

MANITOBA) **Order No. 55/15**
)
THE HIGHWAYS PROTECTION ACT) **May 21, 2015**

BEFORE: Susan Proven, P.H.Ec, Acting Chair
The Hon. Anita Neville, P.C., B.A. (Hons.), Member

ROBERT AND FREDERICA EMERY
STANDING TO APPEAL
HIGHWAY TRAFFIC BOARD PERMIT 034-15
HTB FILE NO. 1/009/003/A/15

1.0 Summary

By this Order, the Public Utilities Board (PUB or Board) confirms that Robert and Frederica Emery have standing under s 21(2) of *The Highways Protection Act* to appeal Permit No. 034-15 issued by the Highway Traffic Board in File No. 1/009/003/A/15.

2.0 Background

John and Rosalie Kuklica and Waterside Development Corporation applied to the Highway Traffic Board for a permit allowing the relocation of an access driveway for temporary construction purposes only. Following a hearing process, Permit No. 034-15 was approved by the Highway Traffic Board and issued February 26, 2015. The permit was issued for River Lots 46 and 47, located on River Road, St. Andrews, Manitoba (the “Kuklica property”). Robert and Frederica Emery own the property adjacent to the Kuklica property.

Qualifying persons coming within the definition under s 21(2) of *The Highways Protection Act* may appeal a permit issued by the Highway Traffic Board. An appeal under this section is to the PUB.

3.0 Robert and Frederica Emery (the appellants)

Mr. Emery contacted the Board on March 11, 2015 seeking to appeal the decision of the Highway Traffic Board. Mr. Emery submitted that he qualified as an appellant under *The Highways Protection Act*, s 21(2) as a “person having an interest in the land in respect of which the permit is issued”. Mr. Emery stated that he acquired his property in October 2006, and that the home on his property was built in 1982 by the previous owners. The driveway encroaches on the Kuklica property, the subject land of the permit in question, and since 1975 both the previous owners and the Emerys have enjoyed continuous and open access across a portion of the Kuklica property to access their property.

In response to Manitoba Infrastructure and Transportation’s submission, the Emerys provided evidence to support their claim of a “prescriptive easement” over the Kuklica property. The evidence provided demonstrates that both the Emerys and the previous owners of their property continuously used their driveway for nearly 40 years, including that portion situated on the

Kuklica property, without force, secrecy or permission. The Board is satisfied that a prescriptive easement exists in favour of the Emery property over the Kuklica property.

4.0 Highway Traffic Board

The Highway Traffic Board submitted that s 21(2) should be interpreted to mean that a person must be a stakeholder in the property, an investor in the property, or have a monetary interest in the property that is the subject of the permit in order to have a right to appeal the issuance of the permit. The Highway Traffic Board also submitted that the relocation of the access driveway under the permit does not have any effect on the Emerys' access to their property off River Road.

5.0 Manitoba Infrastructure and Transportation (MIT)

MIT filed a response opposing the Emerys' initial request to appeal the Highway Traffic Board's decision, stating that while a prescriptive easement would represent a legal interest and therefore a sufficient interest for the purpose of the qualifying language in s 21(2) of *The Act*, the Emery submission had not provided sufficient evidence to establish that a prescriptive easement exists. MIT requested that the Board find that the Emerys do not have standing to appeal.

6.0 Board Findings

The Board thanks the parties for their time and contributions. The Board has reviewed the evidence and all submissions and has concluded that Mr. and Mrs. Emery have "an interest in the land in respect of which the permit was issued" pursuant to s 21(2) of *The Highways Protection Act* by virtue of the prescriptive easement they have over the Kuklica property. In making this finding the Board accepts the position advanced by MIT that a prescriptive easement qualifies as an interest in the land under the applicable statutory provision. The Board is not persuaded that the matters raised by the Highway Traffic Board affect this finding regarding the threshold interest that supports the Emerys' standing to appeal.

The Emerys have standing to appeal Permit No. 034-15 in Highway Traffic Board File No. 1/009/003/A/15, and may proceed to file an appeal with the Public Utilities Board within fourteen (14) days of the date upon which this Order is issued. The Board will provide further directions in respect of the appeal.

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.

7.0 It Is Therefore Ordered That:

1. Robert and Frederica Emery have standing to appeal Permit No. 034-15 in Highway Traffic Board File No. 1/009/003/A/15.
2. Robert and Frederica Emery may, within fourteen days of the date upon which this Order is issued, file an appeal with the Public Utilities Board.

THE PUBLIC UTILITIES BOARD

"SUSAN PROVEN, P.H.Ec"
Acting Chair

"DARREN CHRISTLE"
Secretary

Certified a true copy of Order No. 55/15
issued by The Public Utilities Board

Secretary