

From: Salay, Ann
Sent time: 06/23/2014 12:13:22 PM
To: Pazooki, Ramin
Cc: De Ste. Croix, Barbara
Subject: FW: Salay advice: Limited Access; Type A approach/Commercial not available WAC 468-58-030(1)(a) vs DM 530.10(2)
Attachments: SKMBT_50112091316100.pdf Anjuman-Daycare2009Letter.pdf SKMBT_C45214061314000.pdf 530.pdf
SKMBT_C45214061310340.pdf SKMBT_C45214061310300.pdf SKMBT_C45214061310200.pdf NE 51st.

EXHIBIT
B

Him, Ramin: I am walking out the door, but I would say that a church/mosque/temple would be considered commercial since they generate a great deal of ADT. Certainly, they are not farms or residences. Perhaps they might be a Type C? However, Maybe Barb has experience with this question. I do not. If she does not, what does FHWA say?

Annie

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From: Pazooki, Ramin [mailto:PazookR@wsdot.wa.gov]
Sent: Monday, June 23, 2014 12:05 PM
To: Salay, Ann (ATG)
Cc: De Ste. Croix, Barbara
Subject: FW: Salay advice: Limited Access; Type A approach/Commercial not available WAC 468-58-030(1)(a) vs DM 530.10(2)

Thanks again Annie for your response. One more question: Is an access connection to a mosque or a church considered a "commercial approach"? In other words: Are religious establishments considered commercial businesses? I am referring to WAC 468-58-030(1)(a) prohibiting "commercial approaches" to fully limited access highways.

Thanks, Ramin

Ramin Pazooki
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From: Salay, Ann [mailto:AnnS@atg.wa.gov]
Sent: Friday, June 20, 2014 9:44 AM
To: Pazooki, Ramin
Subject: Salay advice: Limited Access; Type A approach/Commercial not available WAC 468-58-030(1)(a) vs DM 530.10(2)

Greetings, Ramin: Pursuant to your below email and the attached documents, I respond as follows:

1. General Question: Do you agree with Steve Chestnuts' advice that based on WAC 468-58-030(1)(a) we can't allow any commercial access onto a fully controlled limited access highway?

Steve was correct; WSDOT cannot allow commercial access onto a fully controlled limited access highway. However, this particular Type A approach was handled in a different manner, since no Type A approaches are authorized either; only Types C and F are approved only under certain circumstances. In this particular case, it appears that WSDOT decided not to condemn the entire parcel or land lock it; so, it allowed for Owner Haagen to reserve a Type A approach. If done today, the ROW plan sheet would say Full and Partial limited access control. A partially controlled limited access facility authorizes a Type A approach, but not a commercial approach. The only scenario where a

commercial approach would be authorized would be if this section of SR 520 were a modified controlled limited access highway. Whether WSDOT wants to downgrade this area of SR 520 is a business decision.

2. Specific Question: Do the provisions of WAC 468-58-030(1)(a) prohibiting any commercial accesses apply even when the right of way along with the limited access rights have been transferred to the City?

Yes, WAC-58-030(1)(a) applies even though the city now owns both the ROW and limited access rights pursuant to the 1991 deed. As a reminder, WSDOT no longer transfers ownership of limited access rights to cities or counties because they almost never maintain access. This was a policy change in about 2000. Under these circumstances, certain areas of SR 520 were transferred to Redmond, including the obligation following: "The [city] shall have no right of ingress and egress to, from and between said SR 520 and the lands herein conveyed and will maintain the control of ingress and egress to, from and between the lands herein conveyed and the lands adjacent thereto.....EXCEPT that [the city]...shall have reasonable ingress and egress to, from and between the lands conveyed and said Highway Via off and on ramps...."

This means (1) the city has no authority to modify the limited access as conveyed. Sometimes, you might see a deed's language transfer access and include a clause that if the city wants to modify the access, it must first obtain WSDOT's permission. (2) That is not the case with this deed. There is no such option. However, WSDOT could agree to some change in access in other locations, but not for a commercial approach because that is prohibited by WAC.

WSDOT's design manual must be read in light of all statutes and WACs. WSDOT does not have the authority to modify either a statute or WAC by a manual or policy. Statutes and WACs may only be modified through the legislative or administrative process. It might be helpful to reference the WACs in the design manual so that new employees are not confused, but that is a business decision.

I hope that the above will be of assistance to you.

Annie

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From: Pazooki, Ramin [<mailto:PazookR@wsdot.wa.gov>]
Sent: Wednesday, June 18, 2014 6:03 PM
To: Salay, Ann (ATG)
Subject: WAC 468-58-030(1)(a) vs DM 530.10(2)

Good Afternoon, Annie:

I would like to get your advice on a situation that I have run into.

In 2009, we received a proposal for a daycare center in Redmond on a property fronting SR 520 limited access line. This area of SR 520 had been transferred to the City in 1991. There was a single family house on that property and we denied upgrading that access to a commercial access based on the advice we received from Steve Chestnut of our HQ's Access Management unit. Steve's advice was based on the WAC 468-58-030(1)(a) which prohibits having commercial accesses within fully controlled limited access highways.

In 2012, we received a proposal for constructing a mosque on the same property. After conferring with HQ's access management unit, we wrote a letter to the City referring to DM 530.10(2). We further stated that this area of SR 520 had been transferred to the City and while the City would be responsible for granting or denying the access request, the City would still have to follow our Design Manual requirements for any modification to the existing single family access.

The previous applicant for the daycare center is now questioning why we had different responses to these two proposals.

In similar situations, we, as well as other Regions, have always taken the 2nd approach which is to let the City know that while they have jurisdiction over the limited access rights in the deeded areas, they would still have to follow the requirements of our Design Manual for allowing or modifying any access connections. The problem is that DM 530.10(2) does not prohibit having commercial accesses within fully controlled limited access highways so, in my opinion, it is not consistent with the WAC 468-58-030(1)(a). On the 1st proposal, we cited the WAC and denied the commercial access point and on the 2nd proposal, we cited the DM, which must reflect the WAC, it does not. If you agree with Steve Chestnut's opinion, as I do, then we would need to revise DM 530.10(2) by adding language that this chapter applies to residential access connections only, and that no commercial accesses are allowed on fully controlled limited access highways.

So I have two questions:

- 1) General Question: Do you agree with Steve Chestnut's advice that based on WAC 468-58-030(1)(a) we can't allow any commercial access onto a fully controlled limited access highway?
- 2) Specific Question: Do the provisions of WAC 468-58-030(1)(a) prohibiting any commercial accesses apply even when the right of way along with the limited access rights have been transferred to the City?

Attached are the following documents for your review:

1. Our letter for the daycare proposal dated 2/27/2009
2. Our letter for the mosque proposal dated 8/24/2012
3. Steve Chestnut's email dated 2/24/2009 which includes a copy of WAC 468-58-030(1)(a)
4. Right of way plan showing the subject parcel
5. Copy of the DM 530.10(2)
6. GM 501 which was the turnback agreement transferring the right of way to the City of Redmond dated 8/7/1969
7. Quit Claim Deed, deeding the right of way to the City based on GM 501 dated 3/12/1991
8. Judgment and Decree for the subject property dated 2/20/1974

I appreciate your advice on the above two questions.

Thanks, Ramin

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