

M A N I T O B A) Order No. 76/08
)

THE HIGHWAYS PROTECTION ACT) June 4, 2008

BEFORE: Graham Lane, CA, Chairman
Susan Proven, P.H.Ec., Member

APPEAL OF HIGHWAY TRAFFIC BOARD PERMIT
NO. 233-07 PERTAINING TO TEMPORARY
CONDITIONAL RESIDENTIAL ACCESS TO
(PROVINCIAL TRUNK HIGHWAY NO. 59, THE
RURAL MUNICIPALITY OF VICTORIA BEACH

SUMMARY:

By this Order, the Public Utilities Board (Board) denies an appeal of Victoria Beach Enterprises Ltd. (Enterprises) of a Highway Traffic Board (HTB) decision to describe as temporary a current access to Provincial Trunk Highway No. 59 (PTH 59).

The Order also provides recommendations.

BACKGROUND:

Enterprises made application to the HTB for a change in use from agricultural to residential access to PTH 59 from Lot 6, Plan 19499, Section $\frac{1}{4}$ 10, Township 20, Range 7E in the Rural Municipality of Victoria Beach (RM). HTB approved the change in use with the condition that the access be made temporary, to be removed when and if an internal road system to the immediate south is developed. Alternate access would then be available to the property from the internal road system.

Evidence was taken by the Board at a public hearing held on Tuesday, May 27, 2008 commencing at 1:00 p.m. in the Senior Scene Centre, 3 Ateah Road, Victoria Beach, Manitoba. The hearing was conducted on a hear and report basis by Graham Lane, Board Chairman. Immediately prior to the hearing, Board Chairman Lane viewed the subject property and its current access to the highway.

THE APPLICANT:

In his submission to the Board and on behalf of Enterprises, Mr. Michael Ateah noted that the driveway has been in place for sixty years and advised that he could not recall any motor vehicle accidents having occurred at the location as a result of the present access.

Mr. Ateah also noted that north of the subject driveway and on Parcel A another driveway exists, and opined that this second access likely poses a greater risk to safety than Enterprises' access, given the proximity to the curve in the road of Parcel A's access. Mr. Ateah further noted that Enterprises' property has been up for sale for some time and that a conditional sale has recently been made.

He submitted that it was important that the access to Enterprises' property be made permanent, to bring certainty to the new owner and thus allow the sale to proceed. He submitted that when the internal road system is developed to serve the development planned for the area, if the current access is not made permanent the new owner would be faced with considerable expenses, towards reorienting the entrance to the garage to the internal road, the septic field, the current driveway and with respect to then-required relocation of the property's garden.

Mr. Ateah acknowledged the conditional approval for a subdivision, that to result in the internal road system,

but suggested that there were no current plans to proceed with the development.

In summary, Mr. Ateah requested that the access to Enterprises' property be described as residential and permanent.

MANITOBA INFRASTRUCTURE AND TRANSPORTATION (MIT):

MIT was represented by Mr. Richard Nichol, Senior Access Management Analyst, Highways Planning and Design (Winnipeg). and Mr. Heinz Lausmann, Senior Highway Planning Engineer, Highways Planning and Design (Winnipeg)

MIT filed a number of exhibits with the Board, and these were also provided to Enterprises and those interested and also in attendance at the hearing, these exhibits were:

- Exhibit 1: RM of Victoria Beach municipal map showing the approximate location of the subject property. (Appendix 1)
- Exhibit 2: Copy of Highway Traffic Board Permit no. 223-07 and copy of sketch plan 1059140-3- ACU-07. (Appendix 2)
- Exhibit 3: Copies of Traffic information from 1993 - 2006. (Appendix 3)
- Exhibit 4: A portion of Provincial Road Functional Classification Map showing the classification of Provincial Highways on the east side of Lake Winnipeg. (Appendix 4)
- Exhibit 5: Aerial photographs showing the subject property and the location of the existing access connection onto the property from PTH 59. (Appendix 5)

- Exhibit 6: Photocopy of proposed one lot subdivision for Community Planning Services Subdivision File no. 4198-04-4935. (Appendix 6)
- Exhibit 7: Photocopy of proposed 7-lot subdivision for Community Planning Services Subdivision File no. 4198-04-4936. (Appendix 7)
- Exhibit 8: Photocopy of revised subdivision for Community Planning Services Subdivision File no. 4198-04-4936. (Appendix 8)

MIT noted that the existing Enterprises' access driveway currently serves both a large 14.63-acre residential lot and the small 1.23-acre single-family residential lot, the latter the Enterprises' property. The Permit stipulates that *"The access driveway permitted by this Permit is now temporary subject to removal/relocation to the Public Road to the south when the internal road system is developed"*.

MIT noted its support for what it described as the proactive approach taken by HTB in attempting to reduce, rationalize and limit the number of access driveways onto this portion of PTH 59, as well as other highways in the Province. MIT noted its concerns as including:

1. The need to maintain the primary function of PTH 59 to carry traffic safely and efficiently.
2. The existing driveway does not meet MIT's minimum spacing of driveways for the classification of PTH 59.
3. The proximity of the existing driveway to the PTH 59/ PR 504 intersection and right turn acceleration lane.
4. The positive impact on motorist safety by reducing, removing and minimizing the number of driveways onto PTH 59.
5. The precedent that is established for other landowners along PTH 59 and the need to facilitate the orderly and planned development of the lands adjacent to PTH 59.

6. The existing access onto PTH 59 will not be required/necessary for this property in the long term since it would be able to obtain access to the internal municipal road system being proposed in Phases 2 and 3 of the development of this land.
7. Establishing a pattern of access connections onto PTH 59 that can safely accommodate the expected residential and cottage growth in this part of the municipality and resulting increase in traffic on PTH 59; and
8. Maintain the equitable practice that has been established by MIT and the Highway Traffic Board with other new developments along PTH 59 since the early 1980s.

MIT noted that there has been several applications and proposals for subdivision for the properties related to the current appeal, and provided the following history:

1. **April 2004** - Victoria Beach Enterprise submitted two applications to subdivide SP Lot 6 Plan 19499 WLTO in the SE 10-2-7E. Phase One involved the subdivision of the existing yardsite (1.27 acres) from the bulk of the property (14.63 acres) leaving a residual property of approximately 12.9 acres.

The second subdivision, Phase Two, involves the subdivision of a portion (6.82 acres) of the 12.9-acre residual property into 7 lots, leaving a residual property of approximately 6.1 acres.

MIT indicated that the existing access from Lot A to PTH 59 is to service the proposed one lot subdivision being created, and that a new public road connection to PTH 59 to service the proposed 7-lot subdivision was planned in the stead of the current access from Enterprises' property. The existing driveway to the

single lot subdivision is located approximately 167 metres south of the PTH 59/ PR 504 intersection and 42.7 metres south of the existing residential driveway, and serves Parcel A Plan 11808 WLTO to the north.

The public road connection proposed for the 7-lot residential subdivision would access the highway approximately 90 metres south of the existing driveway from Enterprises' property and current access.

2. **September 1, 2004** - Community Planning Services issued a 2-year Conditional Approval of Subdivision approving the one lot subdivision of SP Lot 6 subject to the consolidation of the residual property with SP Lot 7 19499 WLTO. The consolidated properties would have access to the developed municipal road (David Road) bounding the south limit of Lot 7/ Section 20.
3. **May/June 2005** - The applicants requested a revision to their proposed subdivision (reducing the proposed lot from 1.27 acres to 1.23 acres) and a revised 2-year Conditional Approval was issued June 24, 2005.
4. **March 2006** - The proposed 7-lot residential subdivision (CPS file no. 4198-04-4936) on the residual property was referred to Council and there has been no decision by Council as of this date.
5. **June 5, 2007** - The applicants requested and received a one-year extension to their revised 2-year Conditional Approval issued June 24, 2005 thereby amending their expiry date to June 5, 2008.

6. **August 2007** - An application was submitted to the HTB for the Change in Land and Access in accordance with Condition 1(c) of the Conditional Approval of Subdivision.
7. **September/October 2007** - The application was heard September 11/07 without the applicants' attendance and approved.

BACKGROUND: FUNCTION OF PTH 59:

PTH 59 from the Brokenhead First Nations northerly to Victoria Beach is designed as a 2 lane high-speed rural highway (100 km/h). The highway is classified as a Secondary Arterial north of PTH 12 into Grand Beach and, as such, the primary function of the highway and others of similar nature is to carry traffic safely and efficiently at highway speeds between communities and major recreational areas with the servicing of land a secondary function.

In this particular instance, PTH 59 connects the Cities of Winnipeg and Selkirk with the recreational areas of Patricia, Grand Beach, Victoria Beach and numerous cottage areas along the east side of Lake Winnipeg.

Consequently, the highway experiences relatively high volumes of traffic for a two lane undivided highway. MIT advised the hearing that approximately 3% of the traffic on PTH 59 is truck traffic, and that the seasonally adjusted

traffic counts (summer) on this portion of PTH 59 notes a traffic increase of 45%, resulting in summer peaks of approximately 1360 vehicles per day on this portion of PTH 59.

BACKGROUND: ACCESS SPACING:

PTH 59 is designated a Secondary Arterial in the Department's Functional Classification System. As such the desirable spacing of low volume infrequently used agricultural/field driveways for this classification of highway is 600 metres, whereas the minimum spacing of agricultural/ field driveways is 300 metres.

In this instance the subject property is located close to the end of PTH 59 and within a 100-km/h-speed zone that is reduced to a seasonal speed limit of 70 km/h during the summer. The existing driveway serving proposed Lot one is located 41.5 metres from the residential driveway to the north, within 60 metres of the right turn lane for south bound traffic leaving Victoria Beach and approximately 170 metres from the PTH 59/PR 504 intersection. All of which are substantially less than the minimum spacing for agricultural driveways on this type of highway.

The majority of traffic at this location is north bound, left turning traffic headed to Victoria Beach or right turning traffic leaving Victoria Beach with the remainder continuing north on PR 504. Access is managed to maximize

the safe movement of vehicles through this area and is consistent with the primary function of PTH 59 to move people and goods efficiently.

Safe traffic flow is expected to be accomplished in the following ways when dealing with either "new" development or other changes to existing access to the highway i.e.

1. Maintain the status quo by preserving the existing spacing between driveways wherever possible.
2. Relocation and/ or joint use of existing driveways to meet emerging or new access needs.
3. Redesigning/ reconstruction of existing driveways to bring them into compliance with current engineering standards.
4. Moving/ approving driveways onto the lower classification of roadway such as PTHs to PRs, PRs to municipal roads etc. wherever possible.
5. Moving driveways away from intersections and not allowing driveways in close proximity to intersections.
6. Promoting the development of internal road systems to provide access to proposed and adjacent development.
7. Separating traffic movements from the travel lanes of a highway.
8. Prohibiting dangerous situations such as parking on the right of way in the vicinity of driveways or potentially unsafe movements such as backing into traffic created by poor onsite circulation.
9. Requiring developers to provide the necessary on

highway improvements on the highway system to mitigate the impact of traffic from the proposed development may have on motorist safety and highway efficiency.

BACKGROUND: TRAFFIC SAFETY:

MIT advised that it recognizes that the safety of motorists is dependent upon a well-managed roadway environment, and that the majority of all crashes (approximately 55%) on provincial highways will occur at driveways and intersections such as the driveway serving the subject property. MIT further advised that 74% of the crashes at these locations result from the left turn movements at intersections and driveways.

MIT suggested that it is within this context that the department is extremely concerned with the perpetuation of potentially unsafe situations that are problematic from a traffic safety perspective in a number of ways.

Each access onto a high speed/major highway creates a potential safety hazard and is problematic in the following ways:

1. A driveway is in an obstruction in the R.O.W. and increases the risk associated with vehicles leaving the highway and striking the crossing. The greater the number of driveways into a highway the higher the risk of errant vehicles striking the crossing and causing

severe personal and property damage.

2. Each additional driveway creates a potential safety hazard by creating an intersection where nothing existed previously and results in turning movements on and off the highway creating new conflict points between turning and through traffic thereby increasing the accident potential on the highway. Driveways such as the one into the proposed subdivision result in a minimum of 9 potential conflict/collision points on a highway where none previously existed.
3. The cumulative consequences of allowing adjacent development to interfere with the function of a highway are to increase the degree of hazard (safety) and amount of delay for motorists (efficiency) and to accelerate the need for costly highway improvements (economics).

To prevent the creation of potentially hazardous situations on the highway system and the premature obsolescence of the highway infrastructure the province through the Highways Protection Act has instituted land use and access controls to protect the provincially funded highway system within Manitoba. This is in recognition of the fact that many of the accidents and problems associated with highways can be traced directly to the lack of access control.

An analysis of Traffic Collision Statistics collected by the MIT in the past indicates that approximately 35% of all

collisions on the rural portion of the provincial highway system occur at intersections and access points. This figure rises to over 50% if off road collisions (hitting approaches) and collisions outside the "functional area" of the access/intersections are factored in.

BACKGROUND: STRATEGY TO MAINTAIN THE FUNCTION AND SAFETY OF PTH 59:

MIT advised that in recognition of the impact that adjacent land uses and development have on the safety, efficiency and operation of PTH 59, MIT has been taking a proactive role in managing and rationalizing access to PTH 59 wherever possible. Its primary purpose was reported to be the maintenance of the function of PTH 59 to carry traffic safely and efficiently by avoiding unplanned and scattered development along this section of roadway, and ensuring access to new development is directed to appropriately spaced access connections onto the highway via a system of frontage and internal roads. Further, that existing driveways are removed, consolidated and/ or rationalized wherever possible and when the status quo changes.

To accomplish this, MIT advised that it recognizes that this portion of PTH 59 does not service larger rural/ agricultural land uses and that application of the access spacing traditionally associated with Secondary Arterials is not appropriate in this instance. Consequently, MIT is actively promoting that land being developed adjacent to

this highway work towards developing internal road networks that obtain access from the municipal/ mile roads and at the mid point of the section resulting in ½ mile or 800 metre spacing.

BACKGROUND: PRECEDENT:

In this particular instance, Enterprises' property is serviced by an existing driveway that has historically provided access to a residence and garage. Enterprises' appeal requested removal of Condition No. 5 from the Board's permit and was motivated by the loss of personal convenience and anticipated real estate value with loss of permanent direct access onto PTH 59 if this property is serviced by an internal street system.

MIT advised that it is extremely concerned with the precedent that may be established for other landowners adjacent to this portion of PTH 59, should the existing driveway be allowed as permanent and used to facilitate further development of this property. For MIT, this situation, if allowed, would be a highly visible contradiction of the standards Manitoba Transportation and the Highway Traffic Board have established, and want to maintain on the highway system, and what other property owners have been and will be expected to do when developing adjacent to the Provincial Highway system.

Accordingly, MIT recommended that the Board deny the appeal and uphold HTB's decision in this instance.

BOARD FINDINGS:

The Board thanks the parties for their contributions. The Board considered carefully both the positions of Enterprises and MIT, and has decided to uphold HTB's decision.

In doing so, the Board notes the applicant currently has access from the property to PTH 59 and that such access will remain undisturbed until such time as the development of the property to the south proceeds.

The Board accepts the position of MIT with respect to the nature of the highway and the need to control access. The Board notes the key role of this highway in accommodating traffic to the resort areas in and around Victoria Beach. Also the Board notes the speed limit in this portion of the highway is 100 kilometres, though reduced to 70 kilometres in the summertime.

The Board is of the opinion that access to the highway should not be compromised at this strategic location, which is in close proximity to the acceleration lane going south on PTH 59. The Board concludes thus notwithstanding the understanding that no serious accidents have occurred in the past. And while the driveway has been in existence for a long time, the Board would be remiss in not allowing for the opportunity to improve the safety of the site when

development to the south proceeds and access could be gained through an internal road system.

The Board notes that the adjacent property to the north, Parcel A, has access to the highway at a point even closer to the accelerating lane. The owner of Parcel A also owns property to the west currently connected by an internal road to Parcel A.

The Board encourages Enterprises to consult with the owner of Parcel A and explore the possibility of redesigning the development plan with a view to providing access to both Parcel A and Enterprises' property, the subject of this appeal, from the internal road system upon development proceeding. The ultimate removal of both of the current driveway accesses to the highway would enhance the safety of the highway.

The Board notes Enterprises' concern with regards to the need for certainty for the intended purchaser of its property, and provides certainty by denying the appeal. If the purchaser acquires Enterprises' property it should be with the understanding that once development to the south proceeds, changes will be required and costs will be incurred.

The Board will not accede to the request of the appellant to remove Condition 5 from HTB Permit No: 233-07; the Permit will be upheld.

IT IS THEREFORE ORDERED THAT:

1. The application BE AND IS HEREBY DENIED.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE, CA"
Chairman

"H. M. SINGH"
Acting Secretary

Certified a true copy of
Order No. 76/08 issued by The
Public Utilities Board

Acting Secretary

APPEARANCES :

Mr. Richard Nichol	Senior Access Management Analyst, Highway Planning and Design, (Winnipeg), Manitoba Infrastructure and Transportation
Mr. Heinz Lausmann	Senior Highway Planning Engineer, Highway Planning and Design (Winnipeg)
Victoria Enterprises Ltd. Represented by Mr. M Ateah	The Applicant