

M A N I T O B A) **Order No. 115/14**
)
THE HIGHWAYS PROTECTION ACT) **October 9, 2014**

BEFORE: Susan Proven, P.H.Ec, Acting Chair
Régis Gosselin, B ès Arts, MBA, CGA, Chair

APPEAL OF A HIGHWAY TRAFFIC BOARD DECISION, DATED JUNE 13, 2014
AL & HEATHER TROTZ
DENIAL FOR ACCESS ONTO PTH 10
NW ¼ 6-12-18W
RM OF ELTON
FILE NO. 3/010/077/A/14

1.0 Summary

By this Order, the Public Utilities Board (Board) upholds a Highway Traffic Board (HTB) decision that denied the application for access onto Provincial Trunk Highway (PTH) 10.

2.0 Background

Mr. and Mrs. Trotz submitted an application to the HTB to construct an access driveway on PTH 10, NW ¼ 6-12-18W in the RM of Elton on April 24, 2014. In its letter of June 13, 2014, the HTB denied the application. The stated reasons were that PTH No. 10 is classified as an Expressway, with no new direct access being granted and that the property has alternate means of access available via the joint use access driveway and signed easement agreement.

Mr. and Mrs. Trotz appealed the decision to the Board on June 23, 2014.

The Board heard the matter at a public hearing held at 1:00 pm, Tuesday, August 19, 2014, in the Municipal Offices of the RM of Elton, located in Forrest, Manitoba.

3.0 Al and Heather Trotz (the applicant)

Mr. Trotz presented to the Board the history of the current shared easement, and the disputes that have taken place between Mr. and Mrs. Trotz and the neighbours that share the easement, Mr. And Mrs. Kooting. Mr. Trotz advised the Board that he signed the easement agreement with multiple restrictions that he did not agree with, on the advice of his attorney. His reasoning was that his home was scheduled to be delivered the following day, and without the signed agreement, he would be unable to take delivery of the house.

Mr. Trotz identified several points of contention with the agreement, but identified Page 4 Paragraph 10 of the agreement as being the most important one. Mr. Trotz presented to the Board that his understanding of this paragraph means that if he sells his home, the easement agreement terminates, leaving any potential buyers with no access to their home.

Mr. Trotz provided clarification that he would be satisfied with a solution allowing him to modify the existing access driveway by either widening it or relocating it to be located halfway on his land and halfway on Mr. Kooting's land.

4.0 Manitoba Infrastructure and Transportation (MIT)

MIT noted that at this location PTH 10 is classified as a two lane Expressway. The function of these types of Provincial Highways is to move traffic with optimum mobility, maximum safety and minimal interruption. Generally, no direct access is allowed on these types of highways.

Average annual daily traffic is 4,450 vehicles, which increases by 13% in the summer. MIT noted that the Departmental Guidelines in the Classification Study/Transportation Manual recommend that no direct access occur on Expressways. All access to the land adjacent to this classification of highway should be from internal roads which connect to municipal roads, which in turn connect to the highway at a minimum of 1,600 metres (one mile) spacing. The additional residential access being requested by the applicants to facilitate their existing residence would be 60 metres south of the existing driveway servicing this property.

MIT submitted that each new access onto a high speed/major highway creates a potential safety hazard. Traffic Collision Statistics collected by MIT reveal that approximately 35% of all collisions on the rural portion of the provincial highway system occur at intersections and access points on the highway.

MIT also expressed concern over precedent; access along a major highway creates an undesirable and very visible precedent for other landowners/subdividers/developers adjacent to the highway system resulting in increased demand for similar concessions with respect to access.

MIT supports the relocation of the existing access to the common lot line to serve as a joint use access; however, this is something that both parties will have to come to agreement on, as MIT cannot impose this decision on them.

MIT recommended that the appeal be denied on the basis of non-compliance with the Departmental Guidelines in the Classification Study/Transportation Manual.

5.0 Board Findings

The Board thanks the parties for their contributions. The Board considered the position of Al and Heather Trotz and MIT, and has decided in favour of MIT.

The Board takes the matter of safety very seriously and is persuaded that a second access road within 60 meters of an existing access would create a hazard for the road users.

While the Board sympathizes with the myriad issues created by the relationship with the neighbour who shares the driveway and the restrictions on the existing easement agreement, they must agree with MIT's assertion that this is not a valid reason to allow another access onto the highway.

In addition, the Board notes existence of the Easement Agreement, which provides joint access to both properties. The Board recommends that Mr. and Mrs. Trotz seek legal counsel to protect their interests in this matter.

The Board urges the two parties to make an attempt at reconciliation, and try and work together to resolve their disputes over the shared easement. Regardless of the eventual solution, cooperation between the two parties will be key to a resolution of the matter.

For all of the above reasons, the Board will deny the application. The decision of the HTB dated June 13, 2014 is upheld.

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 at www.pub.gov.mb.ca.

6.0 IT IS THEREFORE ORDERED THAT:

1. The appeal BE AND IS HEREBY DENIED.

THE PUBLIC UTILITIES BOARD

“Susan Proven, P.H.Ec”

Acting Chair

“Jennifer Dubois, CMA”

Acting Secretary

Certified a true copy of Order No. 115/14
issued by The Public Utilities Board

Acting Secretary