



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

OFFICE OF THE CITY ATTORNEY

300 Sixth Street

Joel P. Landeen, Assistant City Attorney
City web: www.rcgov.org

Phone: 605-394-4140
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e-mail: Joel.Landeen@rcgov.org

MEMORANDUM

TO: Public Works Committee

FROM: Joel P. Landeen, Assistant City Attorney

DATE: 6-8-10

RE: Report on 100 St. Joseph Street - Imperial Inn Sign

On May 6, 2010, the City sent Kurylas, Inc., owner of the Imperial Inn, a notice that the ground sign for the hotel along St. Joseph street was in violation of the City Code. The City is in the process of preparing for a Public Works' project along St. Joseph Street which will use federal funds. As a condition for use of these funds the City is required to conduct a survey of the right of way to identify any illegal encroachments and have them removed or made legal. Upon completion of this survey, it was discovered that the on-premise ground sign for the Imperial Inn extends 1'2" into the right of way. It is unclear when exactly the sign was placed. Mr. Kurylas claims it was placed in the mid to late 70's. The right of way has not been expanded, so even if this were true, the sign would have still encroached when placed. Whoever installed the sign did not conduct a survey and appears to have located the sign based on the back edge of the sidewalk. Unfortunately, the back edge of the sidewalk is not the edge of the right of way in this location. The City did not become aware of the violation until the encroachment survey was conducted.

The City code prevents signs from encroaching into the right of way. Section 15.20.050(E) prohibits "Signs displaying an advertising message and signs prohibited by § 12.20.030 of this code and located in the public right-of-way." Section 12.20.030 of the City Code generally prohibits structures from being located in the right of way. It further provides an exception for structures maintained for a public purpose, mailboxes and bus benches. This sign does not fall under any of the exceptions. Signs which project into the right of way off of buildings are also prohibited unless located in the area covered in the plat of the Original Town. Projecting signs within the Original Town are specifically allowed. The Imperial Inn is not

located in this area. Normally, disputes over signs are appealed to the City's Sign Code Board of Appeals. However, the City Code specifically prohibits the Sign Code Board of Appeals from considering a variance to allow a prohibited sign.

Staff can identify only two ways for this sign to be made legal: 1) the sign is moved 1'2" to the north so that it no longer encroaches; or 2) a portion of the St. Joseph Street right of way could be vacated so the sign no longer encroaches.

May 12, 2010

Roman & Wilma Kurylas
Imperial Hotel
100 St. Joseph Street
Rapid City, SD 57701

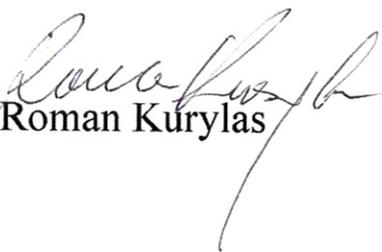
RE: Imperial Hotel pole sign

To Whom It May Concern:

We have had a pole sign up in that spot for over 40 years. I don't know why it is an issue now.

We would like a hearing on this to clarify some concerns.

Sincerely,


Roman Kurylas

RECEIVED

MAY 12 2010

RAPID CITY
PUBLIC WORKS

Item #1



CITY OF RAPID CITY

Growth Management Department
300 Sixth Street
Rapid City, South Dakota 57701-5035

Brad Solon, Building Official
Development Service Center
City web: www.rcgov.org

Phone: 605-394-4157
Fax: 605-394-6636
e-mail: brad.solon@rcgov.org

May 6, 2010

Violation Notice
Certified Mail
Return Receipt Requested

Kurylas Inc
23097 Thunderhead Falls Rd
Rapid City, SD 57702-8524

Re: Ground sign located at 110 Saint Joseph St, Rapid City, SD

Dear Kurylas Inc,

Due to a recent land survey along Saint Joseph Street as part of an agreement with the City of Rapid City and the South Dakota Department of Transportation for Federal Highway Aid Encroachments, an inspection revealed a ground sign at 110 Saint Joseph Street that projects into the public right-of-way. This property is legally described as Lots 17-32 & S ½ Vacated Alley, Block 89, Original Town (County ID 55458). The projection into the public right-of-way is a violation of the Rapid City Municipal Code (RCMC 12.20 030).

Have the sign removed from the public right-of-way by either removing it entirely or by altering the sign to correct the violation. A sign permit is required for alterations to signs. Have the work completed by May 21, 2010. Failure to comply may cause the city attorney to institute the appropriate proceeding to restrain, correct, or abate such violation (RCMC 15.28).

Any person having an interest in the property or the premises may appeal this determination by filing a written appeal to the building official within seven (7) days of receiving this notice. Failure by any person to appeal the notice and order within the time period specified shall constitute a waiver of right to an administrative hearing.

Please call if you have any questions.

Sincerely,

Brad Solon
Building Official



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RAPID CITY, SOUTH DAKOTA 57701-2724

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E-mail: attorney@rcgov.org

www.rcgov.org/attorney/attorneyhomepage.htm

May 28, 2010

Mr. Roman Kurylas
Imperial Hotel
100 St. Joseph Street
Rapid City, SD 57701

Re: Imperial Hotel Pole Sign

Dear Mr. Kurylas,

I am writing in response to your letter dated May 12, 2010. In that letter you question the City's notice that the pole sign for the Imperial Hotel is in violation of the City code and needs to either be removed or relocated so it no longer encroaches into the St. Joseph Street right-of-way. You further state you would like a hearing to clarify your concerns.

So you understand the situation, on-premises ground signs must be entirely within the property lines of the property on which they are located. Signs with ten feet of clearance from the ground may have a setback of zero feet from the property line. All other on-premise signs are required to be setback ten feet from the property line. The Imperial sign crosses your property line and encroaches on the public right-of-way by over a foot. The City was not aware of this encroachment until a survey of the property lines was completed in conjunction with an upcoming street project. Normally, if a sign owner disputes City staff's application of the sign code to their sign, they can appeal to the Sign Code Board of Appeals. However, the encroachment caused by your sign makes it a prohibited sign. The Sign Code Board of Appeals does not have the jurisdiction, or the legal authority, to allow a prohibited sign. As such, no appeal or hearing is available.

The only way to make the current sign legal is to 1) move it so it no longer encroaches on the right-of-way, or 2) convince the City Council to vacate a portion of the right-of-way so it no longer encroaches. Brad Solon, the City's Building Official, informed me that you may have changed your mind from the time the letter was written and be willing to move the sign so it no longer encroaches on the right-of-way. If that is not correct and you desire to address the City Council about this matter, please let me know and I will have this item placed on a future

Page Two
May 28, 2010

agenda. If Mr. Solon was correct and you do not wish to pursue this matter any further, I would still ask that you contact me and let me know. You may also contact me if you have any additional questions or concerns or otherwise wish to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "Joel P. Landeen". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Joel P. Landeen
Assistant City Attorney

JPL/adg

2ST

Imperial Hotel
Sign Location

SAINT-JOSEPH ST

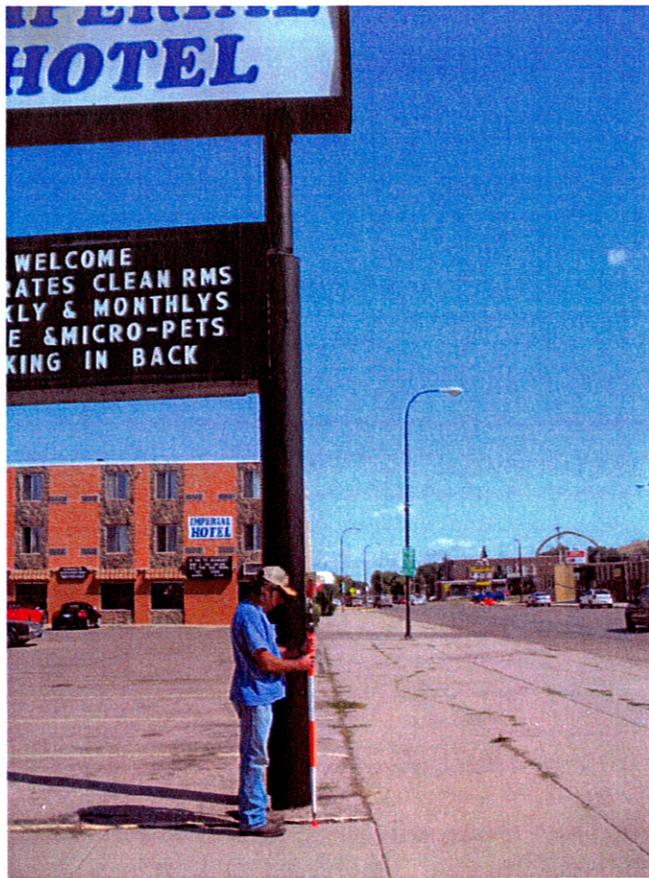


Photo 12