# CITY OF HIGH POINT AGENDA ITEM



Title: Right-Of-Way Encroachment RE-16-0013

(Yihua Timber Industry, Inc.)

From: Lee Burnette, Planning & Development Meeting Date: June 6, 2016

Director

**Advertising Date:** Not Applicable

Public Hearing: No

Advertised By: Not Applicable

**Attachments:** A. Staff Memo

B. AgreementC. Location Map

D. Site Plan

#### **PURPOSE**:

A request by Yihua Timber Industry, Inc. to construct a proposed 5-story building that will encroach 1 foot 4 inches within the East Commerce Avenue right-of-way.

#### **BACKGROUND**:

Staff memo and the Technical Review Committee's recommendation is enclosed.

#### **BUDGET IMPACT:**

There is no budget impact.

#### **RECOMMENDATION / ACTION REQUESTED:**

A. On May 26, 2016 the Technical Review Committee recommended <u>approval</u> of Right-Of-Way Encroachment RE-16-0013.

## CITY OF HIGH POINT PLANNING AND DEVELOPMENT DEPARTMENT

#### RIGHT-OF-WAY ENCROACHMENT RE-16-0003 June 6, 2016

Request			
Applicant:	Proposal:		
Yihua Timber Industry, Inc.	Construct a proposed 5-story building that will encroach 1 foot		
	4 inches within the East Commerce Avenue right-of-way.		

Adjacent Streets				
Name:	Classification:	R/W and Pavement Width:		
East Commerce Avenue	Collector	76 feet and 53 feet from curb to curb		

#### Analysis

The applicant is requesting an encroachment agreement for a proposed 5-story building, a portion of which will intrude 1 feet 4 inches into the street right-of-way along East Commerce Avenue.

The new building will replace an existing building, addressed as 305 East Commerce which also intrudes into the East Commerce Avenue right-of-way 1 feet 4 inches. The proposed replacement building will reside in the same footprint as the existing building. The applicant has stated that the need for this encroachment is to maintain the character of the existing streetscape and avoid potential engineering issues relating to structural support for the adjacent building, addressed as 135 South Hamilton Street, which will be connected to the new building

The Technical Review Committee reviewed this request on May 26, 2016, and determined that the proposed encroachment would not affect public safety or interfere with street maintenance needs, especially since the new building will use the same footprint as the existing one.

The site plan for the proposed building is attached depicting its location and the associated encroachment.

#### Recommendation

The location of the proposed 5-story building would not intrude into the right-of-way more than the existing building and would not affect public safety or interfere with street or utility maintenance. Staff recommends approval of this requested right-of-way encroachment.

#### **Report Preparation**

This report was prepared by Planning and Development Department staff member Justin S. Westbrook, and was reviewed by G. Lee Burnette, AICP.

DRAWN BY: JoAnne L. Carlyle, City Attorney

RETURN TO: City Attorney, P.O. Box 230, High Point, NC 27261

NORTH CAROLINA

#### **GUILFORD COUNTY**

### RIGHT OF WAY ENCROACHMENT AGREEMENT

THIS AGREEMENT (Agreement) made this \_\_\_\_\_ day of \_\_\_\_\_\_, 2016, between **THE CITY OF HIGH POINT**, a municipal corporation existing under the laws of the State of North Carolina (the "City") and **Yihua Timber Industry (USA), INC.**, hereinafter known as the "Company"

#### WITNESSETH

WHEREAS, the City owns the public right of way that includes East Commerce Avenue; and

**WHEREAS**, the Company desires, for its interest and convenience, to construct, maintain and put in place a building in said public right-of-way as described in Exhibit A ("Building") in said public right of way; and

**WHEREAS**, the City under the terms and conditions herein set forth, is willing to allow the above described improvements to be made, and allow the Company to encroach upon the above-referenced City-owned right of way; and

**WHEREAS**, the Company has paid to the City the sum of \$150.00, which partially defrays the administrative costs of the City.

**NOW, THEREFORE,** in consideration of the premises and \$150.00 in hand paid receipt of which is hereby acknowledged and other consideration, the Company hereby covenants and agrees that:

- 1. The Company is responsible for any and all expenditure of labor or materials required in the installation, erection, repair, maintenance or location of the above-referenced Building.
- 2. The Company is responsible for any and all labor or expense which results from any and all future maintenance and repair of such Building, and the removal or dismantling of the Building if and when the Building is removed.
- 3. The Company is to be fully responsible for any and all property damage or injury to or death of any person which results from any and all negligence, omission, defect in design, maintenance or workmanship created by the Company, its agents, employees, contractors or subcontractors in connection with the Encroachment, or any cause of action arising out of the installation, maintenance, or location of said Building or any other cause of action arising out of the planting, installation, maintenance, or location of said Building (collectively, "Claims and Causes of Action").

#### 4. The Company agrees:

- (a) to hold the City, its officers, agents and employees harmless from any and all liability arising out of any such Claims and Causes of Action, and
- (b) to defend the City, its officers, councilors and employees and pay all attorney fees in any and all actions brought as a result of such Claims and Causes of Action; and
- (c) indemnify the City, its officers, agents and employees against any and all loss sustained by reason of such Claims and Causes of Action.
- 5. The Company, during the life of this agreement, agrees to procure or cause to be procured from a responsible insurance carrier or carriers, authorized under the laws of the State of North Carolina, insurance in the minimum amounts of One Million Dollars (\$1,000,000.00) per occurrence and in the aggregate, combined single limit for personal injury, property damage, or wrongful death caused by construction, maintenance, location, repair or visual obstruction of said encroachment with the City of High Point being included as additional insured as respects work under this Agreement. Company shall furnish the City upon the City's request, but no more than once in any 12 month period, a certification from the insurance carrier or carriers with whom the insurance herein mentioned is carried, stating that such compensation is covered by such carrier or carriers and showing such insurance to be in full force and effect (or proof of self-insurance as referenced below). Company shall give the City at least 30 days advanced written notice of any cancellation of any required coverage that is not replaced. Should Company fail to

pay premiums upon said insurance, or should Company fail to obtain said insurance, or to perform any of the agreements, terms, or conditions herein contained; the City at its option, by written notice may declare this agreement cancelled and terminated and all rights acquired hereunder by Company shall thereupon terminate, except Owner shall still be responsible for removing the Equipment from the right of way. In lieu of the foregoing, Company may self insure for any or all of the coverages set forth above.

- 6. The Company, upon completion of the installation of the Building, shall submit to the City revised drawings in the form of an AutoCad (.dwg) file for retention by the City if the actual installation differs significantly from the installation shown on the Exhibit B (Site Plan) (in such event, the Company shall secure approval of the City prior to the differing installation).
- 7. The Company agrees to abide by all lawful statutes and ordinances governing construction of the Building as contemplated herein.
- 8. This Agreement shall not divest the City of any rights or interest in said right of way.
- 9. The Company shall contact "NC One Call Center" prior to excavation where and in the manner required by the NC One Call law.
- 11. This Agreement shall be binding upon and ensure to the benefit of all of the parties hereto and their heirs, personal representatives, grantees, successors, and assigns.
- 12. All matters relating to this Agreement shall be governed by laws of the State of North Carolina without regard to its choice of law provisions, and venue for any action related to the Agreement shall be Guilford County Superior Court or the United States District Court for the Middle District of North Carolina.
- 13. All notices required herein shall be deemed given by depositing such in the United States Mail, first class, and addressed as follows:

#### If to City:

City of High Point Planning & Development Department P.O. Box 230 High Point, NC 27261 ATTN: Planning Director

#### If to Company:

Waterleaf Property Management, LLC 4301 Waterleaf Court Greensboro, NC 27410

IN WITNESS WHEREOF, the City of High Point has caused this instrument to be signed by its Mayor and attested by its Clerk and its seal to be affixed by the duly-granted authority of its City Council, the day and year first above written.

	Yihua Timber Industry (USA), INC. (A California Corporation)		
(Corporate Seal)	By: Print Name:		
	Title:		
STATE OF	-		
COUN	TY		
	A Notary Public of the County and State, do, personally came before me this day and, and that he/she, asing on behalf of the corporation.	acknowledged that	
Witness my hand and official sta	amp or seal, this the day of	_, 2016.	
My commission Expires:	Notary Public		
APPROVED AS TO FORM BY:	CITY OF HIGH POINT		
JoAnne Carlyle, City Attorney	By:Bill Bencini, Mayor		
ATTEST:	SEAL		
Lisa B. Vierling, City Clerk			

### NORTH CAROLINA

GUILFORD COUNTY		
that Lisa B. Vierling is known to before me this date; and, that by	, a Notary Public of said cour me as City Clerk of the City of High Poin authority duly given, and as the act of the in its name by its Mayor, sealed with its	t; that she personally appeared the said City of High Point, the
Witness my hand and off	ficial stamp or seal, this the day of	, 2016.
My commission Expires:	Notary Pu	 blic

#### EXHIBIT A

Starting at the South-East corner on E Commerce Street running along the right of way S81°14′56"W, 120.15 If to an existing corner; then running along the same right of way S81°10′23"W, 100 If to a property corner at the intersection of S Hamilton Street and East Commerce Street; then running along the S Hamilton Street right of way N08°35′03"W, 100 If to a point, then n81°11′18"E, 100 If; then n81°06′43"E, 119.84 If; then S08°45′47"E, 100.26 to the point of beginning.



