



cityofnovi.org

CITY of NOVI CITY COUNCIL

Agenda Item R
March 23, 2009

SUBJECT: Approval of First Amendment to Consent Judgment of May 14, 2003, *Adams Outdoor Advertising v City of Novi*, Oakland County Circuit Court Case No. 98-008771-CZ.

SUBMITTING DEPARTMENT:

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

Adams Outdoor Advertising filed a lawsuit in 1998 seeking authorization to put two new off-premises billboard signs in the City. It was denied variance relief for the placement of these signs, which were apparently to be located in an I-2 District on CSX Railroad property, but did not meet height requirements (proposed at 30 feet instead of 15) and setback requirements (30 feet from the road instead of 100 feet) in each case.

Adams challenged the City's sign ordinance in the circuit court on a theory of exclusionary zoning, arguing that there was very little I-2 property left in the City, and that it was under the control of CSX railway. The circuit court case was dismissed essentially on procedural grounds. That was overturned by the Court of Appeals in 2002, and when the matter came back to the circuit court for trial it was settled. The consent judgment required the City to pay Adams \$10,000. Adams in turn agreed not to sue the City or challenge the sign ordinance for a period of 15 years (starting in 2003). Adams would also be permitted to keep its four existing signs, and, significantly, would be permitted to "repair," "restore," or "rebuild," those existing signs.

This amendment to the consent judgment extends the date for the forbearance on litigation to 20 years and resolves disputes/issues that have been raised recently about the extent of work that has been taking place on the Adams signs over the last several years.

RECOMMENDED ACTION: Approval of First Amendment to Consent Judgment of May 14, 2003, *Adams Outdoor Advertising v City of Novi*, Oakland County Circuit Court Case No. 98-008771-CZ.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Burke				
Council Member Crawford				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

ADAMS OUTDOOR ADVERTISING
OF MICHIGAN, a Minnesota limited
partnership,

Plaintiff,

v

Case No. 98-008771-CZ

CITY OF NOVI, a Michigan
municipal corporation,

Hon. Colleen A. O'Brien

Defendant.

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FIRST AMENDMENT TO CONSENT JUDGMENT
OF MAY 14, 2003

At a session of said Court, held in the
Courthouse Tower, City of Pontiac, County of
Oakland, and State of Michigan
on _____

PRESENT: HON. _____
CIRCUIT COURT JUDGE

1. The parties entered into a Consent Judgment in this case on May 14, 2003. A copy of the Consent Judgment is attached as Exhibit 1 to this document.
2. A dispute has arisen regarding the conditions and/or requirements of the Consent Judgment as a result of certain activities that the Plaintiff has undertaken in connection with the four

signs identified on the Exhibit A attachment to the Consent Judgment (signs A through D, each a “Sign” and, collectively, the “Signs”). The dispute relates to the extent to which Plaintiff was permitted to undertake certain activities and work in connection with replacing/rebuilding the Signs and/or their Sign faces.

3. The parties have agreed to resolve their dispute with an amendment to the initial Consent Judgment as described below. The Court agrees to entry of the Amendment to Consent Judgment, after being fully informed of its purpose and intent.

IT IS HEREBY ORDERED AND ADJUDGED that:

A. Plaintiff is authorized to submit an application for a sign permit and building permit for the east-facing digital sign face for Sign A, as shown on the attached Exhibit 2 (i.e., for the other side of the existing digital sign face currently facing west). Upon the review of the permit applications only for completeness and payment of the standard fees therefor, the City will issue the permits allowing installation of the east Sign face. The parties acknowledge that the permit applications have been received by the City, and the City agrees to review them for completeness and payment and, if complete and paid, approve them on or before March 24, 2009.

B. Plaintiff shall be permitted to keep and retain Signs B, C, and D in their current locations and configurations as “Tri-vision” signs as shown on the attached Exhibit 2. Signs B, C, and D shall not be converted to digital or LED signs unless changes in applicable City of Novi ordinances would permit such digital or LED signs

C. With regard to all signs A through D, Plaintiff is permitted to: (1) maintain and repair such Signs in a manner that does not materially change the appearance of the Sign; and (2) rebuild any of the Signs at current locations and to current configurations (except that with respect to Sign A, for purposes of this First Amendment to Consent Judgment, “current” shall mean a two-sided

digital face, as permitted pursuant to Paragraph A, above), only to the extent they are damaged in whole or in part by the act of a third party and/or an act of God. Absent changes in applicable City of Novi ordinances that would permit such signs, Plaintiff shall not be permitted, however, to: (1) change or remove the Sign faces (except for maintenance that does not materially change the appearance of the face of the Sign); (2) convert Tri-vision signs to LED signs; or (3) make physical improvements to the Signs beyond normal maintenance and repair that does not materially change the appearance of the face of the Sign, other than rebuilding the signs at current locations and to current configurations in the event of damage by third party or act of God. Notwithstanding anything to the contrary, Plaintiff shall be permitted to convert, in its discretion, any Tri-vision sign to a static sign of no greater size, on an existing sign structure. In order to avoid further disputes as to the extent of maintenance, repair, or rebuilding rights, before undertaking any activity other than normal maintenance or repair of a Sign, Plaintiff shall seek a sign permit for such work, together with any additional permits that the City identifies as being required depending upon the nature and extent of the proposed work (e.g., building permit, electrical permit, or the like). Such permits shall be granted consistent with the provisions of this First Amendment to Consent Judgment.

D. The parties acknowledge that the Signs are “changeable copy” signs as defined under the City’s current sign ordinance, and that at least some of the improvements to convert the Signs to changeable copy signs pre-date the City’s current ordinance limitations on such signs. The parties agree that, while Plaintiff is permitted to maintain the existing changeable copy signage pursuant to Paragraphs B and C above, the frequency of the message changes shall not exceed one change per 8 seconds as currently occurs, with no animation, flashing, or moving lights; provided, however, that if state law or statute (including the provisions of the Highway Advertising Act, MCL 252.301, *et seq.*) is amended or altered to require more time between changes, Plaintiff shall comply with such law or

statute. Lighting and illumination of the signage shall otherwise comply with the current state statute applicable to such signs as set forth in MCL 252.301, *et seq.* as of the date of this Amendment to Consent Judgment.

E. Plaintiff's agreement to refrain from filing any lawsuits against the Defendant in any state or federal court to challenge any provisions of Defendant's sign ordinance, contained Paragraphs 2 and 4 of the initial Consent Judgment and running from May 14, 2003 to May 14, 2018, and Defendant's agreement to allow Plaintiff to maintain, repair, and rebuild (as limited by this First Amendment), are hereby extended an additional five years to May 14, 2023.

CIRCUIT COURT JUDGE

Approved for entry:

Marjorie M. Dixon (P44093)
Attorney for Plaintiff

Thomas R. Schultz (P42111)
Attorney for Defendant

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