

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOE DAVID RIGGINS AND
BARBARA JEAN RIGGINS,

Petitioners,

vs.

Case No. 17-0815

DEPARTMENT OF TRANSPORTATION,

Respondent.

_____ /

RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings (Division) conducted the final hearing in this matter on May 23, 2017, by video teleconference at locations in Tallahassee and Lakeland, Florida.

APPEARANCES

For Petitioner: Joe David Riggins, pro se
Barbara Jean Riggins, pro se
4858 Myrtle Beach Drive
Sebring, Florida 33872

For Respondent: Richard E. Shine, Esquire
Department of Transportation
Mail Station 58
605 Suwannee Street
Tallahassee, Florida 32399

STATEMENT OF THE ISSUES

A. Is it necessary for Respondent, the Department of Transportation (Department), to close two driveways on the property of Petitioners, Joe David and Barbara Jean Riggins?

B. If the driveways are closed, will the property affected by the driveway closings still have reasonable access to the State Highway System?

PRELIMINARY STATEMENT

On October 4, 2016, the Department sent Mr. and Ms. Riggins a Notice of Intent to Modify Driveway Connection. An attached Roadway Plan Sheet Number 28 identified removal of the eastern and middle driveways on their property abutting State Road 441. The Rigginses filed a Petition for Formal Administrative Hearing disputing the proposal. The Department representatives met with them at the property to discuss the proposed driveway modifications. The Department and the Rigginses could not agree. The Department stood by its plan to close two driveways. The Rigginses would only agree to closing one.

The Department referred this matter to the Division on February 7, 2017, to conduct the final hearing. After three continuances, the undersigned conducted the hearing on May 23, 2017. Whether the Department complied with the procedural requirements for closing a driveway is not an issue in this proceeding.

The Department presented the testimony of Nicholas Leon, P.E., Construction Engineer, Project Manager, and Nathan Kautz, P.E., District 7 Access Management Engineer. The Department's Exhibits 1 through 9, 11, and 12 were admitted into

evidence. The Department's Exhibit 5 was admitted for a limited purpose.

Mr. and Ms. Riggins each testified. Their Exhibits 1, 2, 5, and 9 were admitted into evidence. The Rigginses' Exhibit 6 was admitted for a limited purpose.

The parties' stipulated to the applicability of Florida Administrative Code Chapters 14-96 and 14-97 and sections 334.04(14), and 335.18 through 335.188, Florida Statutes (2016).^{1/} The undersigned took official recognition of the statutes and applicable administrative rules as Department Exhibits 6 through 9.

The parties provided a Transcript. The Department filed a proposed recommended order. It has been considered in the preparation of this Recommended Order. The Rigginses did not file a proposed recommended order.

FINDINGS OF FACT

1. The parties stipulated to the following facts:

A. On October 4, 2016, the Department sent Joe David and Barbara Jean Riggins a Notice of Intent to Modify Driveway Connection.

B. Mr. and Ms. Riggins received the Notice of Intent to Modify Driveway Connection on October 8, 2016.

C. The Notice of Intent to Modify Driveway Connection related to the property located at 964 State Road 441 Southeast, Okeechobee, Florida.

D. The approximate 0.787 acre property has been held by the Joe David and Barbara Jean Revocable Trust since September 24, 2012.

E. The property is not developed, with the exception of a boat ramp aligned with the property's westernmost driveway that is scheduled to remain open. The remainder of the property consists of asphalt and a bare concrete slab from a demolished structure.

F. State Road 441 is a part of the state highway system.

2. Mr. and Ms. Riggins own two adjacent lots located at 964 State Road 441, Southeast, in Okeechobee County, Florida. The Okeechobee County Property Appraiser identifies them as lots 13 and 14. The lots are vacant. Three driveways exit those properties. The driveways have been in existence since at least 1992. The driveways have not gone a year without use.

3. The Department is an agency of the State of Florida. It regulates access to the state highway system to ensure safe, efficient, and effective maintenance and operation of the roads.

4. The Department is planning a resurfacing project for State Road 441 from State Road 78 to Southeast 30th Terrace in

Okeechobee County. That approximately two-mile stretch of road runs past the Rigginses' property.

5. The Department intends for the project to enhance roadway safety through improvements to the roadway surface, driveway modifications, sign and pavement markings, elevation corrections, bridge retrofits, and guardrails. The planned resurfacing project also includes modifications and improvements to driveways along State Road 441 and installation of a bicycle lane adjacent to the Rigginses' land. The project is a significant change to the roadway and the roadway design.

6. As part of the resurfacing project, the Department conducted an evaluation of modification of all driveways along the project corridor to improve motorist, bicyclist and pedestrian safety and operation of the roadway. When the Department plans significant changes in roads, it conducts an evaluation to determine whether existing driveways meet design standards in conformance with access management act standards.

7. Mr. Leon, Engineer of Record and Project Manager for the project, conducted the evaluation. He recommended closing the eastern and middle driveways on the Rigginses' two lots.

8. The Department gave the Rigginses' notice of the plan to close the two driveways. Department representatives reviewed the plan and the reasons for it with the Rigginses, by telephone and in person.

9. The Department maintains that closing the driveways is necessary to improve safety and compliance with the Department's design standards. Because of their age, the driveways are "grandfathered" and without the substantial changes of the project would not be subject to current design standards.

10. Most recently, the Rigginses leased the lots to Edison Power Company for parking utility line trucks. The utility company used the two lots as if they were one. The lease expired December 31, 2016. If Edison Power were to resume use of the lots, there is sufficient room for its trucks to maneuver and to enter and exit the property using only the westernmost driveway.

11. The eastern driveway is 16 feet wide at its throat where the driveway meets the road. The throat of the middle driveway is 27 feet wide. The throat of the western driveway is 35 feet wide. This driveway lines up with a boat ramp on the other side of the lot. Each driveway is substantially less than 1,320 feet apart from the adjacent driveway.

12. The Department has design standards for driveway dimensions. For rural roadways, like the one involved here, the size range for driveway throats is 24 feet to 36 feet.

13. Department Rule 14-97.003 classifies roadways and establishes driveway spacing for each class. State Road 441 is a Class 5 roadway. Its speed limit is 45 miles per hour. The rule requires driveways on the roadway to be spaced 1,320 feet apart.

The spacing requirement is important for reducing driver confusion and wreck potentials caused by multiple turns onto or from the road in quick sequence.

14. The project design work included examining existing driveways and their effect on traffic flows and interaction with motor vehicle, bicycle, and pedestrian traffic on State Road 441. The Department reasonably focused on limiting conflict points created by driveways and bringing affected existing driveways into compliance with current access standards.

15. Closing the two easternmost driveways will reduce conflict points on the roadway caused by vehicles entering and leaving the property. The activity increases risks of crashes for motor vehicles and for bicyclists who will use the newly created bike lanes and vehicles entering and leaving the property. As a rule, limiting the number of driveway connections promotes better traffic movement and an increased level of safety and mobility for the system as a whole. The westernmost driveway on the Rigginses' property will provide reasonable access to the property.

CONCLUSIONS OF LAW

16. The Division has jurisdiction over the parties and the subject matter of this case. §§ 120.569, 120.57(1), and 120.595, Fla. Stat.

17. The Department initiated this action. Therefore, the Department bears the burden of proving, by a preponderance of the evidence, the allegations in the Notice and plans. See Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

18. The Department has broad discretionary authority to plan and construct roads. Dep't of Transp. v. Lopez-Torres, 526 So. 2d 674, 675 (Fla. 1988); § 334.044, Fla. Stat.

19. Driveway connections on state roads must be permitted or "grandfathered." See § 335.1825, Fla. Stat.; Fla Admin. Code R. 14-96.011(3)(a). The Rigginses' connections to State Road 441 are not permitted. A driveway is "grandfathered" if it was in existence before July 1, 1988, when access permits were first required. The Rigginses' driveways are "grandfathered." See Fla. Admin. Code R. 14-96.011(3)(a).

20. A "grandfathered" connection may be modified because of safety or operational issues. See Fla. Admin. Code R. 14-96.011(4)(b) (the Department may modify a "grandfathered" 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").

21. The Department must allow owners of private property adjoining a state road to have "reasonable access" to and from their property. See § 335.18(2)(a), Fla. Stat. Reasonable

access is "the minimum number of connections . . . necessary to provide safe and efficient ingress and egress to the State Highway System. . . ." See Fla. Admin. Code R. 14-96.002(25).

22. Rule 14-96.015 establishes requirements the Department must meet when modifying unpermitted and "grandfathered" connections in conjunction with a Department project. It reads 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.

* * *

(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 14-96.011(1)(d), 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.

23. The Department has also adopted rule 14-96.011. It establishes standards for modifying unpermitted connections. The rule reads in relevant part:

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).

* * *

(4) Modification of Grandfathered Connections.

* * *

(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.

(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.

* * *

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.

* * *

(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.


24. The Department has complied with the requirements of the law and applicable regulations. The evidence establishes that closing the eastern and middle driveways on the Rigginses' property will improve safety. The western driveway will provide reasonable access to their property.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner, Department of Transportation, enter a final order approving the closure of the

easternmost and middle driveways on the property of Respondents, Joe David and Barbara Riggins, as part of the Department's State Road 441 Resurfacing Project.

DONE AND ENTERED this 28th day of July, 2017, in Tallahassee, Leon County, Florida.



JOHN D. C. NEWTON, II
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 28th day of July, 2017.

ENDNOTE

^{1/} All references to the Florida Statutes are to the 2016 codification unless otherwise noted.

COPIES FURNISHED:

Joe David Riggins
Barbara Jean Riggins
4858 Myrtle Beach Drive
Sebring, Florida 33872
(eServed)

Richard E. Shine, Esquire
Department of Transportation
Mail Station 58
605 Suwannee Street
Tallahassee, Florida 32399
(eServed)

Andrea Shulthiess, Clerk of Agency Proceedings
Department of Transportation
Haydon Burns Building
605 Suwannee Street, Mail Station 58
Tallahassee, Florida 32399-0450
(eServed)

Michael J. Dew, Secretary
Department of Transportation
Haydon Burns Building
605 Suwannee Street, Mail Station 57
Tallahassee, Florida 32399-0450
(eServed)

Tom Thomas, General Counsel
Department of Transportation
Haydon Burns Building
605 Suwannee Street, Mail Station 58
Tallahassee, Florida 32399-0450
(eServed)

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.