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NORTH CAROLINA

MEMORANDUM

Date: May 9, 2011

To: Michael M. Ruffin, County Manager
Through: Wendell Davis, Deputy County Manager
From: Steven L. Medlin, AICP, City-County Planning Director
Subject: Unified Development Ordinance (UDO) Text Amendment – Broadcast Towers (TC1100001)

Summary. This text amendment would amend the Unified Development Ordinance (UDO) requirements for television and radio broadcast towers. It would: 1) require minor special use permits for the towers to provide nearby property owners with notice and opportunity to participate in the review process; 2) ensure that illumination is the minimum required by federal law; and 3) improve consideration of alternatives to reduce impact on nearby properties.

The City Council will consider this item on May 16, 2011.

Recommendations. The Planning Department recommends approval. The Planning Commission held a public hearing on this proposed text amendment on March 8, 2011 and recommended approval by a vote of 10-0.

Background. The City and County of Durham adopted revised regulations for TV/HDTV/AM/FM Broadcast Antennae (broadcast towers) in 2003-2004. The regulations established appropriate siting criteria and a major special use permit requirement. When the UDO was adopted in 2005, however, it allowed broadcast towers by right in certain zoning districts, with minimal performance standards, due to uncertainty at the time regarding tower regulation by local governments. The allowed zoning districts are Rural Residential (RR), Science and Research Park (SRP), Industrial Light (IL), Industrial (I), Industrial Park (IP) with a development plan, and Design District (DD).

In 2006, the Planning Department received a site plan application for a broadcast tower over 500 feet high on Bivins Road, on property zoned RR. The application met all ordinance requirements and was approved. Public notice was not required or provided and the tower was constructed in 2010.

On November 1, 2010, a citizen who lives near the new tower expressed concern to the Board of County Commissioners at work session about the lack of public notice and opportunity to participate in the review process. The County Manager's Office requested that the Joint City-County Planning Committee (JCCPC) address the issue.

On December 1, 2010, the JCCPC considered the issue, with input from the concerned citizen, and recommended that staff initiate an amendment to require a minor special use permit for broadcast towers and improve the applicable performance standards to reduce negative impacts on nearby properties. On March 8, 2011, the Planning Commission held a public hearing on this item and voted unanimously (10-0) to recommend approval.

Issues. Staff has clarified the ability of local governments to regulate broadcast towers with its telecommunications consultant, CityScape Consultants, Inc. Local governments may in fact regulate broadcast towers, even more stringently than Wireless Communications Facilities (WCF's). Broadcast towers must comply with Federal Communications Commission (FCC) and Federal Aviation Administration (FAA) standards, and also with local government standards.

The UDO currently requires a major or minor special use permit for a freestanding WCF. Broadcast towers are typically much taller than WCF's and clearly warrant a special use permit requirement as well. Nearby property owners deserve notice of illuminated towers of this scale, as well as the ability to participate in the review process. Although the old zoning ordinance required a major special use permit for broadcast towers, a minor special use permit would suffice as it would ensure consideration of the relevant law and facts, some of which may be technical, by the Durham Board of Adjustment.

FCC rules for broadcast towers require compliance with FAA standards, and various FAA lighting and/or painting options are often available to applicants. For instance, the FCC states that applicants commonly request permission to use high-intensity white flashing lights on an unpainted structure rather than less obtrusive non-flashing red lights on a painted structure. The revisions in paragraph 5.3.3K.3 regarding lighting would ensure that only the most unobtrusive FCC/FAA designs are approved.

The revisions in paragraph 5.3.3K.6 would help ensure that properties located near but not adjacent to towers are protected from adverse impacts, which aligns with the special use permit criteria in Sec. 3.9.8, Criteria for Approval of Major and Minor Special Use Permits. The citizen who raised this issue does not live adjacent to the tower on Bivins Road but has been significantly affected. Those revisions would also clarify consideration of alternatives to the proposed facility and require justification of its location and design in terms of adverse effects on nearby properties.

Alternatives. The County Board of Commissioners may approve the amendment, deny the amendment, or direct modifications of its language.

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Attachments: Attachment A, An Ordinance to Amend Provisions of the Unified Development Ordinance Regulating Broadcast Antennae, Mark-up Version
Attachment B, An Ordinance to Amend Provisions of the Unified Development Ordinance Regulating Broadcast Antennae, Clean Version
Attachment C, Planning Commission Written Comments Following Hearing on March 8, 2011