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Date: February 3, 2014

To: Thomas J. Bonfield, City Manager
Through: Keith Chadwell, Deputy City Manager
From: Steven L. Medlin, AICP, Planning Director *Steven L. Medlin*
Subject: *Unified Development Ordinance* Text Amendment, Tree Coverage Calculations (TC1300002)

Summary. This is a privately initiated text amendment to amend the method of calculating required tree coverage areas pursuant to Sec. 8.3, Tree Protection and Tree Coverage, of the *Unified Development Ordinance* (UDO). The original proposal (Attachment A) by the applicant would remove the area within easements and stormwater facilities from the overall development area acreage used for calculating tree coverage requirements. After review and comment by staff, the applicant revised the proposal to limit the exemption to area within existing utility easements of record with a minimum width of 50 feet (Attachment B).

Recommendation. Staff recommends approval of the attached ordinance to amend tree coverage calculation requirements of the *Unified Development Ordinance* (TC1300002). The Planning Commission recommended approval, 14-0, of the text amendment on November 12, 2013.

Background. The text amendment application is a privately initiated amendment submitted by Horvath Associates. The current UDO requires tree coverage on most development sites within the Suburban Tier, and for residential zoning districts within the Urban Tier. Tree coverage, pursuant to Sec. 8.3, Tree Protection and Tree Coverage, can be satisfied by setting aside a certain percentage of the development site as tree preservation, tree replacement, or a combination of both.

The UDO allows for two exemptions for calculating the overall area of the development site that determines the amount of required tree coverage: existing water bodies and right-of-way dedications. The original proposal requests a third exemption which would include area within easements of a certain size, and modification of the existing water body exemption to include stormwater facilities. After review and comment by staff, the applicant agreed to revisions to the proposal, limiting the exemption to existing utility easements of record with a minimum width of 50 feet.

On October 2, 2013, the JCCPC reviewed the text amendment and had no concerns with the proposal, recommending initiating the approval process with a unanimous vote. The Planning Commission held a public hearing on the text amendment on November 12, 2013, and recommended approval with a unanimous vote. The Durham Board of County Commissioners will consider this text amendment at its February 10, 2014, meeting.

Issues. The applicant seeks an amendment to the UDO to exempt certain larger easements because the area within the easements cannot be planted to satisfy the tree coverage requirements.

The UDO, in paragraph 8.3.1C.5, currently provides tree coverage calculation exemptions for two instances:

1. Existing water bodies such as streams and ponds; and
2. Right-of-way dedications for the widening of existing right-of-way.

Existing water bodies preclude the planting of trees; and a right-of-way dedication is an exaction that removes property from the development site and places it within the public realm to enhance existing and future infrastructure.

Staff agrees that an exemption for substantial, existing utility easements is warranted due to the general inability to use an easement area for the planting of trees, or to maintain them where they are allowed, but does not support the proposal as originally presented by the applicant. The applicant's proposal would exempt any easement, existing or proposed, of a minimum width, and would also exempt the area of stormwater facilities, which are development-driven installations.

The draft ordinance is a revision of the original application proposal, limiting the exemption to the area within existing utility easements of record (power, gas, water, and/or sewer) of a minimum width of 50 feet.

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Attachments:

Attachment A: Application by Horvath Associates

Attachment B: An Ordinance to Amend Tree Coverage Calculation Requirements of the *Unified Development Ordinance* (TC1300002)

Attachment C: Planning Commission Comments