

Date of Meeting: July 21, 2009

#9

## BOARD OF SUPERVISORS ACTION ITEM

**SUBJECT:** Removal of Signs in the VDOT Right of Way

**ELECTION DISTRICT:** County Wide

**CRITICAL ACTION DATE:** At the pleasure of the Board of Supervisors

**STAFF CONTACT:** Keith Fairfax, Enforcement Program Manager

### **RECOMMENDATIONS:**

Staff recommends that the Board continue the sign collection program as a permanent initiative, with the following components:

- A. Continuation and expansion of the volunteer program
- B. Limited staff collection efforts on Friday of each week
- C. Approval of a Land Fill Waiver for specific use by the Sign Collection Program.

### **BACKGROUND:**

On February 17, 2009 the Board voted to enter into an agreement with the Commonwealth Transportation Secretary for the purpose of removing illegal signs from the highway right of ways located within the County in accordance with the *Code of Virginia* 33.1-377(d). The Board instructed staff to utilize existing resources on Monday and Friday for the purpose of sign collection and further instructed staff to coordinate a volunteer collection effort. Also included with this initiative was a designation of a pilot program for this effort to run through June 30, 2009 after which staff would return to the Board with an update on the program status from its inception.

An executed agreement was received from the Transportation Commissioner on March 19, 2009 and staff began collection efforts on March 27, 2009. A training/safety session for the purpose of soliciting volunteers was advertised and training was held on April 27, 2009 which resulted in the recruitment of 44 volunteers.

The following is a breakdown of illegal signs removed from within the right of ways since the program's inception:

Table 1, Signs Removed from Right of Way

	<u>Staff</u>	<u>Volunteers</u>
April 2009	270	----
May 2009	169	3752
June 2009	344	3861
	<b>Total signs removed = 8296</b>	

**ISSUES:**

The following items are presented to the Board based on findings during the pilot program.

I. Public Information Sessions

On May 6, 2009 staff presented an information session regarding placement of signs within the right of ways for the Dulles Area Realtors Association and on June 1, 2009 for the Rural Economic Development Commission (REDC). These sessions contained information on the agreement entered into with the Commonwealth Transportation Secretary as well as requirements of the County Zoning Ordinances as related to the placement of signs. Realtors expressed concern that the agreement entered into by the County inhibits marketing properties for sale. Members of the REDC did not seem to object to this initiative and were directed to the VDOT source for obtaining permits for sign requirements for wineries, etc.

II. Church Signs

At the request of both Supervisor Waters and Miller, staff scheduled and attended a meeting with several local church pastors. The purpose of this meeting was to address concerns of the negative impact the pilot sign collection program was having on a church's ability to advertise church services. This meeting was attended by Pastors who have congregations that gather in non-traditional settings, such as schools and other venues. Pastors who attended the meeting have been accustomed to placing their A-Frame and other temporary type signage within medians and alongside the roadways for several years, in order to advertise the location of the next denominational gathering. During the pilot program, these Pastors have been contacted by volunteers concerning the signs being placed in the roadways. The volunteers advised the Pastors that the signs were illegal and in some cases, signs were removed from the right of way. Clergy cited an exemption found in the *Code of Virginia* titled "Outdoor Advertising in Sight of Public Highways." This statute authorizes the Commissioner of Transportation to regulate outdoor advertising on private property beyond the right-of-way. Accordingly, the County Attorney has advised that the cited exemption is inapplicable within the highway right-of-way. To the best of staff's knowledge, there is no comparable exemption in VDOT's regulations governing the use of its right-

of-way. The volunteer program follows VDOT's instruction, interpretation and guidance on the enforcement of these regulations.

### III. Volunteer Management

While staff conducted training for volunteers, including program guidelines, general safety and liability, etc., there were three minor incidents reported during the pilot program. Volunteer Program Guidelines are included as Attachment I.

- A. A volunteer was aggressively approached on Ashburn Blvd. by a sign company employee who happened to be in the area simultaneously with the volunteer's collection efforts. When the sign company employee realized the volunteer was removing illegally placed signs, he approached the volunteer's vehicle and banged on the window demanding he get the signs back. The volunteer left the area without further incident.
- B. A volunteer entered private property belonging to a Church on Evergreen Mills Road and removed a sign that was clearly not within the VDOT right of way and had approved County Zoning Permits. The Pastor of the Church contacted staff and advised the volunteer later contacted him at the Church and wanted to apologize for removing the sign and offered to compensate the Church for his mistake. The Pastor requested that we take no action against the volunteer such as removing him from the program.
- C. A volunteer entered a sales office in Lansdowne and was reportedly rude and discourteous towards sales staff in regards to signs in the right of ways. According to a statement submitted, the volunteer approached the staff member in a threatening manner, identified himself as a program volunteer and used profanity while describing the signs which were in violation. This incident remains under investigation and appropriate action will be taken should the investigation substantiate the allegations.

Should the Board decide to continue the program; a review of the volunteer program guidelines will be conducted prior to staff offering additional training sessions in order to insure participant compliance. Additionally, staff has received several requests from members of the public who want to participate as volunteers in this program who were unable to attend the initial orientation session held on April 27, 2009.

### IV. Political Signs

When the Board approved the pilot program at its February 17, 2009 staff advised that political signs placed within the right of way were not subject to collections efforts based on a July 2008 opinion by the Attorney General. On or about February 9, 2009 the Attorney General reversed his July 2008

opinion and thus ruled that political signs are subject to collection efforts and should not be placed in the right of ways. This information was received by staff after presentation of the item to the Board and was incorporated with volunteer and staff training. Political signs having been placed within any right of way within the County are being collected.

V. Landfill waiver fees

Cost associated with collected sign disposal during the pilot program period for staff and volunteers has been 1.78 tons for a total cost of \$142.40. The pilot program has been operating under a ride-a-long waiver with the Office of Solid Waste Management's Enforcement account. Should the Board wish to continue the long-term dedication of resources to this effort, staff will process a separate landfill waiver request.

VI. Staff Resources

Should the Board continue the program, staff believes that it would be a more efficient use of current staff resources to only conduct collection runs on Friday of each week. Data compiled during the pilot program indicates that most signs are present during the weekends and are being collected by Volunteers. By reducing the staff collection efforts to Friday of each week, it would allow staff to concentrate on those complaints received from the volunteers for signs outside of the 5 foot rule area, signs illegally posted on poles which are not within reach of the volunteers, and complaints received from the program volunteers regarding illegal signs on private property that require zoning permits or may be prohibited. Reduction of utilization of staff resources will also allow staff to focus on other zoning and property maintenance enforcement issues. During the pilot program, staff resources from the Zoning Enforcement Team were utilized for the initiative and it was not necessary to redeploy staff resources from the Building Code Enforcement Division and the Enforcement Program Manager served as a point of contact for the volunteer collection program.

**FISCAL IMPACT:**

Staff's proposal would pose minimal fiscal impact. With the exception of less than \$10.00 per new volunteer recruit needing a safety vest, the only other incurred expenses would be landfill fee waivers associated with collected sign disposal.

**ALTERNATIVES:**

1. The Board of Supervisors could terminate its current agreement with the Commonwealth Transportation Commissioner and eliminate both the staff and volunteer components of the sign collection program.

2. The Board of Supervisors could continue its agreement with the Commonwealth Transportation Commissioner for the purpose of removing illegal signs using existing staff resources.
3. The Board could continue the program based on earlier Board direction which terminated on June 30, 2009 with only the volunteer component of the program but would remain under the supervision of the Department of Building & Development Enforcement Program Manager.
4. The Board of Supervisors could work in conjunction with VDOT representatives to promote the Adopt A Highway program and publicize its availability to interested citizen groups.
5. The Board of Supervisors could approve a combination of the options listed above.

**DRAFT MOTION(S):**

1. I move that the Board of Supervisors direct staff to continue a program similar to the pilot program for the purpose of removing illegal signs from within the right of way using staff resources on Friday of each week and continue the volunteer sign collection program with recruitment and training sessions as needed.
2. I move that the Board of Supervisors direct staff to continue sign collection efforts using only the existing volunteer force and conduct recruitment and training sessions for additional volunteers as needed.
3. I move an alternate motion

**ATTACHMENTS:**

- I-Volunteer Program Guidelines
- II-Executed agreement with Commonwealth Transportation Secretary
- III-Code of Virginia 33.1-375.1
- IV-Code of Virginia 33.1-373