COURT OF APPEALS
DECISION
DATED AND RELEASED

AUGUST 13, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0635-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE EX REL.
RONALD H. KRIENKE and
KAREN L. KRIENKE,

Petitioners-Appellants,

v.

TOWN BOARD,
TOWN OF ROUND LAKE,

Respondent-Respondent.

APPEAL from a judgment of the circuit court for Sawyer County: NORMAN L. YACKEL, Judge. *Affirmed*.

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Ronald and Karen Krienke appeal a judgment affirming a decision of the Administrative Appeal Board for the Town of Round

Lake that denied the Krienkes' application for a driveway permit.[1] They argue that the board's decision was arbitrary, oppressive and unreasonable and that its findings are not supported by the evidence. We reject these arguments and affirm the judgment.

The Krienkes sought driveway access to Tiger Cat Road. The board denied the permit, citing safety concerns including the number of exits created on the road, sight stopping distance, existing speed limits, stopping distance and hazards created by topography and geology.

The scope of the court's review is limited to whether the board kept within its jurisdiction; whether it proceeded on a correct theory of law; whether its action was arbitrary, oppressive or unreasonable and represents its will and not its judgment; and whether the evidence was such that the board might reasonably make the determination in question. *See* ***Klinger v. Oneida County***, 149 Wis.2d 838, 843, 440 N.W.2d 348, 350 (1988). The court must view the board's determination with a presumption of correctness and validity. *See* ***Town of Hudson v. Board of Adjustment***, 158 Wis.2d 263, 277, 461 N.W.2d 827, 832 (Ct. App. 1990). It is not the function of the court to substitute their judgment for the board's. *See* § 277.57(8), STATS.

The board's decision is supported by adequate evidence and was not arbitrary, oppressive or unreasonable. Board members personally inspected the area and assessed the danger created by adding access points to a road with a fifty-five mile-per-hour speed limit, cars pulling boat trailers and numerous non-vehicular uses. The board noted that the road has narrow shoulders and is adjacent to a swamp. In winter months, heavy morning traffic and shading from the sun causes the road to become slippery. These findings are adequately supported by the record and constitute a reasonable basis for the board's decisions.

The Krienkes focus solely on the sight stopping distance. Their expert witness visited the site only once in August and measured the sight stopping distance from the crest of the hill to the Krienkes' proposed driveway.

[1] This is an expedited appeal under RULE 809.17, STATS.

This testimony, without considering factors like icing and road use, does not present compelling evidence that the proposed driveway would be safe. Another Krienke witness suggested reducing the speed limit in the area to thirty-five miles per hour, implicitly conceding the board's safety concerns.

The board's approval of previous driveway permits to other individuals does not establish that its decision was based on a double standard. As the trial court noted, each case must be decided on its own merits. The Krienkes established that the sight stopping distance to its proposed driveway was greater than the distance for other driveways that had been approved over the years. They presented no evidence regarding traffic volume, speed, seasonal uses or special hazards. Even if the circumstances were nearly identical, the board could reasonably determine that it should limit the number and spacing of potential hazards.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.