



CITY OF RAPID CITY
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MEMORANDUM

TO: Mayor and City Council

FROM: Joel P. Landeen, City Attorney

DATE: 2-26-2016

RE: Explanation of potential Settlement Agreement with Lamar

The City and Lamar have come to terms on a potential settlement of two lawsuits arising out of the initiated ordinances approved in 2011. The first lawsuit was filed in federal court in 2011. The second lawsuit was filed in state court at the end of 2015. Currently, the federal case is on appeal to the 8th Circuit Court of Appeals. The state lawsuit was brought as a result of rulings in the federal case. While the claims in Lamar's state court filing are similar to the claims in the federal case, there are some significant differences. Lamar has not pled as many constitutional violations and focuses on the temporary taking of six signs which the City denied prior to adoption of the initiated ordinances. The South Dakota Supreme Court has previously ruled that the City improperly denied those 6 signs. Our insurance does not cover inverse condemnation claims so the City's insurer has denied coverage and will not be providing a defense on the state court claims. As a result, the cost of defending this claim and any judgments awarded will be borne solely by the City.

In order to settle this matter and dismiss its claims, Lamar has agreed to accept the following:

- 1) The City and its insurer will pay Lamar \$100,000;
- 2) The City will repeal the ban on digital/LED billboards;
- 3) The City will reduce the radial distance between billboards from 1,500 feet to 1,000 feet and the linear distance from 2,000 feet to 1,500 feet;
- 4) The City will acknowledge in writing that the "sunset" provision on off-premises sign credits will not be applied retroactively to take the credits issued to Lamar prior to adoption of the initiated ordinance.

To put these requests in perspective, Lamar has been seeking millions in damages. If successful on its claims for the temporary taking of the 6 signs which were improperly denied, the damages with interest are likely to exceed \$200,000. The federal judge initially ruled that the ban on digital billboards was illegal under state law, but later vacated his decision and said the issue should be addressed in state court. The reduction in spacing distances makes the spacing between signs more restrictive than it was prior to adoption of the initiated ordinances and still makes Rapid City's spacing distances some of the most restrictive in the state. For comparison:

State of SD: 500 feet (Linear)
Sioux Falls: 600 feet (Radial and Linear)
Brookings: N/A
Watertown: 500 feet (Radial)
Aberdeen: N/A
Pennington County 1,500 feet (Radial)

The City has already acknowledged in federal court that the "sunset" provision on sign credits would not be applied retroactively to credits that were issued prior to adoption of the initiated ordinance. Application of the "sunset" provision to credits issued before the provision was adopted would likely be a taking for which the owner of the credit would need to be compensated.

The specific wording of the actual agreement is still being finalized between the attorneys involved and the City's insurer. There are deadlines pending in federal court which necessitate that we keep this matter moving forward even though the language of the actual agreement has not been finalized. The only changes we are working on are related to the specific language and not to the substantive terms identified above. As soon as the language is finalized we will distribute the agreement and link it to the agenda.