

MANITOBA) Order No. 187/01
)
THE HIGHWAYS PROTECTION ACT) December 6, 2001

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

**APPEAL OF DEPARTMENT OF HIGHWAYS AND
TRANSPORTATION, HIGHWAY TRAFFIC BOARD
PERMIT NO. 157-01 - ACCESS ONTO P.T.H. NO. 10
R. M. OF CORNWALLIS**

APPEARANCES:

Mr. R. Nichol Senior Access Management Analyst, Highway
Department (the Appellant)

Mr. H. Mahood Technical Services Engineer, South West
Region (Brandon)

Mr. D. Ardiel The Permittee

BACKGROUND

An application was submitted to The Manitoba Highway Traffic Board on July 10, 2001 for permission to construct an access from property owned by Mr. D. Ardiel (the subject property) to Provincial Trunk Highway No. 10 ("P.T.H. No. 10" or the Highway).

By letter dated September 4, 2001, The Highway Traffic Board issued Permit No. 157-01 allowing for the construction of an access driveway 100.0 metres north of an existing access serving the subject property.

By letter dated October 3, 2001 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, November 22, 2001, in the Agricultural Extension Centre, 1129 Queens Street, Brandon, Manitoba.

Major Testimony of Mr. D. Ardiel

1. Mr. Ardiel submitted that he was in support of the decision of The Highway Traffic Board to allow his proposed access. He noted that he had in his possession a copy of a Consent of Entry Form from Land Management Services. The document signed by him and witnessed by an employee of Land Management noted that the "vendor requests additional crossing north of yard site".
2. In his presentation Mr. Ardiel noted that discussions about upgrading Highway 10 started prior to year 2000, and that he told the department that while he was not in agreement with the plan he would not stand in their way. He noted that the construction work scheduled for May 1, 2001 was

cancelled, and that on May 4 Land Management approached him for consent of entry to the property. He signed the consent form with three conditions, one of which was the request for the additional crossing on the north side of the property. An application to The Highway Traffic Board was made in July and subsequently approved. The decision was appealed by the Department.

3. Mr. Ardiel submitted that "it appears to me that both Land Management Services and Engineering and Operations fall under Manitoba Transportation and Government Services, if highway wasn't prepared to meet my conditions then perhaps they should have left the Hydro line and trees in place". Mr. Ardiel also noted that the ditch had not be contoured, and the tree rubble was left in front of the house. He provided a picture showing the location of the house.
4. Mr. Ardiel indicated that he wanted a seasonal access for agricultural purposes. He submitted that access via the municipal road was not suitable because of a narrow bridge and the location of a creek. Mr. Ardiel noted that his employee currently lived at the house, and that various encumbrances prevented the movement of large pieces of equipment from the yard to the field.

Major Testimony of The Department of Highways and Transportation

1. The Department submitted nine (9) exhibits, including Sketch Plan No. 3010060-20-A-01, 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 Cornwallis showing the approximate location of the approved access, and an aerial photo of the area.
2. The Department noted that the acquisition of Mr. Ardiel's property is part of a major upgrading project of Highway No. 10. The project involves the construction of passing lanes and service roads that will result in the removal of 14 direct connections onto P.T.H. No. 10. The Department agreed to facilitate the necessary application for approving access to the Highway without recommending approval. This is its normal practice where access becomes an issue during acquisition.
3. The Department noted that the Ardiel property is currently serviced by an existing access and that it is also capable of being accessed via the municipal road north of the property. The Department also submitted that the field was accessible through the yard site.
4. The Department also noted that the subject location on P.T.H. No. 10, a 2 lane highway, is classified as an Expressway, allows for speeds up to 100 km/h,

and handles about 4,000 vehicles a day. This classification means that no new driveways are allowed, and that access to adjacent lands is to be obtained via service roads. The Department also indicated that in order to maintain the flow and safety of through traffic, direct property access to the highway is normally eliminated. The Department also noted that the approval of an access within 100 metres of an existing access and 200 metres from the municipal road contravenes Department policy. The Department noted that several accesses have been removed recently as part of this upgrade, and submitted that approval of a direct access onto P.T.H. 10 within a kilometer of this project is in direct contravention of the Province's priorities, and contradicts attempts to provide a safe highway.

5. The Department submitted that allowing the access would set an unacceptable precedent for other landowners adjacent to P.T.H. 10. The Department noted the significant investments in highway improvements, and the Province's priority to maintain a safe highway, and asked that access to the highway at this location be denied.

Board Findings

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 not uphold the decision of The Highway Traffic Board, and disallow the proposed access to the highway from the subject property.

The Board notes the significant efforts being made to upgrade that section of the highway on which access is being sought. The Board also notes that the highway is classified as an expressway with a speed limit of 100 kms which according to the policy of the Department restrict access mainly from service roads. The Board notes the volume of daily traffic, and believes that the safety of the motoring public will be significantly affected by allowing an additional access a mere 100 metres from an existing access, and 200 metres from the municipal road. The Board notes that the department has indeed been removing direct access in the interests of highway safety. Accordingly the Board will uphold the appeal of the Department, and deny the applicant an additional access to P.T.H. 10.

In denying access the Board notes the subject land is adjacent to a municipal road which can provide reasonable access. The Board also notes the offer of the Department to assist the landowner in getting access to his property via the municipal road.

The Board also notes that the landowner could also create access to his fields from the existing yard site. The Board would encourage the landowner to meet with the Department to pursue the matter of access via the municipal road.

