



Florida Department of Transportation

CHARLIE CRIST
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

STEPHANIE C. KOPELOUSOS
SECRETARY

May 25, 2007

R. Bruce McKibben, Esquire
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

DIVISION OF
ADMINISTRATIVE
HEARINGS

07 MAY 25 PM 4:49

FILED

LAMAR SOUTH FLORIDA
DOAH CASE NO.: 06-3282
DOT CASE NO.: 06-043

Dear Mr. McKibben:

Enclosed is a copy of the Final Order, filed May 25, 2007, in the above-styled case.

Sincerely,

James C. Myers
Clerk of Agency Proceedings
(850) 414-5393

jcm:m

Attachment(s)

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida

FILED
07 MAY 25 PM 4:49
DIVISION OF
ADMINISTRATIVE
HEARINGS

LAMAR SOUTH FLORIDA,

Petitioner,

vs.

DOAH CASE NO.: 06-3282

DOT CASE NO.: 06-043

DEPARTMENT OF TRANSPORTATION,

Respondent.

FINAL ORDER

This proceeding was initiated by the filing of a Petition for Formal Administrative Hearing on April 10, 2006, by **Petitioner, LAMAR SOUTH FLORIDA** (hereinafter **LAMAR**), pursuant to Section 120.57(1), Florida Statutes, in response to a Notice of Intent to Revoke Sign Permit issued by the **Respondent, DEPARTMENT OF TRANSPORTATION** (hereinafter **DEPARTMENT**), on March 21, 2006. The matter was referred to the Division of Administrative Hearings on April 24, 2006, for assignment of an administrative law judge and a formal hearing.

A formal administrative hearing was held in this case in Tallahassee, Florida, on January 12, 2007, before R. Bruce McKibben, a duly appointed administrative law judge. Appearances on behalf of the parties were as follows:

For Petitioner: Gerald S. Livingston, Esquire
Pennington, Moore, Wilkinson,
Bell & Dunbar, P.A.
215 South Monroe Street, Second Floor
Post Office Box 10095
Tallahassee, Florida 32302-2095

For Respondent: J. Ann Cowles, Esquire
Department of Transportation
605 Suwannee Street, M.S. 58
Tallahassee, Florida 32399-0458

At the hearing, the **DEPARTMENT** presented the testimony of two witnesses, Lynn Holschuh and Mark Johnson, and offered Respondent's Exhibits 1 through 10, which were admitted into evidence. **LAMAR** presented the testimony of one witness, Benjamin Henry, and offered Petitioner's Exhibits 1 through 7, which were admitted into evidence. A transcript of the final hearing was filed with the Division of Administrative Hearings on January 29, 2007. The **DEPARTMENT** filed its Proposed Recommended Order on February 16, 2007, and **LAMAR** filed its Proposed Recommended Order on February 19, 2007. Judge McKibben filed his Recommended Order on February 26, 2007, which is attached hereto and incorporated herein by reference. No exceptions to the Recommended Order were filed.

STATEMENT OF THE ISSUE

As stated by the administrative law judge in his Recommended Order, the issue presented was:

[W]hether the Department of Transportation's Notice of Intent to Revoke Sign Permit should be upheld pursuant to Section 479.08, Florida Statutes (2006).¹

¹ The administrative law judge's Recommended Order incorrectly frames the issue as whether the Notice should be upheld pursuant to Section 479.04, Florida Statutes, which is a licensing statute that is not applicable in this case.

FINDINGS OF FACT

After review of the record in its entirety, it is determined that the administrative law judge's Findings of Fact in paragraphs 1 through 12 are supported by competent, substantial evidence, and are adopted and incorporated as if fully set forth herein.

CONCLUSIONS OF LAW

1. The **DEPARTMENT** has jurisdiction over the parties and the subject matter of this proceeding pursuant to Chapters 120 and 479, Florida Statutes.
2. The Conclusions of Law contained in paragraphs 13 through 21 of the Recommended Order are fully supported by law. As such, they are adopted and incorporated as if fully set forth herein.
3. In accordance with Section 479.08, Florida Statutes, **LAMAR** has thirty (30) days from receiving notice of an illegal modification to a non-conforming sign to restore the sign to its original permitted condition without loss of the nonconforming status. **LAMAR** received notice that the sign had been structurally modified on or about March 21, 2006. Although the March 21, 2006, notice did not inform **LAMAR** that the height above ground level was impermissibly modified, it did put **LAMAR** on notice that the sign had been impermissibly modified from a seven (7) pole structure to a four (4) pole structure. **LAMAR** took no action to restore the sign to its original structure of seven (7) poles within thirty (30) days of receiving the Notice of Intent to Revoke. As explained in Lamar South Florida v. Department of Transportation, DOAH Case No. 06-3281 (Recommended Order issued February 20, 2007); DOT Case No. 06-042 (Final Order issued May 21, 2007), the thirty (30) day period to restore a nonconforming sign begins

upon receipt of the notice and any doubt as to the precise nature of the violation should be explored within that thirty (30) day window.

ORDER

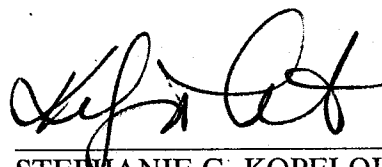
Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that the administrative law judge's Recommended Order is adopted in its entirety and incorporated herein by reference. It is further,

ORDERED that the **Petitioner, LAMAR SOUTH FLORIDA**, shall have thirty (30) days from the date of this Final Order to remove the outdoor advertising sign with permit number 14103, located on US 27, .034 miles north of Rock Road, in Palm Beach County, Florida. It is further

ORDERED that should the **Petitioner, LAMAR SOUTH FLORIDA**, fail to remove the sign within the next thirty (30) days, the **Respondent, DEPARTMENT OF TRANSPORTATION**, or its contractor, shall remove the sign without further notice and the costs of removing the sign are hereby assessed against **PETITIONER, LAMAR SOUTH FLORIDA**, pursuant to Section 479.105(3), Florida Statutes.

DONE AND ORDERED this 25th day of May, 2007.



(for)
STEPHANIE C. KOPELOUSOS
Secretary
Department of Transportation
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida 32399

FILED D.O.T. CLERK
2007 MAY 25 PM 2:00

NOTICE OF RIGHT TO APPEAL

THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY ANY PARTY PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULES 9.110 AND 9.190, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.100(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH THE DEPARTMENT'S CLERK OF AGENCY PROCEEDINGS, HAYDON BURNS BUILDING, 605 SUWANNEE STREET, M.S. 58, TALLAHASSEE, FLORIDA 32399-0458, WITHIN THIRTY (30) DAYS OF RENDITION OF THIS ORDER.

Copies furnished to:

Susan M. Schwartz, Esquire
Assistant General Counsel
Department of Transportation
Haydon Burns Building, MS 58
605 Suwannee Street
Tallahassee, Florida 32399-0458

Lynn Holschuh
State Outdoor Advertising Administrator
Department of Transportation
Haydon Burns Building MS 22
605 Suwannee Street
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Administrative Law Judge
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