

Jernigan, Hannah

From: Elizabeth Teague <eteague@waynesvillenc.gov>
Sent: Friday, December 4, 2020 10:48 AM
To: rrc.comments; NCDOT Service Account - Rulemaking
Cc: NCBOT Chuck McGrady; Rob Hites; Gary Caldwell; Dale McKeel; Burch, Brian C; 'Tristan Winkler'; Lynn Collins
Subject: [External] Comments for Rules Review Commission regarding billboards

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To Whom It May Concern:

I believe that North Carolina should be proud and protective of our Highways. NCDOT's efforts in Divisions 13 and 14 to promote roadway beautification and enhancements, wildflowers, stormwater management, visitor friendly rest areas, and highway safety and roadway improvements are greatly appreciated. I-40, I-26 and the Great Smoky Mountains Expressway and other state roads, particularly in the way of pull outs for viewsheds, rest areas, and roadway engineering, are investments not just in transportation, but also in tourism and adjacent land value. Our local communities depend much on the beauty of the mountains and the views from our major highways and secondary state roadways.

A change in NCDOT signage policies would be a detrimental to our highway system and our local economies. The NCDOT rule change would override local ordinances and allow billboards with a state permit to be converted to digital signage and/or raise the height of allowable signage. The Town of Waynesville and other western North Carolina towns enacted rules to protect the night sky. These rules limit the height of parking lot and street lighting, require cut-off and/or directed fixtures in all development and signs, and prohibit digital billboards of any kind within our jurisdiction. This office gets complaints from residents whenever lighting is mis-directed and impacts their residences. Many people live in this area to get away from urban characteristics - including lighting and signage. Lighting and signage ordinances and policies were adopted on a local basis in response to public input, adopted Comprehensive Land Use Plans, and text amendments implemented through public hearings and local zoning legislation procedures. In supporting the wishes of outdoor advertising interests, NCDOT would be undermining the past work and public will of the people - those who pay property and sales taxes as well as gas taxes.

Even if local ordinances are not in place to guard against such signage, allowing digital billboards and increasing signage height, will impede residents and visitors' views and negatively impact their experience. Digital signs would have negative impacts on those who live near these roadways, those who choose to enjoy the views or recreate from the Blue Ridge Parkway and other destinations or local roadways, and negatively affect the hotels, small businesses and downtowns that depend on tourism for their survival. Signage creates visual clutter. Signs are designed to draw attention, detracting from the landscape and distracting drivers. Environmentally, light pollution from digital billboards would not be welcome by our residents or visitors. Many mammals, birds, reptiles and insects are naturally photoperiodic, and their growth, development, reproduction, eating and locomotion of these animals depend on the balance between day and night and the introduction of artificial light can be detrimental

The signage lobby will argue for short term, private, economic opportunity and their perceived "need" to advertise local businesses. However, in western North Carolina, this argument is counter to the reality of our local communities and the type of tourism and visitor we depend upon. There is no added value in opening up our roadways to look like every other urbanized, cluttered, and lit-up area of the U.S. Instead, the real added value in our roadway system, is in being distinctive from those areas, providing a roadway system that both connects and respects the landscape and the communities it serves.

Thank you for the opportunity to comment on this possible rule change. Please do not harm our State highway system by allowing private sign companies to devalue the scenery, environment and adjacent land values of our transportation corridors.

Elizabeth Teague, AICP, CTP, CFM | Development Services Director

Town of Waynesville, NC

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Jernigan, Hannah

From: Arielle Schechter <acsarchitect@icloud.com>
Sent: Friday, December 4, 2020 4:17 PM
To: rrc.comments
Subject: [External] Comment on outdoor Advertising

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One of the best things about NC is that we have many highways without hideous and tacky billboards. Also, billboards are also distracting and therefore dangerous for drivers who are already distracted nowadays.

Please do NOT allow any new billboards!!

Arielle Schechter, Architect, PLLC
440 Bayberry Dr
Chapel Hill, NC. 27517

Jernigan, Hannah

From: Bill Johnson <williamdjohnson@rocketmail.com>
Sent: Monday, December 7, 2020 10:04 AM
To: rrc.comments
Subject: [External] NCDOT Rule Changes for Billboards

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This correspondence is in support of local governments maintaining control over billboards in their jurisdiction as a part of the DOT rules associated with G.S.136-131.1. However this is to strongly oppose raising billboards to 50 ft. in height or to digitize and allow electronic changeable message billboards in any jurisdiction including DOT's.

Why in the world would we as a state allow motorists to drive 70 to 80 mph on a controlled access highway and try to read a lighted digital changeable message billboard? Can we think of anything much less safe for the traveling public than that?

Billboards in N.C have been given by far enough allowances now. Greater than 2/3 of the existing billboards on controlled access highways are owned by out-of-state mega corporations. These out-of-state corporations are allowed to cut 500 ft. of our roadside trees that belong to all North Carolina citizens--this is over a football field and a half long of our trees and they pay nothing.

Please leave local governments in control of billboards in their jurisdiction and do not allow reconstructed billboards to be 50ft. in height anywhere. Please do not allow digitized lighted changeable message billboards, a 70-80 mph disaster, anywhere under any jurisdiction in our great state.

Thanking all for their service,

William D. Johnson

Jernigan, Hannah

From: Cheryl Buchanan <cbuchanan@townofbannerelk.org>
Sent: Friday, December 4, 2020 12:10 PM
To: rrc.comments; NCDOT Service Account - Rulemaking
Cc: Rick Owen
Subject: [External] Digital Billboards

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As the Zoning Administrator for the Town of Banner Elk, I feel qualified to speak on the Town's behalf regarding the attempt to overrule local ordinances in order to serve certain special interests. It is my opinion that billboards serve a purpose and there are places where they benefit the greater public. However, Banner Elk is a small mountain town where the majority of its revenue comes from tourism. One of the draws to our area is the pristine views and natural landscapes we maintain for our visitors to enjoy. By the time a tourist arrives in Banner Elk, they have already made plans to get to their destination. For those few who haven't; Banner Elk offers free downtown wi-fi to assist visitors in locating anything they might need. The Town of Banner Elk greatly opposes having their local ordinance overridden by those who do not have a vested interest in our community. Please reconsider overruling local ordinance in any situation. Thank you in advance for your kind consideration. Cheryl Buchanan, Zoning Administrator

Cheryl L. Buchanan, Tax Collector/Zoning Administrator/Town Clerk
Town of Banner Elk
PO Box 2049
Banner Elk, NC 28604
200 Park Avenue
Banner Elk, NC 28604
828.898.5398 Ext. 227 Fax: 828.898.4568
cbuchanan@townofbannerelk.org <http://www.townofbannerelk.org>
Town of Banner Elk is a Municipality in Western North Carolina.



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Jernigan, Hannah

From: Kimberlie Smith <Kimberlie.Smith@brunswickcountync.gov>
Sent: Friday, December 4, 2020 2:59 PM
To: rrc.comments
Cc: Brandon Hackney
Subject: [External] Question from Brunswick County Planning Dept.

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Can anyone virtually attend the Rules Review Commission meeting on December 17, 2020? Several of us in the Planning and Enforcement Departments with Brunswick County would like to just sit in to listen and observe. If we are permitted to attend in this manner could you please supply the link for the meeting.

Thank you,

Kimberlie Smith, CZO
Community Enforcement
Brunswick County, NC
Kimberlie.smith@brunswickcountync.gov
910-253-2227

From: cassie.gavin
To: rrc.comments
Subject: [External] NCDOT 19A NCAC 02E .0200 Modernization of outdoor advertising rules
Date: Wednesday, October 28, 2020 12:44:55 PM

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Good morning,

Below are NC Sierra Club's comments on the NCDOT proposed revisions to 19A NCAC 02E .0200 Modernization of outdoor advertising rules. Thank you for your consideration.

The NC Chapter of the Sierra Club represents over 100,000 members and supporters in the state who care about the environment and maintaining North Carolina's scenic roads. We find that DOT's proposed rules strike the right balance at this time and follow legislative intent.

We oppose any changes to the rules that would limit local ordinances and allow billboards with a state permit to be converted to digital or raised in height.

Billboards are ads that all drivers are forced to see, whether they want to read or not. Digital billboards are like giant television screens, distracting to drivers, a nuisance to residents, and an eyesore damaging to the scenic beauty of North Carolina.

Regarding legislative intent, based on the House debate, the bill sponsors clearly did not intend for the 2013 bill (N.C.G.S. 136-131.2, Session Law 2013-413) to allow a billboard to be made larger or to allow a billboard to be digitized.

We wish to protect the ability of local communities to control billboards, especially tall, digitized billboards that impact the scenic beauty of North Carolina and can be a distraction to drivers.

--

Cassie Gavin, Senior Director of Government Relations
NC Sierra Club
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19 W. Hargett Street, Suite 210
Raleigh, NC 27601
Phone: 919.833.8467 x 104

Mobile: 919.360.8803

<https://www.linkedin.com/in/cassiegavin>

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Sent from Gmail Mobile

From: [John Schelp](#)
To: [rrc.comments](#)
Subject: [External] Pls don't change Billboard rules
Date: Tuesday, October 27, 2020 9:09:45 AM

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DOT's proposed billboard rules are not vague. They reflect the law. This is what we want to see.

The vast majority of North Carolinians support restrictions on billboards. Please don't let the billboard industry, again, try to circumvent the will of the people.

With appreciation,

John Schelp
Durham, NC

From: [Susan Sewell](#)
To: [rrc.comments](#)
Subject: [External] Billboard regulations response
Date: Tuesday, October 27, 2020 12:25:43 PM

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As I told you in my comments in the spring, I opposed the original over lenient billboard regulations. So did many other people and you backed off on the worst parts. Now I understand you have push back.

Please stand firm. The modified regulations proposed rules are not vague, reflect the law, and are what we citizens want to see. We like our County options and do not want you to override them.

Mary Sewell
2904 Legion Ave
Durham, NC 27707

From: [Pat Carstensen](#)
To: [rrc.comments](#)
Subject: [External] North Carolina Department of Transportation's (NCDOT) 19A NCAC 02E .0200 Outdoor Advertising
Date: Tuesday, October 27, 2020 6:25:27 AM

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NC DOT's rules on outdoor advertising reflect the law and what the public wants and should be allowed to stand.

Thank you, Patricia Carstensen, 58 Newton Drive, Durham, NC 27707, 919-4901566

From: [Tom Riggins](#)
To: [rrc.comments](#)
Subject: [External] Outdoor advertising
Date: Friday, November 6, 2020 4:59:44 PM

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I think its a blight on our right of way !! Anything you can do to stop it and to remove existing billboards is good.. Regards , Tom Riggins

--

Regards , Tom Riggins

From: [Will Wilson](#)
To: [rrc.comments](#)
Cc: [William Wilson](#)
Subject: [External] billboard rules
Date: Friday, November 6, 2020 11:05:02 AM

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Dear Committee,

The billboard association, in comments to public comments and the rules that your committee came up with, claimed that said rules were vague and need to be revisited. I commend the committee on the rules they came up with, and in my reading as a layperson, didn't find them to be terribly vague. Instead, it seems that the association did not get everything they wanted, and want to relitigate the issue. What they want is their way on every point, and, particularly, lax billboard standards across the entire state without any local input on local wishes.

Many people see billboards as a blight on the local landscape that inhibits the creation of jobs by making places less desirable, and, in particular, see the billboard industry as preventing the creation of more jobs than the very few it creates.

I urge you all to ensure that local wishes are reflected in the limitations placed on billboard regulations.

Thank you,
Will Wilson
16 Sunny Oaks Pl
Durham, NC 27712

Jernigan, Hannah

From: McGrady, Charles W
Sent: Tuesday, December 8, 2020 8:46 PM
To: rrc.comments
Subject: 19A NCAC 02E .0200, Outdoor Advertising Rules

Honorable Commissioners,

I support the draft rules before you, as amended by the NC Department of Transportation in response to the public comments received. These draft rules follow the legislative intent as prescribed, and mirror the overwhelming tone of the public comments received during DOT's rule making process.

I served 5 terms in the North Carolina House of Representatives until my recent resignation. As a legislator, I was worked on negotiating Outdoor Advertising regulations with the interested parties and worked on billboard legislation almost every term. The weakening of local control over billboards, as proposed by the Outdoor Advertising Association, was considered by the Legislature each biennium, and the "legislative intent" was appropriately measured by the final outcome of those bills.

My perspective on these rules has another facet: my October resignation preceded my planned retirement from the North Carolina House of Representatives by just two months, and was hastened by the offer of appointment to the NC Board of Transportation by the Speaker of the House. NC DOT completed its work on these rules before I was sworn in, but I now have two unique perspectives for evaluating DOT's efforts against what I know certainly as the legislative intent.

The Outdoor Advertising Association is seeking an outcome here at the Rules Review Commission that is at odds with both the legislative intent and the public comments received by NCDOT. I urge you to approve these rules as drafted.

Sincerely,

/s/

Chuck McGrady

Member, North Carolina Board of Transportation Former Member, North Carolina House of Representatives

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December 10, 2020

Electronically filed with RRC Staff

Rules Review Commission
Office of Administrative Hearings
6714 Mail Service Center (mailing)
Raleigh, NC 27699-6714
rrc.comments@oah.nc.gov
amber.may@oah.nc.gov- (Amber May, Counsel for RRC)

**RE: Written Comments to North Carolina Department of
Transportation's Proposed Permanent Rules Implementing HB 74**

To Whom It May Concern:

I am General Counsel for and represent the North Carolina Outdoor Advertising Association ("NCOAA"), which organization consists of a large percentage of the outdoor advertising or billboard companies that will be regulated by the permanent rules proposed by the North Carolina Department of Transportation ("DOT"). Thank you for this opportunity to offer comments to the version of the DOT rules resubmitted on December 4, 2020 ("12/20 Revised Rules").

The DOT has put in a lot of effort in revising its prior rules originally before the Rules Review Commission ("Commission"). On behalf of the NCOAA, we thank the DOT for these revisions, which resolved several of our concerns expressed in my written comments to the Commission dated October 8, 2020 ("October 8th Letter"). The DOT representatives displayed a cooperative spirit that is much needed in the universe of regulator and regulatees. Special appreciation goes out to Ebony Pittman, DOT counsel.

Unfortunately, as more fully explained below, the DOT's 12/20 Revised Rules in several places continue to be beyond "the authority delegated to the agency by the General Assembly," which is one of the criteria for consideration by the Commission in G.S. §150B-21.9(a). Additionally, these challenged rules are not "reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency" or are not "clear and unambiguous."

I will try not to unduly repeat the information and arguments made in my October 8th Letter. We respectfully ask that the Commission consider those comments; we intend to incorporate them herein by reference.

The revised rules hereinafter challenged cover a consistent theme: the DOT improperly delegating or ceding regulatory authority to local governments, either by making local approval a condition of State approval or transferring regulatory oversight for billboards over to local governments.

As I mentioned in my October 8th Letter, the DOT cannot enact rules which conflict with the will of the General Assembly as reflected in various state statutes. Two statutes directly and plainly limit local government regulatory authority over previously erected outdoor advertising signs falling within the jurisdiction of the DOT; they are G.S. §136-131.1 and G.S. §136-131.2.

G.S. § 136-131.1 reads as follows:

No municipality, county, local or regional zoning authority, or other political subdivision, shall, without the payment of just compensation in accordance with the provisions that are applicable to the Department of Transportation as provided in paragraphs 2, 3, and 4 of G.S. 136-131, remove or cause to be removed any outdoor advertising adjacent to a highway on the National System of Interstate and Defense Highways or a highway on the Federal-aid Primary Highway System for which there is in effect a valid permit issued by the Department of Transportation pursuant to the provisions of Article 11 of Chapter 136 of the General Statutes and regulations promulgated pursuant thereto.

The North Carolina Supreme Court in *Lamar OCI South Corp v. Stanley County Zoning Board of Adjustment*, 186 N.C. App. 44, 650 S.E.2d 37, *aff'm per curiam*, 362 N.C. 670, 669 S.E.2d 322 (2008) held that the above statute applied to prevent a local government from using its regulatory authority to bar an action authorized under the DOT permit implementing State-wide standards. In *Lamar v. Stanley County*, the act being challenged by Stanley County was the moving of an existing billboard to accommodate a State highway project. Stanley County attempted to stop the move, claiming that zoning rules prohibited the act altogether or prohibited relocating a sign too close to a building on the property. Our courts held otherwise and rejected these claims.

As explained below, in the 12/20 Revised Rules, the DOT has in several instances added in local approval for certain acts, which is counterintuitive to the

statutory direction that local government standards cannot result in a billboard owner losing his or her right to maintain and operate its sign.

The DOT admits that its rule revisions stem from HB 74, a regulatory reform bill, 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.” The clear purpose of this statute is to streamline rules affecting businesses, make them more business friendly and to eliminate rules which are “obsolete, redundant, or otherwise not needed.” (G.S. §150B-21.3A(a)(6)).

In Section 8(b) of HB 74, the General Assembly enacted G.S. §136-131.2. It reads:

§ 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 piggy-back onto G.S. 136-131.1 and preempt *local governments* in the modernization of existing billboards through “repair or reconstruction” of DOT-permitted signs. The term “regulate” means “to govern or direct according to rule, . . . to bring under control of law or constituted authority.” *State v. Gulledge*, 208 N.C. 204, 179 S.E. 883 (1935).

It is common knowledge that many local governments in this State either ban outdoor advertising or severely restrict their ability to operate. Having to get permission from both the State and locals usually meant that signs could not be altered due to the latter’s strict regulations- that signs would languish in the past without opportunity to upgrade and improve with the times like most businesses. HB 74 changed this dynamic by eliminating local oversight for signs to be repaired or reconstructed under DOT’s watch.

Prior to HB 74 and the section above, existing DOT rules spoke of the applicability of rules in order to reconstruct an outdoor advertising sign as follows: “Conforming sign structures may be reconstructed so long as the reconstruction

does not conflict with any applicable state, federal or local rules, regulations or ordinances.” 19A NCAC 2E .0225(b)(2).

As noted in my October 8th Letter, after HB 74, we promptly pointed out to DOT that the above stated rule and others conflicted with the streamlining objectives of G.S. § 136-131.1 and the more recent G.S. §136-131.2 – to eliminate local governance of changes to lawfully erected signs under DOT’s jurisdiction. Many years later, the proposed 12/20 Revised Rules still fall short of complying with these clear statutory directives.

SUMMARY OF OBJECTIONS

A. PROPOSED 19A NCAC 02E .0225 IN CERTAIN PLACES CONFLICTS WITH THE STATE STATUTE IT PURPORTS TO IMPLEMENT, CREATES AMBIGUITIES, AND IS NOT REASONABLY NECESSARY TO IMPLEMENT A STATE OR FEDERAL STATUTE OR FEDERAL REGULATION.

1. Subsection (b)(2) of proposed 19A NCAC 02E .0225 reads:

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

A long time ago, French writer Jean-Baptiste Alphonse Karr coined the saying: “The More Things Change, The More They Remain the Same.” The 12/20 Revised Rules despite their changes remain the same in several critical spots. Despite the plain language of G.S. §136-131.2 preempting local regulation of billboard reconstruction in areas under DOT jurisdiction, DOT has kept in place adherence to local rules when a sign is reconstructed. DOT appears to have added the phrase “subject to G.S. 136-131.2” to the beginning of subsection (b) as a placeholder for the preemptive effect of that statute. This phrase denotes that the sections to follow are contingent on, subordinate to and governed by the statute. *Wise v. Harrington Grove Community Ass’n, Inc.*, 357 N.C. 396, 403, 584 S.E.2d 731,737 (2003).

However, G.S. §136-131.2 specifically covers the topic of “reconstruction” and precludes the whole field of “regulation” by local governments. By leaving in “local rules, regulations or ordinances” in subparagraph (b)(2), the DOT has created an unnecessary ambiguity. The DOT reserves the authority to revoke a DOT issued permit to an outdoor advertiser for failing to conform to DOT rules. Does DOT make all “applicable local rules, regulations or ordinances” relevant to that call? Those in opposition would say so. Invariably, the DOT will be drawn into the

middle of contests involving local objections to acts of reconstruction, where the whole point of HB 74 was to streamline the process, making such objections moot.

In subparagraph (5) of subsection (b), a conforming sign (i.e. one complying with State standards) can be relocated within the same parcel for any reason, including as a result of road improvements taking the area where the sign was initially located. This ability to relocate off a new right of way is obviously necessary to mitigate against State funds being required to pay just compensation for a highway project taking. However, DOT's proposed rules create unnecessary confusion. Does subparagraph (b)(2)'s reference to "local" rules when a sign is reconstructed trump relocation on the same parcel that accompanies the act of reconstruction if the zoning does not allow moving a sign? Although the better argument is "no", why indulge an ambiguity here when G.S. §136-131.2 clearly says locals cannot regulate or prohibit reconstruction?¹

Since the DOT does not possess authority to adopt a rule in conflict with a statute, this rule violates G.S. §150B-21.9(a)(1). The above rule is also not clear and unambiguous; it creates a circular argument of whether a local rule is applicable versus a local rule controlled by the statute. (G.S. §150B-21.9(a)(2)). Especially in light of G.S. §§136-131.1 and 136-131.2, there is no statutory authority for the DOT through rulemaking to make local standards part of the mix. It is clear that the General Assembly, as the policy-making branch of government, has determined that local rules cannot cause the removal of a DOT-permitted sign or otherwise are not applicable to the repair or reconstruction of existing DOT-permitted signs. The DOT cannot by rule say otherwise, which is the case here. The proposed rule is not reasonably necessary to implement a state statute; in fact, as presented, it gums up the statutory benefits with ambiguity. G.S. §150B-21.9(a)(3)(It is not "reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency.")

2. Subsection (b)(4) of proposed 19A NCAC 02E .0225 reads:

Conforming sign structures shall not be changed from a static face to an automatic changing face, nor shall the sign height be increased without local approval.

This verbiage was added as a result of comments from "legislators" who did not vote in favor of HB 74 and special interest groups such as environmentalists and local government representatives who lamented the passing of HB 74.

¹ *Lamar v. Stanly County, supra.* presented this issue of relocation and found preemption. However, with the proposed rules, DOT has modified 19A NCAC 02E .0210(16), the rule at play in *Lamar*, and replaced it with the new subparagraph (5) of subsection (b) of Section .0225.

For the above proposed rule, in order to streamline this letter, I would respectfully request that the Commission review pages 10-12 of the October 8th Letter. I will, however, repeat the primary statutory construction argument as follows:

The only caveat [to preemption] in the HB 74 legislation is that the “square footage of the advertising surface” cannot be increased. That is the only limit to repair or reconstruction. The DOT’s proposed rules improperly add limitations that do not exist in the statute. . . .

If an outdoor advertising sign owner was precluded from changing the characteristics of a sign by the opposition’s limited view of the term “reconstruction”, what would be the point of the caveat or exception dealing with not increasing square footage, which is a characteristic of a sign? Would not the General Assembly have also mentioned other characteristics such as increased height or altered setbacks?

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 related to height, setback, etc. Certainly, local standards are expressly preempted.

....

Moreover, G.S. §150B-19 states in pertinent part that an agency may not adopt a rule that does one or more of the following: “(1) Implements or interprets a law unless that law or another law specifically authorizes the agency to do so.” With the proposed rules, as written, the DOT implements local standards as a condition of State approval in violation of G.S. § 150B-19(1), when the statutory directives say the opposite. *See County of Wake v. North Carolina Department of Environment & Natural Resources*, 155 N.C. App. 225, 250, 573 S.E.2d 572, 589 (2002)(DENR could not reject State landfill permit based on noncompliance with local requirements since enabling statute did not authorize that condition or implement that locally focused law).

With over 400 written objections from folks opposed to HB 74, the DOT has followed a politically expedient path. Those in opposition to the billboard industry have stated that DOT is simply respecting local control. Respectfully, the matter is decided by legislation that DOT must follow, which unambiguously preempts local regulation or prohibition of the repair or reconstruction of outdoor advertising. The

proposed rule is beyond the authority of the DOT, implements local regulation or prohibition of the repair or reconstruction of outdoor advertising without specific authority to do so and conflicts with the statutory directives.

B. PROPOSED 19A NCAC 2E .0204 IS CONTRARY TO STATE LAW, IS UNDULY VAGUE AND IS NOT REASONABLY NECESSARY TO IMPLEMENT A STATE OR FEDERAL STATUTE OR FEDERAL REGULATION.

The NCOAA's objections to the above rule are discussed on page 14 of the October 8th Letter, which rule has undergone no revisions.

In a nutshell, G.S. §136-131.1 and G.S. §136-131.2 preempt local regulation over any action that would cause the removal of an existing billboard that is conforming to State standards and all local efforts of regulation of the repair and reconstruction of outdoor advertising signs. How then can a local government exercise effective control by way of transfer from the DOT and impose local standards when G.S. §§136-131.1 and 136-131.2 limit or preclude the exercise of their typical regulatory authority?

In the 12/20 Revised Rules, the DOT added G.S. §136-138 as alleged statutory basis for this rule. However, that statute simply authorizes the original State-Federal agreement in the 1970s (as described in the October 8th Letter). After that time in the 1970s, the above later-enacted statutes set the table for regulatory control, which precludes or limits local regulation of outdoor advertising that is compliant with State standards, and which would necessarily bar any delegation of control from the DOT to a requesting city or county.

As further evidence of the lack of statutory authority, the substitution of local government permitting for State permitting runs counter to all of the references to the "Department" in the North Carolina Outdoor Advertising Control Act, including G.S. §136-134.1 (establishing judicial review of final decisions of the Secretary of Transportation); G.S. §136-134 (establishing illegal advertising based on conflict with DOT rules); and G.S. §136-130 (regulation of advertising by DOT).

Moreover, a decision to transfer control by the "Chief Engineer" is devoid of the opportunity to be heard by an affected sign company, or any substantive standards for judging a qualifying local entity. It is a blanket rule giving carte blanche authority to one DOT employee to take an action not authorized by and in direct conflict with the State statutory scheme for regulating billboards along interstate and primary highways of this State.

Proposed 19A NCAC 2E .0204 continues to not satisfy G.S. §150B-21.9(a)(1), (a)(2) or (a)(3).

C. PROPOSED 19A NCAC 2E .0206(b)(5) IS CONTRARY TO STATE LAW AND IS NOT REASONABLY NECESSARY TO IMPLEMENT A STATE OR FEDERAL STATUTE OR FEDERAL REGULATION.

In proposed 19A NCAC 2E .0206(b)(5), the DOT conditions the issuance of a State outdoor advertising permit on local approval (e.g. sign or zoning permit). The NCOAA's objections are discussed on pages 14-15 of the October 8th Letter.

CONCLUSION

The DOT has made great strides in addressing the concerns of the outdoor advertising industry as reflected in the 12/20 Revised Rules. However, there are several critical issues that remain. Based on the above, and the administrative record, the undersigned respectfully requests that the Commission object to the above identified DOT proposed rules.

Sincerely,

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

Craig D. Justus

(Electronically Signed)

Craig D. Justus

CDJ/ca

Enclosures

cc: Client

Hannah Jernigan – via email

Helen Landi – via email

Jernigan, Hannah

From: Alisha Goldstein <aeg2107@gmail.com>
Sent: Wednesday, December 9, 2020 10:26 PM
To: NCDOT Service Account - Rulemaking; rrc.comments
Subject: [External] NCDOT rule change for billboards

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To the Rules Review Commission,

I am writing to voice support for local communities to retain control over billboard height. Local communities should be able to decide for themselves an issue such as this that affects their visual environment. Community members spend countless volunteer hours serving on advisory boards or being paid minimally to be on Council to shape the direction of their neighborhoods. Community members should be the one deciding the size, height, and look of billboards. This is not an issue that needs to be taken up by the state. State responsibilities should be to ensure healthcare funding, enforce safe working conditions, promote economic activities among other tasks that ensure the public welfare of its citizens. If one were to think of billboards from a public safety vantage point, they are detrimental by distracting drivers' attention off the road. There is enough distraction already with cellular devices. Please remember that residents are counting on you to perform your job for the betterment of its citizens and sometimes decisions are best left to local communities to decide.

Best regards,
Alisha

Jernigan, Hannah

From: Dale McKeel <dale_mckeel@yahoo.com>
Sent: Thursday, December 10, 2020 11:27 AM
To: rrc.comments
Cc: NCDOT Service Account - Rulemaking
Subject: [External] Comments for December 17 2020 RRC Meeting (19A NCAC 02E, Section .0200 Outdoor Advertising)

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Dear Commissioners,

I am writing to voice my support for the NC Department of Transportation's 19A NCAC 02E .0200 Outdoor Advertising rules that are before you. These rules have been amended in response to the more than [450 pages of comments](#) received last winter.

Specifically, I support the revised rules that respect local control over billboard height and the conversion of existing billboards to digital. I am concerned that in October, representatives of the billboard industry advocated using the rule-making process to allow billboard companies to ignore local ordinances that are more restrictive than state regulations, increase the height of existing billboards to 50 feet, add lighting, and make them digital.

Much of the debate over this rule change is centered around the meaning of NC General Statutes 136-131.1, which allows some billboards to be "modernized" by changing an existing multipole outdoor advertising structure to a new monopole structure. Please note that at the time the language in NCGS 136-131.2 was being debated by the NC House of Representatives, the bill sponsor, Rep. Tim Moffitt, stated that "the bill is not intended to allow an increase in the size of the sign" and "does not allow digitizing of signs." (Debate of Senate Bill 112 in the NC House on July 11, 2013). Furthermore, Representative Chuck McGrady on the same day offered an amendment to SB112 seeking to remove NCDOT as an "environmental agency" since the bill's text allowed any environmental agency to preempt all local government regulations, thus removing all local controls over billboards statewide. Representative Moffitt supported McGrady's amendment, and the amendment passed 112 to 0.

Please also note the following paragraph that was submitted in a comment to NCDOT in March by Karen Sindelar, former Senior Assistant City Attorney and City Attorney, City of Durham (retired):

GS 136-128(2a) defines a "nonconforming sign" as one which "was lawfully erected but which does not comply with the provisions of State law passed at a later date" "State law" is defined in NCGS 136-128(6) as incorporating not just statutes, but also state regulations, and local ordinances: "State law" is "a State constitutional provision or statute, or **an ordinance, rule or regulation enacted or adopted by a State agency or political subdivision of a State pursuant to a State Constitution or statute.**" (emphasis added) As cities and counties are political subdivisions of the State of North Carolina, and exercise zoning authority under NCGS 160A, Article 19, and NCGS 153A, Article 18, their ordinances regulating billboards are considered "state law" under the above definition. Under state statute, then, a billboard which was lawfully erected but which no longer complies with local ordinance is a "nonconforming sign." Appellate decisions have affirmed this conclusion – that billboards which do not

conform with later enacted local ordinances are “nonconforming signs.” They have done so after explicit analysis of the issue (see Lamar OCI v Stanly County Zoning Board, 186 NC App 44, 50-51 (2007)) as well as implicitly through application of DOT’s “nonconforming sign” provisions to billboards that did not conform with local ordinances (see Morris Communications Corp. v. Board of Adjust. of Gastonia, 159 N.C. App. 598, 604, 583 S.E.2d 419, 423 (2003), reh’g denied, 358 N.C. 155, 592 S.E.2d 690 (2004)).

These comments counter many of the billboard industry’s arguments opposing the rule change. In 2019 the billboard industry sought in House Bill 645 to change the definition of “nonconforming sign” to remove the reference to “State law.” HB 645 passed the General Assembly but was vetoed by the Governor and did not become law. Here is the excerpt from HB 645:

~~(2a)(2b)~~ ~~“Nonconforming sign” shall mean a Nonconforming sign. – A sign which was lawfully erected but which does not comply with the provisions of State law—customary use or State—rules adopted and regulations passed by the Department of Transportation at a later date or which in accordance with this Article, or which, due to changed conditions, later fails to comply with State law—customary use or State—rules adopted or regulations due to changed conditions. Illegally erected or maintained—passed by the Department of Transportation in accordance with this Article. Illegal signs are not nonconforming signs.~~

A poll of North Carolina voters conducted in May 2019 found that 66 percent were opposed or strongly opposed to taking control of billboards away from local government and 68 percent were opposed or strongly opposed to allowing billboard owners to build more digital billboards. Results are below.

Q1 State lawmakers have introduced a bill to loosen restrictions on billboards along North Carolina's roads and highways. This bill may take control over billboards from local government and give it to the state government, allowing new billboards to be built in areas where they currently are not allowed. Do you strongly support, somewhat support, somewhat oppose or strongly oppose taking control of billboards away from local government?

<i>Strongly support</i>	11%
<i>Somewhat support</i>	16%
<i>Somewhat oppose</i>	27%
<i>Strongly oppose</i>	39%
<i>Not sure</i>	7%

Q2 This bill may allow existing billboard signs to be replaced with electronic digital billboards that can change messaging frequently, adding another distraction for drivers, even in areas where local governments forbid digital billboards. Do you strongly support, somewhat support, somewhat oppose or strongly oppose allowing billboard owners to build more digital billboards?

<i>Strongly support</i>	15%
<i>Somewhat support</i>	13%
<i>Somewhat oppose</i>	26%
<i>Strongly oppose</i>	42%
<i>Not sure</i>	3%

Thank you for your service to the state and your consideration of these comments. Please approve the NCDOT proposed rules.

Sincerely,

/s/

Dale McKeel
Board member, Scenic North Carolina
3559 Hamstead Court
Durham, NC 27707
dale_mckeel@yahoo.com

Sent via e-mail to: rrc.comments@oah.nc.gov and Rulemaking@ncdot.gov