

BEFORE THE IDAHO TRANSPORTATION BOARD

In Re: DENIAL OF ENCROACHMENT)	PERMIT APPLICATION #03-09-181
PERMIT APPLICATION, HAWKINS)	
COMPANIES COMMERCIAL)	
DEVELOPERS)	
)	
Petitioner,)	DIRECTOR'S FINAL ORDER
)	
)	
vs.)	
IDAHO TRANSPORTATION)	
DEPARTMENT,)	
)	
Respondent.)	
)	

This matter involves an application from Petitioner for a variance from the approach standards of the Idaho Transportation Department (“Department”) in order to obtain three accesses to State Highway 69. The Petitioner sought a variance for three commercial accesses to State Highway 69 within the City of Meridian impact area. The Department denied the petition because it failed to meet the criteria set forth in IDAPA 39.03.400.03(c), 39.42.400.04(a), 39.03.42.08 and 39.03.42.200.08, and because reasonable alternate access is available.

The Petitioner appealed the denial. The Department appointed John Magel as a hearing officer, and a hearing was held on December 17 and 18, 2009. Mr. Magel issued his Recommended Findings of Hearing Officer on February 12, 2010, and Supplemental Recommended Findings of Hearing Officer on February 16, 2010, in which he reversed the Department’s denial of the requested variance. In response to the Department’s motion to reconsider, Mr. Magel issued a Memorandum Opinion and Order on Motion for Reconsideration on April 26, 2010, in which he upheld the denial and recommended that I uphold the denial of the variance.

As Director of the Department, I now have jurisdiction over this matter pursuant to I.C. § 67-5245. Neither party has filed any exceptions to the Recommended Order and the time for doing so has expired.

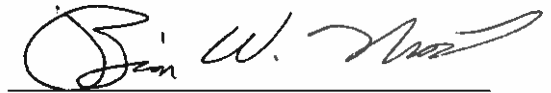
Mr. Magel found, among other things, that the grant of a variance to construct the three approaches would violate I.C. § 49-202(23) prohibiting the use of a controlled access highway by any traffic found to be incompatible with the normal and safe movement of traffic; would violate IDAPA 39.03.42.03c approach spacing on a Type IV access control highway; the southernmost approach would violate IDAPA 39.03.42.400.04a which requires approaches to be located as far as practical from intersections in order to allow for safe vehicle movement; and would violate IDAPA 39.03.42.300.07 which requires approaches to be located where they do not create undue interference with or hazards to the free movement of normal highway traffic. As found by Mr. Magel, the failure to comply with those requirements is sufficient cause for the Department to deny the variance application.

In reviewing the record, I find that substantial evidence exists to support the findings of fact made by Mr. Magel. His findings of fact are not clearly erroneous or unsupported in the record. Therefore, I adopt the findings of fact of Mr. Magel as set forth in his Memorandum Opinion and Order on Motion for Reconsideration dated April 26, 2010, and incorporate his findings of fact as if set forth verbatim herein. I also adopt and incorporate herein Mr. Magel's conclusions of law as set forth in his Memorandum Opinion and Order on Motion for Reconsideration on April 26, 2010. I therefore accept his recommendation that the petition for a variance be denied.

NOW THEREFORE, IT IS HEREBY ORDERED that Petitioner's application for a variance is denied. This is a final order and is the final administrative action of the Idaho

Transportation Department pursuant to I.C. § 67-5271. Any party to this proceeding has the right to judicial review of this Final Order in district court pursuant to I.C. § 67-5270.

DATED this 18th day of June, 2010.



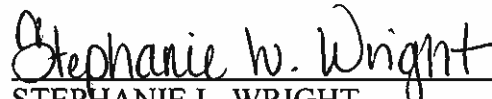
BRIAN W. NESS
Director

CERTIFICATE OF SERVICE

I hereby certify that on this 21ST day of June, 2010, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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Davison, Copple, Copple & Copple
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Boise, Idaho 83701

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Director's Final Order

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