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REPLY TO: RAPID CITY

February 11, 2004

Members of the Rapid City Council  
City of Rapid City  
300 Sixth Street  
Rapid City, SD 57701-2724

Re: Lamar Advertising/Heavy Constructors, Inc./Epic Outdoor Advertising

Dear Members of the Council:

I represent Epic Outdoor Advertising, L.L.P., a locally-owned outdoor advertising company. The principals of Epic are Sean and Brendan Casey, two of the owners of Bear Country, U.S.A. Epic is involved in this nuisance proceeding before the City Council due to the fact that Lamar has commenced litigation against Heavy Constructors, a division of Gustafson Builders, and Epic Outdoor Advertising, over the distance between a Lamar structure and one of Epic's structures on Heavy Constructors' land on I-90. During the course of that litigation, it came to the attention of Epic that Lamar's sign is illegal, due to it being in the right of way. In point of fact, it is Epic's position that once this nuisance is abated, and the sign is removed, the litigation against Epic and Gustafson Buildings will be rendered moot, and will be dismissed by the court.

As the city attorney has opined, there is absolutely no question that the sign at issue is a violation of municipal law. Specifically, Title 8 of the municipal code, Health Safety, Chapter 8.16, Nuisances, specifically states that "no person . . . shall create, maintain or commit, or permit to be created, maintained or committed, any public nuisance as defined in subsection B of this Section . . ." Section B.3. indicates that a "public nuisance" is one that "interferes with, obstructs or tends to obstruct, or renders dangerous for passage any lake or river, bay, stream, canal or basin, or any public park, square, street, **right-of-way** or highway."

As can be seen by the attached survey performed by Kadrmas Lee & Jackson, there is absolutely no question that Lamar's sign is in the right of way. In point of fact, the sign is so close to the section line that it takes a moment to distinguish it from the section line itself. As such, it is a public nuisance and must be abated. Further, Title 15, Buildings and Construction, Chapter 15.28 Sign Code, specifically indicates that "all provisions of the laws and ordinances of the city and the state shall be

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A Limited Liability Partnership

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\* Also licensed in Wyoming \*\* Also licensed in Wyoming and Illinois \*\*\* Also licensed in Minnesota

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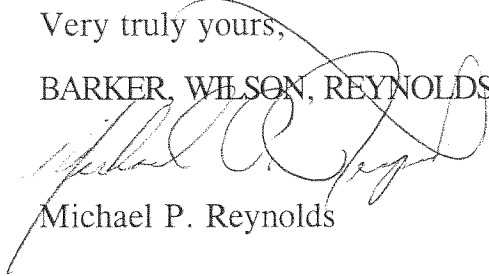
complied with, whether specified herein or not.” That section is found at 15.28.020.G. As such, it is not even within the discretion of either the Sign Board or the City Council to waive this public nuisance.

Simply put, there can be no dispute that the sign is illegal, improper, and constitutes a public nuisance under this strict definition of our municipal code. It can also not be disputed that the City Council has no discretion to grant any form of alteration or variation to this public nuisance. As your City Attorney has undoubtedly indicated, this public nuisance must be abated, under plain law. A failure to do so would be a violation of the municipal ordinances, and an abuse of discretion.

Thank you for your time and attention to this matter. I look forward to speaking with you on Monday evening.

Very truly yours,

BARKER, WILSON, REYNOLDS & BURKE, LLP



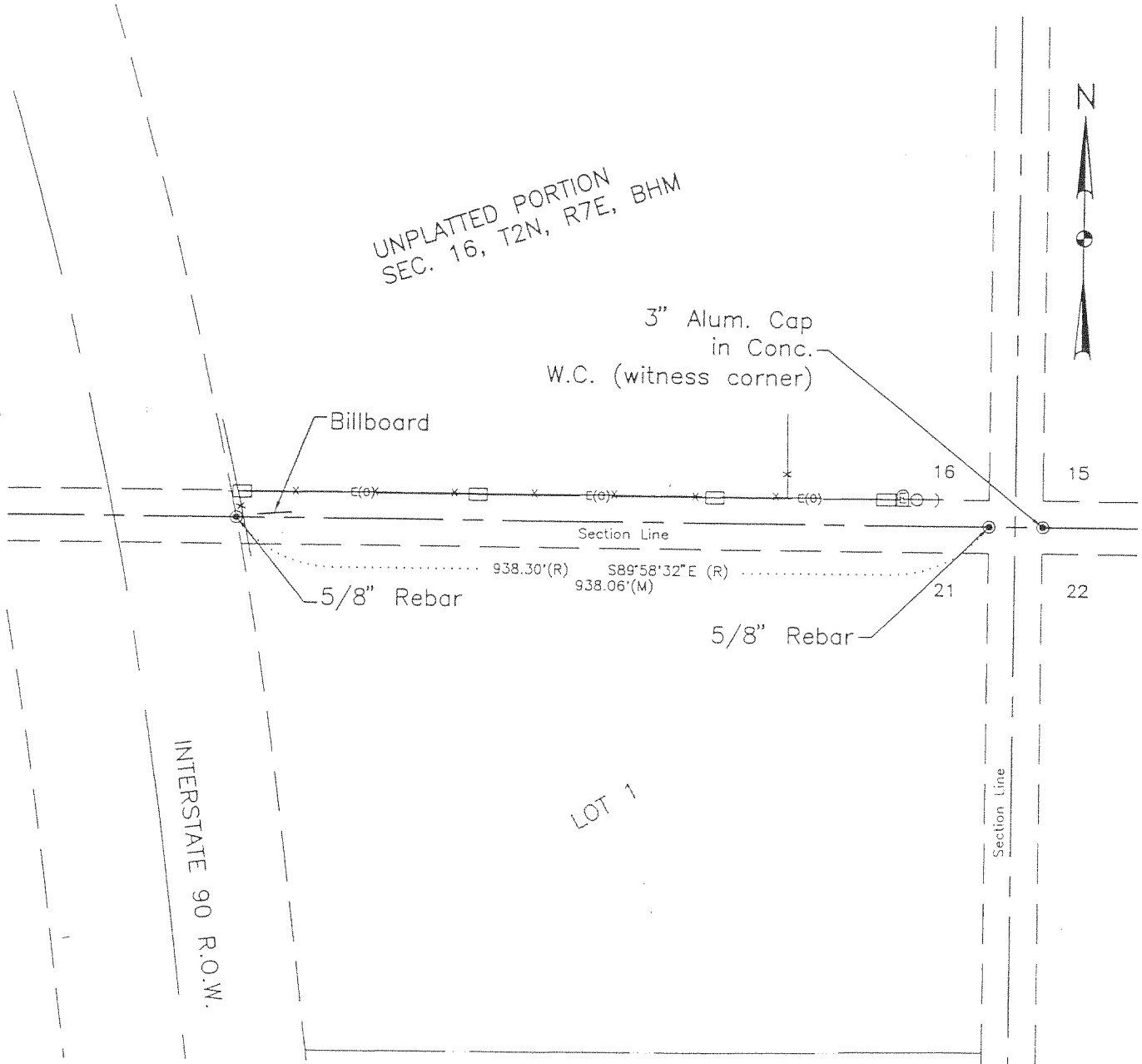
Michael P. Reynolds

MPR:rmr  
Enclosure  
cc: Clients  
FC

# EXHIBIT "A"

THAT PART OF SE1/4 SE1/4 LYING NORTH & EAST OF ROW LINE OF STATE HWY 90  
 UNPLATTED PORTION OF SECTION 16, T.2N., R.7E., B.H.M., IN THE CITY OF RAPID CITY,  
 PENNINGTON COUNTY, SOUTH DAKOTA

Scale: 1" = 200'



## LEGEND:

- FD MON AS NOTED
- ) Guy Anchor
- Guy Pole
- Power Pole
- ▣ Power Box
- Property Line
- x-x- Barbed Wire Fence
- E(O)- Power (Over Head)
- - - - - ROW
- - - - - Section Line

Kadmas  
 Lee &  
 Jackson  
 Engineers, Surveyors  
 and Planners