

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF TRANSPORTATION,)
)
Petitioner,)
)
vs.) CASE NO. 91-4733T
)
)
SUN CITY SHELL, INC.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice the Division of Administrative Hearings, by it duly designated Hearing Officer, K. N. Ayers, held a formal hearing in the above styled case on March 3, 1992, at Tampa, Florida.

APPEARANCES

For Petitioner: Charles G. Gardner, Esquire
Florida Department of Transportation
Haydon Burns Building, M.S. 58
605 Suwannee Street
Tallahassee, Florida 32399-0458

For Respondent: Maxwell G. Battle, Jr., Esquire
Post Office Box 1889
Dunedin, Florida 34697-1889

STATEMENT OF THE ISSUES

Whether Respondent's trailer located on Old US 41 near Sun City in Hillsborough County, is a sign and illegal by reason of not having been permitted.

PRELIMINARY STATEMENT

By notice of alleged violation dated April 29, 1991, the Department of Transportation (DOT), Petitioner, seeks to require Sun City Shell, Inc., Respondent, to remove a trailer parked along US 41 near Sun City in Hillsborough County, Florida, with the name "Sun City Shell" in large letters on both sides of the trailer. As grounds therefore, it is alleged the trailer constitutes a sign and is illegal by reason of not having been issued a permit. Respondent requested a formal hearing to challenge this alleged violation and these proceedings followed.

At the hearing Petitioner called one witness, Respondent called one witness, and eight exhibits were admitted into evidence. There is no dispute regarding the operative facts here involved; accordingly, proposed findings submitted by the parties are accepted.

Having considered all evidence presented, the following is submitted.

FINDINGS OF FACT

1. DOT is the state agency charged with enforcing provisions of Chapter 479, Florida Statutes, relating to outdoor advertising signs.

2. Sun City Shell, Inc., is a Florida corporation engaged in the business of digging and selling oyster shells and fill dirt.

3. The activities of Respondent consists of mining the shells and dirt and selling to buyers who transport the material in their own vehicles.

4. The business office of Sun City Shell is located one-half to one mile south from the location of the trailer.

5. Respondent leases the property on which the mining is done from the owner of the land where the trailer is located. Respondent has been authorized to park tractors and trailers on this property (Exhibit 6).

6. There is a railroad running some one-tenth of a mile away from the highway from the trailer and the mining operation takes place another one-tenth of a mile from the railroad tracks.

7. The trailer here involved is a standard forty-foot, over-the-road trailer normally towed by a tractor and is primarily used by Respondent for the storage of tools used in the mining operation.

8. The trailer is fully operational and has a valid current registration (Exhibit 7).

9. The trailer has "Sun City Shell" in large letters on both sides of the trailer, but there are no arrows, address or telephone numbers, or other identification on the trailer. No application has been made by Respondent for a permit to operate and maintain an outdoor advertising sign in the location where the trailer is parked. The lettering on the trailer is clearly visible from Old US 41, which is a federal aid primary highway.

10. Section 106 of the Hillsborough County Code (Exhibit 8) requires the name of the owner to be printed on motor vehicles used in the operation of the business. Section 320.01(1), Florida Statutes, defines "motor vehicle" to mean, inter alia, a trailer.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings.

12. The sole issue for determination is whether the trailer is a sign as defined in Section 479.01(14), Florida Statutes. If it is a sign it is in violation of Section 479.07, Florida Statutes, by reason of not having been issued a permit.

13. Section 479.01(14) provides:

"Sign" means any combination of structure and message in the form of an outdoor sign,

display, device, figure, painting, drawing, message, placard, poster, billboard, advertising structure, advertisement, logo, symbol, or other form, whether placed individually or on a V-type, back-to-back, side-to-side, stacked, or double-faced display, designed, intended, or used to advertise or inform, any part of the advertising message or informative contents of which is visible from any place on the main-traveled way. The term does not include an official traffic control sign, official marker, or specific information panel erected, caused to be erected, or approved by the department.

14. The critical portion of this definition is "designed, intended, or used to advertise or inform." The lettering on the side of the trailer is visible from the federal aid primary highway, but the trailer was not placed on this property to advertise or inform. One who was unaware of the business of Sun City Shell might well assume that was the name of a gasoline station selling Sun Petroleum products. The "sign" contained no directions or address for the operations office of the business; and actually served only to stow equipment used in the mining operation as testified by the owner of the Respondent.

15. From the foregoing, it is concluded that the trailer visible from US 41 near Sun City in Hillsborough County is not a sign as defined in Section 479.01(14), Florida Statutes, and the notice of alleged violation should be dismissed.

RECOMMENDATION

It is RECOMMENDED that a final order be entered dismissing the notice of violation dated April 29, 1991, issued to Sun City Shell, Inc.

DONE AND ORDERED in Tallahassee, Leon County, Florida, this __27__ day of April 1992.

K. N. AYERS
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this __27__ day of April 1992.

COPIES FURNISHED:

Charles C. Gardner, Esquire
Florida Department of Transportation
Haydon Burns Building, M.S. 58
605 Suwannee Street
Tallahassee, Florida 32399-0458

Maxwell G. Battle, Jr., Esquire
Post Office Box 1889
Dunedin, Florida 34697-1889

Ben G. Watts
Secretary
Department of Transportation
Haydon Burns Building, M.S. 58
605 Suwannee Street
Tallahassee, Florida 32399-0458
Attn: Eleanor F. Turner

Thornton J. Williams
General Counsel
Department of Transportation
Haydon Burns Building, M.S. 58
605 Suwannee Street
Tallahassee, Florida 32399-0458

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.