



Florida Department of Transportation

RICK SCOTT
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

ANANTH PRASAD, P.E.
SECRETARY

January 29, 2013

FILED
13 JAN 31 PM 1:51
DIVISION OF
ADMINISTRATIVE
HEARINGS

William F. Quattlebaum
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550

**THOROUGHbred DEVELOPMENT, INC. AND RODNEY DESSBERG v. FDOT
DOT CASE NO. 12-085**

Dear Judge Quattlebaum:

Enclosed is a copy of the Final Order filed January 29, 2013, in the above-styled case.

Sincerely,

Patricia A. Parsons
Clerk of Agency Proceedings
(850) 414-5265

pap

Enclosures

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

FILED
13 JAN 31 PM 1:51
DIVISION OF
ADMINISTRATIVE
HEARINGS

THOROUGHBRED DEVELOPMENT, INC.,
AND RODNEY DESSBERG,

Petitioner,

DOAH CASE NO. 12-2326
DOT CASE NO. 12-085

vs.

DEPARTMENT OF TRANSPORTATION,

Respondent.

FINAL ORDER

On May 24, 2012, the Department of Transportation (Department) issued a Notice of Denied Outdoor Advertising Permit Application to Thoroughbred Development for an existing sign located .4 miles south of Tallevast Road on US 41 (7851 N. Tamiami Trail) in Manatee County, Florida. As grounds for denial, the Department noted that the sign did not meet spacing requirements described in Section 479.07(9)(a), Florida Statutes, and the sign was located on a Scenic Highway, which precluded the permitting of new signs in accordance with Rule 14-10.004(1)(b), Florida Administrative Code. On June 22, 2012, Thoroughbred Development, Inc., and its owner Rodney Dessberg (collectively Thoroughbred), filed a Petition for Administrative Hearing. On July 10, 2012, the petition and accompanying documents were filed with the Division of Administrative Hearings. The matter was assigned DOAH case number 12-2326.

An administrative hearing was held by video teleconference with sites in Tallahassee, Florida, and Sarasota, Florida, on November 20, 2012, before William F. Quattlebaum, a duly appointed Administrative Law Judge. Appearances on behalf of the parties were as follows:

For Petitioner: Robert K. Lincoln, Esquire
Icard, Merrill, Cullis, Timm, Furen & Ginsberg, P.A.
2033 Main Street, Suite 600
Sarasota, Florida 34237

For Respondent: Susan Schwartz, Esquire
Assistant General Counsel
Department of Transportation
605 Suwannee Street, Mail Station 58
Tallahassee, Florida 32399-0458

At the hearing, the Department called one witness, Kenneth Pye, and offered six exhibits into evidence, which were admitted as Respondent's exhibits 1 - 6. Petitioner presented one witness, Kerry Kirschner, and offered eight exhibits into evidence, which were admitted as Petitioner's exhibits 1 - 8. Five joint exhibits were offered into evidence, which were admitted as Joint exhibits 1-5. The Recommended Order was entered on December 31, 2012. No exceptions were filed.

STATEMENT OF THE ISSUE

As stated in the Recommended Order, the issue presented was whether the Department should approve the application filed by Thoroughbred to permit an existing sign under the "grandfather" provision set forth in section 479.105(1)(e), Florida Statutes.

FINDING OF FACT

The Administrative Law Judge's Findings of Fact in paragraphs 1 through 23 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.

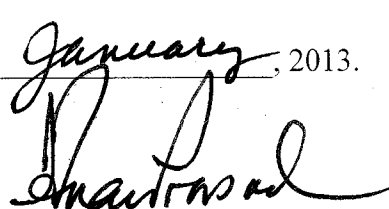
2. The Conclusions of Law in paragraphs 24 through 31 of the Recommended Order are fully supported in law, and are adopted and incorporated as if fully set forth herein.

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

ORDERED that the Recommended Order is adopted in its entirety and incorporated herein by reference. It is further

ORDERED that Thoroughbred Development's application for its existing sign located on U.S. 41, S.R. 190, N. Tamiami Trail, .4 miles S. of Tallevast Road (7851 N. Tamiami Trail) in Manatee County, Florida, is granted and permits shall be issued in accordance with Section 479.105(1)(e), Florida Statutes (2012).

DONE AND ORDERED this 29th day of January, 2013.



Ananth Prasad, P.E.
Secretary
Department of Transportation
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida 32399

FILED D.O.T. CLERK
2013 JAN 29 PM 2:39

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

William F. Quattlebaum
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Kenneth J. Pye, Supervisor
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