

**From:** [Brendan Casey](#)

**Sent:** 5/15/2015 4:03 PM

**To:** [Weifenbach Ron](#); [Doyle Charity](#); [Laurenti Steve](#); [Nordstrom Ritchie](#); [Lewis Chad](#); [Wright Jerry](#); [Scott Amanda](#); [Roberts John](#); [Drew Darla](#); [Estes Brad](#)

**Cc:** [Kooiker Sam](#)

**Subject:** Epic Outdoor Advertising; No. 15UR006

Greetings, City Council Members,

Before you Monday night is the appeal of the unanimous Planning and Zoning decision to allow for the conversion of a static billboard to digital. This conversion requests no increase in size, and will lower the overall height of the sign to 30 feet, as per the existing sign code. This request has the full approval of Planning Staff, the City Attorney's office, and was unanimously approved by the Planning Commission on 4/9/2015. This CUP has been delayed twice, once by lack of quorum at the first scheduled Planning Commission meeting and once by a public notification oversight by the RC Journal. Even though this CUP has taken over six weeks longer than it should have, to this date there has been not a single complaint or concern from the neighboring landowners. However, there was an individual who filed an appeal . . .

As some of you may be aware, Lisa Modrick, Jim Petersen, Deb Jensen, and others have formed a group some years ago which campaigns against the permitting of all signs, and advocates the removal of existing ones. This group was integral in the campaign for the sign related initiatives placed in front of the voters four years ago, and almost single handedly are responsible for running of the City of Rapid head-long into the sign litigation which has been ongoing since 2012. This group of hardened 'sign haters' were fully aware of the illegality of their positions, but still aggressively advocated these ordinances by public vote that were in violation of State Law on their face. Some of the legal questions related to these measures have since been answered by Federal Judge Jeffrey Viken in Lamar vs. RC, and more will be answered in the upcoming filed litigation, Epic Outdoor Advertising vs. RC. Now this group comes forward to appeal this CUP with zero basis. This request fits pristinely within the CUP requirements and the sign code and oddly enough, this permit ***complies completely with the very ordinances THEY advocated four years ago!***

Unfortunately, when this group spoke out against this permit at the 4/9 Planning Commission meeting, this group went back to some old tactics and antics we have seen from them before in a public forum: Defaming and slandering my industry, by business, and me personally. I have gotten used to this behavior from them over the years. However, my attorney ( who was in attendance at the Planning meeting) heavily suggested that we put this group on notice that these outrageous comments which they know to be untrue, will no longer be tolerated and are actionable under S.D. State Law (See attached). I'm sure members of this group will try to spin this notice into something other than it is, but the notice is attached for your review.

Given the above information and the unanimous approval of Staff, Planning Commission, and your City Attorney, I will look forward to your unanimous approval of this permit at Monday night's City Council meeting.

Thank you, and please call with any questions you may have,

Brendan Casey  
Epic Outdoor Advertising  
391-9047

The Law Offices of

**C L** CLAYBORNE, LOOS  
**& S** AND SABERS LLP

Courtney R. Clayborne  
Michael C. Loos  
Michael K. Sabers

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Fax (605) 721-1518  
2834 Jackson Boulevard, Suite 201  
P.O. Box 9129  
Rapid City, South Dakota 57709-9129

April 16, 2015

**VIA CERTIFIED MAIL**

Lisa Modrick  
President Scenic Rapid City  
C/O John Dorsey  
Whiting Hagg Hagg Dorsey & Hagg, LLP  
601 West Blvd.  
Rapid City, SD 57701

Debra Jensen  
Vice President Scenic Rapid City  
913 Mount Rushmore Road  
Rapid City, SD 57701

Jim Petersen  
Chairman Scenic Rapid City  
1203 11th Street  
Rapid City, SD 57701

Mike Quasney  
Secretary/Treasurer Scenic Rapid City  
1512 Lark Drive  
Rapid City, SD 57701

Cathie Calhoon  
1301 Flormann  
Rapid City, SD 57701

Fred Thurston  
Consulting Architect  
1127 Woodridge Drive  
Rapid City, SD 57701

Re: Epic Outdoor Advertising

Dear Scenic Rapid City, its Representatives, and Individuals,

Please be advised that I represent Epic Outdoor Advertising.

Recently, individuals or representatives of Scenic Rapid City appeared at a Rapid City Planning and Zoning meeting. My client was in attendance at that meeting and all speakers were recorded by the City of Rapid City.

Epic Outdoor Advertising approached me with concerns regarding a pattern that has continued wherein individuals associated with Scenic Rapid City make statements to Rapid City officials and others, which are known to be false statements of fact. Many of those false statements are recorded and others are memorialized in print.

Epic Outdoor Advertising cannot and will not continue allow such false statements to be made. South Dakota law provides that false assertions of objective fact are actionable. Further, South Dakota law provides that there is no defense to a defamation or libel claim because the individual begins a false statement of objective fact with "in my opinion."

Epic Outdoor Advertising supports free speech and open forums. It does not support entities or individuals who continually make false assertions of objective fact in public and that damage its business or reputation.

Epic Outdoor Advertising was prepared to initiate litigation to protect its legal rights. I had the paperwork drafted and attach a copy of the Summons which was prepared to be served on Scenic Rapid City and each of you as individuals.

I ultimately convinced my client to authorize me to write a cease and desist letter prior to the initiation of litigation. My client agreed. Please consider this letter as Epic Outdoor Advertising's final notice prior to initiating litigation that it will no longer continue to tolerate the actionable conduct of Scenic Rapid City, its representatives, or the individuals as outlined above.

Sincerely,

Michael K. Sabers

STATE OF SOUTH DAKOTA )  
 )SS:  
COUNTY OF PENNINGTON )

IN CIRCUIT COURT  
SEVENTH JUDICIAL CIRCUIT  
Civ. No. 15-\_\_

EPIC OUTDOOR ADVERTISING, )  
 )  
Plaintiff, )  
v. )  
 )  
SCENIC RAPID CITY, Lisa )  
Modrick (individually and as its )  
President), Debra Jensen (individually and )  
as its Vice-President), Jim Peterson )  
(individually and as its Chairman), )  
Mike Quasney (individually and as its )  
Treasurer), Cathie Calhoun (individually )  
and as a Representative), and )  
Fred Thurston (individually and as its )  
Representative). )  
 )  
Defendants. )

**SUMMONS**

**TO THE ABOVE-NAMED DEFENDANTS, GREETINGS:**

YOU ARE HEREBY SUMMONED and required to answer the Complaint of the Plaintiff, a copy of which is herewith served upon you, and to serve a copy of your Answer on the attorney for the Plaintiff, Michael K. Sabers, at the address below, within thirty (30) days from the date of service of this Summons upon you, exclusive of the date of such service.

IF YOU FAIL TO DO SO, Judgment by default may be entered against you as requested in Plaintiff's Complaint sixty (60) days after the completed service of Plaintiff's Summons and Complaint.

Dated this \_\_\_\_ day of April, 2015.

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Michael K. Sabers  
Attorney for Epic Outdoor Advertising  
Clayborne, Loos, & Sabers, LLP  
2834 Jackson Blvd, Suite 201  
Rapid City, SD 57702  
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May 6, 2015

James D. Leach  
Attorney at Law  
1617 Sheridan Lake Road  
Rapid City, SD 57702

Re: Defamation and Slander

Dear Jim,

I am in receipt of your letter entitled "First Amendment to the United States Constitution." I titled my letter "Defamation and Slander."

I am quite certain you understand that the "First Amendment" does not protect your client from continuing to make false statements of fact about my client and its business. As such, I remain somewhat confused by how you title your letter.

Furthermore, the fact that the letter defends your clients' false statements of fact based on an allegation they are not actionable due to it being "an easy matter for Epic and Mr. Casey to refute them" ignores both Constitutional and South Dakota law. Certainly, my client is not affirmatively obligated to do any such thing. And it will not. It will, however, initiate a lawsuit.

The City of Rapid City records planning and zoning and city council meetings. Furthermore, my client is going to record any other statements of your client at any public forum where it is not being otherwise recorded by the City of Rapid City.

Last, you can make whatever allegations you want about my client and its conduct but I can tell you that my client is no longer going to sit idly by and let your clients continue to make false statements about its business.

Sincerely,



Michael K. Sabers

MKS  
cc: Client (via e-mail)