

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KYRIAKOU REVOCABLE TRUST)
AGREEMENT,)
)
Petitioner,)
)
vs.) Case No. 11-4463
)
DEPARTMENT OF TRANSPORTATION,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On October 18, 2011, an administrative hearing in this case was held by video teleconference in Tampa and Tallahassee, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Soterios Kyriakou, pro se
Kyriakou Revocable Trust Agreement
1010 Peninsula Avenue
Tarpon Springs, Florida 34689

For Respondent: Kathleen P. Toolan, Esquire
Department of Transportation
605 Suwannee Street, Mail Station 58
Tallahassee, Florida 32399-0458

STATEMENT OF THE ISSUE

The issue in the case is whether the Department of Transportation (Department) proposal to close a driveway connection between a state highway and property owned by the

Kyriakou Revocable Trust Agreement (Petitioner) should be approved.

PRELIMINARY STATEMENT

By letter dated February 5, 2010, the Department notified the Petitioner that, as part of a highway construction project in Pasco County, Florida, the Department would be closing a connection between U.S. Highway 19 (US 19) and the Petitioner's property.

By letter dated February 26, 2010, the Petitioner objected to the proposal and requested an administrative hearing. On September 1, 2011, the Department forwarded the request to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

At the hearing, the Petitioner presented the testimony of one witness. The Department presented the testimony of five witnesses and had Exhibits 1 through 4, 6, 7, and 12 through 14 admitted into evidence. The Transcript of the hearing was filed on October 31, 2011. The Department filed a Proposed Recommended Order on November 10, 2011.

FINDINGS OF FACT

1. The Department is the state agency responsible for regulating access to the state highway system.

2. The Department has commenced construction of highway improvements on US 19 in Pasco County, Florida. US 19 is a state highway, also identified as State Road 55.

3. The project is known as the "US 19 Continuous Right Turn Lane Safety Improvement Project." The Pasco County portion of the project is 11 miles long, four miles of which are currently under construction.

4. The project is intended to improve the safety of the highway by reducing the frequency of rear-end collisions, to improve pedestrian safety, and to facilitate mass transit operations. The project includes installation of a continuous right-turn lane, where feasible, as well as pedestrian sidewalks and median alterations.

5. The addition of a continuous turn lane will allow drivers to execute right turns after leaving traffic lanes, thereby reducing the incidence of rear-end collisions.

6. The Department is not planning to acquire additional property. The project is being constructed within existing right-of-way.

7. The Petitioner owns a parcel of commercial property located at 1733 U.S. Highway 19, in Holiday, Pasco County, Florida. The parcel has been owned since 1986 by Soterios Kyriakou and Nomiki Kyriakou, as husband and wife, who transferred ownership to the Petitioner in 2005.

8. The parcel is platted as a single lot and is bordered to the east by US 19 and to the north by a county road, Buena Vista Lane. Two driveways connect the parcel to US 19.

9. One of the project goals was to reduce the numerous driveways that connect private parcels to US 19. Limiting driveway connections to the highway promotes safe traffic flow.

10. In evaluating the four-mile segment prior to design, the Department reviewed more than 200 existing connections between the highway and adjoining parcels for compliance with safety and design criteria.

11. Driveway width and space parameters are generally based on vehicle count and highway classification. Many of the existing connections were excessively wide or insufficiently spaced and failed to comply with appropriate design-safety standards. Improperly-sized or located connections increase the opportunity for accidents between cars and with pedestrians.

12. In order to improve highway safety, the Department focused on limiting "conflict points" and providing for additional separation where possible, while providing for continued access at the existing connections.

13. The relevant design standards applicable to the Petitioner's parcel would normally limit the width of driveways to 24 feet and require a minimum separation of 440 feet between driveways.

14. The driveway connections between US 19 and the Petitioner's parcel exceed the appropriate width parameters. On the east side of the Petitioner's parcel, there are two separate 40-foot wide driveway connections to US 19, divided by a 25-foot wide grassy area.

15. The Petitioner's driveway connections are substantially closer than the 440-foot minimum requirements. The northernmost connection between the parcel and US 19 is approximately 40 feet from the intersection of US 19 and Buena Vista Lane. The southernmost connection between the parcel and US 19 is approximately 105 feet from the corner of US 19 and Buena Vista Lane. The two driveways are approximately 25 feet apart.

16. To the north side of the Petitioner's parcel, there is an 80-foot-wide connection to Buena Vista Lane, which will not be affected by the project.

17. Although the Petitioner's parcel is not of sufficient width to allow compliance with the spacing standards, the Department has not proposed to eliminate both connections between the parcel and US 19. Similarly, the Department has not proposed to reduce the width of the remaining southernmost connection between the Petitioner's parcel and US 19. The Department has proposed only the closure of the northerly connection between the Petitioner's parcel and US 19.

18. Continued use of the Petitioner's existing northernmost connection to the improved US 19 would present a significant conflict point for drivers entering US 19 from Buena Vista Lane and drivers intending to enter nearby Alternate US 19, with drivers turning onto or out of the Petitioner's parcel.

19. There is an existing stop sign on Buena Vista Lane at the intersection with US 19. Persons driving east on Buena Vista Lane execute right turns at the stop sign and travel south on US 19. After the project is completed, such drivers will likely turn south into the new continuous turn lane before merging east into through lanes. The existing northernmost driveway located only 40 feet to the south of the intersection presents a conflict point for vehicles entering onto US 19 from Buena Vista Lane.

20. A few hundred feet south of the Buena Vista Lane/US 19 intersection, US 19 connects to Alternate US 19. Drivers intending to travel west onto Alternate US 19 begin to move towards the right lane near the area of the Petitioner's parcel. After completion of the project, such drivers will likely be moving towards the new continuous turn lane, increasing the hazard presented by the Petitioner's existing northernmost driveway.

21. The Department performed appropriate feasibility and engineering studies prior to proposing the closure of the connection at issue in this proceeding. There was no evidence presented that would suggest the studies were inaccurate or otherwise unreliable.

22. There were multiple opportunities for public involvement during project development as well as direct contact between each impacted owner. The Department specifically notified the Petitioner of the proposal to close the northernmost connection between US 19 and the Petitioner's parcel. On more than one occasion, project representatives met with the Petitioner to discuss the proposal.

23. The closure of the Petitioner's northernmost connection to US 19 will improve vehicular and pedestrian safety. The southernmost 40-foot driveway on US 19 and the 80-foot Buena Vista Lane connection provide reasonable access to the Petitioner's parcel. There are no practical alternatives that would improve vehicular and pedestrian safety while maintaining reasonable access to the Petitioner's parcel from US 19.

24. The Petitioner asserted that the closure of the northerly connection will restrict access to his parcel, will significantly decrease the fair market value of the property, and will result in a loss of tenants and revenue. There was no

credible evidence presented in support of the assertions, and they have been rejected.

25. The Petitioner also asserted that flooding of Buena Vista Lane during rainstorms cause drivers to cross his property to avoid standing water. There was no evidence presented that the closure of the northernmost US 19 connection will have any impact on the referenced driver behavior or on any existing drainage issues.

CONCLUSIONS OF LAW

26. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. §§ 120.56 & 120.57, Fla. Stat. (2011).

27. The Department has the burden of proving by a preponderance of the evidence that the northern connection between US 19 and the Petitioner's parcel should be closed. Dep't. of Transp. v. J.W.C. Co. Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). The burden has been met.

28. The Department has the authority to control points of ingress to, and egress from, highways under the Department's jurisdiction "to ensure the safe, efficient, and effective maintenance and operation of such facilities." § 334.044 (14), Fla. Stat. (2011).

29. Section 335.182, Florida Statutes (2011), states as follows:

335.182 Regulation of connections to roads on State Highway System; definitions.--

(1) Vehicular access and connections to or from the State Highway System shall be regulated by the department in accordance with the provisions of this act in order to protect the public health, safety, and welfare.

(2) The department shall adopt, by rule, administrative procedures for its issuance and modification of access permits, closing of unpermitted connections, and revocation of permits in accordance with this act.

(3) As used in this act, the term:

(a) "Connection" means driveways, streets, turnouts, or other means of providing for the right of reasonable access to or from the State Highway System.

(b) "Significant change" means a change in the use of the property, including land, structures or facilities, or an expansion of the size of the structures or facilities causing an increase in the trip generation of the property exceeding 25 percent more trip generation (either peak hour or daily) and exceeding 100 vehicles per day more than the existing use.

30. The Department has adopted rules governing the modification of nonconforming highway connections. Florida Administrative Code Rule 14-96.015 states, in relevant part, as follows:

14-96.015 Department Design and Construction Projects.

When existing connections are modified by a Department project, access will be provided to abutting properties, subject to reasonable regulation as referred to in Section 335.181(2)(b), F.S. To the maximum extent feasible, this new access will be consistent with adopted Department connection standards.

(1) Corridors will be examined during the preliminary engineering and design phases to determine if existing connections, median openings, and signals spacing and design standards are in conformance, or can be brought into conformance, with adopted Department standards.

(2) When a permitted or grandfathered connection is modified as part of a Department construction project, and not due to a significant change, no additional permit shall be required.

(3) Where connections are to be modified as part of a Department construction project, and the Department is not planning to acquire any portion of the property for the project, the Department will provide notice and opportunity for an administrative proceeding pursuant to Rule 14-96.0011, F.A.C., and Chapter 120, F.S. For purposes of paragraph 14-96.011(1)(d), F.A.C., construction plans for a Department project signed, sealed, and dated by a Professional Engineer registered in the State of Florida shall substantiate a connection's non-conformance with Department standards or potential safety or operational problem, and a separate engineering study shall not be required.

* * *

(5) The Department will bear the cost of modification of existing approved connections necessitated solely by Department construction projects. (emphasis added).

31. The Department has adopted rules governing the modification of unpermitted connections. Rule 14-96.011, states, in relevant part, as follows:

14-96.011 Modification of Connections.

* * *

(3) Unpermitted Connections.

(a) Grandfathered Connections to the State Highway System. Connections permitted or in existence prior to July 1, 1988, use of which have never been discontinued as described in subparagraph 14-96.005(2)(c)3., F.A.C., are considered "grandfathered" and shall not require the issuance of a permit and may continue to provide connection to the State Highway System except as provided in subsection (4).

(b) Unpermitted/Non-Grandfathered Connections. All other unpermitted connections are subject to closure in accordance with paragraph (5)(b).

(4) Modification of Grandfathered Connections.

(a) The Department will require that a permit be obtained in accordance with subsection 14-96.005(3), F.A.C., pursuant to the provisions of Section 335.187(1), F.S., if significant changes have occurred.

(b) The Department will modify a connection if such modification is determined to be necessary because the connection would jeopardize the safety of the public or have a negative impact on the operational characteristics of the state highway. The problem may be substantiated by an engineering study signed, sealed, and dated by a professional engineer registered in the

State of Florida. Such engineering study shall consider the following:

1. Analysis of accidents or operational analysis directly involving the connection or similar connections, or a traffic conflicts analysis of the site.
2. Analysis of the impact modification of the connection will have on maintenance or safety on the public road system.
3. Analysis of the impact modification of the connection will have on traffic patterns and circulation on the public road system.
4. The principles of transportation engineering as determined by generally accepted professional practice.

(c) If the Department acts to modify a connection, the Department shall offer an opportunity to meet on site with the property owner or designated representative. The Department will take into consideration the following:

1. Documents, reports, or studies obtained by the property owner or lessee and provided to the Department.
2. Alternative solutions proposed by the property owner.

(5) Notification Process for Modification of Unpermitted Connections. Notice of the Department's intended action will be provided in accordance with Rule Chapter 28-106, F.A.C. The Department's action will become final unless a timely petition for a hearing is filed in accordance with Rule Chapter 28-106, F.A.C. In order to be timely, the petition must be filed with the Department's Clerk of Agency Proceedings within 21 days after receipt of the Department's notice, in accordance with Rule Chapter 28-106, F.A.C.

(a) The Department shall give written notice to the property owner, with a copy to the occupant, for a grandfathered connection if significant changes have occurred or if the connection is found to cause a safety or operational problem (as specified in this rule chapter). The notice will identify the specific information regarding the safety or operational problem and request that the problem be corrected or that a written agreement on a schedule for the correction be approved by the Department within 30 days of receipt of the notice.

1. If the reason for the modification is due to significant change the notice will state the basis of the Department's determination and require the filing of a permit application by a specified date. Where the Department's requirement to file an application has become final and no timely application has been filed, the Department will take immediate action to modify the connection in accordance with the notice at the owner's expense.

2. If the reason for the modification is a safety or operational problem, the notice will state the basis of the Department's determination and describe the changes necessary to reduce the hazard or correct the situation.

(b) If a timely request for an administrative proceeding is filed, or a permit application is filed within the 21 days, no further action shall occur until review of the application or the administrative proceeding is complete. If the connection is not closed and no timely application or request for an administrative proceeding is filed, the Department will take immediate action to install barriers across or modify the connection at the property owner's expense.

1. If a timely application is approved, the Department may allow the existing connection to be used for a period of time specified or until the connection specified in the permit application is constructed and the existing connection is closed. If necessary to ensure safety and highway integrity, modifications of unpermitted connections will be required by the Department as a requirement of permit approval, subject to the requirements of this rule chapter and Chapter 120, F.S. If the application is denied, the Department shall notify the property owner or lessee of the denial, with a copy to the occupant, and shall immediately close the unpermitted connection(s), subject to the provisions of this rule chapter and Chapter 120, F.S.

2. In lieu of filing an application, the property owner or lessee may challenge the requirement to file a permit application by filing in accordance with Rule Chapter 28-106, F.A.C., a timely written request (within 21 days of receipt of notice) for an administrative proceeding stating the reasons why a permit is not required for the connection. In such a case, final action to modify the unpermitted connection shall be taken in accordance with the results of the administrative proceeding.

(6) Responsibility for Costs of Correcting Deficiencies. The property owner and current user of the connection shall be responsible for the costs of modifications required pursuant to actions taken in accordance with the procedure in Rule 14-96.011, F.A.C.

32. In this case, the Department has fully complied with the requirements of statute and administrative rule set forth herein. The evidence clearly establishes that the closure of the northernmost connection between the Petitioner's parcel and US 19 will improve vehicular and pedestrian safety. The remaining

southernmost connection between the Petitioner's parcel and US 19 provides reasonable access to the Petitioner's parcel from the state highway. There are no reasonable alternatives that would improve safety and provide reasonable access from US 19 to the Petitioner's parcel. The Petitioner offered no credible evidence to support the assertions made in the written request for hearing or raised during the hearing on October 18, 2011.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Transportation issue a final order approving the closure of the northernmost driveway connection located at 1733 U.S. Highway 19, in Holiday, Pasco County, Florida.

DONE AND ENTERED this 30th day of November, 2011, in Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of November, 2011.

COPIES FURNISHED:

Kathleen P. Toolan, Esquire
Department of Transportation
605 Suwannee Street, Mail Station 58
Tallahassee, Florida 32399-0458

Soterios Kyriakou
Kyriakou Revocable Trust Agreement
1010 Peninsula Avenue
Tarpon Springs, Florida 34689

Deanna Hurt, Clerk of Agency Proceedings
Department of Transportation
Haydon Burns Building
605 Suwannee Street, Mail Station 58
Tallahassee, Florida 32399-0450

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

Ananth Prasad, Secretary
Department of Transportation
Haydon Burns Building
605 Suwannee Street, Mail Station 57
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.