

M A N I T O B A ) Order No. 39/00  
 )  
THE HIGHWAYS PROTECTION ACT ) March 14, 2000

BEFORE: G. D. Forrest, Chairman  
J. A. MacDonald, Member

**APPEAL OF DEPARTMENT OF HIGHWAYS AND  
TRANSPORTATION, HIGHWAY TRAFFIC BOARD  
PERMIT NO. 247-99 - ACCESS ONTO P.T.H. NO. 5  
R. M. OF DAUPHIN**

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**APPEARANCES:**

Mr. R. Nichol	Senior Access Management Analyst, Highways Department (the Appellant)
Mr. C. Lund	Technical Services Engineer, Construction and Maintenance West Central Region (Dauphin)
Mr. Bob Durston	On behalf of Howard Durston (the Permittee)
Mr. Allan W. Cardiff	Neighbour of Mr. H. Durston

**BACKGROUND :**

Mr. H. Durston submitted an application to The Manitoba Highway Traffic Board on September 8, 1999 for permission to construct an access from property owned by him (the subject property) to Provincial Trunk Highway No. 5 ("P.T.H. No. 5" or the Highway).

By letter dated October 28, 1999, The Highway Traffic Board issued Permit No. 247-99 allowing for the construction of an access driveway 106.8 metres east of an existing access serving the subject property.

By letter dated November 25, 1999 that decision was appealed to The Public Utilities Board (the Board) by the Highways and Transportation Department (The Department).

The evidence in this appeal was taken by The Public Utilities Board at a public hearing held at 1:30 p.m., Thursday, February 24, 2000, in the Council Chambers of the Rural Municipality of Dauphin, Manitoba.

**MAJOR TESTIMONY OF THE DEPARTMENT OF HIGHWAYS AND TRANSPORTATION**

1. The Department presented exhibits including Sketch Plan No. 4005170-2-A-99 showing the location of the access approved by The Highway Traffic Board. The Department also provided as exhibits a map of the R.

M. of Dauphin showing the approximate location of the approved access and an aerial photo of the area.

2. The Department is opposed to an additional access to the subject property onto P.T.H. No. 5 noting the potential hazard that will be created for motorists on the Highway. The Department noted P.T.H. No. 5 in this vicinity is a 2 lane high-speed rural highway (100 km/h) that carries moderately high volumes of traffic approaching 1400 Average Annual Daily Traffic levels (AADT) with a seasonally adjusted traffic volume approaching 1600 Average Annual Seasonal Traffic levels (ASDT) based on 1998 traffic counts.
3. The Department also noted that P.T.H. No. 5 is classified as a Primary Arterial, therefore the minimum spacing of agricultural driveways for this classification of highway is 400 metres, while the desirable spacing is 800 metres. The 106 metre spacing of the approved access from the existing access to the subject property does not comply with the minimum spacing standards for this type of highway.
4. The Department felt that allowing the access would set an unacceptable precedent given that there are a number of other similar farm sites and properties relying on one access to P.T.H. No. 5.

5. The Department suggested alternatives which included the widening of the current access, the creation of an internal road and the relocation of the current access.

**MAJOR TESTIMONY OF MR. BOB DURSTON, REPRESENTING THE PERMIT HOLDER:**

Mr. B. Durston submitted that he was in support of the decision of the Highway Traffic Board to allow his proposed access for agricultural use only remaining in place. He indicated that he saw no benefit to the Permittee from the alternatives as suggested by the Department. Mr. Durston noted the proximity of the house to the Highway and the narrow distance between the house and the access. The current narrowness of the access, the buried electrical wires as well as the location of the treed shelterbelt limited the flexibility of using or widening the current access to allow for easy handling of today's large farm equipment.

Mr. Durston noted that at the subject property the sight lines were good and with the new access he would in fact be able to get the equipment on and off the road more quickly, enhancing safety. He also noted that the use of the access would mainly be seasonal and had no objection to it being gated or granting a caveat. He noted that it was concern for safety, which initially caused Mr. H. Durston to have the electrical cables buried.

It was also noted that there were safety concerns due to the moving of heavy agricultural equipment as a result of the close proximity of the access to the house and the attached deck.

Mr. Durston noted the concerns expressed by the Department about subdivisions and the growth of accesses in this vicinity and indicated that it was the intention of the Permittee's family to maintain ownership and continue farming into the foreseeable future.

**OTHER EVIDENCE:**

Mr. Cardiff, a neighbour representing himself appeared in support of Mr. H. Durston's application noting the difficulty of getting the large equipment in and out of the driveway. He also indicated an interest in the outcome of the appeal as he was also considering a second access to his property.

**BOARD FINDINGS**

The Board would like to express its appreciation to those parties who expressed their views at the hearing. The Board recognizes that it may not be possible to address the competing interests of all the parties.

From a public interest perspective the Board must satisfy itself that the granting of an access serves the best

interests of the Municipality, its residents, the Department of Highways as well as the motoring public.

Having considered all the evidence and views expressed orally, and in writing, the Board will uphold the decision of the Highway Traffic Board.

The Board believes that the safety of the motoring public is not only determined by the number, size and location of accesses but also, by the use of an access. The Board accepted the evidence of Mr. Durston that the use of the current access does detract from the safety of the motoring public due to the slow speed at which agricultural equipment moves off and onto P.T.H. No. 5 caused by the close proximity of the current access to the residence.

The Board agrees with Mr. Durston that a different access removed from the proximity of the residence will allow for quicker movement of agricultural equipment out of or onto the subject property thereby increasing the safety of the motoring public. Due to the topography in the area, i.e. the closeness of a drain on the northwest side of the house, the treed shelterbelt and the residence, as well as drainage and ditch at the front of the house and property, the Board agrees that the widening of the current access or the building of an internal roadway from the existing access are not reasonable alternatives. Accordingly, the Board will uphold the decision of the Highway Traffic Board and quash the appeal of the Department.

The Board does not agree with the Department that the granting of an access by itself will set a precedent. The Board believes that each appeal must stand on its own merit. In this case there were several special circumstances that the Board considered unique to this application.

The Board noted that the Permittee's residential premise was built many years ago when the requirements for access onto the Highway were less stringent and this fact was recognized because the close proximity of the premise to the Highway allowed for a smaller area being reserved by Highways as a "controlled area" in the vicinity of the farm site and buildings. The Board also noted the well-established treed shelterbelt located in four areas on the subject property together with the creek and drainage issues. The nearness of the current access to the house and the related safety issues weighed in the Board's decision as well.

The Board also accepts the undertaking of the owner to gate the new access to the property when its not in use for agricultural purposes, and the Board believes that by definition agricultural use restricts the use of the access for other purposes. This is a matter that can be monitored by the Department and if necessary a recommendation for the installation of a barricade can come forward at that point.

**IT IS THEREFORE ORDERED THAT:**

1. The Appeal is hereby dismissed.

THE PUBLIC UTILITIES BOARD

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Chairman

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Acting Secretary