

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

ANDRES MONSALVE,

Petitioner,

vs.

DOAH CASE NO. 08-4039  
DOT CASE NO. 08-067

DEPARTMENT OF TRANSPORTATION,

Respondent,

and

OUTLOOK MEDIA OF SOUTH FLORIDA  
LLC,

Intervenor.

---

FINAL ORDER

On June 17, 2008, Respondent, State of Florida, Department of Transportation (Department), received two applications for outdoor advertising permits numbered 57196 and 57197 submitted by Petitioner, Andres Monsalve (Mr. Monsalve). By Notice of Denied Application issued on July 3, 2008, the Department notified Mr. Monsalve that the applications were denied because the applications had no statement, as required by Section 479.07(3)(b), Florida Statutes, from the appropriate local governmental official indicating that the agency or unit of local government would issue a permit to the applicant upon the Department's approval of the state permit application.

An amended Notice of Denied Application was issued on July 15, 2008. The amended notice reflected that Mr. Monsalve's applications were denied because the proposed signs would be in conflict with an existing permitted sign and could not, therefore, meet the spacing requirements for outdoor advertising signs set out in Section 479.07(9)(a), Florida Statutes, and because the proposed location does not comply with all local governmental requirements as provided in Section 479.07(3)(b), Florida Statutes. The amended notice also indicated that the building permit submitted with the applications was not in compliance with local governmental requirements.

Mr. Monsalve filed a Petition for Formal Hearing on August 4, 2008, and the matter was referred to the Division of Administrative Hearings on August 19, 2008. On September 17, 2008, Outlook Media of South Florida, LLC (Outlook Media), filed a corrected motion to intervene. The motion was granted and Outlook Media was afforded intervenor status.

A formal administrative hearing was held on November 4, 2008, by video teleconference with connecting sites in Miami and Tallahassee, Florida, before Errol H. Powell, a duly appointed Administrative Law Judge. Appearances on behalf of the parties were as follows:

For Petitioner: Linda L. Carroll, Esquire  
Carroll Law Firm  
1260 SunTrust International Center  
One Southeast Third Avenue  
Miami, Florida 33131-1714

For Respondent: Kimberly Clark Menchion, Esquire  
Department of Transportation  
605 Suwannee Street, Mail Station 58  
Tallahassee, Florida 32399-0458

For Intervenor: Joseph DeMaria, Esquire  
Amanda Quirke, Esquire  
Tew Cardenas LLP  
1441 Brickell Avenue, Suite 1500  
Miami, Florida 33131

At the hearing, Mr. Monsalve's renewed motion for continuance was denied and a motion to dismiss filed by Outlook Media was denied. Mr. Monsalve testified in his own behalf and entered 14 exhibits into evidence. The Department presented the testimony of Lynn Holschuh and entered seven exhibits into evidence. Outlook Media neither presented the testimony of any witness nor offered any exhibits into evidence.

The transcript of the hearing was filed on November 17, 2008. The Department and Outlook Media timely filed their proposed recommended orders on December 1, 2008, and Mr. Monsalve filed his proposed recommended order on December 2, 2008. There was no objection to the late filing of Mr. Monsalve's proposed recommended order and the Administrative Law Judge Issued his Recommended Order on December 17, 2008. Outlook Media filed exceptions to the Recommended Order on January 5, 2009. No responses to the exceptions were filed.

#### **STATEMENT OF THE ISSUE**

As stated by the Administrative Law Judge in his Recommended Order, the issue presented was:

[W]hether Petitioner's applications for a State sign permit should be granted.

#### **EXCEPTIONS**

Outlook Media takes exception to the Recommended Order Findings of Fact 7, 8, 17, and 18, and Conclusions of Law 31 and 32, for the purpose of clarifying a clerical error consisting of the failure to reference both application numbers. Outlook Media's exception is

well-taken. Findings of Fact 7, 8, 17, and 18, and Conclusions of Law 31 and 32 are modified to include both application numbers.

**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 6, 7 and 8 as modified, 9 through 16, 17 and 18 as modified, and 19 through 25, 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 subject matter of and the parties to this proceeding pursuant to Chapters 120 and 479, Florida Statutes.

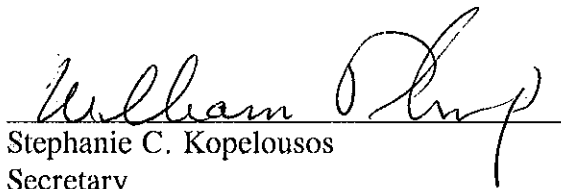
2. The Conclusions of Law in paragraphs 26 through 30, 31 and 32 as modified, and 33 through 39 of the Recommended Order are fully supported in law, and are adopted and incorporated as if fully set forth herein.

**ORDER**

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

**ORDERED** that Andres Monsalve's outdoor advertising permit applications numbered 57196 and 57197 are denied.

**DONE AND ORDERED** this 22<sup>nd</sup> day of January, 2009.

*for*   
Stephanie C. Kopelousos  
Secretary  
Department of Transportation  
Haydon Burns Building  
605 Suwannee Street  
Tallahassee, Florida 32399

FILED D.O.T. CLERK  
2009 JAN 22 AM 8:51

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 9.110(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH 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:

Kimberly Clark Menchion, Esquire  
Assistant General Counsel  
Department of Transportation  
Haydon Burns Building  
605 Suwannee Street, M.S. 58  
Tallahassee, Florida 32399

Joseph DeMaria, Esquire  
Amanda Quirke, Esquire  
Tew Cardenas LLP  
1441 Brickell Avenue, Suite 1500  
Miami, Florida 33131

Errol H. Powell  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-1550

Lynn Holschuh  
State Outdoor Advertising Administrator  
Department of Transportation  
Haydon Burns Building  
605 Suwannee Street, M.S. 22  
Tallahassee, Florida 32399

Linda L. Carroll, Esquire  
Carroll Law Firm  
1260 SunTrust International Center  
One Southeast Third Avenue  
Miami, Florida 33131-1714



# Florida Department of Transportation

CHARLIE CRIST  
GOVERNOR

605 Suwannee Street  
Tallahassee, FL 32399-0458

STEPHANIE C. KOPELOUSOS  
SECRETARY

## DELEGATION OF AUTHORITY

I, Stephanie C. Kopelousos, Secretary of the Florida Department of Transportation, delegate to Kevin J. Thibault, as the Assistant Secretary for Engineering and Operations, Deborah L. Hunt, as the Assistant Secretary for Intermodal Systems Development, and William F. Thorp, as the Interim Assistant Secretary for Finance and Administration, the authority and responsibility to take action on my behalf at anytime during my absence from the Department headquarters in Tallahassee. I also rescind any prior delegations to the contrary.

Stephanie C. Kopelousos, Secretary  
Florida Department of Transportation

Date