

CITY OF MADISON, WISCONSIN

REPORT OF THE CITY ATTORNEY

AUTHOR: Michael P. May, City Attorney

DATED: August 16, 2011

TO THE MAYOR AND COMMON COUNCIL:

RE: Litigation and Settlement with Adams Outdoor Advertising

Several Common Council members have requested additional information on this resolution, which proposes to pay a judgment against the City and settle other outstanding litigation between the City and Adams Outdoor Advertising.

The short reason for the resolution is that the City has no further legal avenues for the tax years at issue and, based on the recent Court decisions, the City owes Adams for its overpayment of taxes for these years. The City will continue to explore whether there are other legal methods of assessing billboards at what we believe to be their true value, but such new approaches cannot reach back to prior years.

Background

The City has been in litigation for a number of years over the property tax assessments of billboards owned by Adams Outdoor Advertising. In the initial litigation, (*Adams I*) Adams challenged the 2002 and 2003 assessments. The City prevailed at the trial Court level and Adams appealed. The Court of Appeals certified the case to the Wisconsin Supreme Court which reversed the decision of the trial court and remanded the case back to the trial court (294 Wis.2d 441, 717 N.W.2d 803, 2006). The City then re-assessed the billboards, in a manner that the City believed to be consistent with the *Adams I* decision, for years 2002 and 2003 and included the 2004 and 2006 assessments. Again, at the trial court level (*Adams II*), Adams challenged the City's re-assessments and Adams prevailed. The City then appealed the case to the Wisconsin Court of Appeals, where Adams prevailed in an unpublished decision. The City then petitioned the Wisconsin Supreme Court to hear the issues raised in *Adams II*, which was denied. The City has exhausted its legal remedies in this litigation.

Prior to 1994, the City assessed the billboards using the cost approach, which consists of valuing the billboard based on the cost required to reproduce the billboard and subtracting the depreciation. In 1994 the City switched from the cost approach to the

income approach (capitalizing the income that the billboard produces to value it) after receiving an appraisal supplied by Adams in a condemnation lawsuit with the City.

Adams I

In *Adams I*, Adams argued that the City's use of the income approach rather than the cost approach was improper; the City should not have included the value of the billboard permit in the assessment; the City should not utilize appraisal methods used in eminent domain cases in personal property tax assessment cases and the City's methodology of assessment violated the Uniformity Clause of the Wisconsin Constitution (rule of uniform taxation). The Wisconsin Supreme Court held that the City could utilize the income approach but should not have rejected all other approaches other than the income approach; the billboard permit should be included in a real property tax assessment and not the personal property assessment and therefore should not have been included in the personal property assessment of Adams billboards; and that the same methods of appraisal in eminent domain cases may be used in personal property tax assessment. The Supreme Court did not address Adam's argument that the City violated of the Uniformity Clause because they found in their favor on the other issues. Additionally, the Supreme Court stated in a footnote that 100 percent of the tax burden from the income generated by Adam's billboards (the value represented by the billboard permit) should not be placed on the landowner as real estate taxes because the rent the landowner charges to Adams is merely a fraction of the income Adams receives. The City continues to believe that this means that at least a portion of the billboard permit was in fact taxable to Adams. The Supreme Court remanded the case back for the City to complete a re-assessment consistent with this holding.

Adams II

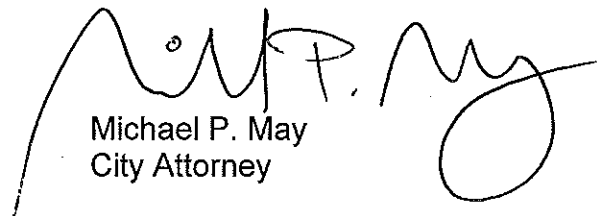
In *Adams II*, the City re-assessed the billboard structure and the billboard related permit using the income approach and reconciled this approach by comparison to similar sales. Adams challenged the City's re-assessment maintaining that the value of the billboard permit could not be included in the re-assessment per the holding in *Adams I*. The trial court and the Wisconsin Court of Appeals agreed with Adams that the City's assessment failed because it utilized the same mechanism of including the value of the billboard permit (a real property value) with the value of the billboard itself (a personal property value). The Wisconsin Court of Appeals acknowledged the confusion in the holding in *Adams I*: that by not taxing the billboard permit, some value of the personal property escapes taxation and, assuming the holding in *Adams I* does allow for taxation of the billboard permit, then it was unclear as to how the City should properly do so. The Supreme Court declined to hear the City's request for further review of the decision and to clarify the ruling in *Adams I*.

Judgment and Settlement

Pursuant to the decision of the Wisconsin Court of Appeals in *Adams II*, the City is required to pay the outstanding judgment for tax years 2002-2004 and 2006. Tax years 2007-2010 have been stayed pending the outcome of *Adams II*, and in light of the

decision and the exhaustion of our legal remedies we have reached a settlement with Adams consistent with the court rulings.

Respectfully submitted,



Michael P. May
City Attorney