MEMORANDUM

To: Zoning Board of Adjustment

From: Brad Solon, Division Manager, Development Services

Date: August 28, 2019

Subject: Appeal of Declaration of Unlawful Signs – Stagecoach West LLC

The City received numerous complaints about the Stagecoach West LLC Signs located at 4110 Mount Rushmore Road. After reviewing the site in the spring of 2019, it was determined that the signs were unlawful and needed to be removed. Staff observed the signs several times in May and June. Based on the observations a violation notice was sent declaring the signs unlawful and ordering the removal of the signs.

In 2000, Stagecoach West LLC obtained a permit for the south side sign near the pool of the campground. The sign conformed to the rules regarding off-premise type signage at the time, and the permit was issued. Currently, the south side sign is 2 poles, "double stacked", larger than 250 square feet, spacing is short to other off-premise signs in the vicinity, has an overhead electric service lateral, and no CUP or zoning approval. The sign was erected, prior to the need to surrender "sign credits". An argument will be presented that the sign is non-conforming to zoning, since the conditions are existing and the rules for signs were immersed into zoning in 2012. However, a contractor self-issued a permit for an overhead electrical service lateral in 2003. If the sign had an upgrade, the sign had to be made conforming to all sign restrictions, except spacing. This would include a Conditional Use Permit authorizing the use of the sign. There is no CUP, the sign is not conforming to any of the off-premise requirements, except spacing as spacing is exempted when making an existing sign conforming. Based on observations by the City, the sign in unlawful and is subject to removal.

In about 2005 Stagecoach planned on erecting a sign on the north side of the campground approach. The application was for an off-premise sign, but at that time, new sign rules were in place. In order to build an off-premise sign, a CUP was required (2002), as well as the requirement to surrender 2 credits. The application was subsequently denied and appealed to the Sign Code Board of Appeals, and apparently granted in part (height variance from 30’ to 37’). This was appealed to Council, where again the appeal was only granted in part (height variance), and there was no
granting of an appeal to the requirements for surrendering credits. The application was then changed to "on-premise" sign only. The size, height and spacing for an on-premise sign was acceptable and a CUP was not required. The sign was erected. Despite being built as an on-premise sign, the sign was used for off-premise advertising. The new Stagecoach sign, erected without credits and without a CUP, has off-premise messages, is over height, 2 pole, double stacked, over 250 square feet and it has an overhead electric service lateral. Based on observations by the City, the sign is unlawful and is subject to removal.

Here is a summary for each sign:

South Side Sign

- The sign became non-conforming to zoning in 2002 when a CUP became a requirement,
- The sign has an overhead electric service lateral added by self-issue permit,
- The sign is over height (over 30'),
- The sign is over 250 square feet,
- The sign has 2 poles,
- The sign has no Conditional Use Permit,
- Any upgrades to the sign except painting the changing of bulbs is a structural alteration as defined, thus requiring the sign to be made conforming,
- Nothing about the sign is conforming, and
- The sign displays off-premise messages without zoning approval.

North Side Sign

- The sign became non-conforming to zoning in 2012 when the Sign Code was moved to Zoning,
- The sign has an overhead electric service lateral,
- The sign is over height (over 30'),
- The sign is over 250 square feet,
- The sign has 2 poles,
- The sign has no Conditional Use Permit,
- Any upgrades to the sign except painting the changing of bulbs is a structural alteration as defined, thus requiring the sign to be made conforming,
- Nothing about the sign is conforming, and
- The sign displays off-premise messages without zoning approval

Recommendation: Staff recommends the Board uphold the decision of the Building Official that the signs are unlawful, and order the signs removed.

However, there is the possibility the Board could grant the appeal, and rule against the Building Official, and declare the signs lawful. We believe this is an impossible ruling. If the signs were lawful and the Building Official is wrong and the signs may remain, then the signs would be conforming already to height, size, spacing, overhead service laterals, 1 pole, and each sign would have a Conditional Use Permit issued by the Planning commission. Neither sign has any of these matters in place, therefore it is impossible to say the signs conform, when they clearly do not.
17.50.080 Signage Definitions

**ABANDONED SIGN.** An on-premises or off-premises sign which meets 1 or more of the following:

a. No longer correctly directs or exhorts any person, advertises a bona fide business, lessor, owner, product or activity conducted or product available on or off the premises where such a sign is displayed;

b. The business it advertises has discontinued business in the city of Rapid City;

c. Any sign declared unlawful by the Building Official;

d. Any sign not properly maintained or which no longer displays an advertising message.

**ADVERTISING MESSAGE.** The copy on a sign which advertises goods, products, services, persons, or public messages

**OFF-PREMISES SIGN.** Any sign identifying or advertising a business, person, activity, goods, products or services located off the premises from where the business, person/activity, goods, products, or services are located.

**ON-PREMISES SIGN.** Any sign identifying or advertising a business, person, activity, goods, products or services which are located on the premises where the sign is installed and maintained

**SIGN.** Any identification, description, illustration or device illuminated or non-illuminated, which is visible from any public place or is located on private property and exposed to the public, and which directs attention to a product, service, place, activity, person, institution, business or solicitation, including any permanently installed or situated merchandise, or any emblem, painting, banner, pennant, placard or temporary sign.
designed to advertise, identify or convey information, with the exception of window displays and sign structures; however, for the purpose of removal, signs shall also include all sign structures.

**STRUCTURAL ALTERATION or STRUCTURAL CHANGE.** Any change, modification or alteration of a sign or sign structure, except changing the copy or advertising message on a sign, painting the sign, changing light bulbs, performing routine maintenance and upgrades on a sign’s wiring or electrical systems, or installing energy saving technology or maintaining or replacing the digital components or digital modules on existing digital signs up to and including replacing the entire digital cabinet and adjusting the mounting methods as necessary, so long as the change does not require any other changes or modifications to the sign structure in addition to the device being installed.

D. **Prohibited signs.** The following types of signs are expressly prohibited, except as otherwise provided by this code:

5. Abandoned signs or unlawful signs

16. Off-premises sign constructed with more than 1 display surface per side;
17. Off-premises sign in a position or shape other than horizontal whose height is greater than its width;
18. Off-premises ground signs with faces constructed at any angle greater than 20 degrees as measured by any angle between the 2 faces;
19. Off-premises signs with a face width greater than 30 feet or a face height greater than 15 feet;

G. **Sign building permits**

3. No new off-premise sign shall be permitted unless the applicant has first obtained an off-premise sign license as required by § 17.50.080E. of this code.
17.50.090 Off-premises signage.

A. Off-premises signage.

1. Off-premises signs, where permitted, shall be regulated by the requirements of this section and § 17.50.080 of the Rapid City Municipal Code, as well as any other applicable requirements found in the Rapid City Municipal Code.

2. The owner of an off-premises sign is required to obtain a sign building permit pursuant to § 17.50.080 prior to building a new off-premises sign or making structural alterations to an existing off-premises sign.

3. If any zoning district requires a conditional use permit for an off-premises sign, prior to a sign building permit being issued pursuant to § 17.50.080, approval of the conditional use permit must be obtained. A conditional use permit is required for any new off-premises sign. A conditional use permit is not required for any work to an existing or approved off-premises sign, including converting to a digital sign. A major amendment to a conditional use permit is not required for work to an existing or approved off-premises sign if that work is in compliance with the requirements of this title.

4. Approval of a conditional use permit is required for the conversion of an on-premises sign to an off-premises sign as defined by this section and § 17.50.090F, and prior to a sign permit being issued pursuant to § 17.50.080.

B. Size, height and spacing regulations for off-premises signage. Off-premises signs shall be constructed in accordance with the following regulations:

1. Off-premises signs shall be ground signs only. Off-premises wall or roof signs are prohibited. Off-premises ground signs shall have no more than 1 structural support or pole. Off-premises sign structures shall be earth tone.

2. Off-premises signs shall have no more than 2 faces. Each face of an off-premises sign may have a maximum area of 250 square feet, except as provided in subsection B.4. The faces on an off-premises sign may be mounted parallel to each other, or may be angled to each other up to a maximum angle of 20 degrees.

3. The maximum height of an off-premises sign is 30 feet, except as provided in subsection B.4. Off-premises signs with a minimum clearance of less than 10 feet from grade shall be setback at least 10 feet from all public rights or way and property lines. Off-premises ground signs with a minimum clearance of 10 feet or more from grade may be setback 0 feet from all public rights of way or property lines. The lowest point of an off-premises sign which extends over an area intended for pedestrian use shall not be less than 8 feet above the finished grade below it. The lowest point of an off-premises sign which extends over an area intended for vehicular use shall not be less than 14 feet above the finished grade below it.

4. For off-premises signs which are located within 100 feet of the right of way for Interstate 90 and which advertise to traffic on Interstate 90, an off-premises sign may have a maximum area of 672 square feet and may have a maximum height of 40 feet.

5. Electrical 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.

6. New off-premises signs shall not be located less than 1,000 feet from any other off-premises sign. The distance between off-premises signs shall be measured from the base of the sign in all directions (radial feet). No off-premises sign shall be located nearer than 1,500 feet from the nearest off-premises signs as measured by the distance over a public road between a line that extends from the base of each sign to the nearest midpoint of any public road from which the sign is intended to be viewed.

7. All off-premises signs shall be at least 50 feet from any on-premises sign. This subsection B.7. shall not prevent the construction of an on-premises sign within 50 feet of a previously existing off-premises sign.
8. Off-premises signs shall be identified by a label, nameplate, or trademark identifying the owner of the sign, except those signs which are exempt under § 17.50.080H. of this code.

9. Off-premises signs shall not be placed in any railroad right-of-way.

10. Off-premises signs shall not be located within any clear sight triangle as set forth by the city's Municipal Code, Design Criteria Manuals or standard specifications.

11. Off-premises signs shall not be placed on any property without written consent of the property owner or the owner's authorized agent. Applicants for an off-premises sign building permit shall provide the city with a copy of an easement or other legally binding document before receiving a permit. The city is not responsible for verifying the legality of the document, but will maintain a copy for its files.

C. Lighting of off-premises signs. In addition to any applicable requirements of § 17.50.080 N., the light from any light source intended to illuminate an off-premises sign, shall be so shaded, shielded, directed or of such an intensity that the brightness shall not adversely affect surrounding or facing premises, nor adversely affect safe vision of pedestrians or operators of vehicles moving on public or private streets, driveways or parking areas.

3. Off-premise sign credit basis. The number of off-premises sign credits that may be issued for removal of an existing off-premises sign is determined as follows:

5. Usage. Off premise sign credits may only be used to erect a new off-premise sign if the proposed new sign is in full compliance with all requirements of the Rapid City Municipal Code and all applicable federal, state or local laws and regulations. The city has no obligation to guarantee that a sign credit may be utilized within the city during the life of the credit.

W. Variances. Applications for variances for sign height, sign area, sign setback, sign spacing, and total number of signs within this section, §§ 17.50.090 and 17.50.100 are subject to the review and approval process requirements outlined in §§ 17.50.050, 17.50.060, 17.50.070, and 17.54.020 as applicable.

17.18.010 General description. General Commercial Zoning
This commercial district is for personal and business services and the general retail business of the city.

17.18.030 Conditional uses.
27. Off-premises signs as regulated by §§ 17.50.080 through 17.50.100 and in accordance with the requirements of § 17.50.090;