



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

In the Matter of the Driveway Connection Appeal
of [REDACTED] Brothers, Inc., STH 42, Village of Sister
Bay, Door County, Section 07-31-28

DHA Case No: DOT-24-0005

FINAL DECISION AND ORDER

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

[REDACTED] Brothers, Inc. (Petitioner), [REDACTED]
[REDACTED]
155 E. Walnut Street
Sturgeon Bay, WI 54235

Wisconsin Department of Transportation, by
[REDACTED]
4822 Madison Yards Way, 5th Floor South
Madison, WI 53705

PROCEDURAL HISTORY

By letter dated January 9, 2024, the Department of Transportation (Department) upheld the Northeast Region Office's decision denying the request of [REDACTED] Brothers, Inc. (Petitioner) for a driveway connection permit onto State Trunk Highway 42 (STH 42) in the Village of Sister Bay, Door County. On January 25, 2024, 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 STH 42 under Wis. Stat. § 86.073. Administrative Law Judge (ALJ) Andrea Brauer was assigned to preside over the matter. The ALJ conducted a telephone prehearing conference on February 12, 2024, at which scheduling orders were issued and the hearing was scheduled.

Pursuant to due notice and agreement of the parties, the hearing was conducted by video conference on March 20, 2024. The hearing was digitally recorded, and the record includes the digital recording, the Department's Exhibits 1 through 14, and the Petitioner's Exhibits 51 through 58 and 60 through 61.¹

¹ The Department objected to the Petitioner's Exhibit 59 on relevance grounds. The Department's objection was sustained. Exhibit 59 is a development agreement between Harbor Place, LLC c/o [REDACTED] and the Village of

A Proposed Decision was issued on May 13, 2024 affirming the Department's denial decision. The Petitioner timely filed an objection to the Proposed Decision, and the Department filed a letter in support of the Proposed Decision.

ISSUE

The issue is whether the Department properly upheld the decision of the Northeast Region Office to deny the Petitioner's application for a permit for a connection to STH 42 pursuant to Wis. Stat. § 86.073.

FINDINGS OF FACT

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

1. On or about September 1, 2023, the Petitioner submitted an application to the Department requesting a permit for a new driveway connection to STH 42 on its property located at the NW quarter of the NE quarter, Section 7, Town 31 N North, Range 28E in the Village of Sister Bay, Door County.² (█████ Testimony; Ex. 1)
2. The Petitioner is a heating and air conditioning business. Its President █████ purchased the property in 1997 intending to expand the business by building a new storefront on vacant land located on the western side of the property. The eastern side of the property contains condominiums, which are also owned by █████ █████. For various reasons, construction of the new storefront did not begin until early 2024. The Petitioner is seeking a new driveway connection for improved access to the new storefront. (█████ Testimony; Ex. 51, p. 7)
3. The Petitioner's property has approximately 150 feet of frontage on the south side of STH 42, which is also referred to as South Bay Shore Road at the site. The area of STH 42 along which the property and proposed driveway abut is a two-lane facility that is considered a minor arterial highway. Annual average daily traffic is 6,020 vehicles per day, and the speed limit is 35 miles per hour. (█████ Testimony)
4. There are several existing connections onto STH 42 near the site. The condominium units on the eastern side of the property have access to a parking lot that connects to STH 42. The Petitioner also has access to STH 42 on the western side of the property through a shared driveway that abuts the Petitioner's property. While this shared driveway is located on the neighboring property, an easement was created in 1997 shortly after █████ █████ purchased the property, granting █████ █████ and another neighbor the right to use and

Sister Bay. It relates to approvals for the development at the site but does not have any bearing on whether the proposed project meets the criteria for granting of a driveway connection permit.

² The permit application was submitted by █████ and incorrectly lists the applicant as Harbor Place, LLC (see Ex. 1). As clarified in the Petitioner's objection, Harbor Place, LLC is the legal entity under which the property was owned at the time that █████ submitted the application to the Department. However, the applicant for purposes of this appeal is █████ Brothers, Inc.

access the shared driveway. The neighbors to the west also have an additional driveway connection on the western end of their property. (Exs. 6-8, 13)

5. The Petitioner is now requesting a permit to build another driveway connection onto STH 42 approximately 25 feet east of the shared driveway to which it has access through the easement. (██████ and ██████ Testimony; Ex. 1, 13)
6. Under current guidelines, a private driveway connection along the stretch of STH 42 where the property is located should be at least 245 feet from any other highway connection point. (██████ and ██████ Testimony; Ex. 11, p. 72; Ex. 10, p. 55)
7. Each additional access point to a highway increases the number of conflict points, increasing the chances for driver error and in turn increasing the rate of crashes along the highway. (██████ and ██████ Testimony)
8. By letter dated December 4, 2023, Department Northeast Regional Office denied the Petitioner's driveway permit application. The denial decision was based on recommended spacing between access points and the fact that the Petitioner has alternative access to the property through the easement, which is only approximately 25 feet away from the proposed driveway location. (██████ Testimony; Ex. 2)
9. On or about December 21, 2023, the Petitioner requested Department review of the Northeast Regional Office's decision. (Ex. 3)
10. By letter dated January 9, 2024, the Department upheld the Northeast Regional Office's denial of the Petitioner's permit application. (Ex. 4)
11. On January 25, 2024, the Petitioner filed a request with the Division of Hearings and Appeals to review the Department's decision to affirm the permit application denial. (Ex. 5)

DISCUSSION

The Department is authorized 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. 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). Additional guidance regarding driveway safety can be found in the Department’s Highway Maintenance Manual (Ex. 10) and the Transportation Research Board Access Management Manual (Ex. 11).

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. The Petitioner bears the burden to prove by a preponderance of the evidence that the requested permit should be issued. Wis. Admin. Code §§ HA 1.12(3)(b) and 1.17(2).

The Proposed Decision

The issue presented in this case is whether the Department properly denied the Petitioner’s driveway connection permit application. The ALJ, having presided over a contested case hearing, concluded that the Petitioner did not meet its burden to prove by a preponderance of the evidence that the requested permit should be issued.

The record showed that the proposed driveway location does not meet standards for spacing between access points, considering road conditions at the site and the fact that the Petitioner has alternate access through a shared driveway and easement located approximately 25 feet away. (Exs. 2, 4) The ALJ credited the testimony of Statewide Access Engineer Michael [REDACTED] and Regional Access Management Engineer David [REDACTED] who were both involved in making the denial decision. [REDACTED] and [REDACTED] explained that they considered a variety of factors in reviewing the application, including traffic volume, speed limit, other nearby access points, and the Petitioner’s existing options for accessing STH 42.

The ALJ also gave credit to the testimony of [REDACTED] and [REDACTED] that proper spacing between access points on a state highway is essential for traffic safety because each additional access point increases the number of conflict points, increasing the chances for driver error and in turn increasing the rate of crashes along the highway. (*See, e.g.*, Ex. 10, pp. 49-51) Based upon current research and traffic safety standards, it is recommended that driveways on a highway with a speed limit of 35 mph be spaced at least 245 feet apart. (Ex. 11, p. 72) This recommendation is based upon the estimated required stopping sight distance at the posted speed limit. ([REDACTED] Testimony) Considering all the factors at the site, [REDACTED] and [REDACTED] both concluded that the proposed driveway connection would create an undue safety hazard due to the proximity to the existing connections and considering the fact that the Petitioner already has another access point at the site through the shared driveway only approximately 25 feet away.

The ALJ noted that, in response, [REDACTED] argued he was unaware of this restriction when he purchased the property and when the easement was granted. He also stated that he is making a significant business investment in the area, and required use of the shared driveway could be detrimental to his business and potentially confusing for customers. In addition, he argued that the new driveway would not add to traffic volume and that some of the existing driveways in the area would also not meet the spacing requirements that the Department is imposing here. However, the ALJ gave credit to the response of [REDACTED] who emphasized

that Department standards for driveway approvals and spacing have changed over time, and that the analysis for each driveway application must be based on a consideration of all the features of the site under current standards.

The Proposed Decision concluded that based upon the compelling testimony of the Department's witnesses and given the site characteristics and the proximity to other driveway connections, a new connection in the proposed location is impermissible under the existing standards in Wis. Admin. Code ch. Trans 231. Accordingly, the Proposed Decision affirmed the Department's denial of the Petitioner's permit application.

Objections to the Proposed Decision

The Petitioner objects to the Proposed Decision pursuant to Wis. Stat. § 227.46(2m). In its objection, it emphasizes its argument that denial of its permit application would be unfair since several existing driveway connections in the area would not meet the spacing requirements that the Department seeks to impose here. The Petitioner also argues several reasons why it does not wish to use the adjacent shared driveway, including that it is a narrow gravel driveway, which is used by other property owners. The Petitioner also asserts practical difficulties with constructing access to its property from the shared driveway.

This Final Decision agrees with the Proposed Decision. To the extent the reasoning varies in any respect from that of the ALJ, each such variance is explained herein as required by Wis. Stat. § 227.46(2m).

The ALJ properly applied the facts to the law as it relates to the current standards for driveway placement. Regardless of the placement of other driveways in the area, each new driveway application must be reviewed based on the features of the site as evaluated under current standards. Here, the record established that the Petitioner has alternate access to the site through a shared driveway and easement located approximately 25 feet away from the proposed driveway location. The Department also established through witness testimony that the proposed driveway connection would create an undue safety hazard due to its proximity to the existing connections. The Department's permit denial decision was therefore correct, regardless of whether the Petitioner would prefer not to have to use a shared driveway.

Based on the above, the Petitioner has not met its burden of proof in this case. Accordingly, and consistent with the Proposed Decision, the denial of its driveway connection permit application should be 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 bears the burden to prove by a preponderance of the evidence that the requested permit should be issued. Wis. Admin. Code §§ HA 1.12(3)(b) and 1.17(2).
3. The Petitioner failed to establish by a preponderance of the evidence that his driveway connection permit application met the Department's written policy standards or the regulations set forth under Wis. Admin. Code ch. Trans 231.
4. The Department properly denied the petitioner's permit application for an additional driveway connection access along STH 42 pursuant to Wis. Stat. §§ 86.07 and 86.073, Wis. Admin. Code § 232.03(2), and the Department's written policies and standards.
5. 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 Wis. Stat. ch. 227.

ORDER

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

The Department's January 9, 2024 decision upholding the Northeast Regional Office's December 4, 2023 denial of the Petitioner's permit application is AFFIRMED.

Dated at Madison, Wisconsin on June 20, 2024.

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.