

Date: September 9, 2019

To: Honorable Mayor and City Council Members

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

Subject: Crossroads Outdoor, LLC and Troy Outdoor, LLC v City of Troy

Crossroads Outdoor, LLC and Troy Outdoor, LLC (Plaintiffs) has a pending lawsuit in federal court against the City, challenging the City's sign moratorium that went into effect starting November 2017. The Plaintiffs had been issued permits to construct eight 200 square foot electronic message center billboards under the prior ordinance. Five of the signs had been substantially constructed as of the date of the moratorium. However, since there was no evidence of construction as to the three remaining proposed signs, the Plaintiffs were notified by the City's Zoning and Compliance Specialist (Paul Evans) that the permits for those signs were suspended in accordance with the moratorium. Under the subsequently amended sign ordinance, similar billboards are now prohibited, since the ordinance now limits the maximum size of a sign to 100 square feet and strictly prohibits off premise commercial advertising signs.

On January 22, 2019, as part of the federal lawsuit, presiding Judge George Caram Steeh granted the City's motion to dismiss one count of the complaint on the basis that Plaintiffs failed to exhaust administrative remedies because they did not appeal the decision to suspend the sign permits to the Building Code Board of Appeals (BCBA). The Court ruled:

Plaintiffs have not availed themselves of an appeal to the Board of Appeals which bears the power to hear their appeal and to grant variances from the sign ordinance. It remains possible the Board of Appeals will determine that the sign moratorium does not apply to Plaintiff's three permits for which Plaintiffs may have reasonably relied.

In June 2019, Plaintiffs filed an appeal with the BCBA challenging the decision of the City's Zoning and Compliance Specialist suspending the sign permits. On September 4, 2019, the BCBA, in a 3 – 2 decision, granted the Plaintiffs application and reversed the decision to suspend the sign permits. The Board determined the decision to suspend the permits was based on an erroneous interpretation of the language of the moratorium and that it was not applicable to permits that had already been issued.

Options

As a result of the decision of the BCBA, the Plaintiffs would be allowed to construct three billboards in accordance with the three original permits unless the City takes further action. Council has the ability to appeal the decision of the BCBA to the

Oakland County Circuit Court under Article 6, Section 28 of the Michigan Constitution (Const. Art 6, § 28). The appeal itself would not stay the effect of the BCBA decision unless the City also files a motion for a stay and the Court grants the motion. It is likely, however, the Plaintiffs would stipulate to a stay if an appeal is filed because they would not want to commence construction when there is a risk in having to remove the constructed signs should the City's appeal be successful.

In such an appeal, the City Attorney's Office would represent the City Administration and argue that the decision of Paul Evans to suspend the permits be reinstated. The attorney for the Plaintiffs could argue in favor of upholding the decision of the BCBA. City Council would also have the option of appointing outside counsel to represent the BCBA in the appeal. In an appeal under Const. Art 6, § 28, the review is limited to a determination of whether the decision was authorized by law and supported by competent, material, and substantial evidence on the record.

Whether or not the City appeals the decision of the BCBA, the federal litigation will continue to proceed to trial or to a hearing on a summary judgment motion on the remaining two counts of the complaint unless otherwise resolved. It is our recommendation that City Counsel authorize an appeal of the decision of the BCBA to the Oakland County Circuit Court. A proposed resolution is attached for your consideration.

Please let us know if you should have any questions.