



violates Chapter 479, Florida Statutes, so that the sign must be removed.

PRELIMINARY STATEMENT

This case arose by a request for a disputed-fact hearing from Respondent Café Erotica/We Dare to Bare/Adult Toys/Great Food/Exit 94, Inc., which was referred to the Division of Administrative Hearings on or about February 21, 2001.

At the disputed-fact hearing, the parties' Joint Prehearing Statement with Notice of Filing Exhibits to Joint Prehearing Statement was admitted as Joint Exhibit One.

Petitioner Department of Transportation (DOT) presented the oral testimony of Tom Simmons, Donald Cerlanek, James L. Acosta, and Leo Giannini, and had Exhibits P-1 through P-5 and P-7 admitted in evidence. Exhibit P-6 was withdrawn.

Respondent presented the oral testimony of Jerry Sullivan and had Exhibits R-1 through R-8 admitted in evidence.

A Transcript was filed with the Division on May 24, 2001. The parties' respective timely-filed Proposed Recommended Orders have been considered.

FINDINGS OF FACT

1. On January 30, 2001, DOT issued Notice of Violation 10B ST 2001 502, against a billboard sign located adjacent to Interstate 95 (I-95), 7.998 miles north of the Flagler County line in St. Johns County. The notice alleged that the sign

violates Chapter 479, Florida Statutes, in that it is unpermitted. DOT contends that the sign advertises for the Café Erotica restaurant, a business establishment not located on the same premises as the sign, and that there is no visible business occurring on the premises where the sign is located.

2. I-95 is part of the Interstate Highway System. The sign is located within 660 feet of the nearest edge of the right-of-way of I-95, and can be seen without visual aid by motorists of normal visual acuity traveling on I-95.

3. The sign is a "permanent" one and has never been permitted by DOT.

4. Respondent Café Erotica/We Dare to Bare/Adult Toys/Great Food/Exit 94, Inc., is a Florida corporation. At all times material, Café Erotica/We Dare to Bare/Adult Toys/Great Food/Exit 94, Inc., has been a corporation in good standing with the Florida Department of State, which has registered and approved its corporate name, pursuant to Section 607.0401, Florida Statutes. It will hereafter be referred to as "Exit 94, Inc."

5. Asher G. Sullivan, Jr., a/k/a Jerry Sullivan, is incorporator, President, shareholder, and Director of Exit 94, Inc. Mr. Sullivan is also president and principal of approximately 35 other Florida corporations, including two outdoor advertising companies (sellers and lessors of

billboards), named "Sunshine Outdoor" and "Interstate Billboards," and also of Café Erotica of Florida, Inc., d/b/a Café Erotica. Mr. Sullivan has decision-making authority over Exit 94, Inc., and the Café Erotica restaurant. He is knowledgeable about DOT sign permitting requirements.

6. Café Erotica of Florida, Inc., d/b/a Café Erotica, is a Florida corporation which holds the license and owns the assets of the Café Erotica restaurant. The Café Erotica restaurant is a 24-hour per day, full-service restaurant, accessible from exit number 94 of I-95. It also features dancers clad in bathing suits and sells adult toys.

7. Exit 94, Inc., does not, and never has, provided food, adult toys, or bare people at the subject location or anywhere else.

8. The parties' stipulation herein, incorporating photographs which are also in evidence, demonstrates that the sign which is the subject of this proceeding is a permanent billboard reading, "CAFÉ EROTICA," "WE DARE TO BARE," "GREAT FOOD," "ADULT TOYS," "EXIT 94, INC." This is not an exact statement of Respondent Exit 94, Inc.'s, authorized corporate name, due to the juxtaposition of the phrases, "Great Food" and "Adult Toys" and the sign's failure to include the slashes separating the phrases. The paint colors on the sign call the viewer's attention to the phrases, "CAFE' EROTICA," "WE DARE TO

BARE," "GREAT FOOD," "ADULT TOYS," and "EXIT 94." The abbreviation "INC.," is the phrase smallest in size, located at the very bottom right, and relatively inconspicuous. As of the date of hearing, the abbreviation "INC." had been painted a different color than it was at the time the violation notices were issued, but otherwise the sign is the same.

9. Affixed to the bottom portion of two of the five poles supporting the foregoing sign is a bright yellow placard which states, "FISH CAMP," with a telephone number. This placard is not nearly as large as the billboard facing and is less visible, but its message also can be seen from I-95.

10. Exit 94, Inc., owns the subject sign(s), but not the real property on which it is located, as more fully described below.

11. The subject sign is located on real property owned by Leo Giannini. Mr. Giannini's real property is not contiguous to real property owned by Exit 94, Inc.

12. Exit 94, Inc., does own eleven acres of non-contiguous real property located about eight miles distant from the subject billboard, near exit 94 of I-95, where Exit 94, Inc., is currently developing a fishing and hunting camp. See, Department of Transportation v. Café Erotica of Florida, Inc. d/b/a Café Erotica/We Dare to Bare/Adult Toys/ Great Food/Exit 94, Inc., DOAH Case No. 00-4188T, etc.

13. Mr. Giannini's subject property is located in the southeastern quadrant of the exit 93 intersection of SR-206 and I-95. At various times, he has rented all, or some part of, this property to Mr. Sullivan's outdoor advertising corporations, Sunshine Outdoor and Interstate Billboards, for the placement of trucks and/or billboards, and to Exit 94, Inc.<sup>1</sup>

14. Mr. Sullivan testified that he never intended to develop a hunting and fishing camp on Mr. Giannini's exit 93 southeastern quadrant property because it is completely dry, although he once intended to develop a pond on the northwestern quadrant of exit number 93, part of which quadrant is also owned by Mr. Giannini.

15. According to Mr. Sullivan's testimony, Exit 94, Inc., leases Mr. Giannini's subject property in the southeastern quadrant of exit 93, mainly for the advertising which Mr. Sullivan has painted on the window of the abandoned gas station located on the Giannini property, which advertising includes the large words, "Fish Camp," the smaller words, "Guided Tours," and the same phone number as is on the yellow placard affixed to the subject sign. According to Mr. Sullivan, this phone number is provided so that customers can call Exit 94, Inc., to schedule fishing tours to locations other than the camp owned by Exit 94, Inc., at exit 94, which as yet has no fish or pond suitable for fishing.

16. Mr. Giannini's southeastern quadrant property at exit 93, is made up of two contiguous parcels, which he purchased at different times. One parcel is 2.3 acres and contains the abandoned gas station made of concrete, with pumps (tanks removed), and some cracked and weed-encroached concrete parking areas around them. This parcel's entrance is on SR-206, 150 yards to the northeast of the subject sign, and its address is 955 West SR-206, St. Augustine, Florida.

17. The other contiguous parcel owned by Mr. Giannini is approximately 4.5 acres and contains the poles and unpermitted sign which is the subject of this proceeding. This parcel's entrance also is on SR-206, but it has a different entrance than the one for the abandoned gas station. This parcel also bears a different address on West SR-206 than the abandoned gas station.

18. Neither of Mr. Giannini's parcels bears the same address as Exit 94, Inc.'s, occupational/business license from St. Johns County, which is "985 SR-206 West, St. Augustine, Florida." Assuming Exit 94, Inc.'s, license should have read, "985 West SR-206," that still is not the same address as either of the parcels in Mr. Giannini's southeastern quadrant property, Exit 94, Inc., admittedly does no business out of any "985" address.

19. Although Mr. Sullivan testified that Exit 94, Inc., operates out of both the abandoned gas station location at exit

93 and the non-contiguous camp location north of exit 94, corporate records for Exit 94, Inc., indicate the corporation operates out of a physical location at 7605 Southeast Williston Rd., Gainesville, Florida 32608, with a business address of P.O. Box 1069, Micanopy, Florida, 32667.

20. Mr. Giannini signed the current lease with Exit 94, Inc., at the request of the general manager of the Café Erotica restaurant. He also signed the current Exit 94, Inc., lease at the physical location of the Café Erotica restaurant on April 13, 2000.

21. The Café Erotica restaurant currently advertises in the phone book, on its premises, and on a billboard at exit number 94 of I-95. In the past, Café Erotica has advertised "we dare to bare," "adult toys," and "exit 94" on other billboards located adjacent to I-95 in St. Johns County. Café Erotica no longer rents billboards in these locations.<sup>2</sup>

22. The advertisements for Café Erotica restaurant currently at exit 94 of I-95 include the words, "private dances," and "great food/adult toys." The advertising is specifically directed at motorists, including truck drivers, on I-95.

23. Mr. Giannini thought that in 1999, he had leased space in front of the abandoned gas station on his smaller parcel, to Exit 94, Inc., as a place to park Exit 94, Inc.'s, trucks, but



Mr. Sullivan maintained that in 1999, Exit 94, Inc., had rented the space in front of the abandoned gas station on the smaller parcel and part of the larger parcel where Exit 94, Inc., had erected a billboard displaying exactly the same language as is on the current subject billboard. However, it is undisputed that poles which are now empty, but which abut the subject billboard, previously held a lighted billboard owned by Exit 94, Inc., which previous billboard carried exactly the same language as the sign which is the subject of these proceedings.

24. There currently is a dispute between Mr. Giannini and Exit 94, Inc., as to what portion of Mr. Giannini's two contiguous parcels at exit 93 is currently leased to Exit 94, Inc., under a new lease signed on April 13, 2000. Mr. Giannini contends that he leased only the western half of the concrete gas station to Exit 94, Inc., and gave Exit 94, Inc., no authority to construct the subject sign currently on the larger contiguous parcel. However, Exit 94, Inc., contends that it is currently leasing the western half of the concrete gas station, plus a part or "strip" of Mr. Giannini's parcel upon which the subject sign is located. This dispute is currently the exclusive jurisdiction of the circuit court due to Exit 94, Inc.'s filing of a lawsuit claiming Mr. Giannini has denied the corporation access to the leased property. For that reason, and because the testimony herein of the lessor and

lessee does not even agree on which real property descriptions were, or should have been, attached to the lease in evidence (P-7 and R-2), the issue cannot be resolved in this forum.

25. Exit 94, Inc., does not intend to, has not, and cannot, provide fishing on the dry parcel(s) at issue. Exit 94, Inc., has taken steps to provide fishing in the future on its own non-contiguous real property, eight miles away, designated as its "hunting and fishing camp," but to date, the pond there is only being filled and is not stocked with fish.

26. The abandoned gas station building on the subject property is only about 25 by 60 feet. It remains locked at all times. Whether one believes Mr. Sullivan that he recently has been locked out by Mr. Giannini or simply believes his testimony that he kept the building locked himself most of the time, it is clear that the inside of the building has seldom, if ever, been used by Exit 94, Inc., except for the placement of a desk and telephone. This finding is supported by the photographs of most of the interior, showing trash, dust, and a single desk pushed into a corner. It is undisputed that Exit 94, Inc., employees have never regularly manned the "office" at this location.

27. There are no public phones or functioning public rest rooms on the property.

28. Mr. Sullivan testified that the phone number he had painted on the window of the abandoned gas station does not ring

at that location. Instead, it rings in his truck. If he is out of town, he "sometimes" has an employee or his wife check truck phone's messages.<sup>3</sup> One can only conclude that Exit 94, Inc.'s, "business" at the subject property is not full-time, important, or primary.

29. The concrete paving surrounding the abandoned gas station on the subject property is breaking up. It has tufts of grass and brush growing out of its cracks. There is general trash and old tires in the area. The concrete paving presents a danger to most motor vehicles which might enter and cannot be reasonably considered "handicapped parking or access" as suggested by Mr. Sullivan. At the present time, stone barriers bar the entrance to the abandoned gas station parcel or at least impede access by most motor vehicles trying to enter this parcel. The greater weight of the credible evidence shows these barriers may be susceptible of being moved temporarily but that they have been in a position blocking that entrance almost continuously since 1994.

30. Exit 94, Inc., has paid \$1500 per month in rent to Mr. Giannini each month since June (not April) 2000. Mr. Sullivan admits that, regardless of which business entity rented all or part of Mr. Giannini's property at any given time, the grass has only been mowed twice in two years. Apparently, only the grass around the subject sign was mowed.

31. No Exit 94, Inc., inventory is stored on the subject property. If there once were fishing rods and equipment stored in the abandoned gas station which have recently been stolen, as contended by Mr. Sullivan, these items still were not integral to Exit 94, Inc.'s, business, because there is no evidence they were ever rented or loaned to customers. Mr. Sullivan only testified that these items were stored for use by customers for Exit 94, Inc.'s, fishing tours to locations not owned by Exit 94, Inc.

32. Mr. Giannini uses the eastern end of the abandoned gas station building to store items for his own several corporations. He goes by the location almost daily and sometimes at night. He pays the electricity charges for the whole building so that he can use the premises at night. The electric bill has been in his name as long as he has owned the parcel containing the abandoned gas station. Since signing the April 13, 2000, lease with Exit 94, Inc., he has seen no signs of activity by Exit, 94, Inc., on either parcel.

33. Tom Simmons, DOT sign inspector, inspected the subject location for DOT on several occasions over the 18-19 months prior to issuing the notice of violation herein on January 30, 2001. During this period of time, he afforded the benefit of the doubt that some commercial venture was in development at the site and that any advertising on the premises therefore would

constitute an on-premises sign, exempt from DOT permitting and subject to regulation only by St. Johns County.

34. Mr. Simmons became aware of the subject sign when it was under construction about September 8, 2000. At that time, he assumed that the premises would become operational for Exit 94, Inc., because he understood that Exit 94, Inc., had applied for a St. Johns County building permit involving electrical and plumbing connections at that location. However, he inspected the subject location on September 8, 2000, January 3, 2001, January 23, 2001, and January 30, 2001, and never saw any business activity or productive enterprise.

35. James L. Acosta is the Supervisor of Code Enforcement for St. Johns County. He inspected the subject property in September 2000, November 2000, January 2001, and on April 4, 2001. At no time has he observed any business activity or productive enterprise on the property. He has recently issued a violation citation to Mr. Giannini, as the owner of the real property, requiring him to remove the subject sign.

36. St. Johns County has never issued a building permit for the subject sign.

37. Testimony and business records of charges by, and payments to, Exit 94, Inc., demonstrate only that other business entities controlled by Mr. Sullivan or his family members have paid for some use of the real property owned by Exit 94, Inc.,

and designated as its "hunting and fishing camp," which property is not contiguous to the subject property. (See Finding of Fact 12.) It was not proven that any fishing tours embarked from the subject property to the owned property or to any other location. There was no affirmative evidence of where the other alleged fishing locations might be. The business records bore the Micanopy address of the corporation. (See Finding of Fact 19.) It was not demonstrated that the business records were stored at the subject property.

38. There is no evidence that any member of the general public has utilized Exit 94, Inc.'s, hunting and fishing services, and due to the relationship of Exit 94, Inc.'s, recorded "customers" to Mr. Sullivan and his various corporations, it may be inferred that none of these "customers" were procured, lured, enticed, or secured by the advertising or his telephone number on the window of the abandoned gas station or on the subject sign.

39. Exit 94, Inc., currently operates at a loss, made up as necessary by personal loans from Mr. Sullivan.

40. Exit 94, Inc.'s business records suggest that its only expenditures at the subject location have been for rent and construction of the subject sign and that all its other expenditures have been for its trucks and its owned real property located at exit 94. There was no affirmative

demonstration that any other expenditures were specifically linked to the subject location.

41. Exit 94, Inc., failed to demonstrate what the minimal level of meaningful activity customary for a hunting and fishing corporation might be, and further failed to demonstrate that a minimal level of activity had occurred at the subject location.

42. Exit 94, Inc., attempted, through two examples, to show that Mr. Simmons's original determination not to cite the subject sign and DOT's determination not to cite certain other signs in the vicinity constituted a custom and usage of the agency, which custom and usage, if applied in this case, would cause the subject sign to be considered an on-premises sign. "Bulls Chip" signs on Bulls Chip trucks and farm equipment parked on real property owned and contiguous to the Bulls Chip factory, were not charged with sign violations because DOT viewed these as on-premises signs. A "Smiley's" truck parked in a flea market parking lot where the truck owner owned and/or leased space to sell specific items under the name on the truck was originally considered an "on-premises" sign by DOT personnel and not cited. When it was determined that the truck owner no longer had business activity or ownership rights at the site, the "Smiley's" truck was cited. These examples are clearly distinguishable from the instant situation.

CONCLUSIONS OF LAW

43. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this cause, pursuant to Section 120.57(1) and Chapter 400, Part III, Florida Statutes.

44. Herein, DOT had the duty of going forward and proving each violation only by a preponderance of the evidence. See Florida Department of Transportation v. J.W.C. Co. Inc., and the Department of Environmental Regulation, 396 So. 2d 778 (Fla. 1st DCA 1981). Even so, DOT met a clear and convincing standard of proof herein.

45. Section 479.01(17), Florida Statutes, provides, in pertinent part,

"Sign" means any combination of structure and message in the form of an outdoor advertising 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 or automatic changeable facing, 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.

46. Section 479.01(6), Florida Statutes, provides,

"Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish; but it does not include



any of the foregoing activities when performed as an incident to the change of advertising message or customary maintenance or repair of a sign.

47. Section 479.07(1), Florida Statutes, provides,

Except as provided in Sections 479.105(1)(e) and 479.16, a person may not erect, operate, use or maintain, or cause to be erected, operated, used or maintained, any sign on the State Highway System outside an incorporated area or on any portion of the interstate or federal-aid primary highway system without first obtaining a permit for the sign from the department and paying the annual fee as provided in this section. For purposes of this section, "on any portion of the State Highway System or on any portion of the interstate or federal-aid primary system" shall mean a sign located within the controlled area which is visible from any portion of the main-traveled way of such system.

48. Section 479.01(4), Florida Statutes, defines

"controlled area" to mean "660 feet or less from the nearest edge of the right-of-way of any portion of the State Highway System, interstate, or federal-aid primary system. . . ."

49. Section 479.150(1), Florida Statutes, provides,

Any sign which is located adjacent to the right-of-way of any highway on the State Highway System outside an incorporated area or adjacent to the right-of-way on any portion of the interstate or federal-aid primary highway system which sign was erected, operated, or maintained without the permit required by Section 479.07(1) having been issued by the department, is declared to be a public nuisance and a private nuisance and shall be removed as provided in this section.

50. The subject unpermitted signs (or sign and placard) are subject to removal because they are located in a controlled area and constitute an erected painted structure, conveying a message with the primary design, intent, and use being to advertise.

51. However, Section 479.16(1), Florida Statutes, provides an exemption from DOT permitting oversight as follows,

The following signs are exempt from the requirement that a permit be obtained under the provisions of this chapter but are required to comply with the provisions of Section 479.11(4) - (8):

(1) Signs erected on the premises of an establishment, which signs consist primarily of the name of the establishment or which identify the principal or accessory merchandise, services, activities, or entertainment sold, produced, manufactured, or furnished on the premises of the establishment and which comply with the lighting restrictions under department rule adopted pursuant to Section 479.11(5), . . . (Emphasis supplied).

52. The burden to establish an exemption falls upon the party seeking to establish the exemption, in this case, Exit 94, Inc. Department of Transportation v. Florida Roadmaster Inn Services, Corp., DOAH Case No. 91-4785T (Recommended Order March 24, 1992; Final Order June 1, 1992), affirmed in Florida Roadmaster Inn Services Corp. v. Department of Transportation, 621 So. 2d 435 (Fla. 1st DCA 1993); Stevens v. Department of Transportation, DOAH Case No. 97-1701T (Recommended Order

December 2, 1998); Florida Department of Transportation v. J.W.C. Co. Inc., and the Department of Environmental Regulation, supra.; and Henderson Sign Services v. Department of Transportation, 390 So. 2d 159 (Fla. 1st DCA 1980).

53. In this case, Exit 94, Inc., has not carried its burden. No business of any kind is regularly--or even irregularly--conducted on the subject premises. The totality of the circumstances are persuasive that the primary design, intent, and use of the subject sign is to advertise either Exit 94, Inc.'s, fishing and hunting camp, which is eight miles away from the subject sign's location, on non-contiguous property at exit 94, or is to advertise the Café Erotica restaurant at exit 94, or to advertise both.

54. The purpose of the statutory exemption is to allow on-premises signs for legitimate business operations. The on-premises exemption exists for the benefit of on-site businesses. It should not be manipulated so as to provide the outdoor advertising industry with a loophole for avoiding outdoor advertising licensing and permitting fees or to circumvent the highway beautification statutes.

55. Herein, The totality of the circumstances demonstrate that there is no bona fide business establishment being operated on the leased premises.

56. The term "premises" is defined in Section 479.01(15), Florida Statutes, to mean "all the land areas under ownership or lease arrangement to the sign owner which are contiguous to the business conducted on the land except . . . where such land is a narrow strip contiguous to the advertised activity or is connected by such narrow strip, the only viable use of such land is to erect or maintain an advertising sign." The term "establishment" commonly means a "business." The American Heritage College Dictionary (Third Edition 1997). Also, "place of business" for advertising purposes was determined, albeit under a different statutory scheme, as "the building or place where the principal activity of the [business] is," State Beverage Department v. Brentwood Assembly of God Church, 149 So. 2d 871 (Fla. 1st DCA 1963), quoted in Department of Transportation v. East Pensacola Safari Camp, DOAH Case No. 76-4201T (Recommended Order November 23, 1976).

57. In the Final Order of Department of Transportation v. Florida Roadmaster Inn Services, Corp., supra., it was held that "[I]n order to qualify for an exemption under Section 479.16(1), a sign must be located on land or property that is an integral part of the activity conducted on the land. It is also necessary that the establishment referred to in Section 479.16(1), be an ongoing business at least in the sense of a minimal level of meaningful activity customary for that

particular kind of business such that the business establishment exists in substance rather than merely in form." The case goes on to distinguish Harrison v. Department of Transportation, 349 So. 2d 720 (Fla. 1st DCA 1977). Harrison does not stand for the proposition that a corporation's vague intent to develop a business without demonstrable efforts towards developing and implementing the business entitles the corporation to enjoy an on-premises exemption for a permanent sign pending the development of the business. See also, McDonald's Corporation v. Department of Transportation, 535 So. 2d 323 (Fla. 2d DCA 1988), holding that a sign did not qualify for the on-premises exemption where the sign was not on the premises of the business nor on any activity or property directly related to the business or its physical establishment, in that case, a restaurant. See also Eddy Corp. v. Department of Transportation, 522 So. 2d 421, (Fla. 5th DCA 1988), rev. den., 531 So. 2d 1352 (Fla. 1988), which was distinguished in the McDonald's case.

58. Herein, the unpermitted permanent sign does not precisely track the legal name of the corporation claiming the exemption. Whether the corporation claiming the exemption has legitimately and currently leased the part of the property on which the sign is located is in collateral litigation. The corporation holds itself out as having multiple addresses, none of which is the address of either contiguous parcel of the

subject property. The subject sign does not describe any product or service for sale on the premises. No fishing camp is present or even contemplated for development on the premises. The subject sign does not describe any activity even related to the premises; only the painted windows of the abandoned gas station even mention fishing "tours." There is no minimal level of meaningful activity customary for a hunting and fishing camp being conducted on either parcel of the subject property.

59. It is unclear from whence Exit 94, Inc., is directing its business, but it clearly is not directing its business from the subject property. It is also clear that the subject property is not being used as an adjunct, outpost, or collateral site for any primary business purpose.

60. Moreover, Exit 94, Inc., failed to prove that the sign "identif[ies] the principal or accessory merchandise, services, activities or entertainment sold, produced, manufactured, or furnished on the premises."

61 The subject property is being used for advertising, pure and simple--or perhaps not so pure or simple to the degree Exit 94, Inc.'s signs may incidentally benefit the Café Erotica restaurant.

62. Without some clear, direct evidence that a motorist has interpreted Exit 94, Inc.'s, sign(s) so as to patronize the Café Erotica restaurant, incidental benefit to Café Erotica is

still only speculation. However, It is not necessary to reflect herein upon whether applying the exemption would permit Mr. Sullivan to accomplish by indirection that which he cannot do directly or whether Exit 94, Inc., is participating in a scam to benefit the Café Erotica restaurant or any advertising sign corporations, because the cases are clearly in accord that Exit 94, Inc., has not met its burden of proof to establish entitlement to an exemption.

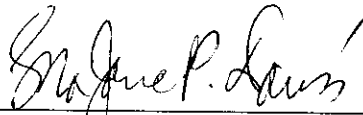
#### RECOMMENDATION

Upon the foregoing findings of fact and conclusions of law, it is

#### RECOMMENDED

That the Department of Transportation enter its final order declaring illegal the subject unpermitted sign owned and maintained by Café Erotica/We Dare to Bare/Adult Toys/Great Food/Exit 94, Inc., and ordering removal of the sign in accordance with a reasonable time frame to be determined by the Department.

DONE AND ENTERED this 12th day of July, 2001, in  
Tallahassee, Leon County, Florida.



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ELLA JANE P. DAVIS  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 12th day of July, 2001.

ENDNOTES

<sup>1/</sup> DOT contends that Mr. Giannini testified that he had previously leased space for a sign to Café Erotica, the restaurant, for advertising, but his testimony on this point is imprecise, and the prior leases are not in evidence. Reconciling all of Mr. Giannini's testimony with that of Mr. Sullivan, it appears he previously leased sequentially to each of the three corporations named in Finding of Fact 13, (Sunshine Outdoor, Interstate Billboards, and Exit 94, Inc.), and that one or more of the three corporations may have advertised for the Café Erotica restaurant. However, DOT's sign inventory log does not show any prior Café Erotica restaurant advertising at this location, only at other locations. (See Findings of Fact 21 and 23).

<sup>2/</sup> See note 1, above.

<sup>3/</sup> No evidence was presented in the instant case that the phone on the subject property "relays" to a cellular phone carried on Mr. Sullivan's person.



COPIES FURNISHED:

Gary S. Edinger, Esquire  
305 Northeast 1st Street  
Gainesville, Florida 32601

Jodi B. Jennings, Esquire  
Department of Transportation  
605 Suwannee Street  
Haydon Burns Building, Mail Station 58  
Tallahassee, Florida 32399-0450

James C. Myers  
Clerk of Agency Proceedings  
Department of Transportation  
Haydon Burns Building, Mail State 58  
605 Suwannee Street  
Tallahassee, Florida 32399-0450

Pamela Leslie, General Counsel  
Department of Transportation  
Haydon Burns Building, Mail Station 58  
605 Suwannee Street  
Tallahassee, Florida 32399-0450

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.