



**Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Driveway Connection
Appeal of [REDACTED]

DHA Case No. DOT-23-0008

FINAL DECISION

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

[REDACTED] (Petitioner)

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
Department of Transportation
P.O. Box 7910
Madison, WI 53707-7910

PROCEDURAL HISTORY

By letter dated March 31, 2023, the Department of Transportation (Department) upheld the Southwest Region-La Crosse Office's decision to deny a driveway connection permit request of [REDACTED] (petitioner) along [REDACTED].

[REDACTED]. On April 17, 2023, the Division of Hearings and Appeals received the petitioner's request for a hearing to appeal the Department's decision to deny the additional driveway access to WIS 131 under Wis. Stat. § 86.073. Administrative Law Judge Kristin P. Fredrick conducted a telephone prehearing conference on May 2, 2023, at which scheduling orders were issued and the hearing was scheduled.

Pursuant to due notice, the hearing was scheduled and held by video conference on June 15, 2023, a date agreed to by the parties. The hearing was digitally recorded, and the record includes the digital recording, Department Exhibits R-3, R-4 through R-12, and petitioner's Exhibits A1 through E, V-1, V-2, and Z.

On July 14, 2023, ALJ Fredrick issued a Proposed Decision affirming the permit denial. The parties were given an opportunity to file objections, none of which were timely received.

FINDINGS OF FACT

The Administrator adopts the Findings of Fact set forth in the Proposed Decision, as follows:

1. The petitioner, [REDACTED], is the managing member of Hansen Housing, LLC, which owns five acres of property located at [REDACTED] (the Property). The property contains a number of buildings, including a single family residence, garage, and outbuildings, along with an existing driveway entrance to State Highway 131 (Hwy 131). (Hearing testimony of [REDACTED] Ex. R-3)
2. On February 14, 2023, the petitioner filed an application with the Department to permit a second driveway connection from the Property to access Hwy 131. The additional driveway connection would serve a separate subdivided parcel of the Property upon which the petitioner intended for his daughter to eventually build a home and reside. ([REDACTED] hearing testimony; Ex. R-3; Petitioner's Exs. B-1 and Z)
3. The proposed new driveway connection is approximately 75 feet from a neighboring property driveway and 190 feet from the existing driveway that serves the Property. Given the landscape and terrain, including trees and a curve in the road, the proposed driveway connection would potentially have better sight distance lines than the existing driveway. (Testimony of [REDACTED]; [REDACTED] hearing testimony; Exs. R-3 and Petitioner Exs. D-1 through D-8, V-1 and V-2)
4. The area of Hwy 131 along which the Property and proposed driveway connection abut is an undivided two-lane highway, with a speed limit of 55 mph, and is considered a minor arterial road with approximate traffic of 2,000 cars per day. (Testimony of [REDACTED]; Ex. R-4)
5. Under current guidelines, a private non-agricultural driveway connection along the stretch of Hwy 131 where the Property is located must be 500 feet from any other highway connection point. [REDACTED] hearing testimony; hearing testimony of [REDACTED]; Exs. R-4 and R-7)
6. Each additional access point to a highway increases the number of conflict points, which in turn exponentially increases the rate of crashes along the highway. ([REDACTED] hearing testimony; Exs. R-8 through R-11)
7. On February 23, 2023, the Department's Southwest Region La Crosse office denied the petitioner's permit application because the proposed driveway access did not meet the minimum spacing guidelines from another highway connection and because the Property already had an existing driveway connection to Hwy 131. ([REDACTED] hearing testimony; [REDACTED] hearing testimony; Ex. R-3)
8. On March 31, 2023, the Department upheld the Southwest Region office denial of the petitioner's permit application.

9. On April 17, 2023, the petitioner filed a request with the Division of Hearings and Appeals to review the Department's decision to affirm the permit application denial.

DISCUSSION

The Administrator adopts the reasoning set forth in the Proposed Decision, as follows:

The Department of Transportation is granted the authority to create regulations, oversee, and develop guidelines associated with the issuance of permits for the placement, construction, and alteration of driveways along state highways. Wis. Stat. § 86.07(2); Wis. Admin. Code § Trans 231.01(1). Although property owners have a right to access their property, the Department has the authority to condition permits for such access as necessary for the "preservation of highways" and "the safety of the public." Wis. Stat. § 86.07(2). The Department has established regulations and standards governing how and when driveways may be permitted along state highways under Wis. Admin. Code Ch. Trans 231. See also, DOT Highway Maintenance Manual (Ex. R-7) The purpose of those standards is to "promote the orderly and safe movement in and out of private properties in such manner as will constitute a minimum of interference to through highway traffic..." Wis. Admin. Code § Trans 231.02(8). Furthermore, the number of driveways allowed for "a single property frontage along a state trunk highway shall be the minimum deemed necessary by the department for reasonable service to the property without undue impairment of safety, convenience, and utility of the highway." Wis. Admin. Code Trans § 231.03(2). If the Department denies a permit application and confirms the denial upon review, the applicant may request a hearing with the Division of Hearings and Appeals. Wis. Stat. § 86.073.

In this case, the Department denied the petitioner's application for a driveway connection permit on the grounds that the location of the proposed driveway connection along Hwy 131 was too close to another existing driveway connection along Hwy 131 and because the Property was already served by an existing driveway connection. (■■■■■ hearing testimony; Ex. R-3) It is not contested that Hwy 131 is a two-lane road with a speed limit of 55 mph servicing 2,000 vehicles per day along the area where the Property is located. Further, it is undisputed that the proposed driveway connection for which the petitioner sought a permit would be located approximately 75 feet from a neighboring property's existing driveway, approximately 190 feet from an existing driveway connection currently used by residents of the Property, and less than 500 feet from an existing intersection between Hwy 131 and Orbit Avenue. (Petitioner hearing testimony; Hearing testimony of ■■■■■; Ex. R-3).

The petitioner made four arguments in support of the additional driveway. The first relates to safety. He presented testimony and evidence to establish that the proposed additional driveway connection to Hwy 131 would potentially be safer than the existing driveway serving the Property due to improved sight distance lines. (■■■■■ hearing testimony; ■■■■■ hearing testimony; Exs. D-1 through D-8, V-1 and V-2) Yet, as acknowledged by the petitioner, he does not intend to abandon the existing driveway; rather, he seeks a second driveway connection so that two separate parcels of the Property each have their own designated driveway. As a result, the Property would have two driveway connections less than 200 feet apart. (Ex. R-3)

The petitioner's second argument in support of a second driveway involved the impact to those individuals residing on the Property. The proposed driveway connection would allow the newly created parcel to have direct access to Hwy 131; but according to the petitioner, if residents of the new parcel were forced to use the existing driveway, they would need to drive between an existing residence and garage. (██████ hearing testimony; Ex. C-1) In the petitioner's opinion requiring both parcels use the existing driveway would not only be unsafe to residents of the Property, but it would devalue the Property. (Id.)

Petitioner's third argument is that he should not be held to minimum distance restrictions because others have not been. He identified other properties along Hwy 131 having driveway connections, including the neighboring property, that the petitioner alleged violated the minimum distance restrictions. (Id.; Exs. A1 and A2) Petitioner implies that it would be unfair to enforce the distance restriction against his Property but not the other properties along Hwy 131. (██████ hearing testimony)

Finally, the petitioner argued that permitting the new parcel would benefit the public. That is, were the newly created parcel allowed to have its own driveway connection, it would generate increased tax revenues by allowing someone to build on the parcel. (Id.)

In support of the permit denial, the Department's witness, ██████ ██████ a civil engineer with thirty years of experience and the statewide access engineer for the last fifteen years, credibly testified that the two guiding principles governing driveway access management are safety and mobility. (██████ hearing testimony) The Department's engineer testified to a transportation study establishing that for each additional access point to a highway the number of crashes increase exponentially. (Id.; Ex. R-8) Likewise, the Department's engineer opined an increase in access points along highways leads to a decrease in safety and mobility. (Id.; Exs. R-8 through R-11) Thus, the Department has created and follows connection access management policy and standards that take into consideration a number of criteria, including adequate spacing restrictions that require access connections to state highways maintain a minimum of 500 feet between a private driveway and the next nearest egress/connection to a highway, whether it be an intersection or another driveway. (Id.; Exs. R-4 and R-7) As part of the engineering analysis, the Department considers whether alternative or existing access exists to the highway. (Id., Ex. 7, p. 22) Because a property is typically only entitled to one connection to the highway, a driveway connection permit may be denied if the property "already has the minimum number of connections necessary to provide reasonable access to it per Trans. 231.03(2)." (Id.) Besides driveway spacing, other factors that may be considered when deciding whether a proposed driveway meets the standards include: intersection sight distance, functional area, vision corners, approach grade, and proper drainage. (Id.) The Department determined that the Property's existing driveway could reasonably service the Property parcels and that inadequate spacing between driveway connections as proposed would impair safety and mobility along Hwy 131 to justify the denial of the petitioner's permit.

The undisputed evidence at the hearing established that the petitioner's proposed driveway did not meet the Department's applicable 500-foot spacing guidelines because it would only be 75 and 190 feet, respectively, from the next closest highway connections. Further, the Property in this matter already has a driveway connection to Hwy 131 that could serve all

parcels of the Property. The petitioner did not establish by credible evidence that the Property could not be served by the existing driveway without undue impairment of safety, convenience, and utility of the highway consistent with Wis. Admin. Code § Trans 231.03(2). The petitioner's testimony focused on the inconvenience and safety of the residents of the parcels of the Property as opposed to the safety and mobility impact on highway users. Although the petitioner believes that it is unfair that other properties along Hwy 131 appear to have driveways that the petitioner believes to be in violation of the spacing guidelines, there is insufficient facts in evidence necessary to draw comparisons between those properties, whose driveways may have existed prior to the enactment of current laws and/or due to the agricultural nature of those properties, which are governed by different laws and policies. (██████ hearing testimony) Further, administrative agencies such as the Division of Hearings & Appeals lack authority to render a decision on equitable or fairness arguments. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F. Supp. 540, 545 (E.D. Wis.1977). Finally, whether the petitioner's newly created parcel may generate local tax revenue is not germane to whether the proposed driveway meets the applicable standards. This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. The petitioner has not met his burden to establish by a preponderance of the evidence that the Department's denial is incorrect under the established law or that the Department failed to follow its own policies. Therefore, the Department's decision to deny the petitioner's driveway connection permit is affirmed.

CONCLUSIONS OF LAW

The Administrator adopts the Conclusions of Law set forth in the Proposed Decision, as follows:

1. The Department has authority to issue or deny driveway access permits pursuant to Wis. Stat. §§ 86.07(2), 86.073, and Wis. Admin. Code § 231.01(1)
2. The petitioner failed to establish by a preponderance of the evidence that his February 14, 2023 driveway connection permit application met the Department's written policy standards or the regulations set forth under Wis. Admin. Code Ch. Trans 231.
3. The Department properly denied the petitioner's permit application for an additional driveway connection access along State Highway 131 pursuant to Wis. Stat. §§ 86.07 and 86.073, Wis. Admin. Code § 232.03(2), and the Department's written policies and standards.
4. The Division of Hearings and Appeals has the authority to hear contested cases and issue decisions on behalf of the Department of Transportation pursuant to Wis. Stat. § 86.073(3) and Chapter 227 of the Wisconsin Statutes.

ORDER

The Administrator adopts the Order set forth in the Proposed Decision, as follows:

WHEREFORE, IT IS HEREBY ORDERED that the Department's March 31, 2023 decision upholding the Southwest Region La Crosse office's February 23, 2023 denial of the petitioner's permit application is affirmed

Notice of appeal rights follow.

Dated at Madison, Wisconsin on August 3, 2023.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, Fifth Floor
Madison, Wisconsin 53705
Telephone: (608) 266-7709
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By: /s/
Brian K. Hayes
Division Administrator

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to ensure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be served and filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. The Division of Hearings and Appeals shall be served with a copy of the petition either personally or by certified mail. The address for service is:

DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53 to insure strict compliance with all its requirements.