



## CITY of NOVI CITY COUNCIL

**Agenda Item 9**  
**October 24, 2011**

**SUBJECT:** Consideration of request by Adams Outdoor Advertising for Second Amendment to Consent Judgment with the City in order to increase the height of an existing billboard located adjacent to I-96 near Taft Road.

**SUBMITTING DEPARTMENT:** Community Development *ums*

**CITY MANAGER APPROVAL:** *[Signature]*

### **BACKGROUND INFORMATION:**

The City of Novi and Adams Outdoor Advertising entered into a consent judgment back in May, 2003 relating to off-premises outdoor advertising signs (billboards) owned by Adams in the area of the I-96 freeway. Adams had challenged the validity of the City's sign ordinance relating to off-premises billboards. Under the consent judgment, Adams was allowed to construct the sign that had caused the dispute, but was correspondingly precluded from filing any more lawsuits against the City to challenge the sign ordinance for a period of 15 years.

During that 15 year period, under the initial consent judgment, Adams was given the right to repair and maintain their billboards as follows:

During the same 15 year period described in the preceding paragraph, Defendant shall not prohibit the Plaintiff from repairing or restoring and/or rebuilding any of its existing billboards identified on Exhibit A, which may be damaged in whole and/or in any part by an act of a third party and/or an act of God notwithstanding the fact that one, some, or all of the Plaintiff's existing billboards fail to conform with one or more provisions of Defendant's sign code.

The parties entered into a First Amendment to Consent Judgment on May 14, 2003, which had to do with improvements that Adams had made without securing appropriate permits from the City. The second amendment authorized completion of those improvements, and also extended the 15 year period in the original consent judgment to an additional 5 years, from May 14, 2018 to May 14, 2023.

Copies of the original consent judgment and the First Amendment are attached.

Recently, the Michigan Department of Transportation (MDOT) undertook road improvements in the area of one of Adams' signs. As a result of the improvements (near Taft Road), the elevation of the roadway changed, and the road is now higher relative to the Adams billboard than it was when the parties entered into the initial consent judgment or the First Amendment to the Consent Judgment.

**Adams has asked the City to allow it to increase the height of the affected sign from 47 feet to 67 feet.** Adams initially had applied for a permit from the Community Development Department to increase the sign height. Because this is an issue covered by the consent judgment, the matter has been referred to the City Council as a proposal to enter into a second amendment to consent judgment. If Council authorized the height increase, a consent judgment document would be negotiated and prepared for filing with the court.

A map and aerial photograph showing the location of the affected sign is attached. Also attached is the written request by Adams Outdoor, through its legal counsel, for the amendment.

**RECOMMENDED ACTION:** Consideration of request by Adams Outdoor Advertising for Second Amendment to Consent Judgment with the City in order to increase the height of an existing billboard located adjacent to I-96 near Taft Road

	1	2	Y	N
<b>Mayor Landry</b>				
<b>Mayor Pro Tem Gatt</b>				
<b>Council Member Fischer</b>				
<b>Council Member Margolis</b>				

1740040

	1	2	Y	N
<b>Council Member Mutch</b>				
<b>Council Member Staudt</b>				
<b>Council Member Wrobel</b>				

*Via Federal Express*

July 11, 2011

Thomas R. Schultz, Esq.  
Novi City Attorney  
Secrest Wardle  
30903 Northwestern Highway  
P.O. Box 3040  
Farmington Hills, MI 48333-3040

***Re: Request to Amend First Amendment to Consent Judgment Dated March 25, 2009  
Regarding Adams' Existing Billboard at 26959 Taft Road ("Sign")***

Dear Tom:

This firm represents Adams Outdoor Advertising, L.P. ("Adams"). As we have discussed, Adams and the City of Novi are parties to a First Amendment to Consent Judgment of May 14, 2003 ("First Amendment") relating to the Sign, which is dated March 25, 2009.

The First Amendment, under Paragraph C on Page 2, allows Adams to "(1) maintain and repair [its] Signs . . . (2) rebuild [its] Signs . . . to current configurations . . . only to the extent they are damaged in whole or in part by the act of a third party . . . [.]". Further, under the same section of the First Amendment, Adams has the right to maintain and repair its Signs "in a manner that does not materially change [their] appearance[.]".

Recently, the Michigan Department of Transportation ("MDOT") completed a reconstruction of the I-96 overpass in the City. As a result of this reconstruction, the height of the overpass increased to such an extent that only the top 1/3 of Adams' Sign is continuously visible from I-96. A picture showing the extent of the obstruction is enclosed for your review.

Adams has previously taken the position that under the language of the First Amendment quoted above, it has the right to secure a permit from the City to increase the height of the Sign to remedy the damage done by MDOT. In communications with Adams, the Community Development Director Charles Boulard has taken the position that Adams' request for a permit to increase the height of the Sign falls outside the scope of the First Amendment. He has further suggested that Adams' only avenue of relief would be requesting that the City Council amend the First Amendment further to allow for an increase in the height of the Sign.

---

# HONIGMAN

---

Thomas R. Schultz, Esq.  
July 11, 2011  
Page 2

Thus, without waiving its right to claim that increasing the height of the Sign due to the actions of MDOT is contemplated by the terms and/or intent of the First Amendment, Adams respectfully requests that the City Council agree to further amend the First Amendment to provide Adams with appropriate relief for the damage done to the Sign.

Please let me know at your earliest convenience if the City needs any additional information or submissions from Adams to consider this request and when the City Council will meet to entertain the request. If you have any questions please do not hesitate to contact me directly.

Very truly yours,

HONIGMAN MILLER SCHWARTZ AND COHN LLP



Richard J. Zecchina

RJZ/kdi  
Enclosure

cc: Ms. Shannon Bellers (via e-mail only)  
Mr. Patrick Duerr (via e-mail only)

9311457.1



Adams Outdoor Advertising - Ann Arbor, MI

## Photo Sheet

### I-96 0.5 mi W/O Novi Rd SS

Bulletins

Trivision



Face Number: 769A  
Direction Facing: East  
Circulation 18+: 97,410  
Illuminated: Y  
Size: 14' X 48'  
City: Novi  
County: Oakland  
State: Michigan  
ZipCode: 48377  
Latitude: 42.488364  
Longitude: -83.493080



**ADAMS OUTDOOR ADVERTISING**  
880 James L. Hart Parkway  
Ypsilanti, MI 48197  
TEL: (734) 327-8999 FAX (734) 327-9104  
www.adamsoutdoor.com



## City of Novi - Existing Billboard

South side of I-96 0.5  
mi west of Novi Rd



M-DOT Road Project included bridge work that significantly increased height resulting in nearly complete obstruction of existing billboard advertising face.

### PROPOSED:

- Install New Steel Monopole providing visibility over bridge
- Re-Use existing display faces, illumination and materials



Adams Outdoor Advertising

Ann Arbor

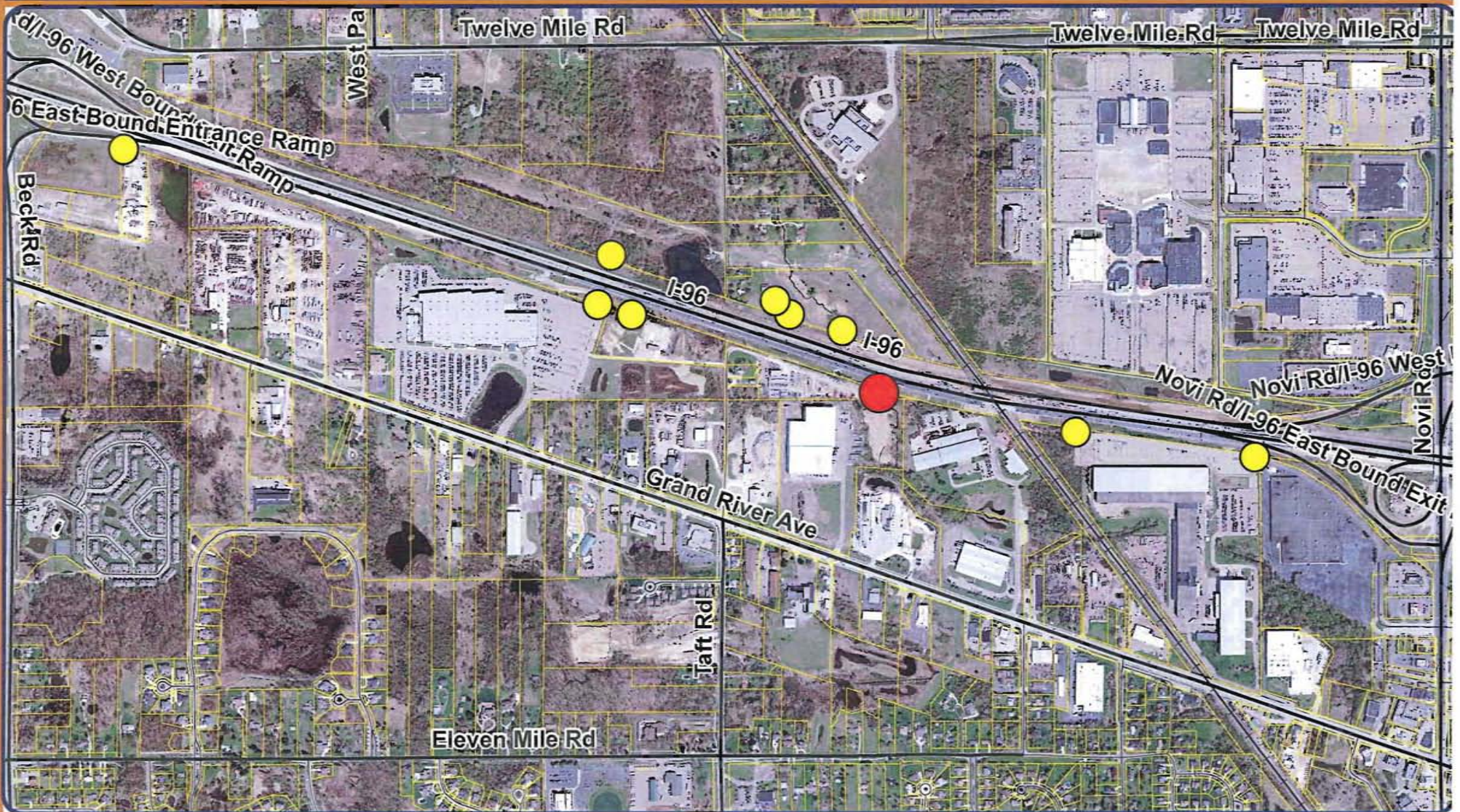
2

2/17/2011



# I-96 Billboard Locations

Between Beck Road and Novi Road



Map Author: David Campbell  
 Date: Oct. 18, 2011  
 Project: I-96 Billboard Locations  
 Version #: 1.0

Amended By:  
 Date:  
 Department:

**MAP INTERPRETATION NOTICE**

Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 132 of 1970 as amended. Please contact the City Clerk/Manager to confirm source and accuracy information related to this map.

- Existing billboards
- Existing billboard for which height increase is proposed



**City of Novi**  
 Dept. of Community Development  
 City Hall / Civic Center  
 45175 W Ten Mile Rd  
 Novi, MI 48375  
[cityofnovi.org](http://cityofnovi.org)





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.

MARJORIE M. DIXON (P44093)  
Conlin, McKenney & Philbrick, P.C  
Attorneys for Plaintiffs  
350 S. Main Street, Suite 400  
Ann Arbor, MI 48104-2131  
(734) 761-9000

THOMAS R. SCHULTZ (P42111)  
Attorneys for Defendant City of Novi  
30903 Northwestern Highway  
P.O. Box 3040  
Farmington Hills, MI 48333-3040  
(248) 851-9500

RECEIVED FOR FILING  
COURT CLERK  
MAR 25 AM 10:43

**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 MAR 25 2003

PRESENT: HON. COLLEEN A. O'BRIEN  
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

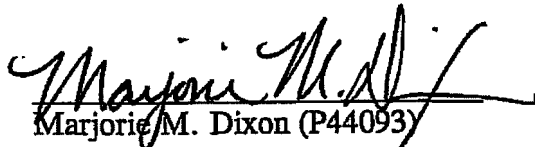
statute. Lighting and illumination of the signage shall otherwise comply with the current state statute applicable to such signs as set forth in MCL 252.301, *et seq.* as of the date of this Amendment to Consent Judgment.

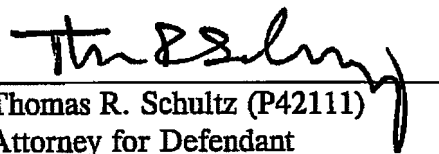
E. Plaintiff's agreement to refrain from filing any lawsuits against the Defendant in any state or federal court to challenge any provisions of Defendant's sign ordinance, contained Paragraphs 2 and 4 of the initial Consent Judgment and running from May 14, 2003 to May 14, 2018, and Defendant's agreement 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.

**COLLEEN A. O'BRIEN**

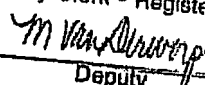
\_\_\_\_\_  
CIRCUIT COURT JUDGE

Approved for entry:

  
Marjorie M. Dixon (P44093)  
Attorney for Plaintiff

  
Thomas R. Schultz (P42111)  
Attorney for Defendant

1210988.2

A TRUE COPY  
RUTH JOHNSON  
Oakland County Clerk - Register of Deeds  
By:   
Deputy



# **EXHIBIT 1**

98-008771-CZ



JUDGE VJ-HISE  
ADAMS OUTDOOR V NOVY CITY

STATE OF MICHIGAN  
RECEIVED FOR FILING  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

2003 MAY 15 A 11:18

ADAMS OUTDOOR ADVERTISING (NY) Case No. 98-008771-CZ  
OF MICHIGAN, a Minnesota limited LIABILITY CORPORATION  
partnership, [REDACTED]

Plaintiff,

CONSENT JUDGMENT

CITY OF NOVI, a Michigan  
municipal corporation,

Defendant.

Michael H. Perry (P22890)  
Fraser Trebilcock Davis & Dunlap, P.C.  
Attorneys for Plaintiffs  
124 W. Michigan, Suite 1000  
Lansing, Michigan 48933

George M. DeGrood, III (P33724)  
Michael D. Ritanour (P32485)  
Thomas, DeGrood, Witenoff & Hoffman, P.C.  
Attorneys for Defendant  
400 Galleria Officentre, Suite 550  
Southfield, MI 48034

At a session of said Court held, in the City of  
Pontiac, County of Oakland, State of Michigan,  
on the \_\_\_\_\_ day of MAY 14 2003 2003

PRESENT: Hon. ~~Steph N. Adams~~ COLLEEN A. O'BRIEN  
Circuit Judge

The parties having previously stipulated that the Court should dismiss this case  
without prejudice and thereafter vacate that dismissal and enter a Consent Judgment upon the  
parties' joint request to do so, the Court having entered the stipulated Order to dismiss the

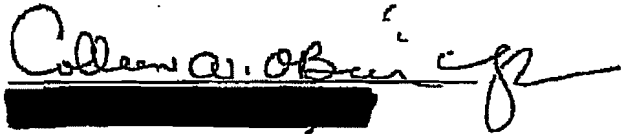
FRASER  
TREBILCOCK  
DAVIS &  
DUNLAP,  
P.C.  
LAWYERS  
LANSING,  
MICHIGAN  
48933

case without prejudice and to thereafter enter a Consent Judgment on December \_\_, 2002, and the parties pursuant to said stipulated order having subsequently jointly notified the Court to enter the Consent Judgment, and the Court being otherwise advised in the premises:

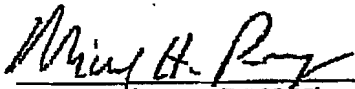
**IT IS HEREBY ORDERED, DECREED AND ADJUDGED THAT:**


1. The Defendant shall pay to the Plaintiff \$10,000;
2. The Plaintiff shall refrain from filing any additional lawsuits against the Defendant in any state or federal court to challenge any provisions of the Defendant's sign ordinance, from the present time and continuing for fifteen (15) years from the date upon which the Court enters the attached Consent Judgment; however, during said 15 year time period, each party shall be allowed to seek the aid of this Court to enforce this Consent Judgment.
3. During the same 15-year period described in the preceding paragraph, Defendant shall not prohibit the Plaintiff from repairing or restoring and/or rebuilding any of its existing billboards identified on Exhibit A, which may be damaged in whole and/or in any part by an act of a third party and/or an act of God notwithstanding the fact that one, some or all of the Plaintiff's existing billboards fail to conform with one or more provisions of the Defendant's sign code.
4. The Plaintiff's agreement to refrain from commencing a new challenge to the Defendant's sign ordinance and the Defendant's agreement to allow the Plaintiff to repair, restore and rebuild, if necessary, one, some or all of the Plaintiff's non-conforming billboards, are without prejudice to either party's rights, duties, claims and defenses which shall thereafter exist following the expiration of the 15<sup>th</sup> year following the entry of the Consent Judgment under applicable law and ordinance then in effect.

Approved for entry:

  
[Redacted]

FRASER  
TREBILCOCK  
DAVIS &  
DUNLAP,  
P.C.  
LAWYERS  
LANSING,  
MICHIGAN  
48223

  
Michael H. Perry (P22890)  
Attorney for Plaintiff

  
George M. DeGrood, III (P33724)  
Michael D. Ritenour (P32485)  
Attorneys for Defendant



---

**EXHIBIT A**

**ADAMS OUTDOOR ADVERTISING'S OFF-PREMISES ADVERTISING  
STRUCTURES (BILLBOARDS) IN THE CITY OF NOVI**

Adams Outdoor Advertising leases the following real estate parcels in the City of Novi, identified by their respective common addresses, for the use and maintenance of off-premises outdoor advertising signs (billboards):

1. 27058 Taft Road
2. 27462 Beck Road
3. 44401 I-96
4. 45001 I-96

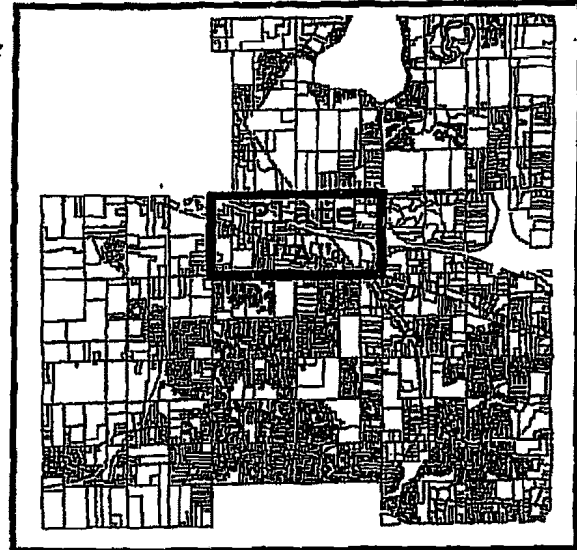


**Adams Advertising  
Billboard  
Location Map**

**City of Novi, Michigan**

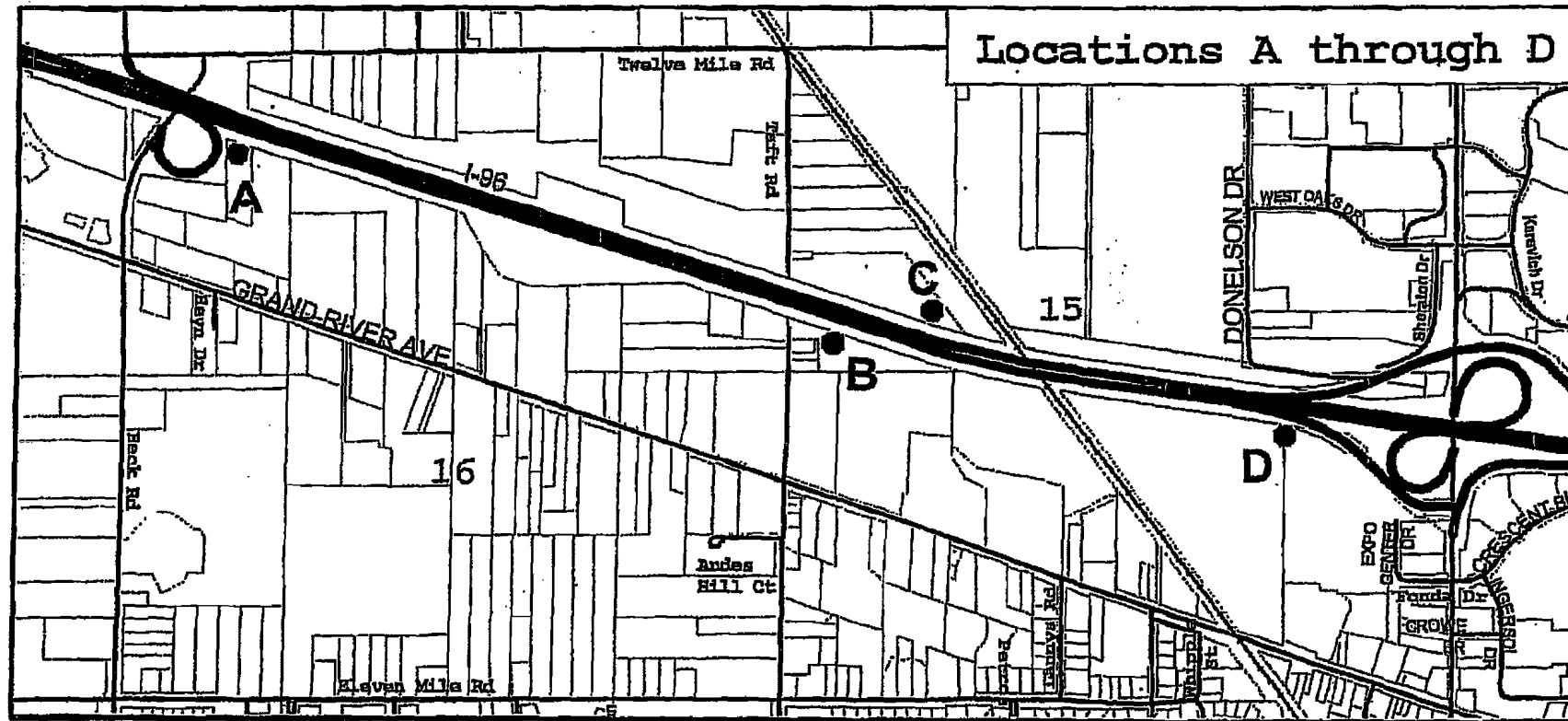
*Date Printed: November 22, 2002*

*Locator Map:*



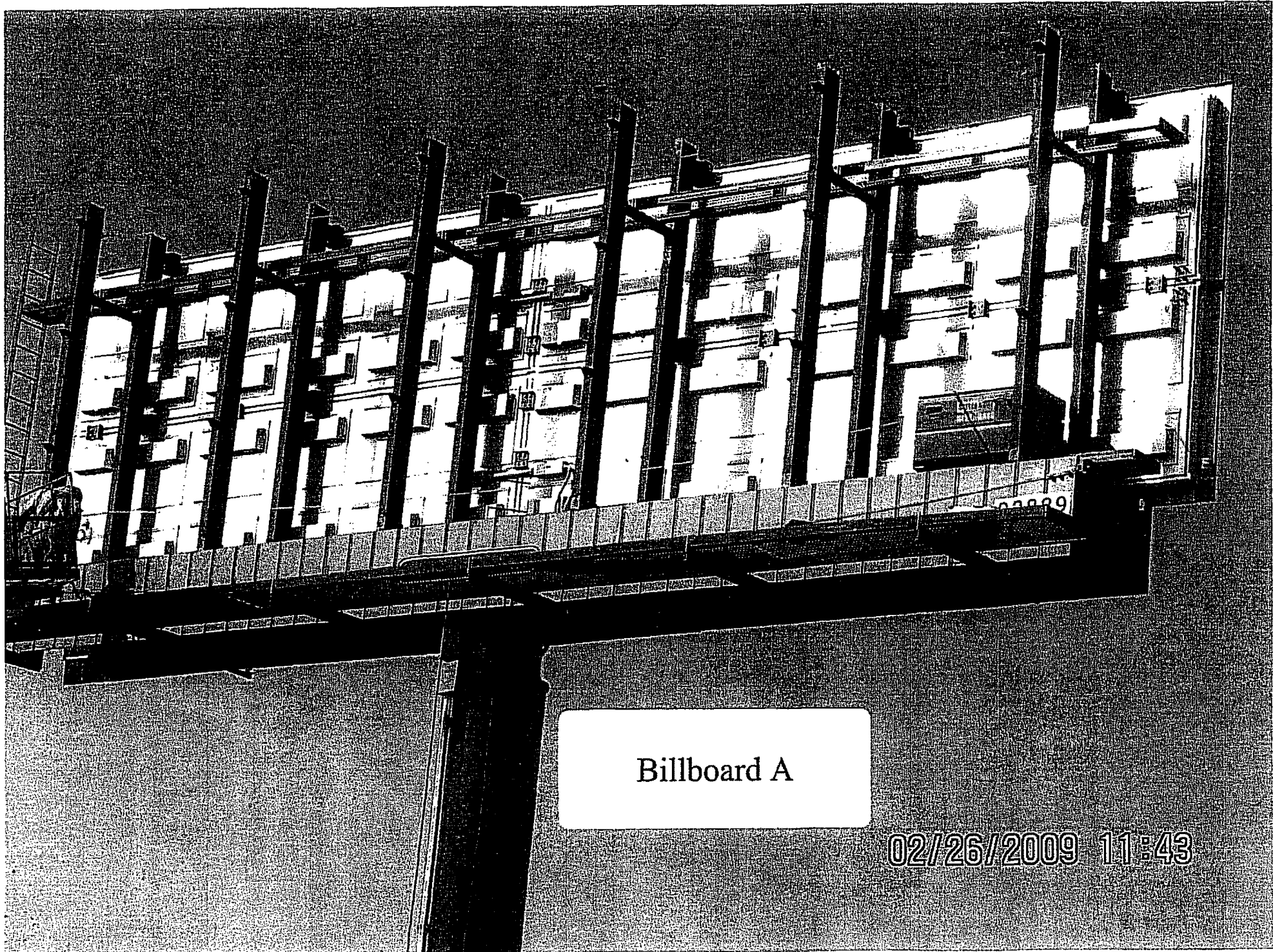
**Legend**

- Billboard Locations
- Text Road Names
- == Expressways
- Railroad
- Roads
- - - City Boundary
- Parcels



## **EXHIBIT 2**





Billboard A

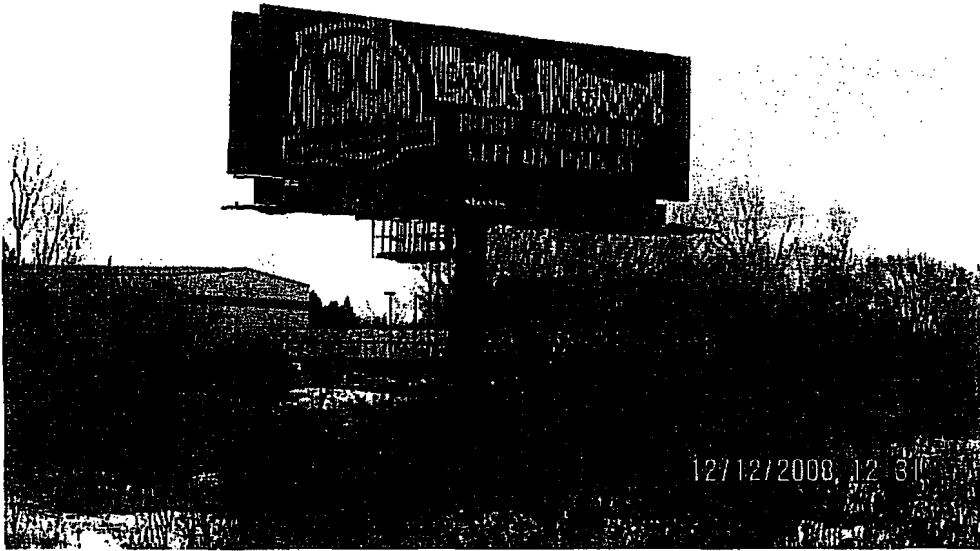
02/26/2009 11:43



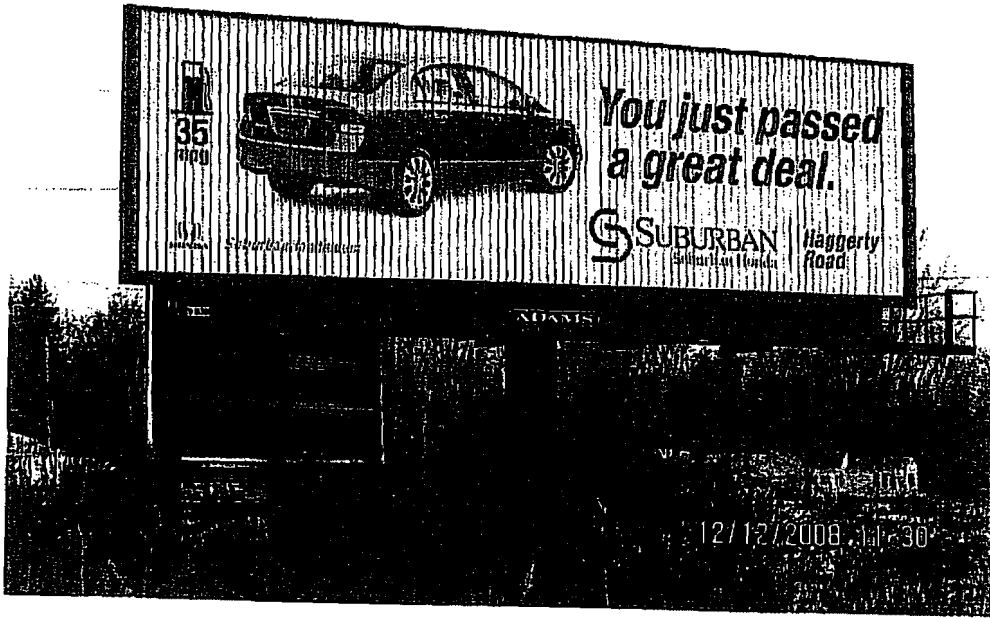
New hope. New technology.  
New commitment to cancer care.

Billboard A

02/26/2009 11:42



**Billboard B**



Billboard C



Billboard D