

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CARTER PRITCHETT ADVERTISING,
INC.,

Petitioner,

Case No. 13-0855

vs.

DEPARTMENT OF TRANSPORTATION,

Respondent,

and

CBS OUTDOOR, INC.,

Intervenor.

RECOMMENDED ORDER

This case came before Administrative Law Judge Darren A. Schwartz for final hearing on February 5 through 7, 2014, in Miami, Florida.

APPEARANCES

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STATEMENT OF THE ISSUE

Whether the State of Florida, Department of Transportation ("Department") properly denied Carter Pritchett Advertising, Inc.'s ("Carter") applications for outdoor advertising sign permits.

PRELIMINARY STATEMENT

On February 1, 2013, the Department issued Carter a Notice of Denied Outdoor Advertising Permit Application, advising that Carter's applications for double-faced outdoor advertising sign permits were not approved because of the following reason:

Sign does not meet spacing requirements
(1500' for interstates, 1000' for FAP).
In conflict with permitted sign(s), tag#(s):
CI138/139.
Held by: **CBS Outdoor, Inc.**

[s. 479.07(9)(a), 1., & 2.FS]

On February 25, 2013, Carter timely filed a Request for Formal Administrative Hearing to challenge the Department's denial of its applications. On March 13, 2013, the matter was referred to the Division of Administrative Hearings ("DOAH") to assign an Administrative Law Judge to conduct the final hearing.^{1/}

On April 22, 2013, CBS Outdoor, Inc. ("CBS") filed a Notice of Appearance as Party Respondent as a Specifically-named Person, and Alternative Petition to Intervene, with Full Party Status, in Alignment with the Florida Department of Transportation. On April 25, 2013, Administrative Law Judge Jessica E. Varn entered an Order granting CBS's petition to intervene.

On May 6, 2013, the Department issued Carter an Amended Notice of Denied Outdoor Advertising Permit Application in which the Department cited two additional grounds for the denial of Carter's applications. The reasons set forth in the Department's amended notice are as follows:

Sign does not meet spacing requirements
(1500' for interstates, 1000' for FAP).
In conflict with permitted sign(s), tag#(s):
CI138/139.
Held by: **CBS Outdoor, Inc.**

[s. 479.07(9)(a), 1., & 2.FS]

Location is not permittable under land use designations of site.

[s. 479.111(2), FS]

Location does not qualify as unzoned commercial/Industrial area.

[s. 479.01(26), FS]

On September 20, 2013, Carter filed an Amended Request for Formal Administrative Hearing on Amended Notice of Denied Outdoor Advertising Permit Application Numbers 58077 and 58078, to

address the Department's additional grounds for denying its applications.

This matter was initially set for final hearing on June 4 through 6, 2013, but was continued twice. On October 1, 2013, the undersigned entered an Order granting the second request for a continuance, and rescheduled the final hearing for February 5 through 7, 2014.

On January 17, 2014, CBS filed a Motion in Limine and Alternative Motion to Continue Final Hearing, which were denied by the undersigned in an Order issued on January 22, 2014. On January 22, 2014, CBS filed a Motion to Dismiss and Alternative Motion for Summary Final Order, to which Carter responded with a memorandum in opposition filed on January 29, 2014. On January 30, 2014, the undersigned entered an Order denying CBS's motions.

On February 3, 2014, the parties filed their Joint Pre-Hearing Stipulation, in which they stipulated to various facts, issues of law, and the admissibility of certain exhibits. On February 3, 2014, Carter filed a Motion in Limine to Exclude Evidence Unrelated to the Three Reasons Cited by the Department for Denying the Carter Applications, to which CBS responded with a memorandum in opposition filed on February 4, 2014. At the commencement of the final hearing on February 5, 2014, the

undersigned ruled on Carter's motion, granting it in part, and denying it in part.

The final hearing took place on February 5 through 7, 2014, in Miami, Florida, as scheduled, with all parties present. At hearing, Carter presented the testimony of Robert Jessee; Rex Hodges, Sr.; Rex "Bo" Hodges, Jr.; Anthony Campanile; Joseph Little; and Mac Barnes. Carter's Exhibits 1 through 13, 13a, 17 through 22, 24, 26 through 31, 33, 46, and 59 were received into evidence.

The Department presented the testimony of Mark Johnson and Kenneth Pye. The Department's Exhibits 2 through 6 were received into evidence. CBS presented the testimony of Joseph Little and Cary Winningham. CBS's Exhibits I6, I13, I14, I26, I28, I35, I41, I49, I60, I87, I88, I96, I110, I114A, I114B, I143, I144, and I146 were received into evidence. The parties' Joint Exhibit 1 was also received into evidence.

The five-volume hearing Transcript was filed on March 12, 2014. At the conclusion of the final hearing, the undersigned granted the parties' request that the deadline for filing proposed recommended orders be extended to 30 days after the date of filing of the Transcript.

On April 4, 2014, CBS filed an unopposed motion to extend the parties' deadline to file proposed recommended orders until April 21, 2014. On April 7, 2014, the undersigned granted CBS's

motion, extending the deadline for the parties to file proposed recommended orders until April 21, 2014. Carter and CBS timely filed proposed recommended orders on April 21, 2014. On April 22, 2014, at 1:47 p.m., the Department filed a Motion to Accept Proposed Recommended Order as Timely, along with a Proposed Recommended Order. On April 23, 2014, the undersigned issued an Order granting the Department's motion. The parties' proposed recommended orders were considered in the preparation of this Recommended Order.

Based on the oral and documentary evidence presented at the final hearing, the stipulations of the parties, and on the entire record of this proceeding, the following findings of fact are made.

FINDINGS OF FACT

The Parties

1. Carter and CBS are licensed to engage in the business of outdoor advertising in the state of Florida.

2. The Department is the agency vested with the responsibility to administer and enforce the provisions of chapter 479, Florida Statutes, including the approval and denial of applications for permits for outdoor advertising signs that are located within 660 feet or less of the nearest edge of the right-of-way of any portion of the interstate and are visible from the main-traveled way of such interstate.

The CBS Applications

3. On July 28, 2009, CBS submitted two applications to the Department for outdoor advertising permits for a V-shaped sign at 1490 Northwest Third Avenue, Miami, Florida, adjacent to Interstate 395 ("I-395"). The CBS applications sought permitting to I-395.

4. At the time CBS submitted its applications to the Department, the location of the proposed sign was within 660 feet from the nearest edge of the right-of-way of the on-ramp connecting I-395 to Interstate 95 ("I-95"), which is a controlled area. Thus, CBS's proposed sign required a permit issued by the Department.

5. Outdoor advertising signs may be permitted only in commercial-zoned or unzoned commercial or unzoned industrial areas. A commercial zone is an area identified in both the local government's Future Land Use Map ("FLUM") and in local zoning regulations as allowing commercial or industrial uses.

6. On August 13, 2009, the Department issued a Notice of Denied Outdoor Advertising Application to CBS. The Department stated the following reasons for denying CBS's applications:

Sign does not meet spacing requirements
(1500' for interstates, 1000' for FAP).
In conflict with permitted sign(s), tag#(s):
BR203/BW544.
Held by: **CLEAR CHANNEL OTDR - S FLORIDA DIV.**

[s. 479.07(9)(a), 1., & 2.FS]

Location is not permissible under land use designations of site.

[s. 479.111(2), FS]

7. CBS's applications were for a pilot program sign to be permitted to I-395. Pursuant to section 470.07(9)(c), Florida Statutes (2009), pilot program signs reduce the spacing requirements for interstates from 1,500 feet to 1,000 feet. However, at the time CBS submitted its applications, the City of Miami had not yet adopted a resolution expressing its intent to participate in a pilot program.

8. At the time CBS submitted its applications, the parcel on which the proposed sign was to be located was zoned Parks and Recreation. In addition, the parcel was designated Recreation on the FLUM. The Department would not issue a permit for an outdoor advertising sign located in a parcel zoned Parks and Recreation and designated Recreation on the FLUM.

9. On September 11, 2009, CBS filed a Petition for Formal Proceedings, challenging the Department's denial of its applications. The Department never transferred the CBS Petition to DOAH prior to taking final action on the CBS applications.

10. Pursuant to Resolution R 09-0451, enacted by the City of Miami on September 24, 2009, the City of Miami resolved to express its intent to participate in a pilot program allowing 1,000 foot spacing of outdoor advertising signs along expressways

in the City of Miami. Furthermore, the City of Miami resolved to authorize placement of billboards in parks, including the Overtown Plaza, where CBS proposed to locate its sign.

11. After CBS submitted its applications, the City of Miami enacted a new zoning ordinance which is commonly referred to as "Miami 21." Miami 21 became effective on May 20, 2010.

12. On May 20, 2010, the City of Miami informed the Department that the City of Miami had accepted the location of the proposed CBS sign into the City of Miami's pilot program, thereby allowing 1000 foot spacing in the City of Miami consistent with the pilot program authorized by section 479.07(9) (c), Florida Statutes.

13. On May 21, 2010, CBS provided the Department with information regarding the updated zoning and FLUM designation(s) of the proposed site based on the newly implemented Miami 21. The new zoning of the proposed sign location was T6-8 O, which allows for commercial, residential and other uses, and the new FLUM designation was Restricted Commercial, which allows for commercial and residential uses.

14. The evaluation used to determine satisfaction of the criteria outlined in sections 479.01(23) (2009) and 479.01(26) (2011), is commonly referred to as the "Use Test." The Department utilizes the Use Test where a parcel of land is designated by the FLUM of the comprehensive plan for multiple

uses that include commercial or industrial uses but are not specifically designated for commercial or industrial uses under the land development regulations.

15. Under the Use Test, a property that is zoned to allow for commercial or industrial uses, in addition to other uses, is examined to determine if surrounding commercial or industrial uses exist near the property that are visible to the main-traveled way of the roadway where the sign is to be permitted. There must be three or more separate and distinct conforming industrial or commercial activities, at least one of which is located on the same side of the highway and within 800 feet of the sign location; the commercial or industrial activities must be within 660 feet from the nearest edge of the right-of-way; and the commercial or industrial activities must be within 1600 feet of each other.

16. Under the Use Test, certain activities are not recognized as commercial activities, such as activities not "visible" from the main-traveled way. Thus, to satisfy the Use Test, the applicant must demonstrate that there are three commercial or industrial activities within the required spacing which are visible from the main-traveled way. To be visible, the commercial or industrial activities must be capable of being seen from the main-traveled way without visual aid by a person of

normal acuity and be generally recognizable as commercial or industrial.

17. Due to the land use designation and zoning of the parcel on which the CBS sign was to be located, CBS submitted information to the Department to demonstrate that it satisfied the Use Test.

18. In May 2012, the Department conducted a Use Test in connection with the CBS applications by evaluating commercial uses along I-395. The Department determined that the CBS applications satisfied the Use Test.

19. On August 7, 2012, the Department entered into a settlement agreement with CBS in which the Department agreed to grant permits for CBS's pilot program sign to be located at 1490 Northwest Third Avenue, Miami, Florida, adjacent to I-395. The settlement agreement was incorporated into a Final Order dated August 14, 2012, dismissing CBS's request for an administrative hearing. On August 22, 2012, the Department issued CBS permits with tag numbers CI 138/CI 139.

The Carter Applications

20. On October 15, 2010, Carter submitted two outdoor advertising permit applications for a double-faced sign to be located 535 feet west of Northwest Fourth Avenue in Miami, Florida and to be permitted to I-95. The Carter applications were assigned Department File Numbers 58077 and 58078. Carter's

applications were not submitted as pilot program signs. They were submitted for 1,500 foot spacing.

21. The location of the proposed Carter sign is within a condominium complex ("Town Park Village Number 1"), specifically, a parking lot adjacent to the same on-ramp connecting I-395 and I-95 as the CBS applications (between Northwest Fifteenth Street and Northwest Fourth Avenue).

22. The Carter applications, however, sought permitting to I-95. Carter's proposed sign is 660 feet from the nearest edge of the right-of-way of the east side of I-95, which is a controlled area. Thus, Carter's proposed sign requires a permit issued by the Department.

23. The location of the proposed Carter sign is designated as Restricted Commercial on the FLUM for the City of Miami, which designation allows for commercial and residential uses. The zoning of the parcel is T5-0, which allows for commercial, residential, and other uses.

24. By letter dated November 15, 2010, the Department notified Carter that its applications would be held by the Department without action until a prior hearing request was resolved. The letter did not identify who filed the referenced prior hearing request. The prior hearing request concerned the CBS applications.

25. Due to the land use designation and zoning of the parcel for the Carter proposed sign, the Department determined that Carter must satisfy the Use Test set forth in section 479.01(26), Florida Statutes (2012). Carter acknowledges that it must satisfy the Use Test in order to obtain the permits.

26. Whether Carter has satisfied the requirements of the Use Test by establishing that there are three commercial or industrial activities visible from the main-traveled way of I-95 is a dispositive factual issue to be determined by the undersigned.

27. Carter identified for the Department three commercial activities near the proposed Carter sign, and within the required spacing, that Carter contends are visible from the main-traveled way of I-95, and thus, satisfy the Use Test. These are the Overtown Shopping Plaza, Two Guys Restaurant, and Black Kutz Barbershop.

28. The location of the proposed Carter sign is within 800 feet for the southwestern corner of Overtown Plaza. The Department does not contest these measurements, or that Overtown Plaza is within 660 feet from the nearest edge of the right-of-way.

29. Two Guys Restaurant is located on Northwest Third Avenue, and is 1,170 feet from the southwest corner of Overtown Plaza. Two Guys Restaurant is 580 feet west of the northbound

I-95 right-of-way line. The Department does not contest these measurements.

30. Black Kutz Barbershop is located on Northwest Third Avenue, and is 1,465 feet from the southwest corner of Overtown Plaza. Black Kutz Barbershop is 496 feet west of the northbound I-95 right-of-way line. The Department does not contest these measurements.

31. Overtown Plaza, Two Guys Restaurant, and Black Kutz Barbershop are within 1,600 feet of each other. The Department does not contest these measurements.

32. The Department conducted a Use Test in connection with the Carter applications by evaluating the visibility of the three purported commercial uses along I-95 proposed by Carter (Overtown Plaza, Two Guys Restaurant, and Black Kutz Barbershop).

33. The Department determined that the Carter applications did not satisfy the Use Test because Overtown Plaza, Two Guys Restaurant, and Black Kutz Barbershop, are not visible from the main-traveled way of I-95, as required by section 479.01(26)(b)4., Florida Statutes (2012).

34. If any of these purported three businesses (Overtown Plaza, Two Guys Restaurant, and Black Kutz Barbershop) are not visible from the main-traveled way of I-95, then Carter has not satisfied the requirements of the Use Test.

35. The photographs relied on by Carter and the persuasive evidence presented at hearing establish that Black Kutz Barbershop and Two Guys Restaurant are not visible from the main-traveled way of I-95.

36. At hearing and in its Proposed Recommended Order, Carter relies on two photographs taken by Mr. "Bo" Hodges from the main-traveled way of I-95 (Carter's Exhibits 17 and 18), to demonstrate that Black Kutz Barbershop and Two Guys Restaurant are, in fact, visible from the main-traveled way of I-95.

37. Exhibits 17 and 18 and the persuasive evidence presented at hearing fail to establish that Black Kutz Barbershop and Two Guys Restaurant are, in fact, visible from the main-traveled way of I-95. Two Guys Restaurant and Black Kutz Barbershop are obstructed from view by trees and other structures. At best, only portions of the buildings that house the two businesses can be glimpsed from the main-traveled way of I-95.

38. Neither the photographs (Exhibits 17 and 18), nor the persuasive evidence presented at hearing, demonstrate that the buildings contain commercial activity. Catching a glimpse of a portion of the buildings does not mean that the buildings contain commercial activity.

39. A glimpse of a building does not establish that a commercial activity is visible from the main-traveled way. In

sum, the photographs relied on by Carter, and the persuasive evidence presented at hearing, fail to establish that Two Guys Restaurant and Black Kutz Barbershop are visible from the main-traveled way of I-95.^{2/}

40. Notably, the Department presented photographic and video evidence of its recent Use Test with respect to Carter's applications (Department's Exhibits 5 and 6). The photographic and video inspection was conducted by Mr. Mark Johnson, a Department Outdoor Advertising Inspector, during his inspection on January 4, 2014.

41. Mr. Johnson testified that neither Black Kutz Barbershop nor Two Guys Restaurant are visible from the main-traveled way of I-95. The undersigned's review of the video and photographs relied on by Mr. Johnson do not show otherwise.^{3/}

42. Mr. Pye, the Department's Supervisor of Field Operations, testified that he drove along the main-traveled way of I-95 just before the final hearing. He was able to merely catch a glimpse of a corner of the building in which Two Guys Restaurant is located, and the top portion of the corner of a building in which Black Kutz Barbershop is located. However, he was unable to determine that there was commercial activity.

43. After a careful consideration of the evidence presented at hearing, the undersigned finds, as ultimate facts, that Two Guys Restaurant and Black Kutz Barbershop are not visible from

the main-traveled way of I-95. Two Guys Restaurant and Black Kutz Barbershop are not capable of being seen from the main-traveled way of I-95 without visual aid by a person of normal visual acuity, and they are not generally recognizable from the main-traveled way of I-95 as commercial.

44. Accordingly, Carter failed to satisfy the Use Test, and the Department properly denied Carter's applications.

45. Based on the undersigned's finding that Two Guys Restaurant and Black Kutz Barbershop are not capable of being seen from the main-traveled way of I-95 without visual aid by a person of normal visual acuity, and they are not generally recognizable from the main-traveled way of I-95 as commercial, there is no need to address any of the other factual contentions of the parties.

CONCLUSIONS OF LAW

46. DOAH has jurisdiction over the subject matter and the parties pursuant to sections 120.569 and 120.57(1), Florida Statutes.

47. As the applicant for the permits, Carter bears the burden of proving, by a preponderance of the evidence, that it should be granted the permits. Fla. Dep't of Transp. v. J.W.C. Co., Inc., 369 So. 2d 778, 788 (Fla. 1st DCA 1981).

48. The Department's denial of Carter's applications was based, in part, on sections 479.111(2) and 479.01(26), Florida

Statutes (2012). Section 479.111(2) provides that outdoor advertising signs may be permitted only in commercial-zoned and industrial-zoned areas or commercial-unzoned and industrial-unzoned areas.

49. Section 479.01(4), Florida Statutes (2012), provides in pertinent part:

"Commercial or industrial zone" means a parcel of land designated for commercial or industrial use under both the future land use map of the comprehensive plan and the land use development regulations adopted pursuant to chapter 163.

50. Section 479.01(5), Florida Statutes (2012), further provides:

"Commercial use" means activities associated with the sale, rental, or distribution of products or the performance of services. The term includes, without limitation, such uses or activities as retail sales; wholesale sales; rentals of equipment, goods, or products; offices; restaurants; food service vendors; sports arenas; theaters; and tourist attractions.

51. The Carter proposed sign location is designated Restricted Commercial under the FLUM and T5-O under Miami 21 zoning. T5-O is an Urban Core zoning designation allowing for residential uses and restricted commercial uses. T5-O is not specifically designated for commercial or industrial uses and is therefore not considered a commercial or industrial zone for outdoor advertising purposes.

52. The Use Test contains both a distance and visibility requirement. Section 479.01(26), Florida Statutes (2012), contains the criteria for the Use Test, and provides:

"Unzoned commercial or industrial area" means a parcel of land designated by the future land use map of the comprehensive plan for multiple uses that include commercial or industrial uses, but which are not specifically designated for commercial uses under the land development regulations, in which three or more separate and distinct conforming industrial or commercial activities are located.

(a) These activities must satisfy the following criteria:

1. At least one of the commercial or industrial activities must be located on the same side of the highway and within 800 feet of the sign location;
2. The commercial or industrial activities must be within 660 feet from the nearest edge of the right-of-way; and
3. The commercial industrial activities must be within 1,600 feet of each other.

Distances specified in this paragraph must be measured from the nearest outer edge of the primary building or primary building complex when the individual units of the complex are connected by covered walkways.

(b) Certain activities, including, but not limited to, the following, may not be so recognized as commercial or industrial activities:

1. Signs.
2. Agricultural, forestry, ranching, grazing, farming, and related activities,

including, but not limited to, wayside fresh produce stands.

3. Transient or temporary activities.
4. Activities not visible from the main-traveled way.
5. Activities conducted more than 660 feet from the nearest edge of the right-of-way.
6. Activities conducted in a building principally used as a residence.
7. Railroad tracks and minor sidings.
8. Communication towers.

53. Section 479.01(28), Florida Statutes (2012), further provides:

"Visible commercial or industrial activity" means a commercial or industrial activity that is capable of being seen without visual aid by a person of normal visual acuity from the main-traveled way and that is generally recognizable as commercial or industrial.

54. Section 479.01(13), Florida Statutes (2012), further provides:

"Main-traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways which specifically include on-ramps or off-ramps to the interstate highway system, or parking areas.

55. The evidence presented at hearing fails to demonstrate that Carter's applications satisfy the Use Test from the main-traveled way of I-95.

56. Carter's reliance on Two Guys Restaurant and Black Kutz Barbershop is misplaced. At best, only a glimpse of part of the buildings in which Two Guys Restaurant and Black Kutz Barbershop are located can be observed from the main-traveled way of I-95. Observing a glimpse of part of the buildings in which Two Guys Restaurant and Black Kutz Barbershop are located from the main-traveled way of I-95 is insufficient to establish that they are visible as commercial activities. See Lamar Outdoor Adver., Inc. v. Ark. State Highway & Transp. Dep't., 2004 Ark. App. LEXIS 344 (Ark. Ct. App. 2004) (affirming denial of outdoor advertising permit to erect a billboard and concluding that business was not visible to the main-traveled way where only a "slight glimpse" of structures could be seen from the main-traveled way).

57. The Department properly determined that Carter failed to satisfy the Use Test, and the Department properly denied Carter's applications for not satisfying the requirements of sections 479.111(2) and 479.01(26), Florida Statutes (2012).^{4/}

58. Based on the undersigned's ruling on this dispositive issue, it is unnecessary to consider the parties' other legal arguments.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department enter a final order denying Carter's applications for outdoor advertising sign permits (Department File Numbers 58077 and 58078).

DONE AND ENTERED this 1st day of May, 2014, in Tallahassee, Leon County, Florida.



DARREN A. SCHWARTZ
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 1st day of May, 2014.

ENDNOTES

^{1/} This case was initially assigned to Administrative Law Judge T.P. Crapps. On March 22, 2013, this matter was transferred to Administrative Law Judge Jessica E. Varn for all further proceedings. On September 3, 2013, this matter was transferred to the undersigned for all further proceedings.

^{2/} Notably, on page 16 of its Proposed Recommended Order, Carter points to Exhibit 12 as evidence of photographs taken by Mr. Bo Hodges "from I-95," which purportedly demonstrate that Two Guys Restaurant and Black Kutz Barbershop "are visible from the main traveled way of I-95." It is apparent to the undersigned that Carter does not mean to suggest that these photographs were taken from the "main-traveled way" of I-95. A review of Mr. Bo Hodges'

testimony and the photographs within Exhibit 12 reflect that none of the pictures of Two Guys Restaurant or Black Kutz Barbershop were taken from the "main-traveled way." Of course, any reliance by Carter on photographs taken anywhere other than from the main-traveled way of I-95 are misplaced. Moreover, on page 17 of its Proposed Recommended Order, Carter refers specifically to documents labeled CAR-000321-323 within Exhibit 12, none of which are photographs of Two Guys Restaurant or Black Kutz Barbershop.

^{3/} Mr. Johnson attempted to perform a prior Use Test of Carter's applications through a visual inspection on May 13, 2013. However, Mr. Johnson's evaluation focused on I-395, although his report does mention I-95. Mr. Johnson did not find any commercial activities visible from I-95. Mac Barnes is an employee of Cardno, which contracts with the Department to perform Use Tests. Prior to Mr. Johnson's May 13, 2013, inspection, Mr. Barnes also performed a Use Test evaluation with respect to the Carter applications. However, Mr. Barnes performed his inspection from I-395, not I-95. The parties agree that the main-traveled way of I-95 is the proper location to conduct a Use Test evaluation of the Carter applications, not I-395.

^{4/} Carter incorrectly contends that it is contrary to the evidence for the Department to have reached the conclusion that CBS satisfied the visibility requirement of the Use Test while Carter did not. The parties recognize that the main-traveled way of I-395 is the relevant viewpoint for determining whether CBS satisfied the Use Test, and that the main-traveled way of I-95 is the relevant viewpoint for determining whether Carter satisfied the Use Test. I-95 runs north and south and I-395 runs east and west. Because there are different viewpoints (interstate highways) which govern the Department's application of the Use Test, the views from those interstate highways vary. What is visible along the main-traveled way of I-395 is different from what is visible from the main-traveled way of I-95.

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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.