



# CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

## OFFICE OF THE CITY ATTORNEY

300 Sixth Street

Carla R. Cushman, Assistant City Attorney  
City web: [www.rcgov.org](http://www.rcgov.org)

Phone: 605-394-4140  
Fax: 605-394-6633  
e-mail: [carla.cushman@rcgov.org](mailto:carla.cushman@rcgov.org)

### MEMORANDUM

TO: Zoning Board of Adjustment

FROM: Carla Cushman, Assistant City Attorney *CC*

DATE: November 25, 2015

RE: Appeal by Epic Outdoor Advertising of Building Official's decision that overhead electrical wires must be replaced with an underground service lateral to the digital billboard at 3435 Sturgis Road

#### Summary

Rapid City Municipal Code requires that all electrical service to off-premises signs be provided through an underground service lateral. Building Official Brad Solon communicated this requirement to Epic Outdoor Advertising ("Epic") in connection with its sign at 3435 Sturgis Road. Epic is appealing that determination. **Staff recommends that the Zoning Board of Adjustment uphold the Building Official's determination and deny Epic's appeal.**

#### History

On April 9, 2015 the Planning Commission heard 15UR006, a conditional use permit to replace an off-premise sign and convert it to a digital sign at 3435 Sturgis Road. The Planning Commission approved the CUP with stipulations. Stipulation No. 3 provided that "all requirements of the General Commercial District and the Rapid City Sign Code shall be continually maintained," and at no time did Epic request removal or amendment of that stipulation. Scenic Rapid City appealed the CUP to Council; on May 18, the Council approved the CUP with stipulations, including Stipulation No. 3.

The next day, the City issued a building permit to Epic to convert the static sign to a digital sign. The previous static billboard was provided with electrical service through an overhead electrical wire from a nearby electrical pole. The City notified Epic that, pursuant to the sign code, the



EQUAL HOUSING  
OPPORTUNITY

EQUAL OPPORTUNITY EMPLOYER

electrical service to the sign must be replaced with an underground service lateral. Epic is challenging that determination via this appeal.

### **Sign Code Provisions**

17.50.090.E concerns the “[a]lteration of existing off-premises signs,” and Section 1 provides:

Notwithstanding any other provision of this code, any legal non-conforming off-premise sign may be reconstructed by the current permit holder in the same location as it currently exists [sic] so long as the alterations or reconstruction of the sign bring it into compliance with all of the provisions of the City Code with the exception of any spacing requirements between signs. A sign building permit is required to make the alterations allowed by this subsection.

In other words, a legal non-conforming sign like the sign at 3435 Sturgis Road that is altered at its current location must be brought into compliance with all of the provisions of City ordinance, including the sign code, with the exception of spacing. One of those applicable code provisions provides that “[e]lectrical service to all off-premises signs shall be provided by an underground service lateral. In no case shall overhead wires be attached in any manner to an off-premise sign.” *RCMC 17.50.090.B.4*. So, if a legal non-conforming sign is altered or reconstructed, any overhead electrical service must be replaced with an underground service lateral.

One other relevant provision: *RCMC 17.50.080.B.7* provides, in part, “In the event that portions of this section conflict with other portions, or portions of this section conflict with state or federal law, the more restrictive requirement shall apply.” Consequently, when comparing provisions for electrical service to off-premises signs found within the sign code to similar provisions in the National Electrical Code adopted and amended within *RCMC Chapter 15.16*, “the more restrictive requirement shall apply.”

### **Building Official’s Decision**

It is on the basis of these code provisions that the Building Official informed Epic that an underground service lateral to the digital billboard at 3435 Sturgis Road must be provided, to comply with *RCMC 17.50.080.B.7* and to bring the legal non-conforming sign into full compliance with the sign code, with the exception of spacing requirements. This decision is supported by Stipulation No. 3 to the CUP obtained by Epic prior to the reconstruction and conversion of this off-premises sign.

At the time of my completion of this agenda, Epic had not provided the Building Official or myself with any reasons supporting their appeal or their argument that no underground service lateral is required. If possible, I will amend this memo in the event that I become aware of Epic’s specific arguments in favor of the appeal. If you have any questions, please feel free to give me a call at 394.4140 to discuss further.