

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOHN R. CLARK,)
)
 Petitioner,)
)
 vs.) Case No. 98-2905
)
 DEPARTMENT OF TRANSPORTATION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Upon due notice, William R. Cave, an Administrative Law Judge for the Division of Administrative Hearings, held a formal hearing in this matter on September 4, 1998, in Sebring, Florida.

APPEARANCES

For Petitioner: Ross MacBeth, Qualified Representative
MacBeth Associates, LTD.
2543 U.S. Highway 27, South
Sebring, Florida 33870

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

STATEMENT OF THE ISSUE

Was the Department of Transportation's action in closing an existing driveway connection to US Highway 27 from the property located at 2623 US Highway 27, South in Sebring, Florida, in compliance with Chapter 14-96, Florida Administrative Code, and the Access Management Act?

PRELIMINARY STATEMENT

By a Notice of Intent to Change Driveway Connection (Notice) dated December 17, 1997, the Department of Transportation (Department) advised Petitioner that, based on an evaluation of existing driveway connections as part of the road improvements to State Road 25 (US 27) in Sebring, Florida, the Department had determined that Petitioner's existing driveway connection onto US 27 would cause a safety or operational problem on the State Highway System. By letter dated January 17, 1998, Petitioner requested an administrative hearing on the closing of the existing driveway connection. By letter dated June 29, 1998, the Department referred the matter to the Division of Administrative Hearings for the assignment of an Administrative Law Judge and for the conduct of a formal hearing.

At the hearing, Petitioner testified in his own behalf and presented the testimony of Mark MacBeth and Tom Deer. Petitioner's Exhibit No. 1 was received as evidence. The Department presented the testimony of Debra Snyder, Gary Amig, Ronald Schlegel, and Tom Deer. The Department's Exhibits Nos. 1 through 8 were received as evidence.

At the close of this proceeding, the Department requested that the parties be allowed 30 days after the filing of the transcript in this proceeding to file their respective proposed recommended orders. Petitioner concurred in this request. The

request was granted with the understanding that the time constraint imposed under Rule 28-106.216(1), Florida Administrative Code, was waived in accordance with Rule 28-106.216(2), Florida Administrative Code. A transcript of this proceeding was filed with the Division on September 21, 1998. The parties timely filed their respective Proposed Recommended Orders under the extended time frame. Subsequent to the filing of the Proposed Recommended Orders but before the issuance of a Recommended Order, Petitioner filed a motion to reopen hearing in order to receive additional evidence. The Department timely filed a response in opposition to Petitioner's motion. By order dated December 30, 1998, Petitioner's Motion to Reopen Hearing was denied.

FINDINGS OF FACT

Upon consideration of the oral and documentary evidence adduced at the hearing, the following relevant findings of fact are made:

1. The driveway connection to US Highway 27 which the Department has closed, and is the subject matter of this proceeding, served the property located at 1623 US Highway 27 South, Sebring, Florida (Merrill Lynch property) which is situated at the intersection of Highway 27 and Sparta Road in Sebring, Florida, and abuts both US 27 and Sparta Road.

2. MacBeth Associates, LTD., a Florida limited partnership, is presently the owner of the Merrill Lynch property. However,

MacBeth Associates, LTD. (MacBeth) did not acquire the Merrill Lynch property until after the commencement of this proceeding.

3. Ross MacBeth, sole owner of a corporation that is one of the general partners of MacBeth, appeared on behalf of MacBeth. However, Ross MacBeth did not file a motion or request that MacBeth be made a party to this proceeding.

4. John Clark, Petitioner, is employed by Merrill Lynch who was leasing the Merrill Lynch property at the time the Department made the decision to close the driveway connection which is the subject matter of this proceeding.

5. On December 17, 1997, the Department issued a Notice of Intent to Change Driveway Connection to Petitioner advising that due to the road improvement project on State Road 25 (US 27), Petitioner's existing driveway connection onto US 27 would be closed because it would cause a safety or operation problem on the State Highway System. This driveway connection is identified as No. 73 on the Department's Access Management Plan.

6. Between Lakeview Avenue and Highland Avenue which includes the Sparta Road and US 27 intersection and Petitioner's driveway connection, US 27 is classified as level five under the Department's Access Management Classifications for Highlands County which was signed into effect by the Department's District I Secretary in January 1993.

7. The Department utilizes the Florida Department of Transportation Roadway and Traffic Design Standards (Design

Standards) as guideline specifications for designing and building driveway connections onto state roads.

8. Aim Engineering and Surveying, Inc. prepared a Connection Access Management Study (Study) for the Department for the project which is the subject matter of this proceeding. Ronald L. Schlegel, Professional Engineer, registered in the State of Florida, who is qualified in transportation engineering was the engineer of record for the Study.

9. The Study recommends the removal of Petitioner's driveway connection because of potential vehicle movement conflicts with bank's driveway connection and that site access is provided from Sparta Road which connects with US 27.

10. The Merrill Lynch property has two access points off Sparta Road, one adjacent to the Merrill Lynch building and one connecting to the rear parking area of Merrill Lynch.

11. Access Management Standards (Standards) require a clearance of 230 feet between the curb line of the intersection and curb line of the access immediately downstream of the intersection. Additionally, the Standards require a minimum of 240 feet between access points (driveway connections).

12. The Merrill Lynch driveway connection (driveway connection 73) does not conform to the Standards in that it is approximately only 90 feet from its curb line to the curb line of the intersection of US 27 and Sparta Road. Additionally, it appears that the curb line of driveway connection 73 and the curb

line of the bank's driveway connection (driveway connection 72) is considerably less than 230 feet and therefore, does not conform to the 230 foot requirement of the Standards.

13. The Standards require a 35 foot turning radius for driveway connections on US 27. Conditions on US 27 at driveway connections 72 and 73 would not allow a 35-foot turning radius. Therefore, since the bank had no other access to US 27, the closing of driveway connection 73 was necessary to prevent any safety and operational problems existing at driveway connections 72 and 73.

14. One of the criteria used in the Study to evaluate existing driveway connections was:

C. Use of joint driveways, if adjacent property owners agree with such use, where such use will solve a safety or operation problem. A joint use agreement shall be executed by property owners.

15. The Department must design driveway connections to connect to a paved point where the Department's right-of-way joins private property.

16. The Merrill Lynch property that is adjacent to the bank property is not paved. Therefore, driveway connection 72 could not be constructed by the Department such that it straddled the bank property and the Merrill Lynch property which would have allowed joint use of driveway connection 72.

17. In response to a contact by Representative Spratt, the Department did a field review of driveway connection 73 and

confirmed that joint-use access was the best alternative for Petitioner. Although joint use of driveway connection 72 is possible, Petitioner has not pursued this matter with the bank.

18. Also, in response to a contact by Representative Spratt, the Department conducted a traffic count at the intersection of US 27 and Sparta Road.

19. From the results of this traffic-count study, it was concluded, barring joint use of driveway connection 72, that access to the Merrill Lynch property off of Sparta Road created less safety and operational problems than would driveway connection 73 if it were allowed to remain open, notwithstanding any evidence to the contrary presented by Petitioner which I did not find to be totally credible.

20. While some of the traveling public (including Petitioner and his customers) may be inconvenienced as a result of the closure of driveway connection 73, it is prudent, from a traffic engineering and safety perspective, to close driveway connection 73.

CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to Sections 120.57(1), Florida Statutes.

22. The burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal.
Florida Department of Transportation v. J.W.C. Company, Inc.,

396 So. 2d 778 (Fla. 2d DCA 1981). To meet this burden, the Department must establish facts upon which its allegations are based by a preponderance of evidence. Section 120.57(1)(h), Florida Statutes.

23. Section 334.044(14) Florida Statutes, provides as follows:

Department; powers and duties.--The department shall have the following general powers and duties:

* * *

(14) To establish, control, and prohibit points of ingress to, and egress from, the State Highway System, the turnpike, and other transportation facilities under the department's jurisdiction as necessary to ensure the safe, efficient, and effective maintenance and operation of such facilities.

24. Sections 335.181(1)(a) and (2)(a), Florida Statutes, provide as follows:

(1) It is the finding of the Legislature that:

(a) Regulation of access to the State Highway System is necessary in order to protect the public health, safety, and welfare, to preserve the functional integrity of the State Highway System, and to promote the safe and efficient movement of people and goods within the state.

(2) 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 connection 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. (Emphasis furnished.)

25. Section 335.184(3), Florida Statutes, provides 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.

26. Rule 14-96.011(1)(d), Florida Administrative Code, provides as follows:

Closing a connection, (unless it has an adverse effect on traffic safety or operations) resurfacing, or bringing a connection to current Department design standards, at the existing location may be considered a safety upgrade as in this rule chapter and will not require a permit.

(1) Validity of Existing Permits. All connection permits issued by the Department prior to the effective date of this rule chapter remain valid until revoked or modified pursuant to the criteria set forth in this rule chapter. The Department may initiate action to revoke or modify any permit or existing permitted connection if:

* * *

(d) Such revocation or modification is determined to be necessary because the connection poses a current or potential safety or operational problem on the State Highway System. This problem must be substantiated by an engineering study signed and sealed by a professional engineer registered in the State of Florida qualified in transportation engineering. (Emphasis furnished.)

27. The record is clear that the Department has met its burden to show that driveway connection 73, as it existed, created a safety and operational problem and that Petitioner has been given a less hazardous and reasonable access to US 27 through Sparta Road. The Department has also met its burden to show that the closing of driveway connection 73 was in compliance with the State Highway System Access Management Act, Sections 335.18-335.188, Florida Statutes, and Chapter 14-96, Florida Administrative Code.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Department of Transportation enter a final order denying Petitioner's request to re-open driveway connection 73.

DONE AND ENTERED this 18th day of February, 1999, in Tallahassee, Leon County, Florida.

WILLIAM R. CAVE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of February, 1999.

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.