

BEFORE THE IDAHO TRANSPORTATION DEPARTMENT

BRANDON M. ROBERTS, )  
 ) Permit Application No. 05-13-24  
 Applicant, )  
 ) **FINAL ORDER**  
 vs. )  
 )  
 STATE OF IDAHO, IDAHO )  
 TRANSPORTATION DEPARTMENT, )  
 )  
 Respondent. )

---

This matter involves an application for an approach to and from U.S. 91 in Franklin County. The Applicant, Brandon M. Roberts, requested a commercial access to and from the state highway to accommodate a new retail and office development on his property. Mr. Roberts is developing a car dealership and a retail center that will house several local businesses.

The Idaho Transportation Department's District 5 Office denied the application. The Idaho Transportation Department (ITD) purchased access rights from property owners along U.S. 91 in March of 2004. ITD purchased and had deeded to it, the access rights specifically to limit access onto this important regional route. Vehicles merging from adjoining properties into faster moving highway traffic would put the travelling public (both in merging vehicles and those already travelling on the highway) at risk.

Mr. Roberts appealed the denial of his application in a letter dated November 7, 2012 to Ed Bala, District Engineer for District 5. ITD appointed Mr. John Lynn to act as an independent hearing officer in this matter and to hold a contested case hearing pursuant to the Idaho Administrative Procedures Act. On January 16, 2013, Mr. Lynn conducted a Prehearing Conference with the parties. He issued a Prehearing Conference and Scheduling Order on January 17, 2013, outlining the administrative procedures and setting the matter for hearing.

The Hearing Officer conducted a hearing on February 7, 2013. Mr. Roberts and Department employees testified at the hearing. On March 21, 2013, the Hearing Officer issued Findings of Fact, Conclusions of Law and Recommended Order. Based on the record before him, the Hearing Officer recommended that the action of District 5 be upheld and that Mr. Robert's appeal be denied. On April 11, 2013, the Department received a letter from Mr. Roberts dated April 10, 2013, taking exception to the Hearing Officer's Findings, Conclusions and Recommended Order. On April 15, 2013, I sent out a briefing schedule based upon Mr. Roberts' April 10, 2013 letter. On or about April 26, 2013, Mr. Roberts contacted Stephanie Wright, Legal Assistant with the Legal Section of ITD. Mr. Roberts asked that his letter dated April 10, 2013 be considered his brief in support of taking Exceptions to the Hearing Officer's Findings. I granted that request.

In his letter, Mr. Roberts indicated that economic opportunity and other safety considerations support the commercial approach he proposed for his development.

On May 10, 2013, the ITD filed its Response Brief. ITD stated that the dispositive issue in this case is an issue of law rather than fact. ITD argued that under IDAPA 39.03.42.300.03, Mr. Roberts is not a qualified applicant for an encroachment (access) permit because ITD purchased the access rights along the highway from adjoining property owners. The property owners deeded the access right to ITD. ITD further notes that because it now owns the access rights, the property owners no longer have standing to seek access to and from the highway. ITD again emphasized it acquired access rights specifically to limit vehicular access for highway safety reasons. On May 28, 2013, Mr. Roberts filed a Reply Brief. Mr. Roberts stated ITD has the authority to make spacing exceptions and override highway safety requirements. He indicated the Department could sell to him the access rights it purchased in 2004. In sum, Mr.

Roberts asked the Department to make an exception in this case in the interest of the economic growth and concerns for traffic safety on local routes in Preston. In my review of the hearing record and the briefs submitted to me, I find substantial evidence exists to support the findings of fact made by the hearing officer in the recommended order. I do not find the findings of fact to be clearly erroneous or unsupported by the record in any respect. Accordingly, I adopt the findings of fact of the hearing officer contained in the recommended order as my own and incorporate said findings of fact by reference into this Final Order.

After a thorough review of the record and the law, I further adopt and incorporate herein the conclusions of law and recommendations contained in the recommended order. Specifically, since ITD purchased and now is the deeded owner of the access rights along U.S. 91, I conclude that Mr. Roberts is not a qualified applicant for an encroachment (access) permit pursuant to the administrative rules governing access to state highways, IDAPA 39.03.42.300.03. Mr. Roberts indicated in his post-hearing brief that ITD could sell to him its deeded access rights. In Conclusion of Law Number 7, the Hearing Officer noted that Idaho Code § 40-311(4) grants ITD the discretion to sell “surplus” real property that is “no longer needed for state highway purposes.” The Hearing Officer also concluded that such discretion does not alter ITD’s property rights with respect to access control or an applicant’s qualification to request an access permit. I have adopted these conclusions.

Additionally, I note that while the ITD is authorized to sell surplus real property there is nothing to indicate the deeded access rights in question are no longer needed for state highway purposes. As indicated in Finding Number 3, the Hearing Officer found ITD purchased the access rights in 2004 as part of a plan to protect highway operations and safety for fifty years.

Mr. Roberts also indicated the commercial development on his property may impact the safety of traffic on local routes in Preston. He states the local traffic problems would be relieved if the state would allow access to and from the highway for his car dealership and retail center. Mr. Roberts indicates that other entities in the area also should be given access to the highway to relieve the traffic demand on local roads. As a matter of law, ITD can only control access on state highways. If Mr. Roberts is concerned about the impact of his development to users of local roads, he needs to work with the local highway jurisdiction. ITD is not in a position to compromise highway safety.

NOW THEREFORE, IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order dated March 21, 2013 is ADOPTED as the FINAL ORDER of the Idaho Transportation Department.

IT IS FURTHER ORDERED that the encroachment application and the appeal filed by Mr. Roberts is hereby DENIED.

This order is a Final Order and is the final administrative action of the Idaho Transportation Department pursuant to Idaho Code § 67-5246. The parties' right to file an appeal and seek the judicial review of this order is set forth in title 67, chapter 52, Idaho Code.

*See Explanation of Appeal Rights attached.*

DATED this 20<sup>th</sup> day of June, 2013.



---

BRIAN W. NESS  
Director

CERTIFICATE OF SERVICE

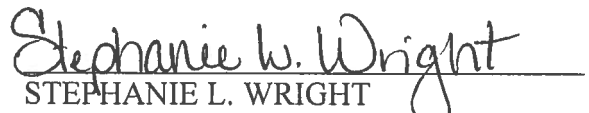
I hereby certify that on this 1<sup>st</sup> day of ~~June~~ JULY, 2013, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Chris Kronberg  
Deputy Attorney General  
Idaho Transportation Department  
P.O. Box 7129  
Boise, Idaho 83707-1129

U.S. MAIL  
 HAND DELIVERED  
 OVERNIGHT MAIL  
 EMAIL: [chris.kronberg@itd.idaho.gov](mailto:chris.kronberg@itd.idaho.gov)

Brandon M. Roberts  
1415 W. Highway 36  
Preston, Idaho 83263

U.S. MAIL  
 HAND DELIVERED  
 OVERNIGHT MAIL  
 EMAIL: [Brandon@rodeomotors.com](mailto:Brandon@rodeomotors.com)

  
STEPHANIE L. WRIGHT  
Legal Assistant

### EXPLANATION OF APPEAL RIGHTS

This is a final order of the agency. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See* I.C. § 67-5246(4).

Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to District Court by filing a petition in the District Court of the county in which a hearing was held; the final agency action was taken; the party seeking review of the order resides, or operates its principal place of business in Idaho; or the real property or personal property that was the subject of the agency action is located.

An appeal must be filed within twenty-eight (28) days of (a) the service date of this final order, (b) of an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. *See* I.C. § 67-5273. The filing of an appeal to District Court does not itself stay the effectiveness or enforcement of the order under appeal.