



500 West Big Beaver
Troy, MI 48084
troymi.gov



Date: March 11, 2020

To: Honorable Mayor and City Council Members

From: Lori Grigg Bluhm, City Attorney
Allan T. Motzny, Assistant City Attorney

Subject: Crossroads v. Troy and Troy v. Troy Building Code Board of Appeals

After exhausting all other viable legal efforts, it is our recommendation that the Troy City Council approve the attached proposed settlement with Crossroads v. Troy. Approval of this settlement will result in the dismissal of the Crossroads v. Troy federal case, where there is significant financial exposure for both damages and also reimbursement of attorney fees, and will eliminate one of the three billboard signs that Crossroads would otherwise be entitled to construct. These two signs will be limited to the following locations (Maple Road locations):

1340 W. Maple- near Crooks- American Legion property
1654 Livernois- corner at Maple- Citgo Gas Station property
2888 E. Maple- near Dequindre- Ace Auto Wash property

Since we understand City Council's vehement opposition to new billboards signs, and Council's reluctance to settle this case, the history leading to this point may be helpful.

- In 2017, Crossroads submitted permits for eight billboard permits in the City of Troy. Based on Troy's sign ordinance provisions at that time, City Administration issued sign permits for all eight locations. Five of these permitted billboards were quickly constructed.
- On November 20, 2017, the Troy City Council approved a 180 day moratorium, prohibiting the processing of any sign permit applications, allowing City Administration an opportunity to propose amendments to the sign ordinance. This resolution was subsequently amended, and also extended.
- As of the date of the moratorium, Crossroads had three additional sign permits issued for the Maple Road locations, but based on the lack of any visible construction, City Administration immediately sent a letter rescinding the Maple Road sign permits.
- On June 9, 2018, Crossroads filed a federal lawsuit against the City, alleging constitutional violations and also arguing that the moratorium was not applicable, since the Maple Road signs were already permitted. City Administration has aggressively defended this lawsuit. As a result of the City's motion for dismissal, the federal judge dismissed one of the claims, finding that Plaintiff did not file an appeal with the Troy Building Code Board of Appeals, and therefore had not exhausted its remedies before filing the federal lawsuit.
- Troy City Council approved a new sign ordinance, which became effective on October 4, 2018, which prohibits any new billboards in the City, and has an



amortization period, requiring all existing billboards to be removed eight years after notification that the sign is non-conforming.

- Based on the ruling of the federal court, Crossroads filed an appeal application with Troy's Building Code Board of Appeals on June 11, 2019.
- On September 4, 2019, Troy's Building Code Board of Appeals granted Crossroads' appeal, finding that City Administration should not have rescinded the Maple Road billboard permits. The City immediately appealed this decision.
- Because of potential conflicts, the City retained outside legal counsel to handle both sides of the City of Troy v. Troy Building Code Board of Appeals case.
- On February 7, 2020, the Oakland County Circuit Court upheld the decision of the Troy Building Code Board of Appeals, which meant that the City is required to re-issue the three Maple Road billboard permits.
- On February 21, 2020, the City, through outside legal counsel, filed a Motion to Reconsider the Court's adverse ruling, which was denied on February 24, 2020.
- Although the City does have the option of filing an application for leave to appeal the Oakland County Circuit Court's decision, such applications are rarely granted by the Michigan Court of Appeals, based on similar facts.

Knowing that the City would need to issue all three Maple Road billboard permits, and also in recognition of the fact that there was still a pending federal lawsuit against the City, where Crossroad claims damages of approximately \$850,000, and entitlement to reimbursement of its attorney fees, which total approximately \$80,000 to date, City Administration resurrected settlement discussions with Crossroads.

In this proposed settlement, Crossroads will only erect two of the three Maple Road signs, and will dismiss the federal lawsuit, without any damages or attorney fees. Because of the timing, Crossroads has asked for two years to complete the construction of these signs. Although this would normally be handled through the permit process, Crossroads has also expressly asked for catwalks and similar safety measures.

Upon the conclusion of the City's pending sign cases, City Administration plans to propose additional amendments to the sign ordinance and the process, including a potential realignment of sign appeals, the imposition of a reasonable filing deadline, and the exploration of a possible sign advisory committee.

Please let us know if you need additional information.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into as of the date the last party executed this Agreement (the “Effective Date”) by and between the City of Troy, Michigan (“City”), on one hand, and Crossroads Outdoor, LLC and Troy Outdoor, LLC (collectively “Crossroads”), on the other hand. The Parties are executing this Agreement with respect to the following matters:

RECITALS

WHEREAS in 2017 Crossroads applied to the City for three signs on various parcels of land within the City limits; and

WHEREAS in 2017 the City issued permits to Crossroads for the three signs; and

WHEREAS Crossroads, in reliance upon the permits issued by the City ordered steel for the sign structures, ordered LED digital sign faces, and made other expenditures aimed at installing the permitted signs; and

WHEREAS the City subsequently adopted a moratorium in November 2017 on the issuance of sign permits under the City’s sign ordinance; and

WHEREAS the City contended that the moratorium suspended the permits previously issued to Crossroads for the duration of the moratorium; and

WHEREAS Crossroads challenged the City’s application of the moratorium to its previously issued permits by filing a Verified Complaint in the United States District Court for the Eastern District of Michigan, such action being assigned Civil Action File No. 2:18-cv-12050-GCS-EAS (“the Litigation”); and

WHEREAS certain other disputes have arisen or might arise in the future between the Parties regarding the matters contended or which could have been contended in the Litigation, and because the Parties wish to settle any and all disputes or claims between them in their entirety, they enter into this Agreement.

THEREFORE, in light of the foregoing and based upon the exchange of valuable consideration by and between the parties to this Agreement, the Parties to this Agreement hereby agree as follows:

Each of the respective Parties to this Agreement hereby mutually releases and forever discharges each of the other Parties to this Agreement and all of such Parties’ successors, assigns, agents, affiliates, officers, directors, employees, representatives, insurers, and attorneys

and each of them of and from any and all claims, debts, liabilities, demands, obligations, damages, costs, expenses, attorneys' fees, actions and causes of action, of every nature, character and description, known or unknown, which any of the respective Parties to this Agreement, now own or hold or may have at any time heretofore owned or held, or may at any time own or hold against any other Party to this Agreement with respect to the Litigation and the Proposal, excepting enforcing this Agreement. This Agreement does not restrict either Party, or any of their assignees: (1) from enforcing this Agreement, or (2) restrict Crossroads, or any of its assignees from asserting the right to build and operate the signs allowed pursuant to this Agreement, to any extent such activity is allowed by this Agreement or other applicable law.

Crossroads further agrees to the following:

- To waive all claims for damages, including those due pursuant to 42 U.S.C. § 1983 and any other legal theory or statute;
- To waive all claims for attorneys' fees and expenses pursuant to 42 U.S.C. § 1988 and any other legal theory or statute;
- To dismiss the Litigation with prejudice within five (5) days of the Effective Date; and
- To forfeit with prejudice one of the three permits previously issued of it's choosing by submission of a letter from Crossroad's counsel to the City within two (2) years of the Effective Date.

The City further agrees to the following:

- To allow Crossroads to build, operate, and maintain two of the three signs previously permitted and recently reinstated by the Building Code Board of Appeals. Crossroads shall choose which two of the three to install and shall have until June 30, 2022 to complete such work;
- The City acknowledges that the two signs permitted by this Settlement Agreement shall be deemed in compliance with the City's sign ordinance, as long as the signs are compliant with the permits and any other applicable ordinance provision. To the extent that any provision in this Settlement Agreement is inconsistent with any of the provisions or requirements of the City's sign ordinance, the terms of this Settlement Agreement control. To the extent the Settlement Agreement is silent on issues regulated by the City's sign ordinance, then the City's sign ordinance shall control. Subsequent enactments to, modifications of, or amendments to the City's sign ordinance shall apply to the two signs to the extent they are not inconsistent with or do not vary the terms of this Settlement Agreement. The signs and Crossroads' other signs in the City will be allowed to have webcams, catwalks, and other OSHA-approved safety measures in compliance with applicable laws Nothing herein shall

be deemed to waive or override applicable state or federal law, including but not limited to the current federal Highway Beautification Act and state Highway Advertising Act;

- To issue or complete all necessary City permits or inspections – such as building permits or electrical permits – for the signs promptly but in no case longer than ten (10) business days after Crossroad’s submission of complete plans for the two signs chosen and the request for same, (provided there is no deviation from the approved permits and this Settlement Agreement), and;
- To complete and certify any necessary portions of any applicable State Department of Transportation forms promptly but in no case longer than five (5) business days after Crossroad’s request for same.

This Agreement sets forth all, and is intended to be an integration of all, of the covenants, promises, agreements, warranties, and representations among the Parties hereto, and, other than as expressly set forth herein, there are no covenants, promises, agreement, warranties, representations, or other understandings, oral or written, express or implied, among them relating to any and all disputes that exist or might exist between the Parties. This Agreement constitutes the entire agreement between the Parties.

This Agreement represents the compromise of claims and is not an admission of liability by any Party.

This instrument may be executed in separate counterparts and shall become effective when such separate counterparts have been exchanged among the parties. Scanned or faxed signatures shall be binding and sufficient.

No presumption against or in favor of any person or party shall apply due to the drafting of this document.

This Agreement shall be governed by the substantive and procedural laws of the State of Michigan. Any suit brought to enforce any provisions of this Agreement must be brought in the courts of the State of Michigan.

Each of the Parties and each of the undersigned individuals hereby warrant to the other Parties that the undersigned have the authority to execute this Agreement and to bind the respective Parties to this Agreement. The Parties represent and warrant that they are the owners of all claims settled and released herein, that they have the authority to release all claims settled and released herein, and that they have not heretofore assigned to any other person or entity all or any portion of any claim settled and released herein. The rights and privileges of this

Agreement shall be freely assignable by Crossroads and Crossroads agrees to provide a copy of this Agreement to any successor.

The Parties acknowledge that the terms of this Agreement have been read, that its provisions are fully understood, that it has been approved by each of them as represented by counsel, and that same has been fully signed by them as their free act, and shall be binding upon all Parties upon execution.

[signatures on following pages]

REVIEWED, APPROVED, AND ACCEPTED BY:

DATED: March ____, 2020.

By: _____
On Behalf of Crossroads Outdoor, LLC

Its: Managing Member

Sworn to and subscribed before
me this _____ day of March, 2020.

NOTARY PUBLIC

My Commission Expires: _____

REVIEWED, APPROVED, AND ACCEPTED BY:

DATED: March ____, 2020.

By: _____
On Behalf of Troy Outdoor, LLC

Its: Managing Member

Sworn to and subscribed before
me this _____ day of March, 2020.

NOTARY PUBLIC

My Commission Expires: _____

REVIEWED, APPROVED, AND ACCEPTED BY:

DATED: March ____, 2020.

On Behalf of City of Troy, Michigan

By: _____
Ethan Baker, Mayor

By: _____
M. Aileen Dickson, City Clerk

Sworn to and subscribed before
me this _____ day of March, 2020.

NOTARY PUBLIC

My Commission Expires: _____