

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF TRANSPORTATION,)
)
 Petitioner,)
)
 vs.) CASE NO. 94-0767
)
 JOHN J. CURRAN,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was conducted in this case on July 26, 1994, in Miami, Florida, before Stuart M. Lerner, a duly designated Hearing Officer of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Charles G. Gardner, Esquire
Assistant General Counsel
Department of Transportation
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605 Suwannee Street
Tallahassee, Florida 32399-0458

For Respondent: John J. Curran, pro se
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STATEMENT OF THE ISSUE

Whether the Department of Transportation (hereinafter referred to as the "Department") should close the median opening on Northwest 79th Street, immediately west of Northwest 27th Avenue, near Respondent's business located at 2770 Northwest 79th Street, Miami, Florida?

PRELIMINARY STATEMENT

By letter dated January 10, 1994, the Department advised Respondent's of its intention to "close the median opening located on N.W. 79 Street, immediately west of N.W. 27 Avenue [which] serves the driveway connection for [Respondent's] property located at 2770 N.W. 79 Street, Miami, Florida 33147." The letter further informed Respondent of his right to request an administrative hearing on the matter.

On January 20 1994, Respondent filed a petition challenging the Department's preliminary determination to close the median opening and requesting a formal administrative hearing. On February 10, 1994, the Department referred the matter to the Division of Administrative Hearings for the assignment of a Hearing Officer to conduct the formal administrative hearing Respondent had requested. The hearing was originally scheduled for June 10, 1994, but was continued at the Department's request. The hearing was ultimately held on July 26, 1994.

At the hearing, the Department presented the testimony of one witness, Debora Rivera, a traffic engineer who works for the Department. In addition to Rivera's testimony, the Department offered six exhibits (Petitioner's Exhibits 1, 2a, 2b, 3, 4, and 5) into evidence. All six exhibits were received by the Hearing Officer. Respondent testified on his own behalf. He presented no other evidence.

Following the conclusion of the evidentiary portion of the hearing, the Hearing Officer, on the record, advised the parties of their right to file post-hearing submittals and established a deadline for the filing of such submittals: 21 days from the date of the Hearing Officer's receipt of the transcript of the hearing. The Hearing Officer received the hearing transcript on August 15, 1994. On August 29, 1994, the Department timely filed a proposed recommended order containing, what are labelled as, "findings of fact" and "conclusions of law." The Department's proposed recommended order has been carefully considered by the Hearing Officer. The "findings of fact" set forth therein are specifically addressed in the Appendix to this Recommended Order.

FINDINGS OF FACT

Based upon the evidence adduced at hearing, and the record as a whole, the following Findings of Fact are made:

1. Respondent owns and operates a business, J'S Trading Post, which is located on the south side of Northwest 79th Street, just west of Northwest 27th Avenue, in Miami, Florida.

2. Northwest 79th Street is an east-west roadway that is part of the State Highway System, having been designated State Road 934.

3. Although Northwest 79th Street is part of the State Highway System, that segment of the roadway at issue in the instant case has not yet been given an access classification by the Department.

4. The roadway segment has a posted speed limit of 40 miles per hour.

5. Northwest 27th Avenue is a north-south roadway that is also part of the State Highway System, having been designated State Road 9.

6. Northwest 79th Street and Northwest 27th Avenue form a "four legged" intersection.

7. Northwest 27th Avenue is the major approach to the intersection. It has three through lanes (including a combined through/right turn lane), as well as an exclusive left turn lane, in each direction.

8. Northwest 79th Street is the minor approach to the intersection. It also has three lanes (including a combined through/right turn lane) in each direction. Left turns from Northwest 79th Street onto Northwest 27th Avenue, however, are not presently permitted.

9. Both Northwest 79th Street and Northwest 27th Avenue have restrictive medians at the intersection approaches.

10. The Department conducted a traffic study and analysis of the intersection of Northwest 79th Street and Northwest 27th Avenue in 1993, which revealed, among other things, the following: the average speeds of eastbound and westbound traffic in the intersection were 35 and 38 miles per hour, respectively; the intersection's morning and afternoon peak hour volumes were 4,588 and 5,250 vehicles, respectively; the levels of service (LOS) for the intersection's morning and afternoon peak hours were D (with a 39.3 second delay) and F (with an undetermined

amount of delay), respectively; and the intersection had been the site of a significant number of accidents.¹

11. Following the completion of the study and analysis of the intersection, the Department reasonably determined that, in the interest of operational efficiency and safety, exclusive left turn lanes should be added to Northwest 79th Street at the intersection.

12. There is presently an opening in the restrictive median that separates the eastbound and westbound lanes of Northwest 79th Street to the west of the intersection. The distance from the centerline of the median opening to the centerline of the intersection is 260 feet.

13. The median opening is near, but not directly across from, the driveway that connects Respondent's property with the eastbound lanes of Northwest 79th Street. Westbound motorists on Northwest 79th Street use the median opening to access Respondent's property and other nearby driveways, even though such a maneuver is dangerous inasmuch as it involves the motorist travelling westbound for a short distance in the eastbound lanes of the roadway.

14. The planned addition of an exclusive left turn lane on eastbound Northwest 79th Street will result in the closure of the median opening and the elimination of this safety hazard.

15. Notwithstanding that it will be more inconvenient for westbound motorists on Northwest 79th Street to get to and from Respondent's business, it is prudent, from a traffic engineering and safety perspective, to close the median opening.

16. Although Respondent's and his customers' direct access to and from Northwest 79th Street will be restricted if the median opening is closed, such access will not be eliminated entirely as a result of the closure. They will still have direct access to and from the eastbound lanes of the roadway.

CONCLUSIONS OF LAW

17. Sections 335.18 through 335.188, Florida Statutes, constitute the "State Highway System Access Management Act" (hereinafter referred to as the "Act").

18. The Act defines the scope of the Department's authority to regulate access to the State Highway System and prescribes the manner in which that authority must be exercised.

19. Section 335.181(2), Florida Statutes, addresses the extent to which the Department may exercise its regulatory authority where there is an abutting property owner. It provides, in pertinent part, as follows: It is the policy of the Legislature that:

(a) Every owner of property which abuts a road on the State Highway System has a right to reasonable access to the abutting state highway but does not have the right of unregulated access to such highway. The operational capabilities of an access connection² may be restricted by the department. However, a means of reasonable access to an abutting state highway may not be denied by the department, except on the basis of safety or operational concerns as provided in s. 335.184.

(b) The access rights of an owner of property abutting the State Highway System are subject to reasonable regulation to ensure the public's right and interest in a safe and efficient highway system. This paragraph does not authorize the department to deny a means of reasonable access to an abutting state highway, except on the basis of safety or operational concerns as provided in s. 335.184.

20. Section 335.184, Florida Statutes, provides, in pertinent part, as follows:

(3) A property owner shall be granted a permit for an access connection to the abutting state highway, unless the permitting of such access would jeopardize the safety of the public or have a negative impact on the operational characteristics of the highway. Such access connection and permitted turning movements shall be based upon standards and criteria adopted, by rule, by the department.

21. The "standards and criteria adopted, by rule, by the department" are found in Chapter 14-97, Florida Administrative Code.

22. The "interim standards" set forth in Rule 14-97.004, Florida Administrative Code, are applicable to the segment of Northwest 79th Street at issue in the instant case because this roadway segment has not yet been formally classified by the Department.

23. These "interim standards" provide, in pertinent part, that, where the posted or design speed limit of the roadway segment in question is 40 miles per hour, the "minimum median opening spacing" is 0.25 miles for a "full median opening and 660 feet for a "directional median opening."

24. "Minimum median opening spacing," as that term is used in the "interim standards," is defined in Rule 14-97.002(20), Florida Administrative Code, as follows:

[T]he minimum allowable distance between openings in a restrictive median³ to allow for crossing the opposing traffic lanes to access property or for crossing the median to travel in the opposite direction (U-turn). The minimum spacing or distance is measured from centerline to centerline of the openings along the traveled way.

25. A "full median opening," as that term is used in the "interim standards, is defined in Rule 14-97.002(15), Florida Administrative Code, as follows:

[A]n opening in a restrictive median designed to allow all turning movements to take place from both the state highway and the adjacent connection.

26. A "directional median opening," as that term is used in the "interim standards," is defined in Rule 14-97.002(11), Florida Administrative Code, as follows:

[A]n opening in a restrictive median which provides for U-turn only, and/or left-turn in movements. Directional median openings for two opposing left or "U-turn" movements

along one segment of road are considered one directional median opening.⁴

27. An examination of the record in the instant case reveals that the median opening at issue in the instant case does not meet the applicable spacing requirements of the "interim standards" and that "safety and operational concerns" justify its closure. Moreover, the Department's closure of the opening will not leave Respondent without "reasonable access" to Northwest 79th Street inasmuch as his driveway, which connects his property with the eastbound lanes of the roadway, will remain open and therefore such action on the part of the Department will not deprive Respondent of any right to which he is entitled pursuant to the Act. See Division of Administration, State Department of Transportation v. Capital Plaza, Inc., 397 So. 2d 682, 683 (Fla. 1981)(construction of "a raised four-foot-wide median" on roadway preventing northbound drivers from "turn[ing] across traffic directly into Capital's service station" did not constitute a "deprivation of access" inasmuch as there was "still free, unimpeded access to Capital's service station albeit only by southbound traffic"); Division of Administration, State Department of Transportation v. Palm Beach West, Inc., 409 So. 2d 1130, 1131 (Fla. 4th DCA 1982)(construction of a "median strip" did not amount to denial of access).

28. In view of the foregoing, the Department should reject Respondent's challenge to its proposed closure of the opening.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department of Transportation enter a final order rejecting Respondent's challenge to the Department's proposed closure of the median opening on Northwest 79th Street, immediately west of Northwest 27th Avenue, near Respondent's business.

DONE AND ENTERED in Tallahassee, Leon County, Florida, this 19th day of September, 1994.

STUART M. LERNER
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 19th day of September, 1994.

ENDNOTES

1/ The intersection has been placed on the Department's "high accident" list.

2/ A "connection," as that term is used in the Act, "means driveways, streets, turnouts, or other means of providing for the right of reasonable access to or from the State Highway System."

3/ A "restrictive median," as that term is used in Rule 14-97.002(20), Florida Administrative Code, is "the portion of a divided highway or divided driveway physically separating vehicular traffic traveling in opposite directions." The term includes "physical barriers that prohibit movement of traffic across the median such as a concrete barrier, a raised concrete curb and/or island, and a grassed or swaled median." Rule 14-97.002(26), Fla. Admin. Code. A "non-restrictive median," on the other hand, is "a median or painted centerline which does not provide a physical barrier between center traffic turning lanes or traffic lanes traveling in opposite directions." Rule 14-97.002(23), Fla. Admin. Code.

4/ It is apparent from a reading of the language of Rule 14-97.002(11), Florida Administrative Code, that an opening need not allow for opposing left turn movements in order to be a "directional median opening" subject to the spacing requirements of the "interim standards."

APPENDIX

The following are the Hearing Officer's specific rulings on the "findings of fact" set forth in the Department's proposed recommended order:

1-7. Accepted and incorporated in substance, although not necessarily repeated verbatim, in this Recommended Order.

8. Accepted as true but not incorporated in this Recommended Order because it would add only unnecessary detail to the factual findings made by the Hearing Officer.

9. Accepted and incorporated in substance.

10. To the extent that this proposed finding states that the average speeds are 35 mile per hour in the eastbound direction," it has been accepted and incorporated in substance. Otherwise, it has been rejected because it is not supported by competent substantial evidence.

11. Accepted and incorporated in substance.

12. Accepted as true but not incorporated in this Recommended Order because it would add only unnecessary detail to the factual findings made by the Hearing Officer.

13-14. Accepted and incorporated in substance.

15. Accepted as true but not incorporated in this Recommended Order because it would add only unnecessary detail to the factual findings made by the Hearing Officer.

16. Accepted and incorporated in substance.

17. Accepted as true but not incorporated in this Recommended Order because it would add only unnecessary detail to the factual findings made by the Hearing Officer.

18-21. Accepted and incorporated in substance.

22. To the extent that this proposed finding states that "the median opening in this controversy is only approximately 260 feet from the intersection," it has been accepted and incorporated in substance. Otherwise, it has been rejected because it is more in the nature of a conclusion of law than a finding of fact.

23-24. Accepted and incorporated in substance.

COPIES FURNISHED:

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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 of time 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.