

MANITOBA)	Order No. 81/15
)	
THE HIGHWAYS PROTECTION ACT)	August 10, 2015

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

APPEAL OF A HIGHWAY TRAFFIC BOARD DECISION
DATED FEBRUARY 26, 2015
ROBERT AND FREDERICA EMERY

APPROVAL OF TEMPORARY CONSTRUCTION ACCESS ONTO PTH 9
RIVER LOTS 46 AND 47 PARISH OF ST. ANDREWS
RM OF ST. ANDREWS
FILE NO. 1/009/003/A/15

1.0 Summary

By this Order, the Public Utilities Board (Board) upholds a Highway Traffic Board (HTB) decision that approved temporary construction access onto Provincial Trunk Highway (PTH) 9.

2.0 Background

John and Rosalie Kuklica and Waterside Development Corporation applied to Manitoba Infrastructure and Transportation for a permit allowing the relocation of an access driveway for temporary construction purposes only. The permit was approved by the Highway Traffic Board and issued February 26, 2015. The permit was issued for River Lots 46 and 47, located at 274 River Road, St. Andrews, Manitoba. Robert and Frederica Emery own the property adjacent to 274 River Road.

Mr. Emery contacted the Board on March 11, 2015 to seek leave to appeal the decision of the Highway Traffic Board regarding File No. 1/009/003/A/15. Mr. Emery submitted that he qualified as an appellant under *The Highways Protection Act*, Section 21(2) as a “person having an interest in the land in respect of which the permit is issued”. The Board issued Board Order No. 55/15, outlining their decision granting Mr. Emery standing to appeal the HTB decision.

Mr. Emery filed his appeal with the Board June 3, 2015 and a Public Hearing was scheduled to be convened July 10, 2015 at 2:00pm at the Rural Municipality of St. Andrews Council Chambers.

3.0 Robert and Frederica Emery (the appellants)

At the Hearing, Mr. Emery made a presentation to the Board outlining three main concerns with the permit. Firstly, during the initial HTB Public Hearing, that the HTB Chairman stated that written submissions filed by area residents did not pertain to the application and would not be read into the record. Second, the appellant had reviewed the preliminary traffic generation information submitted by the application, Waterside Development Corporation, in the form of a Traffic Information Letter and found it to be flawed in its execution and conclusions. The third and final concern was that the length of time the temporary access is permitted is too short, that being three (3) years from the date of issue. Mr. Emery requested that the wording be changed to

allow the permit to be in effect for three years from the date of construction of the temporary access road.

4.0 Manitoba Infrastructure and Transportation (MIT)

MIT made a presentation regarding the temporary access road, and advised that should the three year period on the permit not be enough time, the developer can apply to the Highway Traffic Board for an extension. MIT does not endorse open-ended temporary access permits, explaining that the eventual removal of these access roads can become very contentious with residents.

MIT also acknowledged that the standards used in the Traffic Information Letter did not meet the normal standard that MIT would use to assess PTH 9; however MIT found that the results of the study were acceptable and the condition in question had been met to MIT's satisfaction.

5.0 Board Findings

The Board thanks the parties for their time and contributions. The Board has reviewed the evidence submitted, and has concluded that the decision of the Highway Traffic Board, File No. 1/009/003/A/15, should be upheld.

The Board did not find any evidence that the HTB Chairman made an error in excluding the written submissions of the neighbours from the original Public Hearing.

The question of the appropriateness of the Traffic Information Letter supplied by Waterside Development Corporation is not relevant to the appeal of HTB File No. 1/009/003/A/15, as it was a condition of the subdivision, not a condition of the permit in question.

As to the issue with the length of time allowed by the permit, the Board does not have the authority to amend the permit, only to deny or approve the appeal of HTB permits. The request that the permit be amended to reflect the wording requested by Mr. Emery is not within the jurisdiction of the Board. The Board did not find it to be a compelling reason to reverse the HTB decision, given the option of applying for an extension if the three year period is found to be insufficient.

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

"DARREN CHRISTLE"
Secretary

Certified a true copy of Order No. 81/15
issued by The Public Utilities Board

Secretary