

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

JOHN DADDONO,

Petitioner,

DOAH CASE NO.: 15-4992

DOT CASE NO.: 15-014

vs.

DEPARTMENT OF TRANSPORTATION,

Respondent.

FINAL ORDER

On December 18, 2014, the Department of Transportation (“Department”) issued to John Daddono (“Daddono”) a Notice of Denied Outdoor Advertising Permit Application, regarding Application Nos. 61203 and 61204, for an existing outdoor advertising sign located on a scenic highway. Daddono requested a formal administrative hearing and the matter was referred to the Division of Administrative Hearings. A hearing was conducted before the assigned Administrative Law Judge (“ALJ”), the Honorable E. Gary Early, on February 23, 2016. The ALJ entered a Recommended Order on April 27, 2016, recommending that the Department enter a final order denying Outdoor Advertising Permit Application Nos. 61203 and 61204.

A copy of the Recommended Order, along with a Notice of Scrivener’s Error in the Recommended Order, are attached. No exceptions were filed.

STATEMENT OF THE ISSUE

As stated in the Recommended Order, the issue presented was whether Daddono’s Outdoor Advertising Permit Applications should be denied due to application deficiencies, and because the sign faces are located adjacent to a designated scenic highway.

FINDINGS OF FACT

The Findings of Fact in paragraphs 1 through 47 of the Recommended Order are supported by competent, substantial evidence and are adopted and incorporated as if fully set forth herein.


CONCLUSIONS OF LAW

The Conclusions of Law in paragraphs 48 through 70 of the Recommended Order are fully supported in law, and are adopted and incorporated as if fully set forth herein.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Department denies Outdoor Advertising Permit Application Nos. 61203 and 61204, in accordance with the December 18, 2014, Notice of Denied Outdoor Advertising Permit Application.

DONE AND ORDERED this 16th day of May, 2016.



JIM BOXOLD
Secretary
Department of Transportation
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida 32399

FILED D.O.T. CLERK
2016 MAY 16 AM 10:44

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:

HON. E. GARY EARLY

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOHN DADDONO,

Petitioner,

vs.

Case No. 15-4992

DEPARTMENT OF TRANSPORTATION,

Respondent.

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on February 23, 2016, by video teleconference at sites in Tallahassee, Florida and West Palm Beach, Florida, before E. Gary Early, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: James D. Ryan, Esquire
Ryan & Ryan Attorneys, P.A.
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North Palm Beach, Florida 33408

For Respondent: Austin M. Hensel, Esquire
Department of Transportation
Haydon Burns Building
Mail Station 58
605 Suwannee Street
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STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner's Outdoor Advertising Permit Applications should be denied due to application deficiencies, and because the signs are located adjacent to a designated scenic highway.

PRELIMINARY STATEMENT

On December 18, 2014, the Florida Department of Transportation (Department) issued a Notice of Denied Outdoor Advertising Permit Application for application Nos. 61203 and 61204 to Petitioner. The Department alleged that the outdoor advertising sign permit applications should be denied because of incorrect information in the applications in violation of section 479.08, Florida Statutes, and because the proposed signs are located adjacent to a designated scenic highway, which is not allowed pursuant to Florida Administrative Code Rule 14-10.004(4)(c).

On February 12, 2015, Petitioner requested an informal hearing to contest the denial of the application. Although that date is well beyond the 30 days allotted for the filing of a petition, the Department did not allege that the petition was not timely filed.

On August 28, 2015, the Department entered an Order Cancelling Hearing, which was based on the inability of the parties to agree to material facts. As a result, the Department

determined that the case should be sent to the Division of Administrative Hearings (DOAH). Thereafter, on September 4, 2015, the request for hearing was referred to DOAH.

The final hearing was scheduled for December 16, 2015. It was convened and, due to Petitioner's illness, continued and rescheduled for February 23, 2016.

The case was transferred to the undersigned on February 18, 2016, and the final hearing was conducted as scheduled.

The parties filed a Joint Pre-hearing Stipulation in which they identified stipulated facts for which no further proof would be necessary. The stipulated facts have been accepted and considered in the preparation of this Recommended Order.

At the final hearing, Joint Exhibits 1 through 27 were received in evidence. The parties stipulated that the various governmental records, applications, and notices regarding the signs at issue are business records of the Department, and therefore subject to the business records exception to the hearsay rule.

Petitioner testified on his own behalf, and presented the testimony of Eric Carl Fischer, a director of Town and Country Leasing of Sebastian ("Town & Country Realty"), and Daniel E. Taylor, a licensed real estate broker. Respondent presented the testimony of Mark Johnson, Respondent's regional outdoor advertising inspector, and Kenneth Pye, Respondent's outdoor

advertising field operations supervisor. Respondent's Exhibit 1 was received in evidence without objection.

A one-volume Transcript of the proceedings was filed on March 1, 2016. Respondent timely filed its Proposed Recommended Order. Petitioner filed a motion for extension of time to file his proposed recommended order, based on his lack of knowledge that the Transcript had been filed. The motion was granted, and Petitioner was given until April 21, 2016, to file his proposed recommended order. Petitioner filed his Proposed Recommended Order by the deadline, and both have been duly considered in the preparation of this Recommended Order.

All citations are to the 2015 Florida Statutes except as otherwise indicated.

FINDINGS OF FACT

1. The Department of Transportation regulates outdoor advertising signs located in proximity to the state highway system, interstate highway system, and federal-aid primary highway system.

2. U.S. Highway 1 is a federal-aid primary highway that runs in a generally north/south direction along the east coast of Florida.

3. In April 1995, the Department issued outdoor advertising sign permit tag number BK459 to Town & Country Realty for an outdoor advertising sign (the "original sign").

The original sign was constructed adjacent to and on the west side of U.S. Highway 1 in Sebastian, Florida (the "property").

4. Records maintained by the Department during the period of the original sign's existence, i.e., the Department's outdoor advertising database from July 31, 2002, indicate that the original sign was located at U.S. Highway 1 milepost 18.496. That evidence, created contemporaneously with the sign's existence, and before any controversy regarding the sign arose, is accepted as the most persuasive evidence of the precise location of the original sign.

5. Mr. Pye testified that outdoor advertising sign permits are issued for a specific location, rather than for any location on a parcel of property. Given the precise spacing requirements for signs (see, e.g., section 479.07(9) and section 479.11), and the permitting of signs to the thousandths of a mile, Mr. Pye's testimony is accepted.

6. The original sign was located against a backdrop of vegetation. The original sign was single-sided with a north-facing sign face. As such, the original sign could normally be seen only from vehicles traveling southbound on U.S. Highway 1.

7. On June 13, 2000, U.S. Highway 1, from milepost 14.267 to milepost 22.269 was designated as the Indian River Lagoon State Scenic Highway. The scenic highway designation included the stretch of U.S. Highway 1 on which the property fronts.

8. On March 18, 2004, Henry Fischer & Sons, Inc./Town & Country Realty sold the property and the original sign to Petitioner.

9. Daniel Taylor, a licensed real estate broker, worked on the transaction that led to Petitioner's ownership of the property. He indicated that the property was desirable because it was clean, cleared, and demucked, and because it had the permitted original sign as an attractive asset, since the sign provided an income stream that could be used to pay property taxes.

10. Eric Fischer, who was a director of Town & Country Realty, testified that, when the property was sold to Petitioner, the original sign was intended "to go with the property."

11. Upon the sale of the property and the original sign, Petitioner believed that Town & Country Realty would notify the state of the sale of the sign, and that he would thereafter be contacted by the state.

12. Mr. Taylor testified that he and Petitioner called the Department and determined that Petitioner "could just step into the Fischer's shoes."

13. Based on the testimony of Petitioner and Mr. Taylor, Petitioner knew, or should have known, that the Department had regulatory oversight over the sign.

14. An Outdoor Advertising Permit Transfer Request form is required to be submitted to the Department in order to transfer a sign permit from one person to another. No Outdoor Advertising Permit Transfer Request form was submitted for permit tag number BK459.

15. Petitioner was never contacted by the state regarding the sale of the sign. Nonetheless, Petitioner continued to lease the sign and, as detailed herein, to replace and move the sign after the hurricanes of 2004.

16. In September and October 2004, Hurricanes Frances and Jeanne struck Sebastian, Florida, very badly damaging the original sign. The wooden supports were flattened and no longer usable, and the sign was "pretty demolished."

17. Petitioner testified that he was told by an official of Indian River County to relocate the original sign to keep it from proximity of trees that could, in the event of a recurrence of the 2004 storms, topple and destroy the sign. The testimony, which was intended to prove the truth of the matter asserted, i.e., that Petitioner was directed by a governmental representative to relocate the sign, was uncorroborated by evidence that would be admissible over objection in a civil trial.

18. Petitioner hired a person to rebuild a sign on the property. When the sign was rebuilt, it was not replaced at its

original location at milepost 18.496. Rather, the "rebuilt sign"^{1/} was moved to the cleared center of the property at milepost 18.535.

19. Instead of a single-faced sign normally visible to northbound traffic, the rebuilt sign was a double-faced sign, with sides facing north and south. As such, the rebuilt sign could be seen by vehicles traveling U.S. Highway 1 in either direction.

20. The original sign had four equally-spaced square support posts. The rebuilt sign has three equally-spaced round, and more substantial, support poles.

21. The rebuilt sign has 11 horizontal stringers on each face, with each stringer secured to the three support posts. The stringers are uniform in appearance. The photographs of the rebuilt sign clearly show all of the stringers on one side, and some of the stringers on the other. The stringers show no evidence of having undergone storm damage, or of having been secured to support posts at different points along the stringers. The preponderance of the evidence supports a finding that the stringers were -- as were the posts -- new, stronger, intact materials when the rebuilt sign was constructed, and were not materials salvaged from the remains of the original sign.

22. The original plywood facing on the original sign was replaced with vinyl facings on the rebuilt sign.

23. As a result of the foregoing, a preponderance of the evidence indicates that the rebuilt sign was a new sign erected of entirely new materials, and was not established as a result of maintenance or repair of the original sign.

24. After the March 18, 2004, sale of the property and the post-hurricane erection of the rebuilt sign, Town & Country Realty continued to receive renewal billing from the Department for the original sign, along with several other signs owned by Town & Country Realty. Town & Country Realty, having sold the property on which the original sign was located and having no apparent interest in maintaining its other signs, did not pay the renewal bills.

25. On January 31, 2005, the Department issued a Notice of Violation and Order to Show Cause Non-Payment ("NOV") to Town & Country Realty. The NOV provided a grace period of 30 days within which the license and permits could be renewed, subject to a penalty. Town & Country Realty did not renew the license or permits.

26. On March 7, 2005, the Department issued a Final Notice of Sign Removal, noting that Town & Country Realty had not made payment for renewal or request an administrative hearing to contest the NOV. As a result, Town & Country Realty was given the option of either petitioning for reinstatement of the license and permits, or removing the signs, including the sign

bearing permit tag number BK459. Failure to exercise one of the options within 90 days was to result in the removal and disposal of the sign by the Department.

27. On March 22, 2005, as a result of the continued requests for payment, Town & Country Realty submitted an Outdoor Advertising Permit Cancellation Certification form ("Cancellation Certification") to the Department for permit tag number BK459. The Cancellation Certification was received by the Department on March 24, 2005.

28. The Cancellation Certification was signed by Carl Fischer, president of the permit holder, Town & Country Realty. Mr. Fischer indicated that it was the permit holder's intent "that the above-referenced Permit(s) be cancelled," and that "all entities with a right to advertise on the referenced sign have been notified of the permit cancellation."

29. In the "Date Sign Removed" field of the form, Mr. Fisher wrote "see below." In the bottom margin of the form, Mr. Fischer noted that the sign had been destroyed by one of the 2004 hurricanes, and that "new owner rebuilt sign and I removed BK459 tag and enclosed it." The Cancellation Certification did not provide any information regarding the rebuilt sign or whether it was a sign that required a permit from the Department,^{2/} nor did it provide the name, address, or other identifying information regarding the "new owner."

30. It was not clear when Mr. Fischer removed permit tag number BK459, but it was nonetheless removed and returned to the Department with the Cancellation Certification.

31. The Cancellation Certification was not intended by Mr. Fischer to affect Petitioner's rights or interest in the rebuilt sign, but was a means of stopping renewal bills from being sent to Town & Country Realty.

32. A Cancellation Certification may be conditioned upon issuance of a new sign permit, provided the Cancellation Certification is submitted along with an outdoor advertising permit application.

33. The Cancellation Certification gave no indication that permit tag number BK459 was being conditionally canceled as a requirement for issuance of a new permit, and was not accompanied by an outdoor advertising permit application.

34. On March 24, 2005, permit tag number BK459 was cancelled.

35. From 2005 until June 2014, the rebuilt sign remained in place without inquiry from the Department, during which time Petitioner continued to lease and receive income from the sign. No transfer of or application for a sign permit for the rebuilt sign was filed, and no payment of annual fees was made.

36. No explanation was provided as to why the March 7, 2005, Final Notice of Sign Removal was not enforced, or why the

rebuilt sign, which has at all times been clearly visible from U.S. Highway 1, was allowed to remain in place for nearly a decade despite having no affixed permit tag.

37. On or about May 28, 2014, Mr. Johnson, who was on patrol in the area, noticed that the advertising on the rebuilt sign had been changed. The change caught his attention, so he reviewed the Department's outdoor advertising sign database to determine whether the sign was permitted. He confirmed that the rebuilt sign was not permitted.

38. On June 5, 2014, Mr. Johnson affixed a "30-day green notice" to the rebuilt sign, which provided notice of the Department's determination that the sign was illegal, and was to be removed within 30 days. Failure to remove the sign was to result in the removal of the sign by the Department.

39. On June 9, 2014, the Department issued a Notice of Violation - Illegally Erected Sign (NOV) to Petitioner for the rebuilt sign.

40. Petitioner did not submit a hearing request regarding the NOV. Rather, Petitioner called the telephone number that was listed on the NOV. He spoke with someone at the Department, though he could not remember who he spoke with. Petitioner was advised to file an application for the sign, a remedy that is described in the NOV.

41. On December 1, 2014, Petitioner submitted Outdoor Advertising Permit Application Nos. 61203 and 61204 for the northward and southward faces of the Current Sign at milepost 18.535. Petitioner subsequently submitted additional information, including local government approval, in support of the application.

42. On December 18, 2014, the Department issued a Notice of Denied Outdoor Advertising Permit Application for application Nos. 61203 and 61204 ("notice of denial") to Petitioner. The bases for the notice of denial were that the property's tax identification numbers submitted in various parts of the application did not match, thus constituting "incorrect information" in the application, and that the rebuilt sign is located on a designated scenic highway, thus prohibiting issuance of the permit.

43. In the Pre-hearing Stipulation filed by the parties, the Department, though referencing "incorrect information" as a basis for the December 18, 2014, notice of denial, concluded its statement of position by stating that "[i]n sum, the Department properly denied [Petitioner's application] as the sign is located on a scenic highway." That focus on the scenic highway issue in the Pre-hearing Stipulation could, of itself, constitute a waiver and elimination of other issues, including that of incorrect information. See Palm Beach Polo Holdings,

Inc. v. Broward Marine, Inc., 174 So. 3d 1037 (Fla. 4th DCA 2015). However, looking beyond the Pre-hearing Stipulation, the issue of incorrect information was not the subject of testimony at the final hearing, finds no substantial support in the documentary evidence, and made no appearance in the Department's Proposed Recommended Order. The record in this proceeding does not support a finding that Petitioner provided "incorrect information" in his application, or that such "incorrect information" supports a denial of the application.

44. On February 12, 2015, Petitioner filed a request for an informal administrative hearing with the Department to contest the notice of denial.

45. The request for hearing included affidavits from Petitioner and Henry A. Fischer, a vice-president of Town & Country Realty, each of which provided that Town & Country Realty "submitted to the governmental authorities included but not limited to the Florida Department of Transportation notice of the transfer of the property and the sign permit to Mr. Daddano as well as his correct mailing address of 15 Lakeside Lane, N. Barrington, IL 60010." It is not known whether the N. Barrington, Illinois, address was that of Mr. Fischer or that of Petitioner. Regardless, no such notice of transfer, or any other document bearing the referenced address, was introduced in evidence or discussed at the final

hearing. The preponderance of the evidence indicates that the March 22, 2005, Outdoor Advertising Permit Cancellation Certification, with the notation described in paragraph 30 above, was the only notice provided to the Department regarding the disposition of permit tag number BK459.

46. By June 4, 2015, the advertising copy that caught Mr. Johnson's attention had been removed and replaced with a "This Sign For Rent" covering.

47. By no later than November 17, 2015, well after the Department issued the notice of denial, and without any other form of approval or authorization from the Department, Petitioner had the rebuilt sign "pivoted" in roughly its existing location, so that it is now parallel to U.S. Highway 1. As such, only the side of the sign facing U.S. Highway 1 is visible from the highway, making it a "one-way reader" as opposed to a two-sided sign. Nonetheless, unlike the original one-sided sign, which was perpendicular to the highway against a backdrop of vegetation, the pivoted rebuilt sign can be seen by traffic traveling in either direction on U.S. Highway 1.^{3/}

CONCLUSIONS OF LAW

48. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

49. Section 479.02(1) provides that it is the duty of the Department to "[a]dminister and enforce [chapter 479], the 1972 agreement between the state and the United States Department of Transportation, Title 23 of the United States Code, and federal regulations." As such, the Department has the authority to regulate and to issue permits for outdoor advertising signs along state, interstate, and federal-aid primary highways pursuant to chapter 479.

50. Section 479.07 provides, in pertinent part, that:

(1) Except as provided in ss. 479.105(1) and 479.16, a person may not erect, operate, use, or maintain, or cause to be erected, operated, used, or maintained, any sign . . . on any portion of the interstate or federal-aid primary highway system without first obtaining a permit for the sign from the department and paying the annual fee as provided in this section. As used in this section, the term "on any portion of the State Highway System, interstate highway system, or federal-aid primary system" means a sign located within the controlled area which is visible from any portion of the main-traveled way of such system.

* * *

(6) A permit is valid only for the location specified in the permit. Valid permits may be transferred from one sign owner to another upon written acknowledgment from the current permittee and submittal of a transfer fee . . . for each permit to be transferred.

51. Section 479.105 provides, in pertinent part, that:

(1) A sign that is located . . . adjacent to the right-of-way on any portion of the interstate or federal-aid primary highway system, which sign was erected, operated, or maintained without the permit required by s. 479.07(1) having been issued by the department, is declared to be a public nuisance and a private nuisance and shall be removed as provided in this section.

52. Petitioner owns both the rebuilt sign and the property on which it was erected. As the permit applicant, Petitioner is a "specifically named person[] whose substantial interests are being determined in the proceeding," pursuant to section 120.52(13)(a), and thus has standing in this proceeding.

Maverick Media Grp. v. Dep't of Transp., 791 So. 2d 491, 492-493 (Fla. 1st DCA 2001).

53. As the party seeking to demonstrate his qualification for licensure, Petitioner bears the burden of proving, by a preponderance of the evidence, that he satisfied all of the requirements for issuance of an outdoor advertising sign permit, including issues regarding reinstatement of a license, and was entitled to receive the permit. Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co., 670 So. 2d 932, 934 (Fla. 1996); Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778, 788 (Fla. 1st DCA 1981). "Findings of fact shall be based upon a preponderance of the evidence, except in penal or

licensure disciplinary proceedings or except as otherwise provided by statute" § 120.57(1)(j), Fla. Stat.

54. The Department has the burden to produce competent substantial evidence to support the basis for the denial. Comprehensive Med. Access, Inc. v. Off. of Ins. Reg., 983 So. 2d 45, 46 (Fla. 1st DCA 2008). Nonetheless, "while the burden of producing evidence may shift between the parties in an application dispute proceeding, the burden of persuasion remains upon the applicant to prove [] entitlement to the license." Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d at 934.

Status of the Rebuilt Sign

55. Permit tag number BK459 was canceled in 2005 by the permit holder, Town & Country Realty. That cancelation has not been directly challenged in this or any other proceeding.

56. If the permit for the original sign had been transferred to Petitioner, Petitioner would have been entitled to rebuild the sign after its destruction in 2004, as long as it was replaced at its original location.

57. Upon its destruction in 2004, the original sign was not rebuilt at its previous location at milepost 18.496. Furthermore, the sign was structurally altered from its previous single-sided configuration. Thus, the preponderance of the evidence demonstrates that Petitioner constructed an entirely

new, structurally different, double-sided sign at milepost 18.535.

58. The original sign was removed, and the rebuilt sign constructed, well before the Cancellation Certification for permit tag number BK459 was filed, and the tag returned to the Department. Even if permit tag number BK459 had been pulled from the wreckage of the original sign and affixed to the rebuilt sign, that act would not have constituted authorization for the rebuilt sign, as the construction of the rebuilt sign was not a repair or replacement of a conforming sign in its original location.

59. The preponderance of the evidence demonstrates that the rebuilt sign is a new outdoor advertising sign. Thus, the permitting standards applicable to new sign construction are applicable to the rebuilt sign.

Scenic Highway Standards

60. The Department is required to administer and enforce title 23 of the United States Code. § 479.02, Fla. Stat. In pertinent part, 23 U.S.C. § 131(s) provides that:

If a State has a scenic byway program, the State may not allow the erection along any highway on the Interstate System or Federal-aid primary system which before, on, or after the effective date of this subsection, is designated as a scenic byway under such program of any sign, display, or device which is not in conformance with subsection (c) of this section.

61. Rule 14-10.004(12) (c) provides that:

When a controlled road, or any portion of a controlled road, is designated as a scenic highway or scenic byway pursuant to Section 335.093, F.S., new permits will not be issued for signs visible from the portion of the highway designated as a scenic highway or byway.

62. The property on which the rebuilt sign is located fronts a portion of U.S. Highway 1 designated as the Indian River Lagoon State Scenic Highway. The rebuilt sign was erected after the June 2000 designation date. Thus, the permits for the rebuilt sign may not be issued.

Reinstatement Due to Error

63. Petitioner argues that permit tag number BK459 was canceled as a result of an error in the process of transferring the permit by Town & Country Realty, and the failure of the Department to discern Town & Country Realty's true intent behind its March 24, 2005, filing of the Cancellation Certification. Thus, Petitioner argues that he is entitled to avail himself of the relief authorized by section 479.07(8)(b), which provides that:

if at any time before removal of the sign, the permittee demonstrates that a good faith error on the part of the permittee resulted in cancellation or nonrenewal of the permit, the department may reinstate the permit if:

1. The permit reinstatement fee of up to \$300 based on the size of the sign is paid;

2. All other permit renewal and delinquent permit fees due as of the reinstatement date are paid; and

3. The permittee reimburses the department for all actual costs resulting from the permit cancellation or nonrenewal.
(emphasis added).

64. Rule 14-10.00401(4), provides that:

Pursuant to Section 479.07(8)(b), F.S., a petition for reinstatement of permits canceled, or not renewed, in error shall be submitted to the State Outdoor Advertising License and Permit Office. The petition must be in writing, list the affected permit(s), and shall certify that:

(a) The permit was canceled, or not renewed, in error by the permittee;

(b) The permit tag for the canceled or expired permit was returned to the Department or otherwise accounted for;

(c) The sign has not been disassembled; and

(d) The local government has not declared the sign illegal or taken any other action to have it removed.

If the Reinstatement Petition is denied by the Department, a new permit may be issued for a sign only if the sign meets all current permitting requirements. The reinstatement fee is \$300.00 per permitted sign.

65. The cancellation of permit tag number BK459 came well after the destruction and removal of the original sign. The failure to rebuild the original sign to its existing design and location, and the erection of a new, rebuilt sign, took permit

tag number BK459 out of the ambit of section 479.07(8)(b) and rule 14-10.00401(4).

66. Since the original sign was removed, and since the rebuilt sign is, under the statutes and rules of the Department, a new outdoor advertising sign, permit tag number BK459 may not be renewed as a result of its allegedly erroneous cancellation.

Permitting as a Nonconforming Sign

67. Despite the determination that unpermitted outdoor advertising signs constitute a public nuisance, as established in section 479.105(1), section 479.105(1)(c) provides, in pertinent part, that:

However, the department may issue a permit for a sign, as a conforming or nonconforming sign, if the sign owner demonstrates to the department one of the following:

* * *

2. If the sign does not meet the current requirements of this chapter for a sign permit and has never been exempt from the requirement that a permit be obtained, the sign owner may receive a permit as a nonconforming sign if the department determines that the sign is not located on state right-of-way and is not a safety hazard, and if the sign owner pays a penalty fee of \$300 and all pertinent fees required by this chapter, including annual permit renewal fees payable since the date of the erection of the sign, and attaches to the permit application package documentation that demonstrates that:

a. The sign has been unpermitted, structurally unchanged, and continuously

maintained at the same location for 7 years or more;

b. During the initial 7 years in which the sign has been subject to the jurisdiction of the department, the sign would have met the criteria established in this chapter which were in effect at that time for issuance of a permit; and

c. The department has not initiated a notice of violation or taken other action to remove the sign during the initial 7-year period in which the sign has been subject to the jurisdiction of the department.

68. The rebuilt sign was erected as a new sign after the June 2000 scenic highway designation, and did not meet the criteria established at that time for issuance of a permit. Furthermore, the more recent reconfiguration of the sign from being perpendicular to U.S. Highway 1 to being parallel to U.S. Highway 1 is a structural change that provides an additional and independent basis for the inapplicability of section 479.105(1)(c).

69. Based on the foregoing, the rebuilt sign does not qualify for permitting as a nonconforming sign pursuant to section 479.105(1)(c).

Estoppel

70. The Department, in its Proposed Recommended Order, has provided an analysis of the doctrine of estoppel as applied to the facts of this case. However, the issue of whether the Department should be estopped from denying Petitioner's outdoor

advertising sign permit applications was not identified as an issue by Petitioner in the Pre-hearing Stipulation, either in his statement of position or as an issue of fact or law that remained to be litigated, and was not addressed in Petitioner's Proposed Recommended Order. Thus, the issue is not before this tribunal for disposition.

RECOMMENDATION

Upon consideration of the above Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Department of Transportation enter a final order denying Outdoor Advertising Permit Application Nos. 61203 and 61204.

DONE AND ENTERED this 27th day of April, 2016, in Tallahassee, Leon County, Florida.

S

E. GARY EARLY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of April, 2016.

ENDNOTES

^{1/} Each face of the rebuilt sign is considered to be a sign requiring a separate permit. Though the rebuilt sign includes two sign faces, the "rebuilt sign" will be referred to in the singular.

^{2/} Not all signs fall within the Department's regulatory jurisdiction. For example, signs that are not visible to a controlled roadway, and signs that are considered "on premise" signs do not require permits. Other exempt signs are listed in section 479.16.

^{3/} The "Mulligan's Beach House" advertising copy that drew Mr. Johnson's attention in May 2014 was removed at some time between August 5, 2014, and June 4, 2015. As of June 4, 2015, the rebuilt sign bore a "This Sign for Rent" covering. Despite the fact that the sign remains unpermitted, by November 17, 2015, during the pendency of this litigation, the sign was used to support advertising for "Revolutionary Disc Herniation Treatment."

COPIES FURNISHED:

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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.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOHN DADDONO,

Petitioner,

vs.

Case No. 15-4992

DEPARTMENT OF TRANSPORTATION,

Respondent.

NOTICE OF SCRIVENER'S ERROR

On April 27, 2016, the Recommended Order in the above-styled proceeding was entered. On further review, a scrivener's error was discovered in the last sentence of paragraph 45, which is hereby corrected to read as follows:

The preponderance of the evidence indicates that the March 22, 2005, Outdoor Advertising Permit Cancellation Certification, with the notation described in paragraph 29 above, was the only notice provided to the Department regarding the disposition of permit tag number BK459.

DONE AND ORDERED this 28th day of April, 2016, in Tallahassee, Leon County, Florida.



E. GARY EARLY
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of April, 2016.

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