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NORTH CAROLINA

Date: April 19, 2012

To: Thomas J. Bonfield, City Manager
Through: Keith Chadwell, Deputy City Manager
From: Steven L. Medlin, AICP, City-County Planning Director
Subject: Presentation on Selective Vegetation Removal Permit Requests

Summary. This is an informational report on a new State process for Selective Vegetation Removal Permit requests, and how City of Durham staff is responding to the requests. Last July, the North Carolina General Assembly passed SL2011-397 (SB183). Pursuant to that Session Law (Attachment 1), the North Carolina Department of Transportation (NCDOT) adopted temporary rules in January of this year, effective on March 1, 2012. The law and rules allow outdoor advertising sign companies and businesses fronting along NCDOT highways to request approval from the NCDOT for an increased clearing area within the right of way of interstates, controlled access routes, and the federal primary system (State roads) to provide a wider view to their billboards or business establishments. If issued, the permit is valid for one year. The law does not affect rules for clearing on private property.

NCDOT is the permitting authority, but a local jurisdiction may register for local review of the applications, and provide comment. An applicant must submit their application for selective vegetation removal to the registered local jurisdiction prior to submitting it to the NCDOT. Both the City and County of Durham have registered for local review of the permit requests, with the City-County Planning Director as the contact person. We have received five requests for clearing by outdoor advertising sign companies, but none, as of the date this report was drafted, for businesses.

Recommendation. Staff recommends that City Council receive the presentation.

Background. The City of Durham has prohibited the erection of any new off-premise, outdoor advertising signs (billboards) since September 4, 1984. The Session Law (SL2011-397) and NCDOT temporary rules that became effective on March 1, 2012, require that registered local jurisdictions be notified 30 days in advance of the applicants' submittal of the application to NCDOT. The local jurisdiction then has 30 days to review the application and provide comments to the NCDOT. The NCDOT may or may not take the local jurisdiction's comments into consideration when they

review the permit request (see Attachment 2 for a copy of the notice sent to local jurisdictions).

Since the rules went into effect, we have received five applications for selective vegetation removal around existing billboards. After we received the applications, staff from several departments met to establish a process for review and comment. The City Attorney's Office drafted a guidance document that included the main changes as a result of the legislation, and some direction on which issues the NCDOT will be looking to local jurisdictions for review and comment.

The main issues impacting the City of Durham, per the City Attorney's office, are as follows:

- "Vegetation removal around billboards will no longer be "selective," and billboard companies may clear cut areas, except dogwoods and redbuds;"
- "In the City, the cut zone at the highway side of the right of way [for billboards] along interstates and fully controlled access highways expands from 250 feet to 340 feet [for each face of a billboard]. For other State roads in the City, the cut zone remains at 250 feet (see Attachment 3 for a diagram of the allowable cut zones);
- The cut zone at the back edge of the right of way adjoining private property increases for all applications for cutting around billboards from 100 to 200 feet;"
- If the billboard company proposed to remove large trees that were four inches in caliper at the time the billboard was erected, "[t]he billboard company may choose one of three options for mitigating the impact of their cutting: 1) remove two non-conforming billboards (located anywhere in the state); 2) pay a modest amount (based on NCDOT average cost for new trees) for [the trees removed]; or 3) replant in accordance with a replanting plan approved by NCDOT." Note that this change will have little impact in Durham, since the billboards are close to 30 years old or older, and any trees of that age are not likely to still be in existence within the State right of way.
- The law does require the applicant to tag any tree that is four inches or more in caliper at the time of the application. All native dogwoods and native redbuds at least four inches in caliper within the permitted cut zone shall be preserved. The applicant may completely clear the area if the permit is issued, except for the dogwoods and redbuds, if they also get a beautification and replanting plan approved. Local jurisdictions have an opportunity to comment on a proposed beautification and replanting plan.
- Access for the removal of the vegetation shall be from the private side of the right of way.

The City Attorney's Office also made the point that, "[t]he new laws and regulations do not change or override Durham's UDO prohibitions against erecting billboards or upgrading new ones." It also does not make the existing billboards conforming off-premise signs, nor does it allow clearing of any vegetation that is part of a required buffer or tree protection area on private property.

Issues. The City Attorney's Office and other departmental staff have identified the following issues that may provide reasons for NCDOT to deny a request for selective vegetation removal that the City has the ability to comment on.

Issues for Vegetation Removal Within the Right of Way in Front of Outdoor Advertising Signs:

- **Screening.** If the proposed cutting opens up a view to a junkyard or to an existing on-premise sign, that could be grounds for denial. This will be verified by the Planning Department prior to responding to the NCDOT.

- **Beautification Projects.** If the vegetation proposed for removal was planted as part of a local, state or federal beautification project, this could also be grounds for denial. The Urban Forestry Division of the General Services Department will check this. Even if not technically part of a beautification project, if the City worked with the State to make sure that the vegetation was planted (such as along the widening of Interstate 85), that comment will be sent to the NCDOT.

- **Safety.** The City Transportation Department will try to identify locations of proposed clearing where the removal of vegetation may adversely affect the safety of the travelling public. However, Transportation does not have staff or time resources available to conduct detailed studies for each billboard location.

- **Existing Utility Lines within the State Right of Way.** Public Works has expressed concerns that, in some locations, City infrastructure that has been in place a long time may be damaged if heavy equipment is used to do the clearing. There is nothing in the legislation that mentions the impact on existing utility lines within the public right of way and clearing is primarily supposed to be done manually. Applicants who wish to use power-driven equipment are required to note it on the application, and NCDOT could condition the permit on manual removal. Therefore, comments from Public Works related to City infrastructure will be passed on to the NCDOT. Public Works may also directly contact the applicants to work with them to avoid damage to sensitive infrastructure if the use of heavy equipment is indicated on the application.

Issues for Vegetation Removal Within the Right of Way in Front of Commercial or Business Facilities:

The revised rule (19A NCAC 02E.0602) for businesses allows for a larger clear zone. It states, "For commercial, industrial, institutional and office facilities, the limits of selective clearing or thinning shall be restricted to the area of right-of-way immediately adjacent to frontage property of the facility but not to exceed 1,000 linear feet."

- **Screening of Businesses.** The law allows for verification of whether or not the existing business is, in fact, screened from view from the highway by the vegetation they are requesting to remove. If it is not, then that would be grounds for denial, because there would be no reason for the permit to create more visibility if it is already visible. The Planning Department will verify this when a request is received.

Additional Steps. Staff in Urban Forestry has contacted the NCDOT office to verify that they will be marking redbuds and dogwoods within the clearing zone that are protected by the legislation. Urban Forestry staff has also agreed to document "before and after" photos of the sites. Field staff in Urban Forestry, City Transportation Public Works, and Planning should also be trained to recognize when companies are accessing the clearing sites from the right of way instead of from private property. A central procedure for reporting this to NCDOT would also be established, since this can lead to revocation of the selective vegetation removal permit and denial of all future permits.

Conclusion. As stated above, the Selective Vegetation Removal Permit requests are being submitted to the Planning Department. The Department is then distributing the requests to City Transportation, Public Works and Urban Forestry for review and comment. Planning is then compiling the resulting review comments sending them to the NCDOT within the 30 day window. After NCDOT receives the application and our comments, if the application is approved, clear-cutting will begin. See Attachment 4 for locations under review as of the date of this report.

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Attachments:
Attachment 1, Session Law 2011-397 (SB 183)
Attachment 2, Notice of Municipal and Local Government Review of Applications by Outdoor Advertising Companies {sic}
Attachment 3, Diagram of Permitted Cutting Area
Attachment 4, Map of SVR Permit Requests Received
Attachment 5, Powerpoint Presentation