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## MINUTES

### SIGN CODE BOARD OF APPEALS July 19, 2006

The Sign Code Board of Appeals met on Wednesday, July 19, 2006, with the following members present: Peter Neumann, Chairman; Dennis Hettich; Lesley Rutter; Jim Jackson, and Ethan Schmidt. Staff present: Brenda Vespested and Brad Solon, Development Service Center; Joel Landeen, City Attorney's Office.

Neumann called the meeting to order.

#### **Appeal No. 2006-12**

Bradsky West Boulevard Corporation, 927 Main Street, Rapid City, SD 57701, appeals the decision of the Building Official that the electronic message center located at 927 Main Street, legally described as Lots 13-16, Block 81, Original Town of Rapid City, Sec 2, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, displays off-premise messages.

Solon gave the video presentation. The green cards were turned in before the meeting. Paul, David, and Tom Bradsky were present for the appeal. P Bradsky said that ultimately the issue will be how to define on-premise versus off-premise in the code. P Bradsky gave some history on this sign. Back in March 2005, the Bradsky's applied for a variance from the minimum setback requirements in order to install an electronic reader board. The variance was granted being that the property is in the central business district, the overall size of the sign did not change, and the sight triangle was not affected. In June of 2005, the Bradsky's received a letter from the City saying that they were displaying off-premise messages on this sign. P Bradsky said that they replied by saying that they were displaying on-premise messages because the building is utilized by the tenants, the corporate offices of the businesses in the messages. According to P Bradsky there were discussions with City staff in which they were told if they took off all directionals on the messages, then it was ok. P Bradsky said that they were unhappy with the quality of the sign and they put up a bigger sign, relying on the fact that they would be ok if they did not have any directionals on the sign. Then in June 2006, P Bradsky said that they got another letter from the City saying that they were displaying off-premise messages and to stop. P Bradsky said that they replied with a similar letter stating that they were displaying on-premise messages because the corporate headquarters of the businesses are tenants in the building. P Bradsky said that the question is - does the code definition exclude corporate headquarters from the definition of on-premise. The code definition does not exclude corporate headquarters; therefore they really don't need to be here for this appeal. D Bradsky read the definition of on-premise sign from the Sign Code - any sign identifying or advertising a business, person, activity, goods, products or services which are located on the premises where the sign is installed and maintained. D Bradsky said that the business advertised on the sign could not survive without the offices that are in the Bradsky Building. D Bradsky brought up the signs on the outside of the Civic Center. Landeen said that signs at the Civic Center are exempt from the code. Landeen said that the Silverado advertisements were deemed off-premise by the State and have been removed. P Bradsky said that he had heard all kinds of stuff arguing the signs on the Civic Center are on-premise because First Western Bank has an ATM inside or that KT Connections has meetings there once every six months. P Bradsky said that they are not some bogus corporate office; we truly do have the corporate offices located in the building. D Bradsky stated that the point is that they shouldn't have to be here today because this was all taken care of in 2005 with on going discussions with City staff. D Bradsky said that just because someone complains does not mean that there are any violations. Schmidt asked about the directionals on the messages, if the directionals were taken off before the complaint was filed in June 2006. Brad said yes the directionals were not on the messages at the time of the complaint, but he believes that some of the messages that are on the sign today are off-premise. Solon said that one message describes payouts at Cadillac Jack's, which is in Deadwood. Solon said that the message does not say Tin Lizzie Corporate

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Offices located here, inquire within; it directs you to Tin Lizzie in Deadwood. Solon said that the complaint came from the Sign Contractor Board. Schmidt asked about when the Sign Contractor Board complained about this sign. Solon said that the Sign Contractor Board has talked about this kind of problem for the last 2 years; other electronic reader boards have also had problems with off-premise messages being displayed. P Bradsky said that at one point there sign was ok because there were no directionals on the sign. P Bradsky said that people know where the retail aspect of the business is, which is in Deadwood. Schmidt asked who the Sign Contractor Board was. Solon said that City ordinance has a Board that works on the sign contractor licenses and changes to the sign code. Solon said that the Board met Monday, July 17, 2006, and talked about this sign. Solon stated that Eric Farrar, Doug Rumpca, Gene Hunter, and Dan Wegner are on the Sign Contractor Board. Solon said that in September 2005, Dennis Hetitch brought in an application to put in a bigger reader board at 927 Main Street, and Solon told him that he was reluctant to issue a permit because the picture of the sign was advertising Tin Lizzie Casino. Then another picture of the sign was brought in that showed Bradsky Law Offices displayed on the sign. Solon asked Landeen about issuing the sign permit and Landeen said that the application shows they will comply so the permit will be issued. Jackson stated his opinion that he thinks the sign is legal because these people have offices in that building. Jackson personally thinks, irregardless of what the Sign Board, the City Attorney, or the Supreme Court says; the people who advertise on the Civic Center or the Civic Center Message Center are not in the Civic Center. Jackson said that the City set precedence when they put signs outside the city limits that advertise this building (City/School Administration Center). Jackson does not know how legally somebody can make these things right at the Civic Center or the signs welcoming people into the City; but he encourages these signs and thinks advertising is a fantastic tool. Jackson would vote in favor of keeping the sign the way it is, without the directionals. Schmidt said he thought the Civic Center was exempt by law. Landeen responded to the Civic Center issue; the State did come after the City for the off-premise signs, the advertising has to be tied to a specific event. There was discussion on the Civic Center sign. Landeen said that the only advertisement he saw on the Bradsky sign that was legitimate was the one telling people to apply inside for a job; this advertises an activity that is occurring on the premises – there is no poker, water slide, or water park on this property. P Bradsky said that the problem is that the code definition of on-premise does not distinguish between the retail aspect and the corporate aspect of the business. Landeen said that it has to be an activity that is occurring on the premise; if they want to advertise that the corporate offices are in the building or to apply for a job inside, they can advertise this. Landeen did some legal research on there are very few cases that deal with this specific issue, but there is a case from the Federal District Court in Washington where Miller Beer wanted to put up a big billboard on the side of a building showing a Miller Beer bottle and a slogan. The sign company told Miller Beer that the City was not going to approve this off-premise advertisement, and suggested to Miller Beer that they rent an office in the building where the sign was going to be placed. Miller then opened an advertising office in the building and then applied for a permit for the sign; and the governing body in Seattle, Washington, told them no because they were not advertising the on-premise activity which is the advertising office, but were advertising beer which is not sold or produced on the site. Miller appealed the decision and the Court upheld the decision of the City Board that this was not on-premise advertising. There was more discussion on the Civic Center signs versus the Bradsky sign. Jackson stated that the bottom line is that the laws cannot justify what the Civic Center is doing to the normal public concerning the signage and if the Civic Center is going to be exempt from something, then the City should exempt the whole town. D Bradsky said that the reason the rules were bent at the Civic Center was because First Western Bank and these other outfits paid a lot of money to have their signs put in the Civic Center. Landeen said that the Bradsky sign is a separate issue from Civic Center sign because there is an exception that the Council wrote in the code. Landeen said that it is

very clear just from watching the video that the activities that they are advertising are not occurring on that premise. There was more discussion on the definition of on-premise signs. Schmidt asked if there was a definition of business. Schmidt also asked about the Burger King corporate offices. Landeen said that Burger King has been told that they cannot run the advertisements that they are running. P Bradsky would be surprised if Burger King actually ran the corporate office from the building. Rutter said that there are no penny slots at the Bradsky Building. Jackson said that he is against just anybody putting up a sign on a building and saying that their corporate offices are there; therefore they can advertise. Jackson can see nothing wrong with what they are doing at the with the Bradsky sign. There was more discussion on the definition of on-premise signs and corporate offices. Hettich also agrees that they should not be here because the sign was approved. There was discussion about the sign application and discussions with the City. Rumpca brought up the part in the sign ordinance about blinking and flashing signs being prohibited. Jackson moved to approve the operation of the signage as operated without directionals and no flashing or blinking of the sign, with a second by Schmidt. Schmidt is still trying to interpret the definition of on-premise signs within reason. Landeen said that you have to look at the purpose of the Sign Code as a whole and how to interpret the definition of on-premise signs. Jackson still agrees that the business is gambling and as long as they are advertising gambling, then he is ok with the sign. Rutter said that she does not agree with the sign being approved as is because some of the advertising is wrong and it is not asking too much to have "corporate offices located here" within the message. Rutter said that with the advertisement of penny slots on the sign, it looks to her like she can walk into that building and play penny slots, and you can't do that there. There was more discussion about businesses, corporate offices, and advertising. Appeal No. 2006-12 failed by a vote of 2-2, with Neumann and Rutter opposed and Hettich abstaining. Schmidt moved to continue the appeal until the next meeting for more information and legal research. Motion died for a lack of a second.

Schmidt moved to approve the minutes of March 15, 2006, with a second by Hettich. Motion carried 5-0.

There being no further appeals to come before the board at this time, the meeting adjourned at 8:00 a.m.