

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

J. GLENN WRIGHT TRUST,

Petitioner,

v.

DOT CASE NO.: 19-034

DEPARTMENT OF TRANSPORTATION,

Respondent.

FINAL ORDER

The Department issued a Notice of Intent to Modify Driveway Connection (Notice) to J. Glenn Wright Trust (Wright) on May 7, 2019. The Notice proposed to remove an existing divided driveway connection between the S.R. 60 exit ramp and Wright's property, and to modify Wright's existing driveway access connection to U. S. 27 South, as part of the redesign and reconstruction of the interchange at S.R. 60 (S.R. 60/U.S. Highway 27) (U.S. 27).

Subsequently, the Department issued an Amended Notice on September 23, 2019, which advised of a planned connection to Wright's property from the newly proposed S.R. 60 frontage road, a right-turn-in-only driveway connection to Wright's property from U. S. 27 South, and minor improvements to the U. S. 27/Oak Avenue intersection. Wright objected to the proposals and timely requested a hearing. This case was referred to the Division of Administrative Hearings, and a hearing was conducted before the assigned Administrative Law Judge, Linzie F. Bogan, on December 4, 2019. The ALJ entered a Recommended Order on February 13, 2020, which recommended that the Department enter a final order finding that the proposed modifications to

the driveway connections of the Wright property provide the public with reasonable access to or from the State Highway System, and denying the challenge of Wright to the Amended Notice issued on September 23, 2019. A copy of the Recommended Order is attached.

Findings of Fact

The Findings of Fact set forth in paragraphs 1-14 of the Recommended Order are supported by competent, substantial evidence and the Department adopts the Findings of Fact set forth in paragraphs 1-14 of the Recommended Order and incorporates them by reference. Where paragraphs 1-14 contain findings of ultimate fact that are matters of opinion infused by policy considerations for which the Department has special responsibility, the Department declines to reverse or modify paragraphs 1-14.

Conclusions of Law

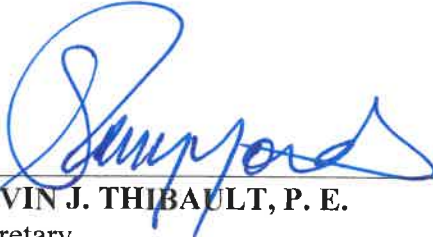
The Conclusions of Law set forth in paragraphs 15-28 of the Recommended Order are supported by law and the Department adopts the Conclusions of Law set forth in paragraphs 15-28 of the Recommended Order and incorporates them by reference. Where paragraphs 15-28 contain findings of ultimate fact that are matters of opinion infused by policy considerations for which the Department has special responsibility, the Department declines to reverse or modify paragraphs 15-28.

Order

Based on the foregoing Findings of Fact and Conclusions of Law, the Department approves the proposed modifications to the driveway connections of the Wright property, and finds the modifications will provide the public with reasonable access to or from the State

Highway System, as part of the Department's redesign and reconstruction of the interchange at S.R. 60 and U.S. Highway 27.

DONE and ORDERED this 26th day of March, 2020.

for 

KEVIN J. THIBAUT, P. E.
Secretary
Department of Transportation
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida 32399

FILED D.O.T. CLERK
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NOTICE OF RIGHT TO APPEAL

THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED 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 9.110(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, MS 58, TALLAHASSEE, FLORIDA 32399-0458, WITHIN 30 DAYS OF RENDITION OF THIS ORDER.

Copies furnished to:

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RON DESANTIS
GOVERNOR

KEVIN J. THIBAUT, P.E.
SECRETARY

DELEGATION OF AUTHORITY

I, Kevin J. Thibault, P.E., Secretary of the Florida Department of Transportation, delegate to Tom Byron, P.E. as the Assistant Secretary for Strategic Development and Courtney Drummond, P.E. as the Assistant Secretary for Engineering and Operations, and Stacy Miller, P.E., as the Assistant Secretary for Finance and Administration, the authority and responsibility to take action on my behalf at anytime during my absence from the Department headquarters in Tallahassee. I also rescind any prior delegations to the contrary.

Kevin J. Thibault, P.E., Secretary
Florida Department of Transportation

4/24/2019

Date

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FILED D.O.T. CLERK

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J. GLENN WRIGHT TRUST,

Petitioner,

vs.

Case No. 19-5716

DEPARTMENT OF TRANSPORTATION,

Respondent.

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held by video teleconference between sites in Lakeland and Tallahassee, Florida, on December 4, 2019, before Linzie F. Bogan, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: David W. Holloway, Esquire
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Seminole, Florida 33772

For Respondent: Richard E. Shine, Assistant General Counsel
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STATEMENT OF THE ISSUE

Whether Respondent's proposed modifications to Petitioner's driveway connections provide the public with reasonable access to or from the State Highway System.

PRELIMINARY STATEMENT

On May 7, 2019, the Florida Department of Transportation (Department) issued a Notice of Intent to Modify Driveway Connection (Notice) to the Glenn J. Wright Trust (Petitioner), as owner of the parcel at issue herein. Petitioner operates a Sunoco gas station at the location in question. The Notice advised that the Department, as part of the redesign and reconstruction of the interchange at State Road 60 (SR 60)/U.S. Highway 27 (US 27), proposed to remove an existing divided driveway connection between the SR 60 exit ramp and Petitioner's property, and to modify Petitioner's existing driveway access connection to US 27 South. The parties jointly participated in a site visit, and as a result thereof, the Department modified its original proposal.

On or about September 20, 2019, the Department issued to Petitioner an Amended Notice of Intent to Modify Driveway Connection (Amended Notice). On September 23, 2019, the Department supplemented its Amended Notice to Petitioner by providing "two Proposed Modification Sheets" which were inadvertently omitted from the Amended Notice. The Amended Notice advised of a planned connection to Petitioner's property from the newly proposed SR 60 frontage road, a right-turn-in-only driveway connection to Petitioner's property from US 27 South, and minor improvements to the US 27/Oak Avenue intersection. The Amended Notice also advised that the Department "is taking this action in order to ensure that driveway access is maintained in the proposed roadway layout without posing a safety or operational problem to the State Highway System, pursuant to sections 335.182 and 335.1825, Florida Statutes."¹

¹ All subsequent references to Florida Statutes will be to the 2019 codification, unless otherwise indicated.

On October 1, 2019, Petitioner filed a request for administrative hearing. On October 29, 2019, the Department referred this matter to the Division of Administrative Hearings (DOAH) for a disputed-fact hearing. During the disputed-fact hearing, the Department presented testimony from Kevin Ingle and Leanna Schail. Petitioner offered testimony from J. Glenn Wright and Thomas Harrison. Joint Exhibits 1 through 12 were admitted into evidence.

A Transcript of the disputed-fact hearing and a Joint Request for Extension of Time to Submit Proposed Recommended Orders were filed with DOAH on December 20, 2019. The request for additional time was granted, and on January 21, 2020, each party submitted a Proposed Recommended Order, which have been considered.

FINDINGS OF FACT

1. The Department, pursuant to section 334.044(14), Florida Statutes, has a duty:

[t]o establish, control, and prohibit points of ingress to, and egress from, the State Highway System, the turnpike, and other transportation facilities under the department's jurisdiction as necessary to ensure the safe, efficient, and effective maintenance and operation of such facilities.

2. By correspondence to Petitioner dated September 23, 2019, the Department advised of its plans to modify, as part of a reconstruction and resurfacing project, certain existing driveways that connect from Petitioner's property to US 27 and SR 60. According to the Department, the modification of Petitioner's driveway connections "will improve safety or traffic operations on the state roadway." The planned US 27/SR 60 interchange reconstruction (US 27/SR 60 interchange) seeks to change certain operational and design features of the two roadways.

3. In the area of Petitioner's property, SR 60 is classified as a Class 5 road with a posted speed limit of 45 miles per hour. The Class 5 designation is assigned to roads where adjacent land has been extensively developed and where the probability of major land use change is not high. In the area of Petitioner's property, US 27 is classified as a Class 3 road with a posted speed limit of 50 miles per hour. The Class 3 designation is assigned to roads where abutting land is controlled to maximize the operation of the through traffic movement, and the land adjacent to these roadways is generally not extensively developed.

4. Petitioner, since approximately 1968, has continuously owned and operated a Sunoco gas station on approximately a one-acre parcel, located at 19300 U.S. 27 South, Lake Wales, Florida. It is undisputed that the existing driveway connections from Petitioner's property to the State Highway System have been in continuous use since 1968.

5. According to the testimony of Department witness Leanna Schail, current Department access management standards provide that a driveway connection on a Class 5 road must be at least 225 feet from an intersection and at least the same distance from other connections. As for Class 3 roads, the access standards provide that a driveway connection must be at least 660 feet from an intersection and at least the same distance from other connections. The respective distance standards are necessary in order to facilitate the reduction of driver confusion and rear-end collisions.

6. U.S. Highway 27, at its location nearest Petitioner's gas station, is a north-south highway that intersects SR 60, which runs east and west. Petitioner's gas station is located southwest of the US 27/SR 60 interchange.

7. The parcel where Petitioner's gas station is located appears essentially square-shaped, with the northern edge of the parcel abutting the exit ramp from SR 60. The eastern edge of Petitioner's parcel abuts US 27. The southern edge of Petitioner's parcel abuts Oak Avenue. The western edge of Petitioner's parcel abuts private property. West of the "private property" is

Mulberry Street, which runs north and south, and connects to the south with Oak Avenue, and to the north at the SR 60 exit ramp.

A. EXISTING ACCESS TO AND FROM STATE HIGHWAY SYSTEM

8. In its current configuration, eastbound motorists on SR 60 who are west of the SR 60/US 27 interchange must transition to the right to access the exit ramp which has direct access connections to Mulberry Street, Petitioner's property (two turn-in points), and US 27 South. The Department's witness credibly testified that the "two turn-in points" from the SR 60 exit ramp are less than 225 feet from the existing and planned SR 60/US 27 interchange and do not meet current design standards.

9. Westbound motorists on SR 60 do not have direct access to Petitioner's gas station.

10. In its current configuration, southbound motorists on US 27 have direct access to a driveway connection to Petitioner's gas station. Northbound motorists on US 27, who are south of the SR 60/US 27 interchange, properly access Petitioner's gas station by turning left on Oak Avenue and then right onto Petitioner's driveway connection to Oak Avenue.² Southbound motorists on US 27 can also indirectly access Petitioner's gas station by turning right onto Oak Avenue and then right on Petitioner's driveway connection to Oak Avenue.

11. In its current configuration, motorists leaving Petitioner's gas station have right-turn-only direct access from the two driveways that connect to the SR 60 exit ramp, right-turn-only direct access to US 27 South, and indirect

² A reasonable inference deduced from the evidence is that motorists turning left to access Petitioner's gas station from US 27 North will be inclined, under certain conditions, to avoid Oak Avenue by driving north a short distance on the US 27 South travel lanes (i.e. in the wrong direction) so as to access that portion of Petitioner's driveway that connects directly to US 27 South. The Department's proposed design change to this driveway connection will lessen the probability of a motorist engaging in this dangerous driving maneuver. Additionally, the Department's proposed redesign of this driveway connection will improve traffic movement through the interchange by enhancing bicycle and pedestrian safety.

access to US 27 by turning left on Oak Avenue and then right on US 27 South.

B. PROPOSED ACCESS TO AND FROM STATE HIGHWAY SYSTEM

12. Beginning at a point approximately 1,000 feet west of the SR 60/US 27 interchange, the Department proposes to construct near the southern edge of SR 60 a bi-directional frontage road which will abut and run parallel to the SR 60 eastbound travel lanes. The eastern-most segment of the bi-directional frontage road will terminate at Mulberry Street. Motorists travelling east on the frontage road who desire to access Petitioner's gas station will be able to do so by way of a one-way extension that runs from Mulberry Street east to the northwest portion of Petitioner's property. The addition of the frontage road eliminates the second eastern-most access point to Petitioner's property from the current SR 60 exit ramp, but still allows for direct ingress to Petitioner's property from the new frontage road.

13. In its proposed configuration, eastbound motorists on SR 60 who are west of the SR 60/US 27 interchange, and who desire to exit to US 27 South, will transition from SR 60 via a redesigned exit ramp which will bypass the northern portion of Petitioner's property and take motorists to US 27 South, where they will have one direct and one indirect access point to Petitioner's gas station. The direct point of ingress to Petitioner's gas station will be at a point nearest to the central eastern quadrant of Petitioner's property which abuts US 27 South. If a motorist misses this point of direct ingress, then the motorist may proceed to the indirect point of ingress by turning right from US 27 South on Oak Avenue, and then making a second right turn to access Petitioner's property. These same access points are available to motorist travelling southbound on US 27.

14. The totality of the evidence shows that egress from Petitioner's property to the State Highway System has dropped from three direct access points (two onto the SR 60 exit ramp/one onto US 27 South) to only one

indirect access point (Oak Avenue). Furthermore, the evidence shows that ingress to Petitioner's property from the State Highway System has been reduced from three direct access points (two from SR 60 exit ramp/one from US 27 South) to two direct access points (frontage road/US 27 South), with no material change to the indirect access point from Oak Avenue.

CONCLUSIONS OF LAW

15. DOAH has jurisdiction over the parties and subject matter of this proceeding. See §§ 120.569, 120.57(1), 335.182, Fla. Stat.

16. The general rule is that the burden of persuasion, apart from a statutory directive, is on the party asserting the affirmative of an issue before an administrative tribunal. *Young v. Dep't of Cmty. Aff.*, 625 So. 2d 831, 833-834 (Fla. 1993); *Dep't of Transp. v. J.W.C. Co.*, 396 So. 2d 778, 788 (Fla. 1st DCA 1981); *Balino v. Dep't of HRS*, 348 So. 2d 349, 350 (Fla. 1st DCA 1977). In this case, the Department, as the party affirmatively seeking to change the status quo, bears the burden of proving by a preponderance of the evidence that Petitioner's driveway connections should be modified.

17. Section 335.181(2) provides that it is the policy of the Legislature that:

(a) Every owner of property which abuts a road on the State Highway System has a right to reasonable access to the abutting state highway but does not have the right of unregulated access to such highway. The operational capabilities of an access connection may be restricted by the department. However, a means of reasonable access to an abutting state highway may not be denied by the department, except on the basis of safety or operational concerns as provided in s. 335.184.

(b) The access rights of an owner of property abutting the State Highway System are subject to reasonable regulation to ensure the public's right and interest in a safe and efficient highway system. This paragraph does not authorize the department to deny a means of reasonable access to an abutting

state highway, except on the basis of safety or operational concerns as provided in s. 335.184. Property owners are encouraged to implement the use of joint access where legally available.

18. Florida Administrative Code Rule 14-96.002(25) defines “reasonable access” as “the minimum number of connections, direct or indirect, necessary to provide safe and efficient ingress and egress to the State Highway System based on Section 335.18, F.S., the Access Management Classification, projected connection and roadway traffic volumes, and the type and intensity of the land use.”

19. Section 335.182(3)(a) provides that the term “connection,” as used in the Florida Transportation Code and the State Highway System Access Management Act, “means driveways, streets, turnouts, or other means of providing for the right of reasonable access to or from the State Highway System.”

20. Rule 14-96.015(3) provides as follows:

Where connections are to be modified as part of a Department construction [sic] 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.

21. Rule 14-96.011(3)(a) provides that “[c]onnections permitted or in existence prior to July 1, 1988, use of which have never been discontinued ... 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).” Petitioner’s connections are “grandfathered” within the meaning of rule 14-96.011.

22. Rule 14-96.011(4)(b) provides, in part, that 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.”

23. Florida Administrative Code Rule 14-97.003(3)(b) provides that existing lawful connections, such as Petitioner’s grandfathered connections, “are not required to meet the access management standards[,] [and e]xisting access management features will generally be allowed to remain in place, but shall be brought into conformance with access management standards when significant change occurs or as changes to the roadway design allow.”

24. The overall statutory framework and related rules require the Department to bring non-conforming lawful driveway connections into compliance with current access management standards, where feasible, by utilizing the fewest number of direct or indirect connections required to provide for safe and efficient ingress and egress to the State Highway System.

25. It is undisputed that the current eastbound SR 60 exit ramp provides two points where drivers on the ramp could come into conflict with drivers turning from Petitioner’s property onto the ramp. This is without question a safety concern. The redesigned eastbound SR 60 exit ramp and the unidirectional frontage road extension to Petitioner’s property eliminate the opportunity for traffic conflict because motorists will no longer have direct egress from Petitioner’s property to the SR 60 exit ramp. The elimination of this opportunity for traffic conflict has the positive effects of improving vehicular circulation and enhancing safety on the public road system.

26. With respect to the driveway connection from US 27 South to Petitioner’s property, the Department’s decision to make this a right-turn-in,

ingress-only connection from US 27 South enhances safety by eliminating the opportunity for traffic conflict between motorists exiting Petitioner's property and motorists attempting to access Petitioner's property from US 27 South or US 27 North.³

27. Petitioner does not challenge the Department's proposed changes on the grounds that the changes fail to comply with Access Management standards, but instead, challenges the Department's intended action on grounds that the changes will create traffic circulation problems on Petitioner's property. While it is possible that the reduction in egress connections from Petitioner's property could result in an increase in opportunities for vehicular conflict as motorists navigate about Petitioner's property, the evidence does not establish that the resulting loss of egress connections will deprive motorists of reasonable direct or indirect access to or from the State Highway System.

28. The Department has met its burden, and proved that the modification of Petitioner's existing driveway connections will improve safety or traffic operations on the State Highway System.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Transportation enter a final order finding that the proposed modifications to the driveway connections of the J. Glenn Wright Trust property provide the public with reasonable access to or from the State Highway System, and denying the challenge of the J. Glenn Wright Trust to the Amended Notice of Intent to Modify Driveway Connection issued on September 23, 2019.

³ See Footnote two regarding concerns associated with motorists traveling northbound on US 27.

DONE AND ENTERED this 13th day of February, 2020, in Tallahassee, Leon
County, Florida.



LINZIE F. BOGAN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of February, 2020.

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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.