

MINUTES

SIGN CODE BOARD OF APPEALS May 21, 2003

The Sign Code Board of Appeals met on Wednesday, May 21, 2003, with the following members present: Pete Neumann, Chairman; Ray Hadley; Jim Jackson; Dawn Mashek; and Pam Lang. Staff present: Brad Solon, Brenda Vespsted, and Jason Green – Assistant City Attorney.

Neumann called the meeting to order.

Appeal No. 2003-11

Rex Conrad, 405 12th Street, Rapid City, SD 57701, appeals the determination of the Building Official that the proposed on premise sign to be located at 1320 W Main Street, legally described as Part of Lot 23-26 South of Rty of Block 6 in Riverside Subdivision, is less than 100 feet from an off premise sign.

Conrad presented the green cards. Solon gave the video presentation. Neumann asked Conrad if the sign was on premise. Conrad said that he owns the land next to the Lamar sign. Solon said that on the aerial map the small strip of land south of the railroad tracks is marked and there was some discussion about whether this was on premise or off premise. Neumann asked to see a drawing of the proposed sign. Conrad said that he had a picture and it was the same sign that was on Omaha Street. Neumann asked about the size of the sign. Conrad said that it must be about 12' x 12'. Lang asked Conrad about the business being for sale and if they allow the sign to go up, the sign stays and the business may go. Conrad said that he is not selling the business as far as business and property separate, but if someone buys the property the business may go away. Jackson said that one of his concerns is the railroad tracks, and that the company he works for owns that building right next to Conrad and property across the railroad tracks; if they allow this to go through then his company will want to put a sign up also. Jackson is concerned that this small area is going to become full of signage. Conrad said that his problem is that he lost this sign on Omaha Street, with the new sign ordinance it's almost impossible to put it back up on Omaha. Jackson said that when his company was in the building next door, they put up signage on the side of the building facing W Main Street. Jackson said that it was very visible from the side of the building. Conrad said you could see it if you were looking that way, but the problem that he has is that he has a 12th Street address at this business and the streets are about a whole block off between his 12th Street and where it continues south of W Main Street. Conrad said he has a terrible time with people getting to his business with that address and people are constantly looking for him south of W Main Street. Conrad said that he had his sign on Omaha Street because it was easier for people to find the business. Conrad would like a smaller sign on Omaha saying to turn here, but he can't do that. Neumann wanted to know if he put a sign on W Main Street, what would be the best direction to get there. Conrad said that the sign would have the address of 405 12th Street, directing them to enter off Omaha Street. Neumann agrees that Conrad needs a sign, but if he is selling the business and property, do we need another sign there on W Main Street. Jackson believes that there is enough room on the side of the building to give advertisement. Conrad said that he has a sign on the building. Conrad said that the tourist folks don't have trouble finding him, it's the local people when you say 12th Street and they are 2 blocks off. Jackson said that at the last meeting they had a road that went between two properties and this has the railroad in between and he said that it becomes off premise to him even though he owns both properties. Conrad said that before, the properties had two different tax ID numbers, but he has since combined them into one tax ID number. Jackson said that on Kno Place where we were at, the road went through the property and they were able to put an off premise sign on the other side of the road but not across the railroad tracks. Neumann said that the question is that it's an on premise sign but the properties are separated by the railroad tracks. Green said that there are separate tax ID numbers on the properties. Conrad said that they don't anymore,

he had them changed. Green said that the properties are physically separated and it is possible to transfer title. Green looked at the paperwork from Conrad on property tax ID numbers. Green said this was the Director of Equalization's determination on the way they index the property for tax purposes and doesn't affect the legal status of the property. Conrad asked about the Rushmore Plaza Civic Center sign and what it is considered because it is across the street. Green and Jackson said it was an off premise sign. Conrad said that he was in Rapid City to do business and every time he turns around, Rapid City is against him. Conrad said he is trying to work through the system, but every time he comes down - this is the second time he has been down here. Jackson said he sympathizes with Conrad, but he has a couple problems with this sign - one is that it is going between two existing billboards and he believes that there is enough area on the building to give him adequate signage. Conrad said that the next problem that comes up is if they determine that the sign is off premise, then he can't have a sign because he doesn't have any frontage. Jackson said that his main reason is that there are already two signs there and he would be putting signs in between signs. Hadley clarified with Green that this is considered two conveyable pieces even if it is listed as one. Green said that it is only listed as one in the Director of Equalization's records, there are two separate parcels. The Director of Equalization can combine parcels to tax, but it does not change the way the Register of Deeds has recorded the parcels. Neumann asked about the sign on Omaha being on premise. Conrad said that the sign code changed, now you have to have 1000 feet between off premise signs, 3 years ago that sign was ok. Conrad said that if the sign could have stayed, he wouldn't be here. Green said that actually the sign couldn't have stayed because it was illegal non-conforming and under the old sign code it could not have been put back up the same way. Green believes that Conrad has been compensated for his sign. Conrad doesn't understand because every comment that he gets from Green and Solon is that he is not supposed to be making any money. Conrad said that Solon commented that he had 2 signs on Omaha Street, the one is leased to Lamar and he can't technically break that lease. According to Conrad, Solon told him that he is making money on that sign and he can't put another one up. Conrad gets the impression that he is not supposed to be making any money and be in business. Conrad said that they did make him take the sign down, but he would rather have the sign and didn't want compensated for it. Conrad said that he spent thousands of dollars on this sign and now it's a piece of junk. Hadley asked Green to clarify what he said about the removal of the sign - it could have stayed there, but because he was compensated, he can't put it back there on Omaha Street. Green said no, once it has been removed, then in order for him to put it back up he would have to get a sign permit and meet all the requirements of the sign code which has 1,000 feet spacing requirements between off premise signs. Hadley said that he understood that Green said that it didn't have to come down, and it was his understanding that it came down to widening the road. Hadley was confused; if it didn't have to come down, but it had to come down because of widening the road and now you're saying that he would have to have sign credits and be able to meet everything else. Green said that if the DOT did not undertake in their project, the city sign code would not have required removal of that sign; however once the sign code is in effect, anytime a sign is removed for whatever reason, when the sign is reconstructed it has to meet the requirements of the new code. Green said that once Mr. Conrad's sign was removed by DOT, this effectively took his right to put that sign back up and that is something he should be compensated for by DOT. They not only took his sign, but they also took his right to put up a sign. Neumann said that basically Conrad is being penalized by the City and the DOT. Green said that Conrad has been unfortunate, but DOT should have compensated him not just for the physical value of the sign, but also for the right they took from him to put a sign back up. Neumann is in agreement that he needs a sign of some sort, because for a long time he didn't know how to get to his place. Neumann is not sure how to approach this matter. Hadley doesn't know how to get there either. Hadley said that if he reads the ordinance correctly and he has had this discussion with Green before, he doesn't believe they can grant a variance. Green doesn't believe there is any variance for this Board or for the Council for that

matter. Mashek asked Conrad if the second Lamar sign was his property and how long the lease goes for. Conrad said that it was his sign and the lease was for 10 years. Mashek asked what part of the lease he was on right now. Conrad said that he was on year 9 and he just signed a new lease before he was ordered to take the sign down. At the time, Conrad didn't have any reason to put anything on that sign so he signed a new lease. Mashek asked about the billboard and if it could ever be put that close to the road again. Solon said that the billboard is non-conforming. Jackson asked Conrad how far across the railroad right-of-way is. Conrad said that it was probably about 25 feet. Jackson asked if Conrad could put a pole sign on the other side of the south property fence. Conrad said that it still doesn't meet the code. Solon said that he only has 80 feet of street frontage. Conrad said that if we don't consider that strip of property on the other side of the railroad tracks as on premise, then he doesn't have any frontage on W Main Street and could not put up a sign. Lang said that they could grant a variance for a bigger sign on the side of the building. Green said yes they could grant a variance for a bigger sign if that's what the application requested. Lang said that she would feel more comfortable with a bigger sign on the building, and thinks that Conrad is a victim of a lot of bad circumstances including selecting that location. Lang thinks that this answer before them today is not a good one, whereas perhaps we could grant a variance to give Conrad a larger sign on the building. Conrad says that his whole problem with the system is that every time he comes down here, it's one hundred bucks. Conrad said that last time he was here it cost him \$100 and now he is here again and cost him another \$100 - \$75 for the appeal and then the certified letters – when does it all end. Green made one suggestion to the Board on this front; if the Board were to deny this application without prejudice, this would constitute a waiver of the application fee, but not the mailing fees. Green said that if Conrad were to apply for a new permit for a wall or pole sign he could apply for a variance for that application. Green can't say that he does or doesn't need a variance or can or can not put up a sign, he doesn't have the information for that. If the Board denies without prejudice, it would save Conrad the appeal application fee. Solon said that on 12th Street, Conrad has 80 feet of frontage and this is what they used to consider the signs that are up now. Conrad said that they also used the W Main Street frontage. Neumann asked Conrad how much frontage he had on W Main Street. Conrad said that they are weighing two different things, they are telling him that W Main is not part of the frontage and now they are saying it is. Neumann said he was just asking the question. Jackson told Conrad they were just trying to find something to work for him and help him. Lang said she can't support this sign but could support a variance on the sign on the building. Conrad said he doesn't feel that a sign on the building is what he needs unless someone is looking in that direction when they drive by. Jackson said that a pole sign by the fence towards the west end of the property would do more good than a sign between 2 billboards that would be blocked and not read as well. Jackson said that the west end of the property is a very visible area. Jackson said that the building is very visible by way of W Main or St. Joe. Conrad said only if you are looking that way. Jackson said that if you had something red over there that will attract the eye, it will pull you there. Lang asked Conrad if his position was that they approve what he's proposing or he doesn't want anything. Conrad said that it would make more sense to have the sign closer to the street so people can see it driving by, on the side of the building would be too far away. Conrad said that anything is better than nothing. Lang moved to deny without prejudice, with a second by Jackson. The motion to deny carries 4-1 with Hadley opposed.

Hadley moved to approve the minutes of April 16, 2003. Second by Jackson.

There being no further appeals to come before the board at this time, the meeting adjourned.