

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

DAVID L. MAASSEN,

Petitioner,

vs.

Case No. 21-1546

DEPARTMENT OF TRANSPORTATION,

Respondent.

RECOMMENDED ORDER

Pursuant to notice, the final hearing in this cause was conducted before Administrative Law Judge Lynne A. Quimby-Pennock, of the Division of Administrative Hearings (“DOAH”), on July 16, 2021, by Zoom conference from Tallahassee, Florida.

APPEARANCES

For Petitioner: David Lambert Maassen, pro se
140 South Osceola Avenue
Arcadia, Florida 34266

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

STATEMENT OF THE ISSUE

Whether the Notice of Intent to Modify Driveway Connection, in which Respondent, Florida Department of Transportation (“FDOT”) seeks to close a driveway on Petitioner’s property to eliminate potential traffic issues and reduce the number of access points to the roadway, is consistent with sections 334.044(14), 335.181, and 335.182, Florida Statutes, and Florida Administrative Code Rules 14-96.011 and 14-96.015.

PRELIMINARY STATEMENT

On March 1, 2021, FDOT sent a Notice of Intent to Modify Driveway Connection (“Notice”) to John and Kathryn Maassen, the listed property owners. The Notice announced that the “existing driveway,” an approximately 100-foot driveway connection directly on State Road 70 (“SR 70” or “Oak Street”), would be closed to improve safety or traffic operations. Multiple “Driveway drawings^[1]” [sic] were allegedly attached to the Notice, as was a Notice of Administrative Hearing Rights.

Petitioner David Maassen (“Mr. Maassen”), timely requested a hearing. FDOT referred the matter to DOAH for a “formal administrative hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes.”

The Notice provided:

Re: (04040000) FDOT Financial Project ID 441562-1-52-01
Property Tax ID 25-37-24-0128-00B0-0120
Notice of Intent to Modify Driveway Connection
The Florida Department of Transportation (FDOT) is currently designing a roadway improvement project reconstruction on SR. 70 in DeSoto County. Part of the design effort includes an evaluation of existing driveway connections for potential modifications that will improve safety or traffic operations on the state roadway.

Pursuant to sections 334.044(14) and 335.182 Florida Statutes, as well as Rule 14-96.015 Florida Administrative Code and Rule 14-96.011(3)(b), (5)(b), FDOT is proposing to alter the existing

¹ The Notice included a one-page “ROADWAY PLAN (2).”

driveway access connection to Property Tax ID: 25-37-24-0018-00D0-0000^[2] and SR 70.

FDOT is taking this action pursuant to sections 335.182 and 335.1825 Florida Statutes and Rules 14-96.011 and 14-96.15,^[3] Florida Administrative Code.

The existing driveway will be closed, as per the attached plans [sic]. This proposed action will reduce the number of access points to the roadway and eliminate potential traffic issues.

A copy of a Notice of Administrative Hearing Rights is also attached if you should disagree with the proposed plan.

Sincerely,
Kara Davis
Florida Department of Transportation
District One^[4]

On May 19, 2021, the Notice of Hearing by Zoom Conference was issued, scheduling the hearing for July 16, 2021. The hearing was completed as scheduled.

On July 9, 2021, Petitioner and Respondent each filed their proposed exhibits. Respondent also filed its witness list. On July 14, 2021, FDOT filed a “Notice of Filing Amended Exhibit for Final Hearing,” specifically Exhibit 11.

² The two property tax IDs listed in the “Re:” section and paragraph two are not the same. No objection was raised to the two inconsistent property tax IDs. Throughout the hearing the property location was presented as the northeast corner of SR 70 and Baldwin Avenue in Arcadia, Florida.

³ The reference to rule “14-96.15 Florida Administrative Code” is incorrect, there is no such rule. No objection was raised to the incorrect citation, and the parties easily discussed the relevant rule, rule 14-96.015, which was listed in paragraph two of the Notice.

⁴ At no time was District One’s territory provided.

During the hearing, Mr. Maassen testified on his own behalf, and his Exhibits A through Q were accepted in evidence.⁵ FDOT presented the testimony of three witnesses. Respondent's Exhibits 1 through 11 were accepted in evidence.

At the end of the hearing, the parties were advised of the ten-day timeframe provided by rule for filing proposed recommended orders ("PROs"), running from the later of the filing of the transcript at DOAH or the close of the hearing. At that time, the undersigned was advised that a transcript would be ordered. Mr. Maassen unilaterally requested an extended deadline of 20 days from the filing day of the transcript. Respondent's counsel did not object, and the request was granted.

The one-volume Transcript was filed on August 20, 2021. On August 20, 2021, FDOT filed a Motion to Extend the Date to Submit Proposed Recommended Orders ("Motion"). The Motion provided that FDOT had received the Transcript and requested the court reporter to file it at DOAH. Further, the Motion provided the parties had conferred after the conclusion of the hearing, and were jointly requesting 21 days to file the PROs. The Motion was granted and the parties were notified that their PROs were due on Friday, September 10, 2021.

Both parties timely filed their PROs on September 10, 2021. To the extent that either PRO contained new facts or information that was not subject to cross-examination during the hearing, those matters have been excluded from consideration. Otherwise, both PROs have been carefully considered in the preparation of this Recommended Order.

⁵ Exhibits A through H, and J were admitted over objection.

FINDINGS OF FACT

The Witnesses

1. Mr. Maassen testified that John and Kathryn Maassen were his parents and are deceased.⁶ Although an argument could be made that Mr. Maassen was not the proper party to this case, no one raised this as an objection, and both parties actively participated in the hearing.

2. Nicolas Leon is employed by FDOT as a roadway engineer supervisor III. He holds a bachelor's and master's degree in civil engineering, and is a licensed professional engineer. Mr. Leon's duties and responsibilities include being the engineer of record and/or project manager on multiple transportation projects. He oversees a team of roadway and traffic designers, project managers, and engineers.

3. Leanna Schail is employed by FDOT as a traffic services access management manager for District One. She has a degree in mechanical engineering, and manages a team of four FDOT employees who review all the access management applications for driveway connection permits throughout District One.

4. Joel B. Hobbs is employed by FDOT as an operation program engineer. He works at the FDOT maintenance office which is west of the property at issue.

FDOT's Process

5. FDOT conducted an analysis of SR 70 in DeSoto County, Florida by evaluating the roadway, side streets, median openings, access connections, intersections, and intersections signalizations. A roadway project was formulated to bring the facility into compliance with state statutes and rules.

⁶ Mr. Maassen's Exhibit N was a copy of Warranty Deed regarding "Lots 12, 13, and 14 of Block B, Fountain Park Subdivision, Arcadia Florida," executed between Elon N. and Alesia J. Duncan to John S. and Kathryn Maassen dated April 21, 1961.

6. FDOT is charged to use a forward-looking process to bring all state roadways into compliance with FDOT's design standards. These design standards, set forth in FDOT's statutes and rules, are to protect and ensure the public health, safety, and welfare for all users of the state roadway, including vehicles, pedestrians, and bicycles.

7. FDOT is required to follow the Access Management Act found in chapter 335.18, and 14-96 and 14-97 to evaluate the roadway.

8. Property owners who have property directly adjacent to a state roadway share a property boundary with the state roadway. Those property owners are entitled to reasonable and adequate access to their property. However, the property owner is not entitled to unregulated access to that property. *See* § 335.181(2), Fla. Stat.

9. FDOT was statutorily directed to adopt rules that provide an administrative procedure for closing unpermitted connections. *See* § 335.182(2), Fla. Stat. As found in rules 14-96 and 14-97, an unregulated access, such as a driveway, is one that has not been permitted by FDOT, and may create safety and operational concerns because it may not be constructed or designed in compliance with FDOT's standards.

10. Driveway connections on state roads must be permitted or grandfathered. *See* § 335.1825, Fla. Stat.; Fla. Admin. Code R. 14-96.011(3)(a). A driveway is grandfathered if it was in existence prior to July 1, 1988, when access permits were first required. *See* Fla. Admin. Code R. 14-96.011(3)(a). To retain the grandfather status, a driveway must be consistently used by the owner or business proprietor. If the property use is changed, that property loses the grandfathered status.

11. When a property use changes, the owner has the ability to apply to FDOT for an access permit for the access connection. FDOT reviews those applications and may grant or deny the application.

12. Driveway confusion and driver confusion occur when a driver "is presented with too many choices to make in a short period of time due to the

inefficiency or difficult driveway location.” Such driveway confusion could cause a driver to make a wrong choice as to when, where, and how to move their vehicle within a driveway area, attempt to enter a driveway, or exit the driveway into the flow of traffic.

FDOT’s Proposed Project and Property

13. FDOT proposed a “roadway improvement project reconstruction on SR 70 in DeSoto County,” Florida.

14. The project is approximately 1.8 miles in length beginning just east of Peace River, and heading east into Arcadia, Florida. The project includes both the eastbound and westbound lanes of SR 70, a divided roadway, sometimes called “one-way pairs.”

15. FDOT proposed to: reconstruct the pavement through repaving the roadway; install a new closed-drainage system for storm water; install a new sanitary sewer line; create new signage; improve pavement markings; install signalization; and provide lighting improvements.

16. Additionally, at the intersection of SR 70 and Baldwin Avenue (“Baldwin”), FDOT proposed to install a west-bound right turn lane onto North Baldwin.

17. For the majority of the project, FDOT proposed to install eight-foot-wide ADA⁷ compliant sidewalks with ramps at the intersections. However, in the area where the 100-foot driveway would be closed, a six-foot-wide sidewalk with intersection ramps would be created along the curve in SR 70, based on the limited right-of-way.

18. Ms. Schail testified that using the “same criteria and regulation, statutes, and Administrative Code,” her team analyzed 120 driveway access connections along the proposed project corridor. Of those 120 driveway access connections, 14 were identified for modification due to safety and operational concerns.

⁷ The term “ADA” was understood to refer to the Americans with Disabilities Act of 1990, a civil rights law that prohibits discrimination based on disability.

Five of the 14 driveway access connections were identified for closure due to safety and operational concerns.

19. The property containing the approximate 100-foot driveway with direct access to SR 70 at issue here is a 0.43-acre parcel located at the northeast corner of Baldwin and SR 70, Arcadia, Florida.

20. The 100-foot driveway has been in use since the 1960s. The property was a gasoline station for many years. However, in the 1990s, the property use changed from a gasoline station to a sign shop, known as DeSoto Sign (“Shop”).

Petitioner’s Objection and Position

21. Mr. Maassen objected to FDOT’s proposed closure of the Shop’s 100-foot driveway with direct access to SR 70. The Notice used the term “modification,” yet it also contained the sentence: “[T]he existing driveway will be closed, as per the attached plans.”⁸ Mr. Maassen’s position was that the terms: “modification” and “closure” are not the same. The Notice provided that the closure would “reduce the number of access points to the roadway and eliminate potential traffic issues.” The Notice also provided that the potential modifications would “improve safety or traffic operations on” SR 70.

22. Mr. Maassen offered 10 “FLORIDA TRAFFIC CRASH REPORT[s]” dated May 2016 to December 2020 to support his contention that automobile crashes at or near the Shop were not the issue. He alluded that Exhibit “I,” a crash report from May 2017, provided the only instance where a bus was parked parallel to SR 70 on the 100-foot driveway. The report mentioned the parked bus as a contributing factor to a two-car accident. However, it is noted that the crash report is over four years old.

⁸ As indicated above, only one drawing or plan was attached to the Notice.

23. Mr. Maassen acknowledged that a long-bed blue tractor-trailer has parked (and still parks) parallel and next to the Shop, along Baldwin. He also acknowledged at times the tractor-trailer traveling westbound on SR 70 may have maneuvered into that parking location by blocking traffic on SR 70. It is Mr. Maassen's belief that FDOT is using that tractor-trailer as its basis for the proposed closure of the 100-foot driveway.

24. Mr. Maassen testified that the tractor-trailer driver should be educated and/or ticketed by law enforcement to stop the parking maneuver. Mr. Maassen further testified that if the driver could not be educated as to how to drive or park appropriately, his license should be revoked.

25. Mr. Hobbs, the only witness to actually see the tractor-trailer parking maneuver, conceded that "within the last year," the tractor-trailer is "no longer pulling out directly onto 70. He is pulling up adjacent to the through lane and starting his maneuvers to back up into the parking position." The tractor-trailer is now traveling south on Baldwin, pulling onto the Shop property via the Baldwin connection, and maneuvering into the parallel parking position next to the Shop.

26. Mr. Maassen had no idea whether the 100-foot driveway, with the direct access to SR 70, was permitted at the time it was constructed or since that time. He made the point that someone would not "go out and cut a hole in a driveway for a roadway without somebody knowing about it."

27. Mr. Maassen acknowledged the speed limit on SR 70 in front of the Shop was 45 miles per hour.

28. Further, Mr. Maassen pointed to section 335.184(3), and argued that when the roadway was repaved, or work done on the Shop property, "[T]here's been no reason to make a change." However, he did not provide any testimony as to when any re-pavement or work was done on SR 70 or on the Shop property. His position is the 100-foot driveway gives the property reasonable access for Shop customers.

29. Mr. Maassen asserted FDOT's proposed action leaves him without "reasonable access" to the Shop property. He testified:

I cannot take a delivery vehicle off a side street, make a U-turn, turn it around on that driveway and bring it back out on the side street. A vehicle of any size or nature, any of the businesses that the sign shop actually works with that has a vehicle with a trailer will be limited.

There's a canopy in the middle of that driveway which prevents you from making any type of a U-turn out there with any type of a dual vehicle. We need to have a complete access through the property from one side to the other, not just being able to pull onto one side.

This is not a retail outlet. This is an operational facility where they're doing work on vehicles out front that must be able to be brought across the driveway, not just pull on it and back out.

His contention is that this action (maneuvering around the Shop property) "is reasonable access for customers." However, maneuvering on the Shop property is considered internal circulation, and not what FDOT is charged with regulating.

FDOT's Position

30. FDOT is the state agency responsible for regulating access between state roads and private property abutting those roads. *See* §§ 335.18 through 335.188, Fla Stat. SR 70 is a part of the Florida state highway system.

31. The Shop's direct connection, meaning the access, or driveway, connecting the parcel onto SR 70, runs parallel to SR 70 and is approximately 100 feet long, with a curb somewhere in the middle. The approximate length of the curb was not provided, nor was its existence challenged. This direct connection begins approximately 10 feet from the intersection of SR 70 and Baldwin.

32. The Shop's second connection ("second driveway") lies on Baldwin and is approximately 75 feet long. This is an indirect connection as it connects the Shop property to Baldwin, the side street which directly connects to SR 70. The second driveway is not subject to any changes in the Notice.

33. SR 70 is classified as a class 5 road. *See Fla. Admin. Code R. 14-97.003(1), Table 2.* The class 5 designation is assigned to roadways that "are controlled access facilities where adjacent land has been extensively developed and where the probability of major land use change is not high." *See Fla. Admin. Code R. 14-97.003(2)(b)4.* The rule provides that for a driveway connection on a class 5 road, which has a posted speed limit of 45 miles per hour, there must be at least 245 feet between the access connections on driveways, side streets, or adjacent properties.

34. Ms. Schaille confirmed that at the intersection of SR 70 and Baldwin, the speed limit is 45 miles per hour. Further, she testified that the distance between the Shop's 100-foot driveway abutting SR 70 and the Baldwin intersection is approximately 10 feet. Thus, the Shop's 100-foot driveway is an unregulated access, in that it does not meet the spacing requirement identified in rule 14-97.003(2)(b)4. Ms. Schaille testified that this unregulated access is FDOT's reason for closing the driveway.

35. As provided in paragraph 9 above, "driveway connections on state roads must be permitted or grandfathered." *See § 335.1825, Fla. Stat.;* Fla. Admin. Code R. 14-96.011(3)(a). There is no question that the gasoline station's direct connection was in place prior to 1988. However, the use of the property changed to the Shop in the mid-1990s without an access permit application being submitted to or granted by FDOT.

36. Ms. Schaille testified the Notice was FDOT's second letter communicating the intent to modify the Shop's property access. Further, FDOT staff met with Mr. Maassen or his brother at the Shop property to discuss the proposed project. Numerous telephone conversations occurred between Mr. Maassen and FDOT staff regarding the proposed project.

37. Ms. Schaille credibly testified to the statutes and rules that FDOT must follow when projects are proposed. To paraphrase the language of section 335.181(1), she provided that the:

Access Management Act is to protect all users of the state highway system, insofar as to ensure that public health, safety, and welfare of all users, which includes vehicular traffic, pedestrian traffic, and bicycle traffic on a state roadway, while also allowing for the safe and efficient mobility of people on a state roadway.

38. Further, Ms. Schaille specified section 335.181(2) provided that “every property owner adjacent to the state roadway, shares a property boundary with the state roadway [and] is entitled to reasonable and adequate access to their parcel.” However, the property owner is not “entitled to unregulated access to that parcel.”

39. An unregulated access to a property is one that has not been permitted by FDOT. Ms. Schaille testified that such unregulated access to a property “may create safety and operational concerns or is not constructed or designed in accordance with the Department’s standards for driveway connections.”

40. According to Ms. Schaille, a “property owner is entitled to and has a right to the minimum number of connections required to provide safe and efficient ingress and egress to their parcel, which can be satisfied by either direct or indirect driveway connections.” In this instance, the indirect connection could be made for ingress to the Shop from Baldwin by either turning left or right onto the Shop property, and for egress by turning left out of the Shop property onto Baldwin, which connects directly to SR 70.

41. Ms. Schaille confirmed that section 335.181(2)(a) requires FDOT to provide a property owner “adjacent to the state roadway reasonable and adequate access to the state roadway either by indirect or direct means. The access is - - - permissible access would have to be regulated by the Department, and we could not approve an unregulated access.”

42. Ms. Schaille's testimony was clear, concise, and credible as to the statutes and rules employed by FDOT in making the determination regarding the closure of the 100-foot driveway.

CONCLUSIONS OF LAW

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

44. FDOT, as the party asserting the affirmative of the issue, has the burden to prove by a preponderance of the evidence that the driveway may be modified as proposed in the Notice. *Young v. Dep't of Cmty. Aff.*, 625 So. 2d 831, 833-34 (Fla. 1993); *Dep't of Transp. v. J.W.C. Co.*, 396 So. 2d 778, 788 (Fla. 1st DCA 1981).

45. FDOT is the state agency responsible for regulating access to the state highway system pursuant to sections 335.18 through 335.188. Specifically, FDOT is the state agency with the power “[t]o establish, control, and prohibit points of ingress to, and egress from, the State Highway System ... as necessary to ensure the safe, efficient, and effective maintenance and operation of such facilities.” § 334.044(14), Fla. Stat.

46. FDOT initiated this action by issuance of a Notice, with an attached driveway drawing and notice of administrative hearing rights.

47. Section 335.181 provides in pertinent part:

(1) It is the finding of the Legislature that:

(a) Regulation of access to the State Highway System is necessary in order to protect the public health, safety, and welfare, to preserve the functional integrity of the State Highway System, and to promote the safe and efficient movement of people and goods within the state.

* * *

(2)(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.

48. "Reasonable Access' means 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." *See* Fla. Admin. Code R. 14-96.002(25). "Connection' means driveways, streets, turnouts, or other means of providing for the right of reasonable access to or from the State Highway System." § 335.182(3)(a), Fla. Stat.

49. Driveways on state roads must be permitted or grandfathered, or they are subject to closure. *See* § 335.1825, Fla. Stat., and Fla. Admin. Code R. 14-96.011(3). An unpermitted driveway is grandfathered if it was in existence prior to July 1, 1988, and has not been discontinued for a period of one year or more. *Id.* at 14-96.011(3)(a). A change in property use occurs when the business located on the property has been out of service for a period of one year or more. *See* Fla. Admin. Code R. 14-96.005(2)(c)3.

50. The Shop's 100-foot driveway directly on SR 70 is currently an unpermitted driveway. When the gasoline station started operation in the 1960s, a permit may not have been required. However, when the gasoline station ceased operation and the Shop engaged in business, the property use changed, and a permit was required.

51. FDOT, at the direction of the State legislature, has adopted rules governing the modification of unpermitted driveways. Rule 14-96.015 provides, in relevant part, as follows:

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.

(2) When a permitted or grandfathered connection is modified as part of a Department construction project, and not due to a significant change, no additional permit shall be required.

(3) 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.

52. Pursuant to rule 14-96.011(4)(c), if FDOT acts to modify a driveway, it “shall offer an opportunity to meet on site with the property owner or designated representative ... [and] 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.

53. FDOT may modify grandfathered driveways pursuant to the following standards set forth in rule 14-96.011(4)(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.

54. Rule 14-96.011(5) provides the following notification process for modifying a grandfathered connection:

(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.

1. If the reason for the modification is due to significant change the notice will state the basis of the Department's determination and require the filing of a permit application by a specified date. Where the Department's requirement to file an application has become final and no timely application has been filed, the Department will take immediate action to modify the connection in accordance with the notice at the owner's expense.

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.

55. Here, FDOT seeks to modify Petitioner's unpermitted, 100-foot-wide driveway for safety and operational reasons due to the Project along SR 70.

56. Based on the Findings of Fact, Petitioner's driveway was at one point grandfathered. Although there is no dispute that the driveway existed on or before July 1, 1988, the weight of the credible evidence confirmed that the use of the property changed in the 1990s from a gas station to a sign shop, a significant change in use. Testimony established that no permit was requested or obtained when this change in use occurred.

57. Based on the Findings of Fact, FDOT complied with the requirement in rule 14-96.011(4)(c) to meet on site with Mr. Maassen or his brother, plus additional telephone conversations between the two parties occurred. Though the efforts to reach an agreed resolution were unsuccessful, FDOT complied with the requirement to meet on site and consider Petitioner's circumstance. Further, FDOT proved by a preponderance of the evidence that the modification of Petitioners' driveway will improve safety and the operational characteristics on SR 70, and will provide Petitioner with reasonable access through the indirect connection on Baldwin.

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 Shop's 100-foot driveway as part of the State Road 70 project.

DONE AND ENTERED this 28th day of September, 2021, in Tallahassee, Leon County, Florida.



LYNNE A. QUIMBY-PENNOCK
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 28th day of September, 2021.

COPIES FURNISHED:

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

David Lambert Maassen
140 South Osceola Avenue
Arcadia, Florida 34266

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.