

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF TRANSPORTATION

In the Matter of the Denial of Access
Permit Application 1A-A-2023-105850

ORDER ON BURDEN OF PROOF

This matter is pending before Administrative Law Judge Jessica A. Palmer-Denig upon a request by the Minnesota Department of Transportation (Department) for a determination of the assignment of the burden of proof. The record related to this request closed on February 2, 2024.

William Young, Assistant Attorney General, appears on behalf of the Department. Robert Ladd, Heather Ladd, and Ladd, LLC (Appellants), appear through Robert and Heather Ladd, without legal counsel.

Based upon the record, pursuant to Minn. R. 1400.5500((D), (J), (Q), .7800(E) (2023), and for the reasons expressed in the accompanying Memorandum, the Administrative Law Judge issues the following:

ORDER

1. Appellants bear the burden of proof and must establish by a preponderance of the evidence that their application should be granted.

2. Notwithstanding that Appellants bear the burden of proof, the Department shall proceed with the presentation of its evidence following opening statements.

Dated: February 7, 2024


JESSICA A. PALMER-DENIG
Administrative Law Judge

MEMORANDUM

I. Introduction

Appellants applied for an access permit to construct a paved driveway to their property from Minnesota Trunk Highway 48 in Pine County, Minnesota. The Department denied their application, and Appellants appealed under Minn. Stat. § 160.18, subd. 4 (2022).

The Administrative Law Judge discussed the burden of proof in this matter with the parties at the first prehearing conference on December 18, 2023. The Department asserted that Appellants bear the burden to show that the Department erred in denying their application. The Department requested an opportunity to file a brief regarding the placement of the burden of proof so that the parties could obtain a determination on this issue prior to the hearing. The Department filed its brief on January 26, 2024. Appellants did not file a response to the Department's submission.

II. Analysis

Minnesota courts have long recognized that property owners have a right of reasonably convenient and suitable access to public roadways abutting their property.¹ Determining whether a property owner has been denied reasonable access depends on the facts of each case.² In the context of takings cases, courts have held that property owners do not have a right to access at any particular location,³ and even the imposition of substantial inconvenience upon the property owner's access has not been considered a denial of the right of access.⁴

At issue here is whether the Department followed its Access Management Manual and applicable law in denying Appellants' application. In a prior contested case proceeding under Minn. Stat. § 160.18 (2022), a judge of this tribunal determined that the Department bore the burden of proof to establish that its denial of an access permit application complied with the applicable legal standards.⁵ The Department asserts that the burden of proof should instead rest with Appellants.

Under Minn. R. 1400.7300, subp. 5 (2023), "[t]he party proposing that a certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard." Appellants' appeal arises under Minn. Stat. § 160.18, which does not provide for any standard or burden. In this case, Appellants are proposing that a certain action be taken, in that Appellants contend that the Department should grant their application for a driveway permit at a specific location. The Administrative Law Judge determines that Appellants bear the burden of proof to establish by a preponderance of the evidence that their application should be granted.

¹ *Johnson v. City of Plymouth*, 263 N.W.2d 603, 605 (Minn. 1978); MINN. CONST. art. I, § 13.

² *Johnson*, 263 N.W.2d at 607.

³ *State v. Northwest Airlines, Inc.*, 413 N.W.2d 514, 519 (Minn. Ct. App. 1987) ("An abutting property owner does not, however, have a right of access at every point on the street or highway; his right of access is subject to reasonable regulations in the public interest."); *Grossman Invs. v. State*, 571 N.W.2d 47, 51 (Minn. Ct. App. 1997) (stating that "[n]ot every denial of immediate or convenient access will support a claim for damages," and holding that the loss of direct access to a roadway did not amount to a taking).

⁴ *Johnson*, 263 N.W.2d at 607.

⁵ *In re the Denial of Access Permit Application 1A-A-2021-95608*, No. 60-3000-37722, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION (Minn. Office Admin. Hearings July 7, 2022).

Notwithstanding that, the Administrative Law Judge determines that the Department will be required to present its evidence before Appellants' case-in-chief. Under Minn. R. 1400.7800(E), "the party with the burden of proof shall begin the presentation of evidence unless the parties have agreed otherwise or the administrative law judge determines that requiring another party to proceed first would be more expeditious and would not jeopardize the rights of any other party." The Administrative Law Judge determines that the hearing will proceed more expeditiously if the Department presents its case first, and that no party's rights are jeopardized by rearranging the order of the parties' evidentiary presentations.

III. Conclusion

Appellants bear the burden of proof to show by a preponderance of the evidence that the Department erred when it denied their application for a driveway access permit. Notwithstanding the assignment of the burden of proof to Appellants, the Department shall present its evidence first at the hearing.

J. P. D.