



City of Asheville
Office of the City Attorney

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March 15, 2012

Mr. Ryke Longest, Director
Duke Environmental Law and Policy Clinic
Duke University School of Law
Nicholas School of the Environment
Box 90360
210 Science Drive
Durham, N.C. 27708-0360

Re: Selective Vegetation Removal/NC Sess. L. 2011-397

Dear Mr. Longest:

This will follow-up several telephone conversations that I have had with you and others who are interested in challenging SL 2011- 397, the new law regarding selective vegetation removal for certain outdoor advertising signs along interstate and primary highways in the State. You have filed a lawsuit against the North Carolina Department of Transportation in Wake County Superior Court challenging the manner in which the DOT adopted the interim rules intended to give effect to the new law. I understand that other issues are being considered as well, and may be raised later.

Asheville is the largest city in western North Carolina. Our local economy depends heavily on travel and tourism, and on preserving and protecting the natural beauty of our region. Among the issues raised in the lawsuit, one matter of concern to us was that the DOT held only one public hearing on the interim rules, and no hearings in the western part of the State. Considering the impact of the interim rules on North Carolina as a whole, and on western NC in particular, we believe that the notice and hearing procedure was not adequate in this case, and that the rules do not address our topography as well as they might. Particularly in view of the immediate and long-lasting effect that tree removal will have, we think it is important that DOT give careful consideration to the interim rules and that it act upon sufficient information from informed sources. To this end, more hearings should occur, and these hearings should be held in different parts of the State.

We have only recently learned that the lawsuit has been filed, and have had little opportunity to review the legal and factual issues involved. Depending on the results of that review, the City of Asheville may seek to challenge the DOT's action as well. However, because the Asheville City Council does not meet again until March 27, no decision can be made until then. If the City decides to challenge the DOT's action, we would prefer not to have to file a separate action, and may seek to intervene in yours. I understand that other communities may be similarly interested in this matter. If it is possible to continue the hearing to allow Asheville (and others) sufficient time to review the matter and consider whether to intervene, judicial economy may be served.

If you have any questions, or need any further information, please call.

Sincerely,

Robert W. Oast, Jr.
City Attorney

RWOjr/sc
cc: Mayor and City Council