



Florida Department of Transportation

**RON DESANTIS
GOVERNOR**

605 Suwannee Street
Tallahassee, FL 32399-0450

**KEVIN J. THIBAUT, P.E.
SECRETARY**

Office of General Counsel
Mail Station 58
850/414-5265

March 3, 2021

Honorable John D. C. Newton, II
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

20-4115

**RE: THE BARKMORE RESORT v. DEPARTMENT OF TRANSPORTATION
DOT CASE NO. 19-054**

Dear Judge Newton:

Enclosed is a copy of the Final Order filed March 3, 2021, in the above-styled case.

Sincerely,

Amber K. Greene
Clerk of Agency Proceedings

Enclosure

2021 MAR -5 AM 11:42
DIVISION OF
ADMINISTRATIVE HEARINGS
FILED

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

THE BARKMORE RESORT,

Petitioner,

v.

DOT CASE NO.: 19-054

DEPARTMENT OF TRANSPORTATION,

Respondent.

_____ /

FINAL ORDER

The Department issued a Notice of Intended Department Action (Notice) to The Barkmore Resort (Barkmore) on August 2, 2019. The Notice proposed to close Barkmore's southern driveway and widen its northern driveway connecting Barkmore's property to the Department's right-of-way for State Road 45 as part of a project converting a part of State Road 45 (Land O'Lakes Boulevard/US 41) to a four-lane divided roadway. The proposed modifications to the northern driveway will make it consistent with the Department's Design Standards, and improve safety and operations. Barkmore 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, John D. C. Newton, II, on December 8, 2020. The ALJ entered a Recommended Order on January 29, 2021, which recommended that the Department enter a final order finding that the proposed closure of the southern driveway and the modifications to the northern driveway of the Barkmore property provide the Petitioner with reasonable access to or from the State Highway System, and denying the challenge of Barkmore to the Notice issued

on August 2, 2019. A copy of the Recommended Order is attached. None of the parties filed exceptions to the Recommended Order.

Findings of Fact

The Findings of Fact set forth in paragraphs 1-11 of the Recommended Order are supported by competent, substantial evidence and the Department adopts the Findings of Fact set forth in paragraphs 1-11 of the Recommended Order and incorporates them by reference.

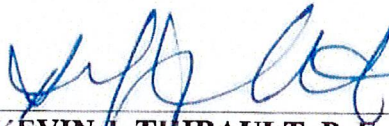
Conclusions of Law

The Conclusions of Law set forth in paragraphs 12-19 of the Recommended Order are supported by law and the Department adopts the Conclusions of Law set forth in paragraphs 12-19 of the Recommended Order and incorporates them by reference.

Order

Based on the foregoing Findings of Fact and Conclusions of Law, the Department approves the proposed closure of Barkmore's southern connection and modifications to the northern connection of the Barkmore property to State Road 45, and finds the modifications will provide the Petitioner with reasonable access to or from the State Highway System, as part of the Department's construction project converting a part of State Road 45 (Land O'Lakes Boulevard/US 41) to a four-lane divided roadway.

DONE and ORDERED this 3rd day of March, 2021.


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

2021 MAR -3 AM 8:16
D.O.T. CLEAR

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:

Honorable John D. C. Newton, II
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

Richard E. Shine, Assistant General Counsel
Amber Greene, Clerk of Agency Proceedings
Florida Department of Transportation
605 Suwannee Street, MS 58
Tallahassee, Florida 32399-0458

Stephanie N. Carver
The Barkmore Resort
10125 Land O'Lakes Boulevard
Land O'Lakes, Florida 34638

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

THE BARKMORE RESORT,

Petitioner,

vs.

Case No. 20-4115

DEPARTMENT OF TRANSPORTATION,

Respondent.

RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings (Division) heard this case by Zoom conference on December 8, 2020, with locations in Tallahassee, Bartow, and Land O' Lakes, Florida.

APPEARANCES

For Petitioner: Stephanie N. Carver, pro se
 The Barkmore Resort
 10125 Land O' Lakes Boulevard
 Land O' Lakes, Florida 34638

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

STATEMENT OF THE ISSUES

A. Is it necessary for Respondent, the Department of Transportation (DOT), to close the southern driveway of the property of Petitioner, Barkmore Resort, Inc. (Barkmore)?

B. If the driveway is closed, will the Barkmore property have reasonable access to the State Highway System?

PRELIMINARY STATEMENT

DOT sent Barkmore a Notice of Intended Department Action advising that, as part of a project converting a part of State Road 45 (SR 45) (also known as Land O' Lakes Blvd. or US 41) to a four-lane divided roadway, DOT intended to close Barkmore's southern driveway entering SR 45 and widen the northern one. Barkmore requested a formal administrative hearing to dispute DOT's decision. The only grounds for rejecting DOT's proposed action stated in the request for hearing were that if the driveway were closed, "[t]here will be no way to access the electric poles, multiple septic tanks, and propane tank if the South driveway is closed" and the business would become "inoperable."

DOT referred the dispute to the Division on September 16, 2020, for conduct of the requested hearing. The undersigned conducted the hearing December 8, 2020. DOT presented testimony from Tammy Kreisle, P.E., Construction Engineer, and Ken Muzyk, P.E. Exhibits 1 (limited purpose) through 11 were admitted into evidence on behalf of DOT. Stephanie N. Carver, owner and president of Barkmore, testified for Barkmore, presenting eight lines of testimony. Barkmore did not offer exhibits. Both parties were advised of their right to submit proposed recommended orders. The Hearing Transcript was filed January 4, 2021. DOT timely filed a proposed recommended order, which has been considered in preparation of this Recommended Order. Barkmore did not file a proposed recommended order.

FINDINGS OF FACT

1. Barkmore is located at 10125 Land O' Lakes Boulevard (SR 45), Land O' Lakes, Florida. The Barkmore property is a single parcel consisting of three lots with commercial operations for Barkmore Resort Kennel and a recreational vehicle and boat storage facility.

2. The property's two driveways connect to SR 45. The northern driveway connects to the Barkmore parking lot and is aligned with the fence gate for the storage area. At some point in the past, the southern driveway had a cross-connection to the parking lot. It does not now. It currently consists of dirt and grass and terminates at a locked gate on the southern run of Barkmore's fence. Images of the southern driveway do not show signs of recent use. Currently the driveways are "grandfathered" in and not subject to existing driveway requirements.

3. SR 45 is part of Florida's highway system. DOT regulates access to the state highway system to ensure safe, efficient, and effective maintenance and operation of the roads. Several statutes and rules govern DOT's activities, including when and how it can change a property's access to the system.

4. DOT is planning a roadway widening project that will include reconstructing SR 45 into a four-lane roadway. This will permit a 55 mile an hour speed limit. The SR 45 project's approximate length is 2.7 miles reaching from north of Connerton Boulevard to south of State Road 52. Barkmore's property abuts that stretch of road. DOT intends for the project to improve road capacity, traffic flow, and safety. The project is a significant change to the roadway and roadway design.

5. The project includes modifications and improvements to driveway connections along SR 45. It also provides for a shared-use path for vulnerable users, including bicyclists and pedestrians, along the east side of the project. The path, however, is on the opposite side of SR 45 from Barkmore. Barkmore's driveway is one of approximately 19 driveway modifications DOT proposes as part of the project.

6. Barkmore's southern and northern driveways are 155 feet apart. Florida Administrative Code Rule 14-97.003 requires 660 feet between driveway connections. This requirement alleviates "driveway confusion" for

drivers caused by driveways in close proximity to each other, like those of Barkmore. The fact that Barkmore's southern driveway terminates in a locked gate adds to the confusion for drivers.

7. Every driveway creates a conflict point with vehicles and pedestrians traveling on the road to which the driveway connects. Limiting conflict points promotes better traffic movement and an increased level of safety and mobility for the highway system.

8. Because of these safety and traffic flow considerations, DOT proposed modifying the Barkmore driveways to bring them into compliance with current requirements. DOT proposed elimination of the southern driveway and significant improvement of the northern one. The project will replace the northern driveway's dirt and gravel with asphalt. The project will increase the width of the northern driveway from 12 feet to 24 feet at the right-of-way line. The project also increases the opening, or throat, where the northern driveway connects to SR 45, to 70 feet. After the proposed changes, the northern driveway will provide reasonable and improved access to Barkmore's property, including to the southern gate. After modification, the northern driveway will provide for adequate vehicle circulation into and out of the Barkmore property.

9. There is no evidence to support the claim of the hearing request that, "[t]here will be no way to access the electric poles, multiple septic tanks, and propane tank if the South driveway is closed" and the business would become "inoperable."

10. On August 2, 2019, DOT sent Barkmore a notice advising of DOT's intent to close Barkmore's southern driveway and widen its northern driveway connecting Barkmore's property to the DOT right-of-way for State Road 45. The notice also advised Barkmore of its right to request an administrative hearing.

11. DOT conducted a hearing on October 15, 2019, to receive public input, to learn how the project will affect access to businesses, and to hear public

input about the project's potential economic impact on the business community.

CONCLUSIONS OF LAW

12. Sections 120.569 and 120.57(1), Florida Statutes (2020)¹, grant the Division jurisdiction over the parties and the subject matter of this case.

13. DOT is the state agency responsible for regulating access to the state highway system pursuant to sections 335.18 through 335.188, Florida Statutes.

14. DOT initiated this action. Consequently, DOT bears the burden of proving the allegations of the Notice by a preponderance of the evidence. *See Dep't of Transp. v. J.W.C. Co.*, 396 So. 2d 778 (Fla. 1st DCA 1981).

15. Owners of property abutting a state highway have a right to reasonable access to the highway. But they do not have a right to unregulated access. DOT may restrict access connections so long as it permits reasonable access to an abutting state highway. § 335.181(2), Fla. Stat. DOT 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.

16. Driveway connections on state roads must be permitted or "grandfathered." *See* § 335.1825, Fla. Stat.; Fla Admin. Code R. 14-96.011(3)(a). DOT may modify a "grandfathered" connection, like Barkmore's, in conjunction with a DOT project like the improvements to SR 45. Modification is necessary if the unmodified connection would jeopardize public safety or negatively affect the operational characteristics of the state highway. Fla. Admin. Code R. 14-96.011(4)(b).

17. Barkmore's two driveway connections would jeopardize public safety and negatively affect the operational characteristics of SR 45 if unchanged. DOT's proposal to close the southern driveway and significantly upgrade the

¹ All citations are to the 2020 compilation of the Florida Statutes unless noted otherwise.

northern driveway preserves reasonable access to SR 45. The proposed modification is necessary and preserves Barkmore's access to SR 45.

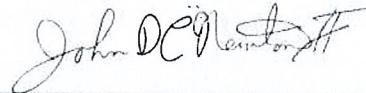
18. Section 335.199(3) requires DOT to hold at least one public hearing to receive input about a proposed project. DOT fulfilled this requirement.

19. Florida Administrative Code Rule 14-96.011(3)(c) requires DOT to offer the property owner an opportunity to meet on site and consider documents and alternatives offered by the property owner. DOT complied with this requirement.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that Respondent, Department of Transportation, enter a final order approving the closure of the southern driveway of Petitioner, Barkmore Resort, Inc., and improvement of the northern driveway as part of the State Road 45 project.

DONE AND ENTERED this 29th day of January, 2021, in Tallahassee, Leon County, Florida.



JOHN D. C. NEWTON, II
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of January, 2021.

COPIES FURNISHED:

Stephanie N. Carver
The Barkmore Resort
10125 Land O' Lakes Boulevard
Land O Lakes, Florida 34638

Richard E. Shine, Esquire
Department of Transportation
605 Suwannee Street
Tallahassee, Florida 32399

Amber Greene, Clerk of
Agency Proceedings
Department of Transportation
Haydon Burns Building
605 Suwannee Street, MS 58
Tallahassee, Florida 32399-0450

Kevin J. Thibault, P.E., Secretary
Department of Transportation
Haydon Burns Building
605 Suwannee Street, MS 57
Tallahassee, Florida 32399-0450

Sean Gellis, General Counsel
Department of Transportation
Haydon Burns Building
605 Suwannee Street, MS 58
Tallahassee, Florida 32399-0450

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.