Exhibit A

THE VAN WINKLE LAW FIRM

February 17, 2020

Via email and mail

North Carolina Department of Transportation
c/o Helen Landi
NCDOT APA Coordinator
1501 Mail Service Center
Raleigh, NC 27699-1501
hlandi@ncdot.gov

Re: Proposed DOT Rulemaking (2020) – Public Comment

To Whom It May Concern:

I am the General Counsel for and represent the North Carolina Outdoor Advertising Association (hereinafter "NCOAA"). The NCOAA is the industry association for outdoor advertising businesses in the State of North Carolina. Our membership comprises more than 90% of outdoor advertising owners and operators in this State. The purpose of this letter is to set out in writing several comments to the North Carolina Department of Transportation (hereinafter "DOT")'s proposed rules, as described in the fiscal note, as being related to the "Regulatory Reform Act, Specifically the Section on Outdoor Advertising (ODA) Modernization of outdoor advertising devices" (House Bill 74)(hereinafter "2020 Proposed Rules"). Thank you for this opportunity to comment.

Before I describe the troubling consequences of the 2020 Proposed Rules, it is important to denote the purposes of HB 74 by examining its title. It is called: "AN ACT TO IMPROVE AND STREAMLINE THE REGULATORY PROCESS IN ORDER TO STIMULATE JOB CREATION, TO ELIMINATE UNNECESSARY REGULATION, TO MAKE VARIOUS OTHER STATUTORY CHANGES, AND TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS." The purpose of this statute is to streamline agency rules, make them more business friendly and to eliminate rules which are "obsolete, redundant, or otherwise not needed." (G.S. §150B-21.3A(a)(6)). We believe that included within the latter category would be rules that are either without statutory authority or rules that conflict with statutory authority.

In a nutshell, the 2020 Proposed Rules accomplish the opposite effect of the clear purpose behind HB 74. In several instances, they substantially add to the regulatory processes applicable to outdoor advertising, negatively alter the financial and operational burdens on the regulated industry, and dramatically increase the costs to both the regulatees and the State if left to deal with the consequences of the sweeping rule changes. Moreover, the 2020 Proposed Rules directly subvert the goals of the modernization provisions of HB 74 and plainly conflict with those statutory changes, as hereinafter explained.

We understand that DOT has given two reasons for the 2020 Proposed Rules: (1) to "Comply with Session Law" dealing with modernization of outdoor advertising devices (G.S. §136-131.2); and (2) The effect of G.S. §150B-21.3A and its requirement for the agency to periodically review its rules and readopt "necessary rules" no later than August 31, 2020.[1]

It is important to understand what the statutory change related to modernization did and conversely what it did not.

G.S. §136-131.2 (HB 74, Sec. 8(b)) provides:

§ 136-131.2 **Modernization of outdoor advertising devices.**

> No municipality, county, local or regional zoning authority, or other political subdivision shall, without the payment of just compensation as provided for in G.S. 136-131.1, regulate or prohibit the repair or reconstruction of any outdoor advertising for which there is in effect a valid permit issued by the Department of Transportation so long as the square footage of its advertising surface area is not increased. As used in this section, reconstruction includes the changing of an existing multipole outdoor advertising structure to a new monopole structure.

The whole point of G.S. §136-131.2 was to preempt *local governments* in the "repair or reconstruction" of existing DOT-permitted signs. It did not change DOT's role in any way. It was meant to streamline the process as indicated in the title of HB 74; to eliminate one governmental player from the regulatory landscape. This statute was not an invitation for the DOT to materially increase the regulatory burdens placed on the industry, which, unfortunately, the 2020 Proposed Rules, if adopted, would do. In fact, as currently constituted, the 2020 Proposed Rules conflict with this preemptive goal by placing local governments squarely into the

[1] As extended via a letter from the North Carolina Rules Review Commission dated April 19, 2019 per its authority in G.S. §150B-21.3A(d).

decision-making rubric when most of the billboards are to be repaired or reconstructed.

As for second reason given for the 2020 Proposed Rules, rather than eliminating rules as a result of the mandated goal to implement regulatory reform, the DOT has instead added unnecessary rules – those that are "obsolete, redundant, or otherwise not needed."

According to DOT's website, the 2020 Proposed Rules are deemed "necessary without substantive changes" and recommended for re-adoption. Based on the primary goal of regulatory reform in HB 74, a "substantive change" surely is one which materially increases the regulatory burdens placed on the regulated industry. In several instances, the 2020 Proposed Rules amend the current regulations in substantive ways harmful to the outdoor advertising industry.

Here are our initial public comments[2]:

1. THE 2020 PROPOSED RULES CONFLICT WITH THE MODERNIZATION STATUTE OR ARE OTHERWISE IN EXCESS OF STATUTORY AUTHORITY.

Clearly, the objective of G.S. §136-131.2 as enacted by HB 74 was to preempt local regulation in the field of repair or reconstruction of existing DOT-permitted outdoor advertising signs. This statute follows the preemption holding established by the North Carolina case of *Lamar v. Stanley County,* 186 N.C. App. 44 (N.C. Ct. App. 2007), *affirmed per curiam*, 362 N.C. 670 (N.C. Supr. Ct. 2008), where it was determined that local governments could not prohibit the relocation of DOT-permitted signs within the same "sign location/site" as defined in the DOT rules.

The 2020 Proposed Rules conflict with HB 74 and particularly G.S. §136-131.2 by:

a. Requiring a new DOT permit (19A NCAC 02E .0225(b)(2)) anytime an existing billboard is "altered". The act of altering billboards by increasing height, converting to steel from wood, or reconstructing to a monopole from multiple poles is not new. Like any structure, repairs and improvements are occasionally done for a myriad of reasons, including promoting attractiveness and insuring safety. Since the regulation of billboards in the early 1970s, there has never been the

[2] The NCOAA reserves the right to introduce additional comments as the 2020 Proposed Rules proceed through the rule-making process.

requirement to obtain a DOT permit and pay a fee every time the components of an existing billboard are changed. This is so regardless of whether a sign being altered conforms to DOT standards or local standards.[3] After four decades, the 2020 Proposed Rules change this. Why now? Nothing in HB 74 or G.S. §136-131.2 suggests that the DOT should add to the regulatory burden, especially where history shows that a new "alteration" permit has never been necessary to meet the public interest. The regulatory reform statutes are a signal to DOT to streamline and reduce burdens, not add to them. G.S. §136-131.2 focuses on mitigating local control; there is no indication that the General Assembly authorized a whole new permitting scheme from DOT.

b. Sec. .0225(b)(2) of the 2020 Proposed Rules refers to an OA-1A form for a new alteration permit. There is no rule implementing the particulars of that form. What are the standards to apply in order to receive permission to alter a sign? The 2020 Proposed Rules are ambiguous. Section .0206 deals with the erection of a new billboard, which states that a local permit is to be included as part of an OA-1 application for a State permit. That application requires a local zoning permit to be attached, which effectively brings local decision makers into play. It is not clear what DOT requires for the OA-1A form. If local approval is required, then it would expressly conflict with G.S. §136-131.2.

c. The North Carolina Outdoor Advertising Control Act, G.S. §136-126 *et seq.* (hereinafter "OACA"), expressly authorizes DOT to require a permit for the erection and subsequent maintenance of a sign.[4] *See* G.S. §§136-130, 136-133. There is no statutory authority for a permit anytime an existing sign is "altered". The term "erect" in the OACA means "to construct, build, raise, assemble . . . or in any other way bring into being or establish." G.S. §136-128(1). Altering a sign that is

[3] Signs not conforming to DOT standards must abide by the 50% rule when repaired. *See* 19A NCAC .02E. .0225(f). The sign owner may request a "review" by DOT; however, even this notification is not mandatory. No permit was ever required in that process.

[4] Unlike modernization, the act of "maintenance" means "to hold or keep in an existing state or condition." *Friends of Hatteras Island Nat. Historic Maritime Forest*, 117 N.C. App. 556, 570, 452 S.E.2d 337, 346 (1995)(*citing* Black's Law Dictionary 859 (5th ed. 1979)). The OACA also authorizes the DOT to request a permit if a State-controlled route is added to an area where an existing billboard is being maintained.

already existing would not qualify under that definition. Moreover, the term "alteration" is not defined. Would changing out one pole or swapping out face panels be an "alteration" necessitating a new permit and fee?

d. G.S. §150B-19(5) prohibits an agency from establishing a new fee without statutory authority. There is no such authority for the new alteration permit fee. *See* G.S. §136-133 (setting forth fees for the initial permit and annual renewal).

e. In several instances, the 2020 Proposed Rules employ the term "nonconforming" (19A NCAC 2E .0201(16)) in such as a way as to effectively eliminate the repair or reconstruction of a billboard as authorized by G.S. §136-131.2, whenever local rules prohibit same even if the sign complies with DOT standards. *See* 19A NCAC .02E .0210(8), .0225(b). "Nonconforming" signs, as defined, would include those signs not meeting local standards. *See* G.S. 136-28(2a), (6). The whole point of that section was to preempt local rules because most billboards in this State have been rendered nonconforming to local standards. To promote jobs and allow for signs to be modernized, the General Assembly made the policy choice to allow those signs to be repaired or upgraded despite local regulations. The 2020 Proposed Rules, as constituted, deny outdoor advertisers the exercise of the rights given by HB 74.

Over the years, NCOAA, by and through counsel, has communicated with DOT regarding the consequences of rule-making that would eliminate the fruits of G.S. §136-131.2 or that would add to the industry's burden by implementing a new permitting scheme for sign "alterations", which is not needed. The proof is in the history of never needing a permit for "alterations". Why is one now needed? Examples of communications are attached as Exhibits "1-5".[5] In light of these communications going back to 2013 warning of the very problems exhibited by the 2020 Proposed Rules, why does DOT continue to stay the course?

As the above communications going back to 2013 show, we have heard the argument from DOT that the State statute's definitions of "nonconforming" and "State law" create some impetus to reject the clear preemption point of G.S. §136-131.2. It is important to understand that the term "nonconforming" in the OACA is found only in two (2) places – G.S. §136-131 dealing with DOT removal of signs and §136-133.1(d) for compensation related to removing existing trees. This term is not used in G.S. §136-131.2. or in any OACA provision addressing permitting. As we

[5] The exhibits referenced in the Exhibit 5 letter are omitted due to redundancy.

have stated in the letters and in meetings with the DOT, new terms can be easily employed to implement modernization such as "signs not conforming to State standards". Meaning, billboards that don't meet the federal floor in the Highway Beautification Act and as set forth in the agreement between the State and the federal government cannot be "modernized" or substantially altered (measured, in part, by the historical 50% percent rule in Sec. .0225).

Over the years, we have also suggested a process for an addendum to the historical DOT permit, not a new permit that brings into play conflicting standards and exacts new fees.

2. THE 2020 PROPOSED RULES CHANGING THE DEFINITION OF "SIGN LOCATION" WILL CAUSE SUBSTANTIAL FINANCIAL AND OPERATIONAL BURDENS ON THE INDUSTRY AND SUBJECT THE STATE BUDGET TO MATERIAL INCREASES IN PAYING OUT JUST COMPENSATION FOR HIGHWAY PROJECT TAKINGS.

Since 2000 at least, the definition of "sign location/site" in the DOT rules encompasses an area measured by the "closest 1/100th of a mile." 19A NCAC .02E.0200(27). At regular intervals, outdoor advertising signs are displaced as a result of State highway projects. In the past, the above definition allowed billboards to be moved on the same site without regard to local standards. This reality can be seen in the facts of the above-mentioned *Lamar v. Stanly County* case.

The first step that an outdoor advertiser normally takes when faced with forced removal as a result of a State highway project is to determine whether a sign can be moved within the same "sign location/site" boundaries. If so, this eliminates in most cases the need to worry about just compensation from the State. The DOT's Secretary of Transportation has acknowledged in the past DOT's practice to allow relocation on the same site when caused by a highway project. *See* Secretary Opinion attached hereto as Exhibit "6".

The 2020 Proposed Rules seek to substantially change the definition of "sign location/site" to the exact GPS coordinates of the sign, thus eliminating any option to avoid a drawn-out fight for just compensation. Meaning, now local rules can prevent relocation on the same site. The State will be paying substantially more in right of way acquisition as a result of the stringent sign rules enacted for the aesthetic programs of local government. It is clear from the fiscal notes that neither the DOT or the Office of State Budget and Management analyzed the fiscal impacts on the regulatees and the State from this rule change. There is no explanation give for the change, which is substantive, despite the characterization to the contrary. In 2017, the North Carolina Supreme Court in the case of *DOT v. Adams Outdoor*

Advertising affirmed the right of owners of outdoor advertising signs to receive just compensation from governmental takings. Just compensation is based on fair market value. At times, depending on a myriad of factors such as location, fair market value in the industry may mean hundreds of thousands of dollars for one billboard. Eliminating the option to move the sign on the same site means the State will have to pay a lot more.

Currently, and for decades, a sign could be moved on the same site without the need for a new permit or the payment of new fees. Signs are sometimes moved to accommodate a landowner's development needs. Anytime a sign is reconstructed it is technically moved - not put back into the same holes containing the concrete footings. The 2020 Proposed Rules alter this without an explanation of the exigency driving the change.

3. 19A NCAC 02E .0202 -AGREEMENT - APPEARS TO BE OBSOLETE AND UNNCESSARY.

In Section .0202 of the 2020 Proposed Rules, the second sentence states that in the event that federal regulations are more restrictive than DOT rules related to outdoor advertising, the federal rules will be expressly incorporated by reference, and presumably enforced. This provision is not authorized by the OACA and, more specifically, G.S. §136-138, which expressly covers the subject matter of agreements with the federal government without mention of federal regulations being controlling. G.S. §150B-19(1) plainly directs the agency not to adopt a rule that "implements or interprets a law unless that law or another law specifically authorizes the agency to do so." The federal-state agreement related to the control of outdoor advertising sets the "floor" for regulations in this State. Nothing therein suggests that the Federal Highway Administrator and/or the federal DOT can change that agreement unilaterally and impose stricter standards.

4. 19 NCAC 02E .0204 - LOCAL ZONING AUTHORITIES - APPEARS TO BE OBSOLETE AND UNNECESSARY.

HB 74 for outdoor advertising is codified, in part, in G.S. §136-131.2 and provides that no municipality or county can "regulate or prohibit the repair or reconstruction of any outdoor advertising from which there is in effect a valid permit issued by the Department of Transportation." Obviously, the term "regulate" is very broad and would include any regulatory efforts by the local governments to impose its set of standards on a billboard's modernization. Moreover, the only statutory limitation in the new law is that the "square footage of the advertising surface" cannot be increased. The well-established rule of statutory construction is that mentioning a specific exception implies the exclusion of others.

Morrison v. Sears, Roebuck & Co., 319 N.C. 298, 303, 354 S.E.2d 495, 498-499 (1987)(espousing the doctrine of *expressio unius est exclusion alterius*); *Granville Farms, Inc. v. County of Granville,* 170 N.C. App. 109, 114, 612 S.E.2d 156, 160 (2005). Notably, there are no additional exceptions in the statute addressing a sign's conformity to local standards or mentioning development restrictions related to height, setback, etc.

The clear intent of HB 74 is to streamline the regulation of existing outdoor advertising signs along the interstates and primary highways of this State. Modernization efforts are not to be measured by or judged according to local standards, except to the extent of increases in advertising square footage.

In addition to HB 74, G.S. §136-131.1 provides that a local government, in the exercise of its regulatory authority, cannot cause the removal of outdoor advertising for which there is in effect a DOT permit.

Section .0204 of the 2020 Proposed Rules states that DOT can delegate its regulatory authority to local governments. There is nothing in the OACA that suggests that local governments can be delegated through administrative action any authority to administer that statutory framework and any regulations promulgated pursuant thereto. The statute that the rule references as authority, G.S. §136-130, expressly and exclusively delegates rule making authority to the DOT only.

G.S. §150B-19(1) prohibits the DOT from adopting a rule that "implements or interprets a law unless that law or another law specifically authorizes the agency to do so." There is no statute that authorizes the DOT to insert local authority into the process of permitting decisions which are assigned exclusively to the DOT in the OACA. *See County of Wake v. DENR*, 155 N.C. App. 225, 249-250, 573 S.E.2d 572, 589 (2002)(in the absence of specific statute authorizing DENR to implement local government duties for landfills, said agency could not incorporate such local standard as part of its permitting).

5. 19 NCAC 02E .0206 APPLICATIONS REQUIRING A LOCAL PERMIT APPEARS TO BE OBSELETE AND UNNECESSARY.

There is no statutory authority to require a local permit as a prerequisite to a State permit, as Section .0206 calls for. As noted throughout this letter, the proposed changes to "sign location/site" and to require an "alteration permit". which will then purportedly pull in local ordinances to many activities previously preempted by State law, conflict with the OACA and causes substantial hardship to the industry.

CONCLUSION

In summary, the outdoor advertising modernization section of HB 74 is not a legitimate basis for the 2020 Proposed Rules and is certainly not an invitation to make the sweeping changes that the DOT has proposed. The 2020 Proposed Rules do not streamline the regulatory burdens.

Administrative agencies such as DOT only have regulatory authority that is conferred by statute. *In re: Appeal of Arcadia Dairy Farms, Inc.*, 289 N.C. 456, 464, 223 S.E.2d 323, 328 (1976). Our Supreme Court has stated:

> Administrative rules and regulations, to be valid, must be within the authority conferred upon the administrative agency. The power to make regulations is not the power to legislate in the true sense, and under the guise of regulation legislation may not be enacted. The statute which is being administered may not be altered or added to by the exercise of a power to make regulations thereunder.

States' Rights Democratic Party v. North Carolina State Board of Elections, 229 N.C. 179, 187, 49 S.E.2d 379, 384 (1948). Clearly important to the matter at hand, an agency "may not, but its rules or order, forbid the exercise of a right expressly conferred by statute." *State of North Carolina ex. rel. Utilities Commission v. Lumbee River Electric Membership Corp.*, 275 N.C. 250, 257, 166 S.E.2d 663, 668 (1969).

As highlighted above, the 2020 Proposed Rules in several instances:

1. Substantively change existing law;
2. Are not expressly authorized by federal or State law;
3. Conflict with state statutes;
4. Fail to reduce the burden on the industry who is tasked with complying with the rules;
5. Are not clear and unambiguous: and
6. Are not reasonably necessary to implement or interpret an enactment of the General Assembly or federal law.

By the 2020 Proposed Rules, the DOT effectively forbids the exercise of the outdoor advertiser's right to modernize its sign without regard to local standards.

At the end of the day, each agency, including the DOT, is required to conduct an "annual review of its rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles" of regulatory reform as espoused in HB 74 and G.S. §150B-19.1. We are hopeful that these comments will spurn meaningful dialogue on outdoor advertising rules that satisfy the goals of HB 74 and other statutorily mandated regulatory reform principles.

Sincerely,

VAN WINKLE, BUCK, WALL, STARNES AND DAVIS, P.A.

Craig D. Justus

(Electronically Signed)
Craig Justus

CDJ/ca
Enclosures
cc. Ebony Pittman, Esq.
TJ Bugbee, Executive Director, NCOAA
Jeanine Dodson, President, NCOAA

4819-0170-9492, v. 1

THE VAN WINKLE LAW FIRM

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December 23, 2013

Via email and mail

Roy T. Grasse
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RE: Lamar Outdoor Advertising

Dear Roy:

Last week, I became aware of DOT's request that Lamar submit a new OA-1 form and pay $120 regarding Lamar's plans to take advantage of House Bill 74 and reconstruct its outdoor advertising sign recently permitted as US 070 018005 and located at 1621 Hwy 70, Hickory, NC 28601 ("Hickory Sign"). A OA-1 form is, of course, an application for an outdoor advertising permit. The $120 fee is the initial fee for a sign permit. Because this is a sign conforming to DOT standards and Lamar had previously secured a local building permit, a new permit should be easily issued. However, we believe that this is not the correct procedure for several reasons and consequently, we are concerned that this will set a bad precedent moving forward with House Bill 74 reconstruction activities.

One, a new permit implies that permission is needed from DOT to perform the reconstruction, which is false. As I indicated in my letter dated October 4, 2013 to you and Jon Nance regarding HB 74, DOT rules do not require a new permit for the repair or reconstruction of a DOT-permitted sign. New permits have only been triggered when the "site location" (as defined in the rules) changes. After hearing about the above OA-1 request for the Hickory Sign's reconstruction, I reached out to my clients in the outdoor advertising industry and confirmed that DOT has never in the past required a new permit to reconstruct a sign at the same location. You may think that asking for permission is harmless. However, having to ask for permission suggests that in some circumstances permission can be denied. As you know, local governments try to insert themselves into the permitting process all the time. The OA-1 form incorporates local government standards whenever an outdoor advertising company seeks to establish a new sign at a site that falls within a city or county's zoning

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boundaries. HB 74 specifically recognizes that local standards are irrelevant to the repair and reconstruction of a DOT-permitted sign. Your request for a "new permit" creates conflict where conflict is not necessary.

Two, HB 74 recognizes that the acts of "repair" and "reconstruction" involve an existing sign already permitted by DOT. Section .0225 of the DOT rules also recognizes that existing DOT-permitted signs may be repaired or reconstructed. There is no mention of permits in that section, and as stated above, no permits have been required for such actions. One can see the absence of permitting requirements for reconstruction even more clearly upon reading Section .0210. This section, of course, deals with the situation of what constitutes valid actions under an existing DOT permit. Stated another way, what are the scenarios where a DOT permit may be revoked? Here are some actions that may be taken without causing the revocation of a permit:

1. Moving a sign, even a nonconforming one on the same "site" (.0210(16)); and
2. Altering a conforming sign so long as it does not "fails to comply with the provisions of the Outdoor Advertising Control act or the" DOT rules (.0210(7)).

Looking at the above two subsections of .0210, it is plain that a conforming sign such as the Hickory Sign may be moved within the same location without needing a new permit. The Hickory Sign may also be altered in conformity with the DOT rules. DOT Permit No. US 070018005 sets forth the maximum standards (following DOT rules) of what is allowed at the site in question. For the Hickory Sign, its relocation does not trigger a new permit. For the Hickory Sign, the DOT does not normally care what type of support structure or materials is put on a sign conforming to DOT standards. Because the existing sign has digital components, there should be no issue regarding digital displays on the reconstructed sign. The existing DOT permit already authorizes the reconstruction in question. If reconstruction of a sign conforming to DOT standards was a cause for a new permit, then doing so without such authorization would presumably trigger the revocation of the existing permit. That is not mentioned as a specific excuse for revocation in Section .0210.

Although the amount of money may matter overtime, $120 is not what we are concerned with at this stage. We are concerned with the request to "start over", to begin a new application process where local information is being requested (contrary to HB 74) and where the possibility of delays and controversy looms. This should not be the case, especially in light of the clear signals from the General Assembly regarding regulatory reform.

Here, the Hickory Sign, a sign conforming to DOT standards, is intended to be reconstructed in such a way as to continue to be conforming to DOT standards. By letter dated December 16, 2013, my client notified the DOT of the reconstruction in accordance with the process I outlined in my October 4, 2013 letter. Since then, my clients have been told that the DOT is working on a new "conversion" form to memorialize reconstruction activities under HB 74. This seemed to us to be more of an addendum to the existing permit, rather than a totally new permit. I am hoping that the information we received last week is simply a reaction to the fact that such "conversion" form is not yet ready. In any event, a new permit for an activity already authorized by DOT rules should not be the answer in the interim.

Please re-visit this issue and contact me at your earliest convenience. In our jurisprudence, having a DOT permit in hand for an existing sign is very important to my clients. Reconstruction activities in conformity with DOT standards should not trigger "starting over."

I look forward to discussing the matter with you in the very near future.

Sincerely,
VAN WINKLE, BUCK, WALL,
STARNES AND DAVIS, P.A.

Craig Justus

cc: Client - via email
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August 22, 2014

Via email and mail

Richard E. Greene, Jr.
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1536 Mail Service Center
Raleigh, NC 27699-1536

RE: House Bill 74 and Rule Making

Dear Mr. Greene:

As you know, I represent the North Carolina Outdoor Advertising Association ("NCOAA"), which organization consists of a large proportion of the outdoor advertising/billboard companies in this State. As you also know, the North Carolina General Assembly passed House Bill 74, entitled "AN ACT TO IMPROVE AND STREAMLINE THE REGULATORY PROCESS IN ORDER TO STIMULATE JOB CREATION, TO ELIMINATE UNNECESSARY REGULATION, TO MAKE VARIOUS OTHER STATUTORY CHANGES, AND TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS." ("HB 74"). For my client and its members, HB 74 is an extremely important new law that, as the above title indicates, stimulates job creation and eliminates unnecessary regulation in the field of outdoor advertising.

A key part of HB 74, which became effective August 23, 2013, was enacting a new statute dealing with the "modernization" of outdoor advertising signs, which provisions were codified in N.C. Gen. Stat. 136-131.2. It reads:

> No municipality, county, local or regional zoning authority, or other political subdivision shall, without the payment of just compensation as provided for in G.S. 136-131.1, regulate or prohibit the repair or reconstruction of any outdoor advertising for which there is in effect a valid permit issued by the Department of Transportation so long as the square footage of its advertising surface area is not increased. As used in this section, reconstruction includes the changing of an existing multipole outdoor advertising structure to a new monopole structure.

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In a nutshell, one of HB 74's ways of streamlining the regulatory process was to eliminate local government standards as an obstacle to repairing or reconstructing DOT-permitted signs along interstates and federal aid primary highways.

Early on, we notified Jon Nance, your predecessor, of the clear implication of reading HB 74 together with existing preemption case law, which was that local government rules, regulations and/or policies are irrelevant to the maintenance, repair and/or reconstruction of DOT-permitted outdoor advertising signs. A copy of my October 4, 2013 letter to Jon Nance is attached hereto as Exhibit "A".

As you should see, there should be no local control over DOT-permitted locations. Unfortunately at a February 6, 2014 meeting in Raleigh with Jon Nance and several Department officials and staff attorneys, it was reported to us that DOT was going to keep in place its obsolete provisions that local regulatory standards can control the repair and/or reconstruction of DOT-permitted locations. It was made known to us at that time that this position was being pressed by the Governor, as Chief Executive Officer. Governor McCrory is not a fan of the outdoor advertising industry.

On March 7, 2014, Paul Hickman and Cameron Henley, on behalf of the NCOAA, met with Secretary Tata to discuss the rules process for the modernization piece of HB 74. Secretary Tata indicated that he clearly understood that DOT rules would have to be changed to eliminate local control as a consequence of HB 74 and he directed staff to make sure to properly handle the matter. As a follow up to that meeting, Paul Hickman delivered an email to Secretary Tata with several attachments, some of which contained our comments to proposed draft rules. A copy of this email with the comments are attached as Exhibit "B". Unfortunately, we are afraid that Secretary Tata's opinion may have been later compromised.

I understand that proposed rules implementing HB 74 are to be filed any day. It is important that DOT does not stay the course of ignoring clear legislative will by keeping in place in its rules local regulatory control. We believe that such position is clearly erroneous, is an effort to legislate policy and would lack substantial justification, entitling my folks to attorney's fees under N.C. Gen. Stat. 6-19.1 in the subsequent litigation to contest such action.

We received this week from Don Smith proposed SVR rules purporting to implement HB 74's new ramp cut allowances. One thing we did agree on with Jon Nance at the February meeting in Raleigh was separating the SVR rules from the rules dealing with modernization. We also supported the draft SVR rules then in place. Unfortunately, we noticed that local control has in some places been inserted in the

most recent version contrary to our understanding. There should be no local control in any of the rules. This must be immediately addressed.

If you have any questions, please do not hesitate to let us know. We would love to have a meeting with you and others prior to filing the proposed rules. Thank you for your time in reading this letter. If for any reason, you believe that something stated in here is materially inaccurate, please let me know as soon as possible.

Sincerely,
VAN WINKLE, BUCK, WALL,
STARNES AND DAVIS, P.A.
Craig D. Justus
(Signed Electronically)
Craig D. Justus

CDJ/ca

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October 4, 2013

Via email and federal express

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RE: House Bill 74

Dear Roy and Jon:

As you know, I represent the North Carolina Outdoor Advertising Association ("NCOAA"), which organization consists of a large proportion of the outdoor advertising/billboard companies in this State. As you also know, the North Carolina General Assembly recently passed House Bill 74, entitled "AN ACT TO IMPROVE AND STREAMLINE THE REGULATORY PROCESS IN ORDER TO STIMULATE JOB CREATION, TO ELIMINATE UNNECESSARY REGULATION, TO MAKE VARIOUS OTHER STATUTORY CHANGES, AND TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS." ("HB 74"). For my client and its members, HB 74 is an extremely important new law that, as the above title indicates, stimulates job creation and eliminates unnecessary regulation in the field of outdoor advertising.

I am writing this letter to both of you due to the fact that, at times, your roles overlap, especially in the area of selective vegetation removal by outdoor advertising folks within the State right of way. A misstep in selective removal may affect an outdoor advertising permit (as outlined in SB 183).

For your convenience in reading this letter, I have attached the two pages of HB 74 dealing with outdoor advertising.

Regarding the addition of subsection (a1) to G.S. 136-133.1, I understand that the North Carolina Department of Transportation ("DOT") intends to go through rule-making before any "ramp cuts" outside the previously defined cut zone will be approved pursuant to this new provision. We are not clear why rule-making is necessary. Even if so, it appears to be very minor adjustments of clarification.

EXHIBIT
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Unlike SB 183, the General Assembly did not direct the agency to prepare rules. As you know after SB 183 became law, DOT went through an extensive process to create new temporary and then permanent rules, principally 19A NCAC 02E .0608-.0611 ("Current SVR Rules"). I will address each, to wit:

> .0608 of the Current SVR Rules does not require any changes. It refers to G.S. 136-133.1(c) for defining a "site plan", which statutory section is clear as to what is required even for the "ramp cuts".
>
> .0609 does not require any changes. It refers to G.S. 136-133.2 that mentions "required documentation" without further explanation. Because this term is not defined, it appears that any additional clarification that you may need associated with the "ramp cuts", could be accomplished by internal paper work that does not rise to the level of rule-making.
>
> .0610, arguably, may need to be tweaked. Subsection one refers to G.S. 136-133.1(b)'s definition of "selected vegetation" by reference to point A to point D and from Point B to point E. I can see where new G.S. 136-133.1(a1) may be included here for clarification. Subsection eight refers to the marking of the "proper permitted cutting distances according to G.S. 136-133.1(a)(1)-(6)." Again, I see the possibility for clarification by adding the new ramp cut substitution. I don't see the necessity of changing any other subsections of this rule. Significantly, subsection ten is already written to account for the three compensatory options when "existing trees are requested to be removed" without regard to where.
>
> .0611 does not require any changes.

It appears that Section 2 of Executive Order No. 23 may solve the "marking" of the cut zone points that I indicated above for .0610. In any event, if the DOT feels that rule making is needed, then we will work with you to make it happen in a productive and expeditious manner. The OAH rule-making statutes only mandate a minimum of one (1) public hearing. DOT held several hearings for the extensive re-write associated with SB 183. The minor tweaking that we see should not trigger more than one hearing.[1] In any event, there is no reason why these minor revisions could not be in

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[1] HB 74's provision about "ramp cuts" was merely a clarification of DOT authority that already existed in former G.S. 136-93. It also trumpets the "right to be clearly viewed." There is no need for material, substantive changes to the current rules. The issues raised in Executive Order No. 23 are already covered by either existing rules (.0610(10) handles the last sentence of Section

effect by January 1, 2014. As I will stress throughout this letter, if rule changes are being made, it is only reasonable, as before with SB 183, that the affected industry be privy to the thought process early on, rather than as a fait accompli and only after the rules are submitted to OAH. A public agency and the affected industry should be working partners in the process. I believe the recent changes to the statutes emphasize the importance of understanding a rule's fiscal impact and other effect on an industry up front and there is no better resource for such knowledge than the industry itself.

As for the modernization provisions in HB 74 with new G.S. 136-131.2, there is no requirement for rule changes in order to implement these statutory rights. This statute generally codifies the law established by the North Carolina Supreme Court's ruling in *Lamar v. Stanly County*, 2008 N.C. LEXIS 987 (N.C., Dec. 12, 2008) that local governments are preempted from using their regulations to prevent the maintenance and/or repairs of billboards permitted by the DOT. G.S. 136-131 2 expands this principle to also apply to "reconstruction" activities, including, but not limited to, the changing of a multi-pole structure to a monopole.[2] As you undoubtedly know, it is clear jurisprudence in our State that an agency "may not, but its rules or order, forbid the exercise of a right expressly conferred by statute." *State of North Carolina ex. rel. Utilities Comm. v. Lumbee River Electric Membership Corp.*, 275 N.C. 250, 257, 166 S.E.2d 663, 668 (1969). Stated another way, "a statute which is being administered may not be altered or added to by the exercise of a power to make regulations thereunder." *States' Rights Democratic Party v. North Carolina State Bd. of Elections*, 229 N.C. 179, 187, 49 S.E.2d 379, 398 (1948). Moreover, an agency cannot create a "liability" or "duty" where the statutory law creates none. *Motzinger v. Perryman*, 218 N.C. 15, 20-21, 9 S.E.2d 511, 514-515 (1940); *Kinston Tobacco Bd. of Trade, Inc. v. Liggett & Myers Tobacco Co.*, 235 N.C. 737, 741, 71 S.E.2d 21, 24 (1952).

HB 74 is a clear statement that local government rules, regulations and/or policies are irrelevant to the administration of law related to outdoor advertising signs once permitted by DOT. The role that local governments play for a DOT-permitted billboard is now no different than a private citizen. Meaning, a local government may now only oppose changes to a DOT-permitted outdoor advertising use via repairs or reconstruction in two ways: (1) Appealing a DOT ruling but only to the extent they can

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2 referencing "existing trees"; 0609(b)(4) referenced in Section 3 is not specific to location) or by statute (Section 4's reference to local comments is covered by G.S. 136-93(d)). Section 1 of the Executive Order is not authorized by statute. Neither the new subsection (a1) nor SB 183 limits cutting to "one-time". Obviously, any permissible cut area is subject to continual vegetation removal over time as part of maintenance of the initial cut.

[2] I believe that it could be reasonably argued that it merely clarified the allowances in G.S. 136-133.1 that already stated that a local government could not use their regulations to cause the removal of a DOT-permitted sign.

establish standing; or (2) Giving comment. Obviously, unlike private actors, a third way would be for the local government to condemn the outdoor advertising business and pay just compensation.

I state the above to emphasize that, as a result of HB 74 especially, DOT in administering its rules should not be placing any type of significance to the policies, positions, rules or regulations of a county or city who might be opposed to something my clients are doing related to a DOT-permitted sign. This fact should be well-received by DOT since it greatly simplifies your folks' work-life by mitigating against Roy, a District Engineer or some DOT-contractor having to wade through pages of local laws.

DOT rules do not require a new permit for the repair or reconstruction of a DOT-permitted billboard. New permits have only been requested if the "site location" as defined in the rules changes. I understand that DOT requests notice of updates to a sign such as changing from wooden poles to a steel monopole in order to simply track the current condition of the structure.

I have been told on numerous occasions by various DOT officials that the terms "nonconforming" and "conforming" in the DOT rules are interpreted to mean conformity when viewed in relation to the standards as to size, height, spacing and location set by DOT, not by any local government. New G.S. 136-131.2 supports this approach. However, clarification in the rules may be warranted, especially in the areas where the terms "nonconforming" and "conforming" are referenced. But I want to emphasis that a rule, whether existing or proposed, cannot defeat the "exercise of a right" provided by statute. Meaning, the statute trumps any conflicting rules and requires nothing further to be self-executing. In this case, repair and reconstruction rights in G.S. 136-131.2 are not dependent on any DOT rule revisions.

Based on the above, we feel the proper approach in the instance of any repair or reconstruction of a DOT-permitted sign on the same "site location" is to notify the Outdoor Advertising Coordinator in writing of any "updates" to changes to a DOT-permitted billboard only if they are material (i.e. going from wood to steel, multi-pole to monopole). As Roy has recently acknowledged, no notice is warranted anytime a sign that is deemed "conforming" to DOT standards is repaired.

Of course, we will remain cooperative if a local government reasonably requests a building permit for the limited purpose of inspecting the condition of any footing changes; provided, however, it is clear that this is not intended to open the door to the local officials to "regulate" or "prohibit" the repair and/reconstruction as stated in G.S. 136-133.2. Local rules conflicting with DOT standards such as height are of no effect.

G.S. 136-133.2's only caveat is not increasing the "square footage of [a sign's] advertising surface area."

Please understand that my client, and to my knowledge, many of its members acknowledge that repairs and/or reconstruction may be materially limited or restricted if the status of the sign is "nonconforming to DOT standards as to size, height, spacing and location". The approach that we advocate regarding written notice to the Outdoor Advertising Coordinator is for signs "conforming to DOT standards as to size, height, spacing and location." We understand that some changes to signs "nonconforming to DOT standards as to size, height, spacing and location" may require specific written authorization from DOT. Of course, if a sign is considered "nonconforming to DOT standards", for example due to "double-stacking" or "spacing", and those issues are cured as part of reconstruction, then such activity should not be opposed by DOT.

My client and its members are obviously excited about the opportunities to "modernize" its existing signs from both a standpoint of economics and aesthetics. We believe that HB 74 truly advances regulatory reform. If the DOT believes that rule changes at any time are warranted, especially those that might relate in any way to HB 74, please advise immediately and, as mentioned above for the "ramp cuts", please include us in the process early on.

Thank you for your time in reading this letter. If for any reason, you believe that something stated in here is materially inaccurate, please let me know as soon as possible. We want to make the transition from HB 74 as smooth as possible for DOT and our industry.

I look forward to continuing our working relationship with you both.

Sincerely,
VAN WINKLE, BUCK, WALL,
STARNES AND DAVIS, P.A.

Craig D. Justus

CDJ
Enclosure

cc: Client - via email
Elizabeth Strickland, Esq. - via email
Phyllis Tranchese, Esq. - via email

recognized by a college or university and those that are not."

SECTION 6.(c) Part 3 of Article 1 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"**§ 116-40.11. Disciplinary proceedings; right to counsel for students and organizations.**

(a) Any student enrolled at a constituent institution who is accused of a violation of the disciplinary or conduct rules of the constituent institution shall have the right to be represented, at the student's expense, by a licensed attorney or nonattorney advocate who may fully participate during any disciplinary procedure or other procedure adopted and used by the constituent institution regarding the alleged violation. However, a student shall not have the right to be represented by a licensed attorney or nonattorney advocate in either of the following circumstances:

(1) If the constituent institution has implemented a "Student Honor Court" which is fully staffed by students to address such violations.

(2) For any allegation of "academic dishonesty" as defined by the constituent institution.

(b) Any student organization officially recognized by a constituent institution that is accused of a violation of the disciplinary or conduct rules of the constituent institution shall have the right to be represented, at the organization's expense, by a licensed attorney or nonattorney advocate who may fully participate during any disciplinary procedure or other procedure adopted and used by the constituent institution regarding the alleged violation. However, a student organization shall not have the right to be represented by a licensed attorney or nonattorney advocate if the constituent institution has implemented a "Student Honor Court" which is fully staffed by students to address such violations.

(c) Nothing in this section shall be construed to create a right to be represented at a disciplinary proceeding at public expense."

SECTION 6.(d) Each constituent institution shall track the number and type of disciplinary proceedings impacted by this section, as well as the number of cases in which a student or student organization is represented by an attorney or nonattorney advocate. The constituent institutions shall report their findings to the Board of Governors of The University of North Carolina, and the Board of Governors shall submit a combined report to the Joint Legislative Education Oversight Committee and the House and Senate Education Appropriations Subcommittees by May 1, 2014.

SECTION 6.(e) Subsection (c) of this section is effective when it becomes law and applies to all allegations of violations beginning on or after that date.

AMEND PRIVATE CLUB DEFINITION

SECTION 7. G.S. 130A-247 reads as rewritten:

"**§ 130A-247. Definitions.**

The following definitions shall apply throughout this Part:

...

(2) "Private club" means an organization that (i) maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member's guest, and is either incorporated as a nonprofit corporation in accordance with Chapter 55A of the General Statutes or is exempt from federal income tax under the Internal Revenue Code as defined in ~~G.S. 105-130.2(1);~~G.S. 105-130.2(1) or (ii) meets the definition of a private club set forth in G.S. 18B-1000(5).

..."

OUTDOOR ADVERTISING AMENDMENTS

SECTION 8.(a) G.S. 136-133.1 reads as rewritten:

"**§ 136-133.1. Outdoor advertising vegetation cutting or removal.**

...

(a1) Notwithstanding any law to the contrary, in order to promote the outdoor advertiser's right to be clearly viewed as set forth in G.S. 136-127, the Department of Transportation, at the request of a selective vegetation removal permittee, may approve plans for the cutting, thinning, pruning, or removal of vegetation outside of the cut or removal zone defined in subsection (a) of this section along acceleration or deceleration ramps so long as the view to the outdoor advertising sign will be improved and the total aggregate area of cutting or removal does not exceed the maximum allowed in subsection (a) of this section.

...

(f) Tree branches within a highway right-of-way that encroach into the zone created by points A, ~~C, and D~~B, D, and E may be cut or pruned. Except as provided in subsection (g) of this section, no person, firm, or entity shall cut, trim, prune, or remove or otherwise cause to be cut, trimmed, pruned, or removed vegetation that is in front of, or adjacent to, outdoor advertising and within the limits of the highway right-of-way for the purpose of enhancing the visibility of outdoor advertising unless permitted to do so by the Department in accordance with this section, G.S. 136-93(b), 136-133.2, and 136-133.4.

...."

SECTION 8.(b) Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-131.2. Modernization of outdoor advertising devices.**

No municipality, county, local or regional zoning authority, or other political subdivision shall, without the payment of just compensation as provided for in G.S. 136-131.1, regulate or prohibit the repair or reconstruction of any outdoor advertising for which there is in effect a valid permit issued by the Department of Transportation so long as the square footage of its advertising surface area is not increased. As used in this section, reconstruction includes the changing of an existing multipole outdoor advertising structure to a new monopole structure."

DISPOSITION OF DMH/DD/SAS RECORDS

SECTION 9. The Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall amend its Records Retention and Disposition Schedule Manual to provide that if a Medicaid service has been eliminated by the State, the provider must retain records for three years after the last date of the service, unless a longer period is required by federal law. At the termination of that time period, records may be destroyed or transferred to a State agency or contractor identified by the Department of Health and Human Services.

STUDY OCCUPATIONAL LICENSING BOARD AGENCY

SECTION 10.(a) The Joint Legislative Program Evaluation Oversight Committee shall include in the 2013-2014 Work Plan for the Program Evaluation Division of the General Assembly a study to evaluate the structure, organization, and operation of the various independent occupational licensing boards. For purposes of this act, the term "occupational licensing board" has the same meaning as defined in G.S. 93B-1. The Program Evaluation Division shall include the following within this study:

(1) Consideration of the feasibility of establishing a single State agency to oversee the administration of all or some of the occupational licensing boards.

(2) Whether greater efficiency and cost-effectiveness can be realized by combining the administrative functions of the boards while allowing the boards to continue performing the regulatory functions.

(3) Whether the total number of boards should be reduced by combining and/or eliminating some boards.

SECTION 10.(b) The Program Evaluation Division shall submit its findings and recommendations from Section 10(a) of this act to the Joint Legislative Program Evaluation Oversight Committee and the Joint Legislative Administrative Procedure Oversight Committee at a date to be determined by the Joint Legislative Program Evaluation Oversight Committee.

PROHIBIT TRANSPORTATION IMPACT MITIGATION ORDINANCES

SECTION 10.1.(a) Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read as follows:

"**§ 160A-204. Transportation impact mitigation ordinances prohibited.**

No city may enact or enforce an ordinance, rule, or regulation that requires an employer to assume financial, legal, or other responsibility for the mitigation of the impact of his or her employees' commute or transportation to or from the employer's workplace, which may result in the employer being subject to a fine, fee, or other monetary, legal, or negative consequences."

SECTION 10.1.(b) Article 6 of Chapter 153A of the General Statutes is amended by adding a new section to read as follows:

"**§ 153A-145.1. Transportation impact mitigation ordinances prohibited.**

No county may enact or enforce an ordinance, rule, or regulation that requires an employer to

Cynthia Arrowood

From: Paul Hickman <Paul.Hickman@fairwayoutdoor.com>
Sent: Thursday, August 21, 2014 3:40 PM
To: Craig Justus
Subject: FW: HB 74 Rules Interpretation for Outdoor Advertising - Email 1 of 4
Attachments: 19a ncac 02e 0206.3.14.14 (with ncoaa comments).doc; 19a ncac 02e 0226.3.14.14 (with ncoaa comments).doc; 19a ncac 02e 0201.3.14.14 (with NCOAA comments).doc; 19a ncac 02e 0204.3.12.14 (with ncoaa comments).doc; 19a ncac 02e 0207.3.12.14 (with ncoaa comments).doc; 19a ncac 02e 0225.3.12.14 (with ncoaa comments0.doc; 19a ncac 02e 0224.3.12.14 (with ncoaa comments).doc; 19a ncac 02e 0210.3.12.14 (with ncoaa comments).doc; 19a ncac 02e 0203.3.12.14 (with ncoaa comments).doc; 19A NCAC 02E 0204 (3).pdf; 19A NCAC 02E 0225 (3).pdf; NcdotOdaEmployeeFlowChart31414.docx

Paul Hickman | General Manager | 919.755.1900 | **FAIRWAY**

From: Paul Hickman
Sent: Friday, March 14, 2014 12:34 PM
To: 'ajtata@ncdot.gov'; 'srblake@ncdot.gov'; 'mholder@ncdot.gov'; 'ambell1@ncdot.gov'; 'vstanley@ncdot.gov'
Cc: Cameron Henley ; Craig Justus
Subject: HB 74 Rules Interpretation for Outdoor Advertising - Email 1 of 4

Secretary Tata, Ms. Blake & Mr. Holder,

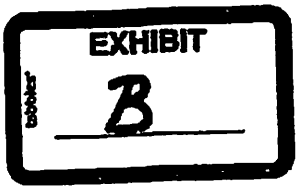
Cameron Henley & I want to thank you again for meeting with us last Friday to discuss the outdoor advertising (ODA) rules process for the modernization piece of HB 74. We will be sending four emails today to provide all the information we discussed. We thought it would be more efficient if we went ahead and did a revision to the rules that would be fair and workable for the department & the industry that HB 74 applies too since this law was signed almost seven months ago.

This email contains 12 attachments, the first 9 attachments are the revised set of rules done by the NC Outdoor Advertising Association (NCOAA) General Council Craig Justus and would allow this process to move forward and be completed in a timely manner. The 10th & 11th attachment show the differences between January and February DOT drafts. Please note that the highlighted words are words that were taken out in January but put back in, in February, and the orange text is text that was added in February. The last attachment is an employee flow chart of NCDOT employees that the ODA industry works or meets with, we have highlighted in yellow those primary employees we communicate with.

The second email will be the January 6th set of rules for modernization, the third email will be the February 6th set of rules for modernization and the final email will be the selective vegetation removal (SVR) set of rules for HB 74 as well as my letter of response to Jon Nance & Don Smith this past Monday that will hopefully allow us to move this part of the rules covering SVR forward as well.

We thank you for reviewing the interpretation of HB 74 and after you have had a chance to review these emails and discuss internally the NCOAA would like to have an opportunity to meet with you again Secretary to follow up on our first meeting and discussion. Please advise us at your earliest convenience when we could meet again.

Paul Hickman | General Manager | 919.755.1900 | **FAIRWAY**



19A NCAC 02E .0201 is proposed for amendment as follows:

SECTION .0200 – OUTDOOR ADVERTISING

19A NCAC 02E .0201 DEFINITIONS FOR OUTDOOR ADVERTISING REGULATION ~~CONTROL~~

In addition to the definitions set forth in G.S. 136-128, the following definitions shall apply for purposes of outdoor advertising control:

(1) Abandoned Sign: A sign that is not being maintained as required by the rules in this Section. The absence of a valid lease is one indication of an abandoned sign. An outdoor advertising sign structure shall be considered to be abandoned if for a period of 12 months the sign has been without a message, contains obsolete advertising matter, or is significantly damaged or dilapidated.

(2) Automatic Changeable Facing Sign: A sign, display, or device which changes the message or copy on the sign facing automatically. ~~electronically by movement or rotation of panels or slats.~~

(3) Blank Sign: A sign structure on which all faces contain no message, or which contains only a telephone number advertising its availability.

(4) Comprehensive Zoning: Zoning by local zoning authorities of each parcel of land under the jurisdiction of the local zoning authority placed in a zoning classification pursuant to a comprehensive plan, or reserved for future classification.

(a) A comprehensive plan means a development plan which guides decisions by the local zoning authority relating to zoning and the growth and development of the area.

(b) Even if comprehensively enacted, the following criteria shall determine whether such zoning is enacted primarily to permit outdoor advertising:

(i) If the zoning would constitute spot zoning, which means that it is designed primarily for the purpose of permitting outdoor advertising signs and in an area which would not normally permit outdoor advertising. Zoning shall not be considered "primarily for the public of permitting outdoor advertising signs" if the zoning would permit more than one principal commercial or industrial use, other than outdoor advertising, and the size of the land being zoned can practically support any one of the commercial or industrial uses; or. ~~The zoning classification provides for limited commercial or industrial activity only incidental to other primary land uses;~~

(ii) The commercial or industrial activities are permitted only by variance or special exceptions.~~; or~~

~~(iii) The zoning constitutes spot or strip zoning. "Spot zoning" or "strip zoning" is zoning designed primarily for the purpose of permitting outdoor advertising signs in an area which would not normally permit outdoor advertising.~~

Commented [A1]: These changes are consistent with SB 183 and codified in G.S. 136-133.5(e)

(5) Sign Conforming to NCDOT Standards~~Sign~~: A sign legally erected in a zoned or unzoned commercial or industrial area which meets all current legal requirements promulgated and enforced by the Department in terms of commercial or industrial area, size, height, lighting or spacing for erecting a new sign at that site. Local rules or standards are not applicable to determining whether a sign is conforming for purposes of this Section.

(6) Controlled Access Highway: A highway on which entrance and exit accesses are permitted only at designated points.

(7) Department or NCDOT: The North Carolina Department of Transportation, an agency of the State of North Carolina.

(~~8~~7) Regulated ~~Controlled~~ Route: Any interstate or federal-aid primary highway as it existed on June 1, 1991, and any highway which is or becomes a part of the National Highway System (NHS).

(~~9~~8) Destroyed Sign: A sign no longer in existence due to factors other than vandalism or other criminal or tortious acts. An example of a destroyed sign includes a sign which has been blown down by the wind and sustains damage in excess of 50 percent as determined by the criteria in 19A NCAC 02E .0225(f).

(~~10~~9) Dilapidated Sign: A sign which is shabby, neglected, or in disrepair, or which fails to be in the same form as originally constructed, or which fails to perform its intended function of conveying a message. Characteristics of a dilapidated sign include, but are not limited to, structural support failure, a sign not supported as originally constructed, panels or borders missing or falling off, intended messages cannot be interpreted by the motoring public, or a sign which is blocked by overgrown vegetation outside the highway right of way.

(11~~0~~) Directional Sign: A sign which contains directional information about public places owned or operated by federal, state, or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public. Directional and other official signs and notices include, but are not limited to, public utility signs, service club and religious notices, or public service signs.

(a) Public Service Sign: A sign located on a school bus stop shelter which meets all the following requirements:

(i) identifies the donor, sponsor or contributor of said shelter;

(ii) is located on a school bus shelter which is authorized or approved by city, county, or state law, regulation, or ordinance, and at places approved by the city, county, or state agency controlling the highway involved;

(iii) contains only safety slogans or messages which shall occupy not less than 60 percent of the area of the sign;

(iv) does not exceed 32 square feet in area; and

(v) contains not more than one sign facing in any one direction.

Commented [A2]: These are the "categories" of development standards that DOT has adopted.

Commented [A3]: This is consistent with HB 74.

(b) Public Utility Sign: A warning sign, informational sign, notice or other marker customarily erected and maintained by publicly or privately owned utilities, which are essential to their operations.

(c) Service Club and Religious Notices: Any sign or notice authorized by law which relates to meetings of nonprofit service clubs, charitable associations, or religious services. These signs shall not exceed eight square feet in area.

(12) Discontinued Sign: A sign no longer in existence. A discontinued sign includes a sign of which any part of a sign face, not including border or trim, is missing more than 180 days. In some cases, a sign may be both discontinued and dilapidated.

(13) Fully Controlled Access Highway ~~Freeway~~: A divided ~~arterial~~ highway for through traffic with full control of access.

(14) Highway: A highway that is designated as a part of the interstate or federal-aid primary highway system as of June 1, 1991, or any highway which is or becomes a part of the National Highway System. A highway shall be a part of the National Highway System on the date the location of the highway has been approved finally by the appropriate federal authorities.

(15) Lease: An agreement, in writing, by which possession or use of land or interests therein is given for a specified purpose and period of time, and which is a valid contract under North Carolina laws.

(16) Main Traveled Way or Traveled Way: Part of a highway on which through traffic is carried, exclusive of paved shoulders. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a traveled way. It does not include frontage roads, turning roadways, or parking areas.

(17) Sign Not Conforming to NCDOT Standards~~Nonconforming Sign~~: A sign which was lawfully erected but which does not comply with all legal requirements promulgated and enforced by the Department ~~with the provisions of State law or rules~~ and passed at a later date or which later fails to comply with Outdoor Advertising Control Act or NCDOT ~~State law or~~ rules due to changed conditions. Also includes a sign legally erected prior to the effective date of the Outdoor Advertising Control Act or prior to the addition of a route to the interstate or federal-aid primary system or National Highway System in a zoned or unzoned commercial or industrial area which does not meet all current standards promulgated and enforced by the Department in terms of commercial or industrial zoning, size, height, lighting and spacing for erecting a new sign at that site. For purposes of the outdoor advertising rules, nonconforming signs also include those signs which have become nonconforming pursuant to 19A NCAC 02E .1002(d) on scenic byways which were part of the interstate or federal-aid primary highway system as of June 1, 1991, or which are or

Commented [A4]: Clarifies that DOT is talking only about the substantive parts of the sign face.

become a part of the National Highway System. Local rules or standards are not applicable to determining whether a sign is not conforming for purposes of this Section.

Commented [A5]: This is consistent with HB 74.

(187) Official Sign/Notice: A sign or notice erected and maintained by public officers or public agencies within their territorial or zoning jurisdictions and pursuant to and in accordance with federal, state, or local law for the purpose of carrying out an official duty or responsibility. Official signs and notices include, but are not limited to, historical markers authorized by state law and erected by state or local government agencies or nonprofit historical societies.

(198) On-premise/On-property Sign: A sign which advertises the sale or lease of property upon which it is located or which advertises an activity conducted or product for sale on the property upon which it is located. An on-premise sign may not be converted to a permitted outdoor advertising sign unless it meets all rules in effect at the time of the conversion request. An on-premise sign must be located on property contiguous to the property on which the activity is located. Tracts not considered to be contiguous include, but are not limited to:

(a) Tracts of land separated by a federal, state, city, or public access maintained road;

(b) Tracts of land not under common ownership; or

(c) Tracts of land held in different estates or interests.

(2019) Parkland: Any publicly owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site.

(210) Permit Holder: A permit holder shall be the sign owner, and for purposes of the rules in this Section the terms and definitions shall be interchangeable, unless the Department of Transportation, through the appropriate district office, has been notified in writing that the permit holder is a person or entity other than the actual owner of the sign. In this case, the actual sign owner's name, mailing address, and telephone number must be declared.

(221) Salvageable Sign Components: Components of the original sign structure prior to the damage that can be repaired or replaced on site by the use of labor only. If any materials, other than nuts, bolts, nails or similar hardware, are required in order to repair a component, the component is not considered to be salvageable.

(232) Scenic Area: Any area of particular beauty or historical significance as determined by the federal, state, or local official having jurisdiction thereof, and includes interests in land which have been acquired for the restoration, preservation and enhancement of beauty.

(243) Scenic Byway: A scenic highway or scenic byway designated by the Board of Transportation, regardless of whether the route so designated was part of the interstate or federal-aid primary highway system as of June 1, 1991, or any highway which is or becomes a part of the National Highway System.

(254) Sign: Any outdoor sign, sign structure, display, light, device, figure, painting, drawing, message, placard, poster, billboard, or other object which is designed, intended, or used to advertise or inform. A sign includes any of the parts or material of the structure, such as beams, poles, posts, and stringers, the only eventual purpose of which is to ultimately display a message or other information for public view. For purposes of these rules, the term "sign" and its definition shall be interchangeable with the following terms: outdoor advertising, outdoor advertising sign, outdoor advertising structure, outdoor advertising sign structure, sign structure, and structure.

~~(25) Sign Conforming by Virtue of the "Grandfather Clause:" A sign legally erected prior to the effective date of the Outdoor Advertising Control Act or prior to the addition of a route to the interstate or federal-aid primary system or NHS in a zoned or unzoned commercial or industrial area which does not meet all current standards for erecting a new sign at that site.~~

~~(26)~~ (265) Sign Face: The part of the sign, including trim and background, which contains the message or informative contents. For purposes of measuring the maximum area or height of a sign, embellishments or extended advertising shall be excluded.

~~(27)~~ (276) Sign Location/Site: A sign location or site for purposes of these rules shall be measured to the closest 1/100th of a mile in conformance with Department of Transportation methods of measurement for all state roads. ~~measured to the closest 1/100th of a mile, in conformance with Department of Transportation methods of measurement for all state roads. the latitude and longitude as determined by recreational grade global position system (GPS) equipment.~~ The location or site shall be determined and listed on each outdoor advertising permit application by DOT personnel.

~~(28)~~ (287) Sign Owner: A sign owner shall be the permit holder of record, and for purposes of the rules in this Section the terms and definitions shall be interchangeable, unless the Department of Transportation, through the appropriate district office, has been notified in writing that the sign owner is a person or entity other than the actual holder of the permit. In this case, the actual sign owner's name, mailing address, and telephone number must be declared.

~~(29)~~ (298) Significantly Damaged Sign: A sign which has been damaged or partially destroyed due to factors other than vandalism or other criminal or tortious acts to such extent that the damage to the sign is greater than fifty percent as determined by the criteria in 19A NCAC 02E .0225(f).

~~(30)~~ (3029) Unzoned Commercial or Industrial Area: An area which is not zoned by state or local law, regulation, or ordinance, and which is within 660 feet of the nearest edge of the right of way of the interstate or federal-aid primary system or NHS, in which there is at least one commercial or industrial activity that meets all requirements specified in 19A NCAC 02E .0203(5).

Formatted: Superscript

Commented [A6]: This proposed change is not triggered by HB 74. This definition has been in place for over a decade and there is no discernible reason to change it.

~~(31)~~ (3~~0~~) Zoned Commercial or Industrial Area: An area which is zoned for business, industry, commerce, or trade pursuant to a state or local zoning ordinance or regulation. Local zoning action must be taken pursuant to the state's zoning enabling statute or constitutional authority in accordance therewith. Zoning which is not part of comprehensive zoning or which is created primarily to permit outdoor advertising structures as defined in G.S. 136-133.5(e) shall not be recognized as valid zoning for purposes of the Outdoor Advertising Control Act and the rules promulgated thereunder, unless the land is developed for commercial or industrial activity as defined under 19A NCAC 02E .0203(5).

History Note: *Authority G.S. 136-130;*
Eff. July 1, 1978;
Amended Eff. MONTH 1, 2014: August 1, 2000; December 1, 1993; March 1, 1993; December 1, 1990; January 1, 1984.

19A NCAC 02E .0203 is proposed for amendment as follows:

19A NCAC 02E .0203 OUTDOOR ADVERTISING ON ~~CONTROLLED~~ REGULATED ROUTES

The following standards shall apply to the erection and maintenance of outdoor advertising signs in all zoned and unzoned commercial and industrial areas located within 660 feet of the nearest edge of the right of way of the controlled route. The standards shall not apply to those signs enumerated in G.S. 136-129(1), (2), (2a) and (3), which are directional and other official signs and notices, signs advertising the sale or lease of property upon which they are located, signs advertising the sale of crops at roadside stands, and signs which advertise activities conducted on the property upon which they are located.

(1) Configuration and Size of Signs:

(a) The maximum area for any one sign shall be 1,200 square feet with a maximum height of 30 feet and maximum length of 60 feet, inclusive of any border and trim but excluding the base or apron, embellishments, extended advertising space, supports, and other structural members.

(b) The area shall be calculated by measuring the outside dimensions of face, excluding any apron, embellishments, or extended advertising space.

(c) The maximum size limitations shall apply to each side of a sign structure; the signs may be placed back-to-back, side-by-side; or in V-type construction with not more than two displays to each facing, and such sign structure shall be considered as one sign.

(d) Side-by-side signs shall be structurally tied together to be considered as one sign structure.

(e) V-type and back-to-back signs shall not be considered as one sign if located more than 15 feet apart at their nearest points.

(f) The height of any portion of the sign structure, excluding cutouts or embellishments, as measured vertically from the adjacent edge of pavement of the main traveled way shall not exceed 50 feet.

(g) Double-decking of sign faces so that one is on top of the other is prohibited.

(2) Spacing of Signs:

(a) Signs may not be located in a manner to obscure, or otherwise physically interfere with the effectiveness of any official traffic sign, signal, or device, or to obstruct or physically interfere with the driver's view of approaching, merging, or intersecting traffic.

(b) ~~Controlled~~ Regulated Routes with Fully Controlled Access ~~(Freeways):~~

(i) No two structures shall be spaced less than 500 feet apart.

(ii) Outside the corporate limits of towns and cities, no structure may be located within 500 feet of an interchange, collector distributor, ~~intersection at grade,~~ safety rest area or information center regardless of whether the main traveled way is within or outside the town or city limits. The 500 feet spacing shall be measured from the point at which the pavement widens and the direction of measurement shall be

along the edge of pavement away from the interchange, collector distributor, ~~intersection at grade,~~ ~~safety~~ rest area or information center. In those interchanges where a quadrant does not have a ramp, the 500 feet for the quadrant without a ramp shall be measured along the outside edge of main traveled way for ~~freeways~~ highways as follows:

(A) Where a route is bridged over a ~~freeway~~ fully controlled access highway, the 500 foot measurement shall begin on the outside edge of pavement of the ~~freeway~~ fully controlled access highway at a point directly below the edge of the bridge. The direction of measurement shall be along the edge of pavement away from the interchange.

(B) Where a ~~freeway~~ fully controlled access highway is bridged over another route, the 500 foot measurement shall be made from the end of the bridge in the quadrant. The direction of measurement shall be along the edge of main traveled way away from the bridge.

(C) Where the routes involved are both ~~freeways~~ fully controlled access highways, measurements on both routes shall be made according to (A) or (B) of this Subitem, whichever applies.

Should there be a situation where there is more than one point at which the pavement widens along each road within a quadrant, the measurement shall be made from the pavement widening which is farthest from the intersecting roadways.

(c) ~~Controlled~~ Regulated Routes Without Fully Controlled Access:

(i) Outside of incorporated towns and cities --no two structures shall be spaced less than 300 feet apart.

(ii) Within incorporated towns and cities --no two structures shall be spaced less than 100 feet apart.

(d) The foregoing provisions for the spacing of signs do not apply to structures separated by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distances is visible from the highway at any one time.

(e) Official and "on-premise" signs, as permitted under the provisions of G.S. 136-129(1), (2), (2a) and (3), and structures that are not lawfully maintained shall not be included nor shall measurements be made from them for purposes of determining compliance with spacing requirements.

(f) The minimum distance between structures shall be measured along the nearest edge of the main traveled way between points directly opposite the signs along each side of the highway and shall apply only to structures located on the same side of the highways.

(3) Lighting of Signs; Restrictions:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights including animated or scrolling advertising, are prohibited, which shall not mean signs ~~unless~~ expressly allowed under Item 4, of this rule except those giving public service information such as time, date, temperature, weather, or similar information.

(b) Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of the controlled routes and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with the operation of a motor vehicle are prohibited.

(c) No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.

(d) All such lighting shall be subject to any other provisions relating to lighting of signs presently applicable to all highways under the jurisdiction of the state.

(e) Lighting shall not be added to ~~or used to~~ illuminate signs not conforming to NCDOT standards~~nonconforming~~ signs. ~~signs or signs conforming by virtue of the grandfather clause~~.

(4) Automatic Changeable Facing Sign:

(a) Automatic changeable facing signs shall be permitted on the controlled routes under the following conditions:

(i) The sign does not contain or display flashing, intermittent, or moving lights, including animated or scrolling advertising;

(i) The changeable facing remains in a fixed position for at least eight seconds;

(iii) If a message is changed electronically, it must be accomplished within an interval of two seconds or less;

(iv) The sign is not placed within 1,000 feet of another automatic changeable facing sign on the same side of the highway;

(v) The 1000-foot distance shall be measured along the nearest edge of the pavement and between points directly opposite the signs along each side of the highway;

(vi) A sign conforming to NCDOT standards~~legally conforming structure~~ may be modified to an automatic changeable facing upon compliance with these standards and approval by the Department. A request to modify a structure shall be submitted by c~~C~~ertified m~~M~~ail. Signs not conforming to NCDOT standards~~Nonconforming or grandfathered structures~~ shall not be modified to an automatic changeable facing;

(vii) The sign must contain a default design that will freeze the sign in one position if a malfunction occurs; and

(viii) The sign application meets all other permitting requirements.

(b) The outdoor advertising permit shall be revoked for failure to comply with this Item.

(5) Unzoned Commercial or Industrial Area Qualification for Signs:

Commented [A1]: Clarifies that digital displays if compliant with Item 4 would not be considered "flashing, etc.".

Commented [A2]: If lighting was already part of a sign legally erected but no longer complying with DOT rules it would not necessarily lose its right to have lighting. The intent of this rule wa not to allow any lights to be added to signs that no longer conform DOT standards. Clarifies that HB 74 mandates that local standards are not to be used for existing DOT permitted signs.

Commented [A3]: Clarifies that HB 74 mandates that local standards are not to be used for existing DOT permitted signs.

(a) To qualify an area unzoned commercial or industrial for the purpose of outdoor advertising control, one or more commercial or industrial activities shall meet all of the following criteria prior to submitting an outdoor advertising permit application:

(i) The activity shall maintain all necessary business licenses as may be required by applicable state, county or local law or ordinances;

(ii) The property used for the activity shall be listed for ad valorem taxes with the county and municipal taxing authorities as required by law;

(iii) The activity shall be connected to basic utilities including but not limited to power, telephone, water, and sewer, or septic service;

(iv) The activity shall have direct or indirect vehicular access and be a generator of vehicular traffic;

(v) The activity shall have a building designed with a permanent foundation, built or modified for its current commercial or industrial use, and the building must be located within 660 feet from the nearest edge of the right of way of the controlled route. Where a mobile home or recreational vehicle is used as a business or office, the following conditions and requirements also apply;

(A) The mobile home unit or recreational vehicle shall meet the North Carolina State Building Code criteria for commercial or business use.

(B) A self-propelled vehicle shall not qualify for use as a business or office for the purpose of these rules.

(C) All wheels, axles, and springs shall be removed.

(D) The unit shall be permanently secured on piers, pad, or foundation.

(E) The unit shall be tied down in accordance with local, state, or county requirements;

(vi) The commercial or industrial activity must be in active operation a minimum of six months prior to the date of submitting an application for an outdoor advertising permit;

(vii) The activity shall be open to the public during hours that are normal and customary for that type of activity in the same or similar communities but not less than 20 hours per week;

(viii) One or more employees shall be available to serve customers whenever the activity is open to the public; and

(ix) The activity shall be visible and recognizable as commercial or industrial from the main traveled way of the controlled route. An activity is visible when that portion on which the permanent building designed, built, or modified for its current commercial use can be clearly seen twelve months a year by a person of normal visual acuity while traveling at the posted speed on the main traveled way of the

controlled route adjacent to the activity. An activity is recognizable as commercial or industrial when its visibility from the main traveled way of the controlled route is sufficient for the activity to be identified as commercial or industrial.

(b) Each side of the controlled route shall be considered separately. All measurements shall begin from the outer edges of regularly used buildings, parking lots, storage or processing areas of the commercial or industrial activity, not from the property line of the activity and shall be along the nearest edge of the main traveled way of the controlled route.

(c) The proposed sign location must be within 600 feet of the activity.

(d) To qualify an area as unzoned commercial or industrial for the purpose of outdoor advertising control, none of the following activities shall be recognized:

(i) Outdoor advertising structures;

(ii) On-premise or on-property signs defined by Rule .0201(18) of this Section if the on-premise/on-property sign is the only part of the commercial or industrial activity that is visible from the main-traveled way;

(iii) Agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to temporary wayside fresh produce stands;

(iv) Transient or temporary activities;

(v) Activities not visible and recognizable as commercial or industrial from the traffic lanes of the main traveled way;

(vi) Activities more than 660 feet from the nearest edge of the right of way;

(vii) Activities conducted in a building principally used as a residence;

(viii) Railroad tracks and minor sidings;

(ix) Any outdoor advertising activity or any other business or commercial activity carried on in connection with an outdoor advertising activity; and

(x) Illegal junkyards, as defined in G.S. 136-146, and nonconforming junkyards as set out in G.S. 136-147;

History Note: *Authority G.S. 136-130;*
Eff. July 1, 1978;
Amended Eff. MONTH 1, 2014: August 1, 2000; November 1, 1993; December 1, 1990; November 1, 1988.

19A NCAC 02E .0201 is repealed without notice pursuant to G.S. 150B-21.5(b)(3) and 136-131.2 as follows:

~~**19A NCAC 02E .0204 LOCAL ZONING AUTHORITIES**~~

~~Local zoning authorities may certify to the Board of Transportation when they have established effective control within zoned commercial and industrial areas, through regulations or ordinances with respect to size, lighting and spacing of outdoor advertising signs consistent with the intent of the Highway Beautification Act of 1965, Section 131 of Title 23 of the United States Code, and with customary use. Upon authorization from the Chief Engineer to the local zoning authority, the size, lighting and spacing requirements set forth in G.S. 136 Articles 11 and 11A or 19A NCAC 02E .0200, will not apply to those areas and the local zoning authority shall be authorized to issue permits for the erection and maintenance of outdoor advertising signs.~~

History Note: *Authority G.S. 136-130;*
Eff. July 1, 1978;
Amended Eff. December 1, 2012; November 1, 1993.
Repealed Eff. MONTH 1, 2014.

Commented [A1]: This should remain deleted for several reasons: (1) Because G.S. 136-130 or any other statute does not authorize the Department to delegate control to local governments, is unlawful; (2) G.S. 136-131.1 and HB 74 conflict with this Sectio (3) Federal funding hinges on the State's compliance with the Highway Beautification Act and federal regulations. Why would th State subject itself to suffering the loss of funds if a local government improperly exercises control over outdoor advertising? (How does the DOT get it back from a local government once delegated? What remedies to the State if a local government violat the "effective control" requirements, which includes paying just compensation for signs taken pursuant to the exercise of regulatory or eminent domain powers) and (4) This Section is standard-less an therefore difficult to administer. Scott Capps said the DOT would never allow a delegation of control to happen. If so, why set up an opportunity for a local government to litigate over a claim that DO arbitrarily denied a local authority's certification of compliance wit the Highway Beautification Act?

19A NCAC 02E .0206 is amended without notice pursuant to G.S. 150B-21.5(a)(2),(4) as follows:

19A NCAC 02E .0206 APPLICATIONS

(a) An application for an outdoor advertising permit for a newly erected sign at a new location shall be made on NCDOT form OA-1, which may be obtained at any District Office or the NCDOT website. Upon completion, the application shall be submitted to the district office for the district where the proposed site is located. The application shall be submitted by c~~C~~ertified m~~M~~ail and include the following attachments:

(1) A written lease or written proof of interest in the land where a sign is proposed to be constructed. An applicant may delete information pertaining to term and amount of lease;

(2) A right of entry form to provide the right of entry from the property owner or adjacent property owners to allow DOT personnel to enter upon property when necessary for the enforcement of the Outdoor Advertising Control Act or these rules;

(3) If zoned, a written statement from the local zoning authority indicating the present zoning of the parcel and its effective date. Upon request of the district engineer or designee, ~~engineer,~~ the applicant shall submit copies of minutes from the appropriate zoning authority pertinent to the zoning action;

(4) If the area is an unzoned commercial or industrial area, a copy of the documentation confirming that the requirements under .19A NCAC 02E .0203(5)(a)(i) and (ii) have been met;

(5) A sign permit of zoning permit, if required by the local government having jurisdiction over the proposed location;

(6) A written certification from the sign owner indicating there has been no misrepresentation of any material facts regarding the permit application, or other information supplied to acquire a permit; and

(7) The initial nonrefundable permit fee.

(b) Any omission of attachments or certification required in Items (1) through (7) in this Rule may cause the rejection of the application. If the application is incomplete, the entire application package, including application fee, shall be returned to the applicant.

(c) In the instance of the reconstruction of a sign conforming to NCDOT standards as set forth in Rule .0225 of this Section, the application requirements for a permit addendum are set forth in Rule .0225.

(d) Where an outdoor advertising sign is erected prior to the addition of a route to the interstate or federal-aid primary system or National Highway System, and because of that addition a NCDOT permit is required to maintain the sign, the sign owner shall submit attachments (1), (2), (6) and (7) in subsection (a) above. The sign owner shall also submit proof of a current zoning map showing the site or, if unzoned, documentation confirming that the requirements of Rule .0203(5)(a)(i) and (ii) are met.

History Note: *Authority G.S. 136-130;*
Eff. July 1, 1978;
Amended Eff. MONTH 1, 2014: August 1, 2000; November 1, 1993; December 1, 1990; June 15, 1981.

Commented [A1]: This clarifies new sign versus reconstructed or repaired sign covered by HB 74.

Commented [A2]: A new permit should not be required for reconstruction.

Commented [A3]: In this instance, the signs may have been in place for decades. Over those years, signs may have been sold at various times and original files lost, misplaced or simply not transferred. In any event, historical documentation of zoning, or building permits, at time of original erection is not necessarily readily available, even from the government. If the applicant submits a copy of the current zoning map, that should be enough. Any intentionally false statement will subject the applicant to possible revocation penalties.

19A NCAC 02E .0207 is amended without notice pursuant to G.S. 150B-21.5(a)(2) as follows:

19A NCAC 02E .0207 FEES AND RENEWALS

(a) Initial and annual renewal fees shall be paid by the sign owners for each permit requested in order to defer the costs of the administrative and inspection expenses incurred by the Division of Highways of the Department of Transportation in administering the permit procedures. Fees shall also be paid for any addendum to an existing permit applied for pursuant to Rule .0225 or Rule .0226 in this Section.

(b) An initial nonrefundable fee of one hundred and twenty dollars ($120.00) per outdoor advertising structure shall be submitted with each permit application and an annual nonrefundable renewal fee of sixty dollars ($60.00) per sign structure shall be paid by the sign owners on or before April 15 of each year to the appropriate district engineer or designee. ~~engineer.~~ Sign owners must return the information required under Paragraph (c) of this Rule with their annual renewal fees. A nonrefundable fee of sixty dollars ($60.00) shall be paid with each application for an addendum to an existing permit referenced above.

(c) The Division of Highways of the Department of Transportation shall send an invoice for the annual renewal fee to each sign owner/permit holder with a valid permit. For a renewal to be approved, the sign owner/permit holder must submit the signed invoice along with the renewal fee. If requested, the permit holder/sign owner shall provide a valid lease or other proof of interest in the land where the sign is located. Failure to submit this documentation within 30 days of written request from the district engineer or designee ~~District Engineer~~ by certified mail will subject the permit to revocation under 19A NCAC 2E .0210(4).

History Note: *Authority G.S. 136-130; 136-133;*
Eff. July 1, 1978;
Amended Eff. November 1, 1993; October 1, 1991; December 1, 1990; July 1, 1986;
Temporary Amendment Eff. November 16, 1999;
Amended Eff. MONTH 1, 2014: August 1, 2000.

Commented [A1]: Not addressed before.

19A NCAC 02E .0210 is proposed for amendment as follows:

19A NCAC 02E .0210 REVOCATION OF OUTDOOR ADVERTISING PERMIT

The appropriate district engineer or designee shall revoke a permit for a lawful outdoor advertising structure based on any of the following:

(1) mistake of facts by the issuing ~~District Engineer~~ district engineer or designee for which had the correct facts been known, he would not have issued the outdoor advertising permit;

(2) misrepresentations of any facts made by the permit holder or sign owner and on which the ~~District Engineer~~ district engineer or designee relied in approving the outdoor advertising permit application;

(3) misrepresentation of facts to any regulatory authority with jurisdiction over the sign by the permit holder or sign owner, the permit applicant or the owner of property on which the outdoor advertising structure is located;

(4) failure to pay annual renewal fees or provide the documentation requested under Rule .0207(c) of this Section;

(5) failure to construct the outdoor advertising structure except all sign faces within 180 days from the date of issuance of the outdoor advertising permit;

(6) a determination upon inspection of an outdoor advertising structure that it fails to comply with the Outdoor Advertising Control Act or the rules in this Section;

(7) any alteration of an outdoor advertising structure for which a permit has previously been issued which would cause that outdoor advertising structure to fail to comply with the provisions of the Outdoor Advertising Control Act or the rules adopted pursuant thereto;

(8) alterations to a sign not conforming to NCDOT standards~~nonconforming sign or a sign conforming by virtue of the grandfather clause~~ other than reasonable repair and maintenance as defined in Rule .0225(c). For purposes of this Rule, alterations include:

(a) enlarging a dimension of the sign facing or raising the height of the sign;

(b) changing the material of the sign structure's support;

(c) adding a pole or poles; or

(d) adding illumination;

(9) failure to affix the emblem as required by Rule .0208 of this Section or failure to maintain the emblem so that it is visible and readable from the main-traveled way or controlled route;

(10) failure to affix the name of the person, firm, or corporation owning or maintaining the outdoor advertising sign to the sign structure in sufficient size to be visible as required by Rule .0208 of this Section;

(11) unlawful destruction or illegal cutting of trees, shrubs or other vegetation within the right-of-way of any State-owned or State-maintained highway as specified in G.S. 136-133.1(i);

(12) unlawful use of a controlled access facility for purposes of repairing, maintaining or servicing an outdoor advertising sign where an investigation reveals that the unlawful violation was conducted

Commented [A1]: Clarifies that HB 74 mandates that local standards are not to be used for existing DOT permitted signs.

actually or by design by the sign owner or permit holder, the lessee or advertiser employing the sign, the owner of the property upon which the sign is located, or any of their employees, agents, or assigns, including independent contractors hired by any of the above persons; and

(a) involved the use of highway right of way for the purpose of repairing, servicing, or maintaining a sign including stopping, parking, or leaving any vehicle whether attended or unattended, on any part or portion of the right of way except as authorized by the Department of Transportation, including activities authorized by the Department for selective vegetation removal pursuant to G.S. 136-131.1, G.S. 136-131.2 and G.S. 136-133.4. Access from the highway main travel way shall be allowed only for surveying or delineation work in preparation for and in the processing of an application for a selective vegetation removal permit; or

(b) involved crossing the control of access fence to reach the sign structure, except as authorized by the Department, including those activities referenced in Sub-Item (a) of this Item;

(13) maintaining a blank sign for a period of 12 consecutive months;

(14) maintaining an abandoned, dilapidated, or discontinued sign;

(15) a sign that has been destroyed or significantly damaged as determined by Rule .0201(8) and (29) of this Section;

(16) moving or relocating a sign not conforming to NCDOT standards~~nonconforming sign or a sign conforming by virtue of the grandfather clause~~ which changes the location of the sign as determined by Rule .0201(27) of this Section. ~~as determined by Rule .0201(27) of this Section~~;

(17) failure to erect, maintain, or alter an outdoor advertising sign structure in accordance with the North Carolina Outdoor Advertising Control Act, codified in G.S. 136, Article 11, and the rules adopted pursuant thereto; and

(18) willful failure to substantially comply with all the requirements specified in a vegetation removal permit if such willful failure meets the standards of G.S. 136-133.1(i) as specified in G.S. 136-133.4(e).

History Note: *Authority G.S. 136-93; 136-130; 136-133; 136-133.1(i); 136-133.4(e);*
Eff. July 1, 1978;
Amended Eff. August 1, 2000; May 1, 1997; November 1, 1993; March 1, 1993; October 1, 1991; December 1, 1990;
Temporary Amendment Eff. March 1, 2012;
Amended Eff. MONTH 1, 2014; November 1, 2012.

Commented [A2]: Clarifies that HB 74 mandates that local standards are not to be used for existing DOT permitted signs. Also the definition of "location" should be reinserted.

DID YOU HAVE CHANGES TO THIS ONE?

19A NCAC 02E .0224 SCENIC BYWAYS

(a) Outdoor advertising is prohibited adjacent to any highway designated as a scenic byway by the Board of Transportation after the date of the designation as scenic, regardless of the highway classification, except for outdoor advertising permitted in G.S. 136-129 (1), (2), (2a) or (3).

(b) All lawfully erected outdoor advertising signs adjacent to a Scenic Byway that is on a controlled route for outdoor advertising shall become signs not conforming to NCDOT standards nonconforming signs and shall be subject to all applicable outdoor advertising regulations provided in 19A NCAC 02E.0200. Any sign erected on a controlled route adjacent to a Scenic Byway after the date of official designation shall be an illegal sign as defined in G.S. 136-128 and G.S. 136-134.

Commented [A1]:

(c) Permits shall not be required for signs adjacent to scenic byways which were not on a controlled route for outdoor advertising. The department shall maintain an inventory of signs that were in existence at the time the route was designated a Scenic byway. Any sign erected after its designation as a Scenic Byway, except for outdoor advertising permitted in G.S. 136-129(1), (2), or (3), shall be an illegal sign as defined by G.S. 136-128 and G.S. 136-134.

(d) Outdoor advertising signs adjacent to Scenic Byways that are not required to obtain permits are nonetheless governed by the rules in this section.

History Note: *Authority G.S. 136-129.2;*
Eff. August 1, 2000.

19A NCAC 02E .0225 is proposed for amendment as follows:

19A NCAC 02E .0225 REPAIR/MAINTENANCE/ALTERATION OF ~~CONFORMING~~ SIGNS CONFORMING TO NCDOT STANDARDS

(a) Signs may not be serviced from or across the right of way of interstates and fully controlled access primary routes ~~freeways~~ or from ~~or~~ across controlled access barriers or fences of controlled routes. Prior to or within sixty (60) days of commencement of the below described reconstruction activity, t~~T~~he sign owner shall submit an request for an addendum to the existing NCDOT permit on~~An application for an outdoor advertising alteration permit shall be made on NCDOT~~ form OA-1A, which may be obtained at any District Office or the NCDOT website. Notification to NCDOT is required in the form of an addendum request in the event a sign is reconstructed so that any of the following occurs: (i) the height of the sign is increased in compliance with NCDOT standards; (ii) the pole materials are changed; (iii) automatic changeable copy is installed; or (iv) the sign is changed from a multipole to a monopole..

(b) Signs c~~C~~onforming to NCDOT standards~~signs~~ may be altered within the limits of the rules in this Section.

(1) A conforming sign that has been destroyed or significantly damaged may be reconstructed within the limits of the rules in this Section ~~by notifying the district engineer in writing of any substantial changes that would affect the original dimensions of the initial permit application~~.

(2) Conforming sign structures may be reconstructed so long as the reconstruction does not conflict with any applicable ~~state,~~ state or federal ~~or local~~ rules, regulations or ordinances.

(3) A nonrefundable ~~permit~~ fee is required with the request for an addendum~~application~~.

(4) ~~The alteration of a conforming outdoor advertising structure shall not commence until a permit has been issued.~~ The outdoor advertising structure except all sign faces must be completely reconstructed ~~and erected~~ within 180 days from the date of the issuance of the addendum to the permit. If the outdoor advertising structure except sign faces is not reconstructed within 180 days of issuance of the addendum to the permit then any intervening rule change shall apply to the sign structure. During the 180 day period, the altered outdoor advertising structure shall be considered in existence for the purpose of spacing of adjacent signs.

~~(c) Alteration to a nonconforming sign or sign conforming by virtue of the grandfather clause is prohibited. Reasonable repair and maintenance are permitted including changing the advertising message or copy. The following activities are considered to be reasonable repair and maintenance:~~

~~(1) Change of advertising message or copy on the sign face;~~

~~(2) Replacement of border and trim;~~

~~(3) Repair and replacement of a structural member, including a pole, stringer, or panel, with like material;~~

~~(4) Alterations of the dimensions of painted bulletins incidental to copy change; and~~

~~(5) Any net decrease in the outside dimensions of the advertising copy portion of the sign; but if the sign face or faces are reduced they may not thereafter be increased beyond the size of the sign on the date it became nonconforming.~~

Commented [A1]: Before, whenever a sign was repaired or altered, a new permit was not required and notice was only required if the size of the advertising space was increased. See below regarding "substantial changes that would affect the original dimensions of the initial permit application." Not every act of altering should trigger notice to the NCDOT and some level of administrative review with corresponding fees. This draft language is a suggestion of the types of activities that would trigger the need for an "addendum". Form OA-!A needs to match this Section. Since it is well-established that any change arising from reconstruction must comply with NCDOT standards as to height, size, spacing, etc, then there is no need to wait on NCDOT approval in advance. This is simply a notification mechanism. An addendum rather than a new permit, is in keeping with the ministerial check-off of this activity.

Commented [A2]: Local rules should be deleted pursuant to HB 74.

Commented [A3]: Reconstruction is the verb used in HB 74.

~~(d) The addition of lighting or illumination to existing nonconforming signs or signs conforming by virtue of the grandfather clause is specifically prohibited as reasonable maintenance; however, such lighting may be permanently removed from such sign structure.~~

~~(e) A nonconforming sign or sign conforming by virtue of the grandfather clause may continue as long as it is not abandoned, destroyed, discontinued, or significantly damaged.~~

~~(f) When the combined damage to the face and support poles appears to be significant, as defined in 19A NCAC 02E .0201(29), the sign owner may request the Department to review the damaged sign, including salvageable sign components, prior to repairs being made. Should the sign owner perform repairs without notification to the Department, and the Department later determines the damage is greater than 50% of the combination of the sign face and support pole(s), the permit may be revoked. To determine the percent of damage to the sign structure, the only components to be used to calculate this value are the sign face and support pole(s). The percent damage shall be calculated by dividing the unsalvageable sign components by the original sign structure component quantities, using the following criteria:~~

~~(1) Outdoor Advertising on Wooden Poles: The percentage of damage attributable to poles shall be 50% and the percentage of damage attributable to sign face shall be 50%;~~

~~(2) Outdoor Advertising on Steel Poles or Beams: The percentage of damage attributable to poles shall be 80% and the percentage of damage attributable to sign face shall be 20%; and~~

~~(3) Outdoor Advertising on Monopoles: The percentage of damage attributable to poles shall be 80% and the percentage of damage attributable to sign face shall be 20%.~~

History Note: *Authority G.S. 136-131.2; 136-130; 136-89.58;*
Eff. August 1, 2000;
Amended Eff. MONTH 1, 2014; August 1, 2000.

19A NCAC 02E .0226 is proposed for amendment as follows:

19A NCAC 02E .0226 ~~**ORDER TO STOP WORK ON UNPERMITTED OUTDOOR ADVERTISING**~~ **REPAIR AND MAINTENANCE OF** ~~**NON-CONFORMING**~~ **SIGNS NOT CONFORMING TO NCDOT STANDARDS**

(a) Alteration to a sign not conforming to NCDOT standards ~~nonconforming sign~~ is prohibited, unless the nonconformity is eliminated as a result of such alteration. Reasonable repair and maintenance are permitted including changing the advertising message or copy. The following activities are considered to be reasonable repair and maintenance:

(1) Change of advertising message or copy on the sign face;

(2) Replacement of border and trim;

(3) Repair and replacement of a structural member, including a pole, stringer, or panel, with like material;

(4) Alterations of the dimensions of painted bulletins incidental to copy change; and

(5) Any net decrease in the outside dimensions of the advertising copy portion of the sign; but if the sign face or faces are reduced they may not thereafter be increased beyond the size of the sign on the date it became nonconforming.

(b) The addition of lighting or illumination to existing sign not conforming to NCDOT standards~~nonconforming signs~~ is specifically prohibited as reasonable maintenance; however, such lighting may be permanently removed from such sign structure.

(c) A ~~nonconforming~~ sign not conforming to NCDOT standards may continue as long as it is not abandoned, destroyed, discontinued, or significantly damaged.

(d) When the combined damage to the face and support poles appears to be significant, as defined in 19A NCAC 02E .0201(28), the sign owner may request the Department to review the damaged sign not conforming to NCDOT standards, including salvageable sign components, prior to repairs being made. Should the sign owner perform repairs without notification to the Department, and the Department later determines the damage is greater than 50% of the combination of the sign face and support pole(s), the permit may be revoked. To determine the percent of damage to the sign structure, the only components to be used to calculate this value are the sign face and support pole(s). The percent damage shall be calculated by dividing the unsalvageable sign components by the original sign structure component quantities, using the following criteria:

(1) Outdoor Advertising on Wooden Poles: The percentage of damage attributable to poles shall be 50% and the percentage of damage attributable to sign face shall be 50%;

(2) Outdoor Advertising on Steel Poles or Beams: The percentage of damage attributable to poles shall be 80% and the percentage of damage attributable to sign face shall be 20%; and

(3) Outdoor Advertising on Monopoles: The percentage of damage attributable to poles shall be 80% and the percentage of damage attributable to sign face shall be 20%.

~~(a) If outdoor advertising is under construction and the Department determines that a permit has not been issued for the outdoor advertising as required under the provisions of this Chapter, the District Engineer may require that all work on the~~

Commented [A1]: This is consistent with HB 74 to clarify that local rules are not to be applied to existing DOT permitted signs.

Commented [A2]: Example: Sign is taller than 50 feet and therefore not conforming to DOT standards. If rebuilt so that the sign is less than 50 feet, this should be allowed. This would actually clarify and encourage bringing signs into compliance with NCDOT standards.

Commented [A3]: This is consistent with HB 74 to clarify that local rules are not to be applied to existing signs.

Commented [A4]: This is consistent with HB 74 to clarify that local rules are not to be applied to existing signs.

Commented [A5]: This is consistent with HB 74 to clarify that local rules are not to be applied to existing signs.

~~sign cease until the sign owner shows that the sign does not violate the provisions of this chapter. The order to cease work shall be in writing and prominently posted on the outdoor advertising structure, and no further notice of the stop work order is required. The failure of a sign owner to comply immediately with the stop work order shall subject the outdoor advertising structure to removal by the Department of Transportation or its agents.~~

~~(b) For purposes of this rule only, outdoor advertising is under construction when it is in any phase of construction prior to the attachment and display of the advertising message in final position for viewing by the traveling public.~~

~~(c) The cost of removing outdoor advertising by the Department of Transportation or its agents shall be assessed against the sign owner.~~

~~(d) No stop work order may be issued when the Department of Transportation process agent has been served with a court order allowing the sign to be constructed. The District Engineer shall consult with the Outdoor Advertising coordinator to determine whether such an order has been served on the Department.~~

History Note: *Authority G.S. 136-130; 136-133;*
Temporary Adoption Eff. November 16, 1999;
Eff. MONTH 1, 2014; August 1, 2000.

Writer's Extension: 2404
Writer's Facsimile: 828-257-2773
Writer's E-mail: cjustus@vwlawfirm.com

October 24, 2014

Via email and mail

Richard E. Greene, Jr.
NCDOT - Division of Highways
1536 Mail Service Center
Raleigh, NC 27699-1536
rgreene@ncdot.gov

Scott Capps
NCDOT
1566 Mail Service Center
Raleigh, NC 27699-1566
scapps@ncdot.gov

RE: House Bill 74 and Rule Making

Dear Ricky and Scott:

On behalf of my client, the North Carolina Outdoor Advertising Association ("NCOAA"), I wanted to thank you for the meeting that we had in Raleigh on October 14, 2014. As you know, the purpose of that meeting was to see if the Department of Transportation and the NCOAA could "get on the same page" with implementation of House Bill 74's allowances addressing modernization of outdoor advertising. At our meeting, we went over the issues presented in and material included with my August 22, 2014 letter (with exhibits) to Ricky as well as my December 23, 2103 letter to Roy Grasse. Here are some of the major points that I took away from the meeting:

1. You agree that submitting an "addendum" to permit is a proper course to follow whenever a sign owner seeks to modernize his billboard, rather than having to obtain a new DOT permit.
2. You agree that the following actions taken by sign owners for billboards conforming to DOT standards (not necessarily local) would be authorized by HB 74 and would not trigger any enforcement action by the DOT:

    a. Reconstructing a billboard by swapping out wooden poles for steel poles;
    b. Reconstructing a sign by replacing multi poles with a mono pole; and
    c. Increasing the height of a sign.

Until an "addendum" process is in place in a new set of rules, my clients will use the process of notification outlined in my October 4, 2013 letter to Roy Grasse and Jon Nance that was included as an exhibit to the above August 22, 2014 letter.

3. Consistent with No. 2 above, you would work on rewriting the rules to clear up inconsistencies dealing with the use of the term "nonconforming sign" to match up with HB 74's directive that local standards are not relevant to the repair and reconstruction of DOT-permitted signs, including the activities described above. As you know, we have suggested that you use the phrases "sign conforming to NCDOT standards" or "sign not conforming to NCDOT standards".
4. You intend to keep in place the reference to "nonconforming signs" in the rules dealing with digital, which allows local standards to continue to apply.
5. You would consider a clarification that would allow a "sign conforming to NCDOT standards" to be relocated anywhere on the same "lot" (same landowner) without having to seek a new permit. If necessary, the addendum approach mentioned above might be employed. As we discussed, allowing more room to relocate by express allowances in the rules will potentially lead to more resolutions in condemnation actions.

Several of my clients have expressed the strong desire to carry out the modernization benefits of HB 74. More than likely, you will see in the short term an increase in these endeavors. While you continue to work on the rules, my folks will rely in the meantime on the assurances provided by you that the above activities described in No. 2 above will not receive any resistance or negative response from the DOT. Because it takes a significant outlay of money, time and/or labor to modernize a sign and because local government resistance may be common place (despite the clear language of HB 74), it is important to know that we are "on the same page" with DOT.

Again, I thank you for the meeting we had. Once you complete a draft set of new rules, we would appreciate the opportunity for review and feedback (and perhaps another meeting) before they are filed for public comment.

If you have any questions, please feel free to contact my office.

Sincerely,
VAN WINKLE, BUCK, WALL,
STARNES AND DAVIS, P.A.
Craig D. Justus
(Electronically Signed)
Craig D. Justus

cc: Client - via email
Ebony Pittman. Esq. – via email – epittman@ncdoj.gov
Roy T. Grasse – via email – rgrasse@ncdot.gov
DMS:4821-7834-1782v1|32763-32763-0007|10/23/2014

THE VAN WINKLE LAW FIRM

Writer's Extension: 2404
Writer's Facsimile: 828-257-2773
Writer's E-mail: cjustus@vwlawfirm.com

May 12, 2015

Via email and mail

Scott Capps
NCDOT
1566 Mail Service Center
Raleigh, NC 27699-1566
scapps@ncdot.gov

RE: I-95 Billboard in the Town of Benson; State Permit No. I-095-051034 ("Billboard")

Dear Scott:

I hope you are doing well. As you probably know, my firm represents Capital Outdoor Advertising ("Capital"). As a follow up to my October 24, 2014 correspondence to you and to Ricky Greene[1], a copy of which is attached hereto, I wanted to notify you on behalf of Capital that my client is in the process of reconstructing the above referenced Billboard located in the Town of Benson in order to increase its height, not to exceed the NCDOT standards of fifty (50) feet.

We believe that the Billboard conforms to NCDOT/State standards. As you know, Capital does not intend to use HB 74 to modify signs that are not conforming to DOT standards unless the modification cures the nonconformity. At our meeting last year in Raleigh, we all acknowledged that the federal Highway Beautification Act and the corresponding federal-state agreement establishes a minimum floor of standards for controlling outdoor advertising along interstates and federal aid primary highways. States can choose to be more restrictive. In our case, the North Carolina General Assembly has chosen to allow DOT-permitted billboards to be repaired and/or reconstructed without adherence to local standards, which still preserves the "floor" referenced above.

As indicated in my October 24, 2014 letter, we understand that the above activity is authorized by the House Bill 74 legislation and that your office would agree that such action would not trigger any enforcement by the NCDOT.

[1] As you know, I have on behalf of several outdoor advertising clients previously submitted this same type of notice of modernization activities so that your Department could update its records.

EXHIBIT
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The notice provided for herein is consistent with the process of notification outlined in my October 4, 2013 letter to Roy Grasse and Jon Nance, my August 22, 2014 letter to Ricky Greene and my above mentioned October 24th letter.

If you have any questions, please do not hesitate to contact me at your earliest convenience.

Sincerely,
VAN WINKLE, BUCK, WALL, STARNES AND DAVIS, P.A.
Craig D. Justus
(Electronically Signed)
Craig D. Justus

CDJ/ca

cc: Client - via email
Ebony Pittman. Esq. - via email - epittman@ncdoj.gov
Richard E. Greene, Jr. - via email - rgreene@ncdot.gov
Roy Grasse, NCDOT Outdoor Advertising Coordinator - rgrasse@ncdot.gov
DMS:4846-6688-3383v1|33285-33285-0008|5/11/2015

THE VAN WINKLE LAW FIRM

Writer's Extension: 2404
Writer's Facsimile: 828-255-0255
Writer's E-mail: cjustus@vwlawfirm.com

March 25, 2019

Via email and mail

Marc Morgan, P.E.
615 Concord Road (NC 73)
Albemarle, NC 28001
mmorgan@ncdot.gov

Roy Grasse
1567 Mail Service Center
Raleigh, NC 27699
rgrasse@ncdot.gov

RE: Lamar Outdoor Advertising – Outdoor Advertising Sign Along NC 24/27

Dear Marc and Roy:

As you know, I represent Lamar. I am writing to you concerning your letter dated February 28, 2019 wherein you provide the requisite 30 days-notice prior to revocation of Lamar's outdoor advertising permit under 19 NCAC 2E 0212. In your letter, you claim that my client's billboard along US 24/27 ("Sign") in Stanley County was illegally erected adjacent to a scenic byway.

As you know, Lamar possesses a State permit for the Sign (NC024 084020). You acknowledge that in your letter since the point of your letter is to provide notice "prior" to permit revocation. Most of your letter is truly a head-scratcher. In order to accommodate a North Carolina Department of Transportation ("DOT") road widening project, the Sign was relocated within the same "sign location/site" as defined in 19 NCAC 2E .0201(27)(i.e. 1/100 mile) ("Site"). This effort to mitigate damages associated with a State project by relocating straight back off the newly proposed right-of-way is a common occurrence all over the State; a time-honored practice going at least as far back as I have been practicing law (more than 25 years). It is one way for the outdoor advertiser to preserve an asset, especially a nonconforming one, while reducing expenditures of public funds normally triggered by condemnation. Now, after years and years of precedent, you claim this act of relocation is illegal. This surprising determination by you smacks in the face of decades and decades worth of the same or similar examples without the consequence of permit revocation, is contrary to unambiguous DOT rules on the topic, and conflicts with prior rulings from the North Carolina Secretary of Transportation.

19 NCAC 2E .0210(16) states that a DOT permit shall be revoked if a *nonconforming sign* is moved or relocated so as to change the location of the sign as defined by .0201(27) referenced above. The flip to this is that it is perfectly legal to move a sign, even a nonconforming one, within the same permitted address.

19 NCAC 2E .0224(b) provides that all "lawfully erected outdoor advertising signs adjacent to a Scenic Byway" shall be considered "nonconforming signs and shall be subject

EXHIBIT
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to all applicable outdoor advertising regulations provided in 19A NCAC 02E .0200."[1] In this case, the Sign was, again, relocated on the same Site, which is recognized as a permitted activity under 19 NCAC 2E .0210(16).

You mention G.S. 136-129.2 and G.S. 136-134 in your letter. Those statutes speak to signs "erected" in a manner contrary to the North Carolina Outdoor Advertising Control Act ("OACA") or DOT rules promulgated to enforce same. In G.S. 136-128 of the OACA, the term "erect" "means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish." The key here is that the verbs mentioned do not include "relocate", "reconstruct" or "reestablish." The Sign was already existing, established and permitted on the Site. Rather than creating a new sign at a new location, the Sign was simply moved.

Consistent with the distinction between creating a new sign at a new location and activities associated with maintaining or operating an existing sign, G.S. 136-133 requires a person to obtain a State permit only for the former. Long ago, the Sign was lawfully erected on the Site. Lamar possesses a DOT permit for the Sign; Lamar does not need a new permit. The act of relocation has NEVER required a new permit or permission so long as the outdoor advertising sign is moved within the boundaries of the same "sign location/site". Therefore, relocation has never been considered by the DOT as an act of "erection." If it had, a new OA-1 permit application would have historically been part of the mix. It has not been.[2]

The fact that relocation does not trigger a new permit has been acknowledged in multiple communications and meetings between the outdoor advertising industry and DOT over the years. Attached as Exhibits "1", "2", "3", 4" and "5" are a sampling of communications memorializing the long-standing position of the DOT that the act of relocation on the same "sign location/site" does not require a new permit. The Sign's nonconforming nature does not change that outcome. The maintenance or operation of that Sign, even if it is nonconforming, included the right to relocate on the same Site; there is no other way to read 19 NCAC 2E .0210(16).

Attached as Exhibit "6" is a 2007 ruling from Lyndo Tippett, then North Carolina Secretary of Transportation, in a case involving an appeal from a District Engineer's decision to revoke a permit based on moving a billboard on the same "sign location/site".

---

[1] The Sign meets the standards imposed in the Federal-State agreement implementing the federal Highway Beautification Act.

[2] The undersigned is aware that there are draft DOT rule amendments to require a permit every time a sign is altered- which would include relocation. The very fact that the DOT rules may be changed to require a permit for that event supports the notion that heretofore a permit was not required.

The Rink Media sign in question, located ironically in Stanley County, was nonconforming due to agricultural zoning. Like this case, Rink Media's nonconforming sign was moved to accommodate a State highway project. Secretary Tippett ruled against the District Engineer and required permit reinstatement based on the plain language of 19 NCAC 2E .0210(16) that provided the outdoor advertiser with the right to relocate. It is interesting to note the following finding in Secretary Tippett's opinion:

> It is DOT's practice to allow a nonconforming sign structure removed as a result of a highway project, to be moved within the same sign location as specified on the permit application. As applied, a sign structure may be moved up to 52.8 feet (26.4 feet left or right) back on the same property, without changing its location.

In light of the above clear precedent and unambiguous DOT rules, you must not revoke Lamar's permit. Such revocation would justify an award of attorney's fees to my client under G.S. 6-19.1 as well as any damages associated with a taking of Lamar's property.

The DOT should be thankful a new spot on the same "sign location/site" was reasonably available so as to minimize any just compensation impact associated with widening NC 24/27. In fact, there should be no excuse to hold up State relocation assistance funding since the act complained of is expressly allowed by DOT rules.

I look forward to hearing from you. I have copied Ebony Pittman with this letter. We hope to resolve this matter amicably and expeditiously.

Sincerely,
VAN WINKLE, BUCK, WALL,
STARNES AND DAVIS, P.A.
Craig D. Justus
(Electronically Signed)
Craig Justus

CDJ/ca
Enclosures
Cc: Ebony Pittman – via email
Client – via email

4842-1088-7822, v. 1

STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY
GOVERNOR

1501 MAIL SERVICE CENTER, RALEIGH, N.C. 27699-1501

LYNDO TIPPETT
SECRETARY

February 28, 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Betty S. Waller
201 Shannon Oaks Circle, Suite 200
Cary, NC 27511

Dear Ms. Waller:

SUBJECT: Appeal of revocation of NCDOT Outdoor Advertising Permit number NC024 084010 for Rink Media, Stanly County, NC

This is in response to your October 31, 2006, appeal concerning the revocation of subject outdoor advertising permit by District Engineer D. R. Hearne.

Based on the outdoor advertising regulations and state law, my final decision is outlined in the attached document.

Sincerely,

Lyndo Tippett

LT/sw
Enclosure

cc: W. S. Varnedoe, P.E., Chief Engineer - Operations
J. P. Brandenburg, P.E., State Road Maintenance Engineer
Scott Wheeler, Outdoor Advertising Coordinator
B. S. Moose, P.E., Division Engineer
D. R. Hearne, P.E., District Engineer
Rink Media

PHONE 919-733-2520 FAX 919-733-9150

STATE OF NORTH CAROLINA

DIVISION 10, DISTRICT 1

IN THE OFFICE OF THE
SECRETARY OF TRANSPORTATION
06 OA 008

IN RE: Rink Media)
APPELLANT, Appeal of Denial of Outdoor) FINAL DECISION
Advertising Permit, Stanly County, North Carolina)

This matter was considered by Lyndo Tippett, Secretary of Transportation of the State of North Carolina, pursuant to an appeal dated October 31, 2006, by Rink Media (Appellant) which sought review of a decision by District Engineer D. R. Hearne dated September 8, 2006. Appellant granted Secretary Tippett an additional 30 days in which to render a Final Decision pursuant to N.C. Admin. Code t.19A, s.2E.0213.

ISSUES

Issue. Whether the district engineer properly revoked Appellant's permit for an outdoor advertising structure adjacent to NC 24 in Stanly County on property owned by Ruby Almond pursuant to N.C. Admin. Code t.19A, s.2E.0210(16)?

EXHIBITS

A. Letter to Rink Media dated August 4, 2006, from District Engineer D. R. Hearne, notifying of alleged violation of N.C. Admin. Code t.19A, s.2E.0210(16).

B. Letter to Rink Media dated September 8, 2006, from District Engineer D. R. Hearne, revoking outdoor advertising permit number NC024 084010 based on N.C. Admin. Code t.19A, s.2E.0210(16).

C. Copy of appeal from Betty Waller, counsel for Rink Media, dated October 31, 2006.

D. Copy of N.C. Admin. Code t.19A, s.2E.0210, Revocation of Permit.

E. Copy of N. C. Admin. Code t.19A, s.2E.0201 (27), Definitions (Sign Location /Site)

F. Copy of Form OA-1, Application for Outdoor Advertising Permit

G. Letter to Gateway Outdoor (previous owner of subject sign) dated January 25, 2005 from NCDOT Right of Way Agent advising of acquisition of portion of Ruby Almond property.

H. Letter to Rink Media dated February 2, 2006 from NCDOT Right of Way Agent sending payment for signs to be relocated on NC 24/27 west of Albermarle.

I. Copy of sketch showing sign location.

FINDINGS OF FACT

1. Rink Media is the permit holder/sign owner of Permit Number NC024-084010 that is assigned to a billboard located on property owned by Ruby Almond adjacent to NC 24 in Stanly County.

2. The sign structure was erected prior to the enactment of the NC Outdoor Advertising Control Act. The sign structure was permitted on April 6, 1977. At the time the permit was issued, the sign structure was located in an area zoned residential-agricultural. Based on these findings the sign was permitted as a nonconforming sign structure. (Exhibit F)

3. In a letter dated January 25, 2005, Roger L. Lisk, NCDOT Right-of-Way Agent informed Gateway Outdoor Advertising (previous owner of the subject sign) that the DOT had purchased the property on which the sign was located. The letter further informed the sign owner of the need to vacate the premises and remove all personalty from the right-of-way. The DOT informed the sign owner that it would pay $3950.00 to move the sign structure. (Exhibit G)

4. In accordance with the DOT's request, on December 5, 2005 the nonconfoming sign structure was moved.

5. The nonconforming sign structure was moved back less than 52.8 feet (26.4 feet left or right) from where it was previously situated. (Exhibit I)

6. N. C. Admin. Code t.19A, s.2E.0201 (27) provides that "a sign location for purposes of these rules shall be measured to the closest 1/100th of a mile, in conformance with Department of Transportation method of measurement for all state roads." As applied and in accordance with DOT policy regarding removing and relocating sign structures due to highway projects, a sign structure may be moved 56 feet back on the same property, without changing its location. (Exhibit E)

7. In a letter dated February 2, 2006 from NCDOT Right of Way Agent, Rink Media was sent the relocation payment for the subject sign structure. (Exhibit H)

8. In a certified letter dated August 4, 2006, District Engineer D. R. Hearne notified Rink Media that sign permit number NC024 084010 was in violation based on N.C. Admin. Code t.19A, s.2E.0210(16). (Exhibit A)

9. N.C. Admin. Code t.19A, s.2E.0210(16) provides that the district engineer shall revoke a permit for a lawful outdoor advertising structure for "moving or relocating a nonconforming sign or a sign conforming by virtue of the grandfather clause which changes the location of the sign as determined by .0201(27) of this section;" (Exhibit D)

10. In a certified letter dated September 8, 2006, District Engineer D. R. Hearne notified Rink Media that sign permit number NC024 084010 was being revoked based on N.C. Admin. Code t.19A, s.2E.0210(16). (Exhibit B)

11. In a letter dated October 31, 2006, Rink Media through legal counsel submitted an appeal to Secretary Tippett wherein it contested the revocation of outdoor advertising permit number NC024 084010 ."(Exhibit C)

CONCLUSIONS OF LAW

1. N. C. Admin. Code t.19A, s.2E.0201 (27) provides that "a sign location for purposes of these rules shall be measured to the closest 1/100th of a mile, in conformance with Department of Transportation method of measurement for all state roads."

2. It is DOT's practice to allow a nonconforming sign structure removed as a result of a highway project, to be moved within the same sign location as specified on the permit application. As applied, a sign structure may be moved up to 52.8 feet (26.4 feet left or right) back on the same property, without changing its location.

3. N.C. Admin. Code t.19A, s.2E.0210(16) provides that the district engineer shall revoke a permit for a lawful outdoor advertising structure for "moving or relocating a nonconforming sign or a sign conforming by virtue of the grandfather clause which ***changes the location of the sign as determined by .0201(27) of this section***;" (emphasis added)

4. The revocation of the permit was based on the District Engineer's determination that the sign structure had been relocated in a manner which changed the location of the sign.

5. Findings of Facts 3-6 clearly indicate that the relocation of the nonconfoming sign structure did not change the sign location, as determined by N. C. Admin. Code t.19A, s.2E.0201 (27), since the nonconforming sign structure was not moved more than 56 feet back on the same property.

6. Based on these findings, the decision to revoke the sign permit was not justified based on N.C. Admin. Code t.19A, s.2E.0210 (16).

ORDER

I HEREBY REVERSE the District Engineer's decision to revoke the outdoor advertising permit of Rink Media for permit number NC024 084010 based on N.C. Admin. Code t.19A, s.02E.0210(16) and order that the subject permit be reinstated by the District Engineer within 30 days of the date of this decision.

IT IS FURTHER ORDERED that a copy of this decision be served upon the appellant, Rink Media, and its attorney, by certified mail, return-receipt requested, addressed as follows:

Rink Media
C/O Douglas Rink
P. O. Box 405
Newton, NC 28685

Betty S. Waller
Waller & Stewart, LLP
201 Shannon Oaks Circle, Suite 200
Cary, NC 27511

NOTICE

Any party aggrieved by this final decision has thirty (30) days from the receipt of this decision to file a petition for judicial review in accordance with N.C. Gen. Stat. § 136-134.1.

This the 28th day of February, 2007.

Lyndo Tippett
Secretary of Transportation