STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

HUGH ALLEN ODEN,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 98-2186
	)	
DEPARTMENT OF TRANSPORTATION,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

This cause came on for formal hearing on October 6, 1998, in Tallahassee, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Hugh Allen Oden, pro se
8612 Westview Lane
Pensacola, Florida 32514

For Respondent: Brian F. McGrail, Esquire
Department of Transportation
Haydon Burns Building, Mail Station 58
602 Suwannee Street
Tallahassee, Florida 32399-0458

STATEMENT OF THE ISSUES

The issues in this case are: (1) whether Petitioner has standing to bring this action; and if so, (2) whether Respondent properly denied his application for a driveway/connection permit.

PRELIMINARY STATEMENT

In a Notice to Deny Permit dated March 23, 1998, Respondent Department of Transportation (Respondent) denied Petitioner Hugh

Allen Oden's (Petitioner) application for a connection permit, Permit Application Number 98-A-394-0013.

Petitioner requested an informal hearing on April 21, 1998. Respondent subsequently determined that the case involved disputed issues of material fact. On May 12, 1998, Respondent referred the case to the Division of Administrative Hearings.

Respondent filed a Response to Initial Order on May 21, 1998. Petitioner filed his response on May 28, 1998. A Notice of Hearing, dated May 28, 1998, scheduled the case for hearing on October 6, 1998, in Pensacola, Florida.

On July 1, 1998, Petitioner filed a ex parte letter requesting information about hearing procedures. On July 13, 1998, the undersigned issued an Order Publishing Ex Parte Communication.

On July 22, 1998, the undersigned issued a Notice of Video Hearing and Order of Instructions. This notice advised the parties that the hearing would be conducted on October 6, 1998, by video teleconference. Pursuant to the notice, the Administrative Law Judge would be located in Tallahassee, Florida. Other participants in the hearing would be located in Pensacola, Florida.

On August 24, 1998, Petitioner filed a request for the hearing to be held with all parties appearing in Tallahassee, Florida. The undersigned granted this request by order dated August 11, 1998.

During the hearing, Petitioner testified on his own behalf. He offered six Exhibits which were admitted into evidence.

Respondent presented the testimony of two witnesses. Respondent's Exhibits DOT 1-6 and 8-10 were admitted into evidence.

One of Respondent's exhibits was a deed to the property which was the subject of Petitioner's application. The deed raised questions regarding Petitioner's standing to request a formal hearing. The undersigned granted Petitioner leave to file a post-hearing exhibit on or before October 16, 1998, demonstrating his ownership interest in the subject property.

Petitioner filed a post-hearing exhibit on October 15, 1998.

A copy of the transcript was filed with the Division of Administrative Hearings on October 30, 1998. Petitioner filed a Proposed Recommended Order on November 12, 1998. Respondent filed a Proposed Recommended Order on November 16, 1998.

FINDINGS OF FACT

1. On February 24, 1998, Petitioner submitted a Driveway/Connection Application, Number 98A3940018 to Respondent. Petitioner's application sought a permit to construct a driveway/connection to a proposed retail sales office project for Lot 13, Block 396, Avolon Beach Subdivision, in Santa Rosa County, Florida. The site of the proposed project is located at 2996 Avolon Boulevard (State Road 281), between the I-10 exit ramp and San Pablo Street.

STANDING

2. Petitioner entered his name on the application as owner

of the subject property. Petitioner signed the application as owner with title to the property. He signed the application certifying that he was familiar with the information contained in the application and that to the best of the applicant's knowledge and belief, the information contained therein was true and correct. Petitioner did not fill out a section of the application entitled, "Are You An Authorized Representative?"

3. Respondent relied on Petitioner's certification that he was the owner of the property and processed his application.

4. During the hearing, Petitioner initially testified that he bought the subject property in February of 1998. There was no driveway connection from Lot 13 to Avolon Boulevard in February of 1998.

5. Petitioner did not have a copy of the deed to the subject property with him at the hearing. He admitted on the record that a deed indicating his ownership interest was not filed with the public records in Santa Rosa County. He also admitted that no such deed existed.

6. Petitioner claims that the land was under contract but "had not gone to closing yet." Petitioner did not have a copy of the contract to offer as an exhibit at the hearing.

7. Respondent produced copies of two deeds for the subject property at the hearing. The most recent of these deeds was recorded on July 14, 1997. It indicates that the property is owned by the George H. Moss Trust, George H. Moss, Trustee.

8. Petitioner's post-hearing exhibit consisted of two documents. The first is a Memorandum Agreement dated February 2, 1998. The memorandum indicates that Tim Oden, Agent for 3/0 Partners, LLC, paid $500 in earnest money as a deposit for the purchase of the subject property belonging to George Moss, with the closing to take place on or before April 15, 1998, contingent on specified terms of purchase.

9. One of the terms of purchase requires proof of legal access to San Mateo Avenue which is the subject of this proceeding and has not been fulfilled. Additionally, Petitioner did not present evidence that any of the other conditions of the contract have been fulfilled.

10. The Memorandum Agreement is signed by Tim Oden, Agent for 3/0 Partners, LLC, as buyer and George H. Moss as seller.

11. The second document included in Petitioner's post-hearing exhibit is a copy of a cancelled check in the amount of $500 payable to George Moss for the subject property and signed by Tim Oden. Mr. Moss endorsed the check for deposit.

12. Petitioner's name does not appear anywhere on the Memorandum Agreement. There is no direct evidence showing Petitioner's relationship to Tim Oden or 3/0 Partners, LLC. He has not demonstrated that he has an ownership interest in the property.

PERMIT APPLICATION

13. In a Notice to Deny Permit dated March 23, 1998,

Respondent advised Petitioner that his application was denied. Respondent's notice gave the following reasons for denying the application:

> The Limited Access Right of Way and fence were not shown on the plans. A field review found this proposed connection within the Limited Access Right of Way. This section of State Road 281 is a Limited Access Facility, in conjunction with I-10. Access to the property can not be permitted through the Limited Access Fence or across the Limited Access Right of Way. Access rights were acquired for the construction of I-10 and the interchanges. Access can not be permitted to the ramps or ramp tapers.

14. On or about April 7, 1998, Petitioner provided Respondent with a revised Driveway Permit Drawing showing the Limited Access Right-of-Way and fence.

15. Petitioner admitted in a telephone conversation with Respondent's permit engineer that a previous owner had been compensated for the loss of access to Avolon Boulevard when the I-10 interchange was constructed.

16. The subject property did not have an existing driveway connection when the I-10 interchange was constructed. The Shell service station and the used car lot, which are located at the Avolon Boulevard interchange, had existing driveway connections before the interchange was constructed.

17. Similarly, driveway sites near the intersection of Davis Highway, in Escambia County, and I-10, were in existence at the time the I-10 interchange ramps were constructed. These existing driveways were allowed to remain after construction of

the ramps. New driveway connections would not be permitted at these locations. Permits will not be granted if these properties undergo a substantial change in use which requires a change in permitting.

18. Petitioner's description of the location of the off ramp, ramp taper, and limited access area of Avolon Boulevard are erroneous. The proposed driveway for the subject property is located in the off ramp lane.

19. Federal highway regulations require control of connections beyond the ramp terminal of an interchange for at least 100 feet in urban areas and 300 feet in rural areas. This control for connections to crossroads must be effected by purchase of access rights, providing frontage roads, controlling added corner right-of-way areas, or denying driveway permits.

20. Petitioner's proposed driveway would be located within 300 feet from the end of the taper of the off ramp. Federal regulations prohibit the issuance of a new connection permit for a site within that area.

21. Additionally, Petitioner's proposed driveway connection would cause a safety and operational problem on the state highway system due to its location in the off ramp of the I-10 interchange.

22. There is no persuasive evidence that Santa Rosa County has abandoned the street which is adjacent to Lot 13 and the Shell station, 32nd Avenue. Petitioner did not establish that

there is no legal access from Lot 13 to Avolon Boulevard other than by issuance of the subject permit.

CONCLUSIONS OF LAW

23. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this proceeding. Sections 120.569 and 120.57, Florida Statutes.

24. Petitioner has the burden to prove by a preponderance of the evidence that he is entitled to bring this appeal, and if so, whether he is entitled to the permit he seeks. Department of Transportation v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981).

25. Section 120.569, Florida Statutes, states as follows in pertinent part:

> This provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency . . .

26. Section 120.52(12), Florida Statutes, defines a "party" in pertinent part as follows:

> (12) Party means:
> (a) Specifically named persons whose substantial interests are being determined in the proceeding.
> (b) Any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.

27. Before Petitioner can be considered to have a substantial interest in the outcome of this administrative

proceeding and thus be entitled to appear as a party, he must show:

> . . . 1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing, and 2) that his substantial injury is of a type or nature which the proceeding is designed to protect. The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury.

Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2nd 478 (Fla. 2nd DCA 1981). Petitioner does not have standing to bring this appeal under the Agrico test.

28. Petitioner has not presented any persuasive evidence that he has an ownership interest, legal or equitable, in the subject property. There is no evidence that he is a partner in 3/0 Partners, LLC, or that he is authorized to represent the partnership. There is no evidence that Petitioner is authorized to represent the current owner of the subject property.

29. Rule 14-96.002(21), Florida Administrative Code, defines property owner as "the person holding recorded title to property abutting the state highway system and other persons holding a recorded interest in such property that includes the right of access." Petitioner has not proved that he is a property owner as defined by this rule.

30. Even if Petitioner had proved that he was a proper party to this proceeding, he has not proved that the subject property is located a sufficient distance from the off ramp of the I-10 interchange to satisfy federal regulations or that the

proposed driveway would not create safety and operational problems pursuant to Section 335.181(2) and 335.184(3), Florida Statutes, Rules 14-96 and 14-97, Florida Administrative Code, and Title 23, Section 620, Code of Federal Regulations.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that Respondent enter a Final Order dismissing Petitioner's appeal for lack of standing and/or dismissing Petitioner's appeal on its merits.

DONE AND ENTERED this 14th day of December, 1998, in Tallahassee, Leon County, Florida.

SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of December, 1998.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.