on this portion of the highway will be relocated to the service road with access to the highway at designated points. MIT submitted the introduction of additional access connections and turning movements at this location is undesirable, will adversely affect motorist safety and establish an undesirable precedent.

MIT submitted the existing Riverside Road intersection operates at an acceptable level of service and the additional traffic generated by Kelleher will not have a significant impact.

In summary, MIT ask that the Board quash HTB Permit No. 195-11, approving the widening of the temporary driveway

onto PTH 5A at this location and order The Highway Traffic Board to uphold the paved parking area, light standards, service road extension, and re-issue the permit for the access removal and without the widening and change in use of access from residential to temporary commercial of the existing access.

Other Comments:

Mr. David Karuk, a neighbour to the south expressed concerns with respect to safety, traffic volumes and noise.

The City noted that it is in agreement with the approved Plan however, it was in general support of Kelleher's bid, as the firm would be paying for the removal of the driveway as the Development Agreement has been changed to require that, and, as well, the implementation of the plan by MIT was indeterminate.

BOARD FINDINGS:

The Board thanks the parties for their contributions. The Board considered carefully both the positions of Kelleher and MIT and has decided in favour of MIT.

In doing so, the Board notes the applicant will have access via the extended service road. 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 recently completed traffic study developed with stakeholders including the City of Dauphin. While the Board understands the frustration arising from MIT's inability to indicate when the highway and the service road will be upgraded, the Board is of the opinion that these are matters of a long term nature requiring consistency and adherence to an agreed to and accepted plan.

The Board notes that during the hearing the issue of a jog in the service road as well as the turning radius required for the trucks was raised. The Board would encourage MIT to discuss these issues with Mr. Burton to ensure the end result is a workable access.

The hearing was conducted on a "hear and report basis"; accordingly, Board Member Proven heard the appeal and gained the concurrence of another Board member for the decision included herein.

The Board will therefore order that Permit No. 195-11 be amended to require the removal of the subject access at this time.

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:

1. Highway Traffic Board Permit No. 195-11 BE AND IS HEREBY AMENDED to reflect the removal of the subject access at this time.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE CA"

Chairman

"HOLLIS SINGH"

Secretary

Certified a true copy of
Order No. 166/11 issued by
The Public Utilities Board

Secretary