

M A N I T O B A           ) Order No. 175/03  
                                  )  
THE HIGHWAYS PROTECTION ACT   ) December 3, 2003

BEFORE: G. D. Forrest, Chairman  
          S. Proven, Member

**APPEAL OF THE DEPARTMENT OF TRANSPORTATION AND  
GOVERNMENT SERVICES CONCERNING PERMIT NO. 195-  
03 - RELOCATION OF EXISTING ACCESS DRIVEWAY ON  
PROVINCIAL TRUNK HIGHWAY NUMBER 10**

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**APPEARANCES:**

Mr. Richard Nichol	Senior Access Management Analyst, Highway Planning and Design, Department of Transportation and Government Services (Highways) (the Appellant)
Mr. Robert Mowatt	The Permittee

## **Background**

An Application was made to The Highway Traffic Board (the HTB) by Mr. Robert Mowatt for the relocation of an existing access 126.0 meters north on Provincial Trunk Highway No. 10 (PTH 10) N.E. ¼ Section 22, Township 9, Range 19 West in the Rural Municipality of Cornwallis.

The HTB on August 12, 2003 issued Permit No. 195-03 approving Mr. Mowatt's application.

By way of letter dated September 12, 2003, the Department of Transportation and Government Services (Highways) appealed the decision to The Public Utilities Board (the Board).

The evidence in this appeal was taken by the Board at a public hearing held at 1:00 p.m., Wednesday, October 29, 2003, in the Agricultural Extension Centre in the City of Brandon, Manitoba.

Mr. Mowatt noted that he had been farming at the site all of his life and currently runs a dairy farm with his sons. He indicated that his current plans are to build a home for himself north of the two houses currently occupied by his sons. Mr. Mowatt noted that the property is currently accessible by two driveways with 50 feet of grass in between. He indicated that the design was useful as it provides access for the large milk trucks. Mr. Mowatt indicated that in response to his application for the subdivision to construct his new home the Brandon and Area Planning District established several

conditions including meeting the requirements of Highways. Mr. Mowatt noted that he subsequently met with Highways to discuss the conditions. Mr. Mowatt indicated that he was not particularly opposed to the idea of a frontage road but found the technical specifications too severe. Mr. Mowatt indicated that he was proposing to remove and relocate one of the two accesses to his current site to the site of the new construction about 126.0 meters north. Mr. Mowatt indicated that the remaining access would still adequately handle the milk trucks turning in and out of his property. Mr. Mowatt noted that there were no restrictions as to visibility on entering and exiting his property. With respect to a frontage road Mr. Mowatt was concerned about who would be responsible for maintaining this road. The Municipality had not indicated an interest in maintaining it. Mr. Mowatt also noted the potential for public use of the road which would in fact be a dead end as he had no plans for further subdivision. Mr. Mowatt asked that he be allowed to relocate one of his existing two driveways north to provide direct access to his new home.

### **Highways**

Highways appealed the Highway Traffic Board decision granting permission to relocate one of the existing accesses onto PTH 10 to serve the proposed residential subdivision. Highways supports the Brandon and Area Planning District's Conditional Approval of Subdivision, which requires a public road right of way (frontage road) to be established.

Highways opposed Mr. Mowatt's request for an easement agreement, additional access onto PTH 10 and the relocation of an existing driveway primarily due to the classification of this portion of PTH 10 as an Expressway.

Highways submitted that this approval will create an undesirable precedent by not supporting the requirement for a public road right of way at this location.

On the matter of traffic safety Highways noted that PTH 10 between Brandon and PTH 2 is classified as an Expressway in the Functional Highway Classification. PTH 10 at this location is a heavily travelled (3,770 Average Annual Daily Traffic (AADT) in 2001 with a seasonally adjusted AADT close to 4,100), on a high speed (100 kph) 2-lane highway. The Expressway Classification indicates that no new driveways are to be allowed and that access to adjacent lands is to be obtained via service roads and internal street systems.

Highways submitted that the relocation of an existing access to a location only 126 metres from the existing access to the south and approximately 300 metres from the nearest access to the north is inconsistent with the Expressway Classification of PTH 10. This type of separation between driveways is more consistent with minimum spacing for the lowest classification of provincial highways i.e. low volume Collector not Expressways or the Arterial classifications.

Due to the classification of this highway, the traffic volumes and the rolling/hilly terrain the Department has

consistently opposed new access connections onto the portion of PTH 10 between Brandon and PTH 2. The Department attempts to rationalize driveways by removing existing driveways and promoting the development of internal roads or municipal roads wherever possible.

Highways noted the Mowatt property, which consists of the bulk of the north half of section 22-9-19W is currently serviced by two closely spaced (17 metres apart) access connections onto PTH 10 and the municipal road bounding the north limit of the quarter section. The two existing access connections servicing the Mowatt yard site have historically functioned as ingress and egress for large milk trucks servicing the Mowatt's dairy operation as well as access to the dwellings at this location. The access relocation approved by the Highway Traffic Board is located within 126 metres of the northerly access into the Mowatt farm site and is intended to service Mr. Mowatt's retirement home that is to be placed on a 2 acre residential property being created by the proposed subdivision.

Recognizing the importance of PTH 10 and the potential safety concerns of two closely spaced driveways when reviewing Mr. Mowatt's most recent subdivision, Highways recommended the reservation of public road right of way to service the proposed lot and consolidation of the two driveways into one point of ingress/egress onto PTH 10. The cost of modifying the Mowatt's existing access arrangement and constructing a wider driveway to accommodate his dairy operation would be at departmental expense.

Highways noted in 1997 Mr. Mowatt received approval for a farmstead subdivision in the southeast corner of his property. A permit was issued to Mr. Mowatt for a frontage road to be protected by a legal right of way agreement to the southerly access into his property. At the time Highways had long range plans to four lane PTH 10 between the City of Brandon and PTH 2 and build service roads to consolidate access points at municipal road connections. The department accepted easement agreements as a method of providing joint access to properties. The department subsequently adopted a Passing Lane Warrant as an interim means of improving highway safety without having to incur the high costs associated with four laning high volume two lane rural highways. Consequently, the rationalization of existing access and construction of frontage roads adjacent to PTH 10 to improve public safety as part of highway improvement projects are unlikely to occur in the foreseeable future.

Highways no longer accepts easement agreements as a permanent method of servicing newly subdivided properties adjacent to major provincial highways i.e. Expressways and Arterials. Consequently, the department now recommends the provision of Public Road right of way for new developments adjacent to major provincial highways such as PTH 10.

In view of the existing structure on the property Highways submitted that any future development should be accommodated through an internal street system. Highways noted, that it is only necessary for land to be identified as Public Road on the Final Plan of Subdivision for road development in the future.

Highways noted support from both the Rural Municipality of Cornwallis and the Brandon and Area Planning District by requiring dedication of public road right of way to eliminate the requirement for future driveways in this case, direct access onto PTH 10 at this location.

The Department has pursued the removal and rationalization of access driveways onto PTH 10 by removing redundant driveways, promoting internal road systems, and the joint/relocation use of existing driveways to service new developments/subdivisions wherever possible.

Highways recommended that:

- The Public Utilities Board uphold the Department's appeal and quash the Highway Traffic Board's permit.
- The Public Utilities Board consider ordering the Traffic Board to re-issue a permit that requires the provision of a public road on the final plan of subdivision.

## **Board Findings**

The Board has considered the submission of both parties. The Board recognizes the importance of PTH 10 in this vicinity and the plans to reclassify this part of the highway as an Expressway to accommodate higher volumes of traffic at a high speed. The Board also notes the positions of the Rural Municipality of Cornwallis and the Brandon and Area Planning District on the need for an internal road to access the site of Mr. Mowatt's new subdivision. The Board also notes both Mr. Mowatt's concerns on the technical specifications as well as the Municipality's lack of interest in maintaining the proposed new road. The Board will therefore in the interest of the safety of the motoring public and in order to accommodate future plans for the highway quash Permit No. 195-03 and deny the applicant's request for the removal and relocation of the subject driveway.

In doing so, the Board is mindful of the plans of Mr. Mowatt. It appears that there is some misunderstanding as to specifications of a frontage road and whether the land for that road simply has to be identified but the road not constructed. Mr. Mowatt is encouraged to discuss these issues with Highways. In addition, the Board also notes the possibility of Mr. Mowatt using the existing access and the possibility of an internal private roadway to access his new home, which may be the most cost effective solution. Given that Mr. Mowatt's new home is under construction, the Board urges both parties to resolve the outstanding issues quickly recognizing the Board's decision.



**IT IS THEREFORE ORDERED THAT:**

1. The Highway Traffic Board Order No. 195-03 BE AND IS HEREBY QUASHED.

THE PUBLIC UTILITIES BOARD

"G. D. FORREST"

Chairman

"H. M. SINGH"

Acting Secretary

Certified a true copy of  
Order No. 175/03 issued by  
The Public Utilities Board

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Acting Secretary