

DISTRICT COURT, COUNTY OF LARIMER,
COLORADO

Larimer County Justice Center
201 Laporte Avenue, Suite 100
Fort Collins, Colorado 80521-2762
(970) 498-6100

Plaintiff: THE CITY OF FORT COLLINS,
COLORADO, a municipal corporation,

v.

Defendants: BOARD OF COUNTY COMMISSIONERS
OF LARIMER COUNTY, COLORADO;
STREETMEDIAGROUP, LLC

Andrew D. Ringel #24762
Hall & Evans, L.L.C.
1001 17th Street, Suite 300
Denver, CO 80202
303-628-3300
Fax: 303-628-3368
ringela@hallevans.com

John R. Duval #10185
Deputy City Attorney
Claire Havelda #36831
Assistant City Attorney
City Attorney's Office
300 Laporte Avenue
P.O. Box 500
Fort Collins, Colorado 80522
970-221-6652
Fax: 970-221-6327
jduval@fcgov.com
chavelda@fcgov.com

Attorneys for Plaintiff

DATE FILED: August 25, 2020 3:09 PM
FILING ID: C6398199960F8
CASE NUMBER: 2020CV30580

▲ COURT USE ONLY ▲

Case Number: 2020CV_____

Division: _____

COMPLAINT FOR REVIEW PURSUANT TO C.R.C.P. 106(a)(4)

Plaintiff City of Fort Collins, Colorado, (the “City”) by and through its attorneys, Andrew D. Ringel, Esq., of Hall & Evans, L.L.C. and John R. Duval, Esq., Deputy City Attorney, and Claire Havelda, Esq., Assistant City Attorney, of the Fort Collins City Attorney’s Office, hereby respectfully submits this Complaint for Review Pursuant to C.R.C.P. 106(a)(4), and alleges as follows:

INTRODUCTION

1. On July 28, 2020, Defendant Board of County Commissioners of Larimer County, Colorado (“Board” or “Larimer County”) issued its Findings and Resolution Approving the Street Media Group Sign Appeal (“Findings and Resolution”) concerning a public hearing it conducted on June 1, 2020.

2. The Board’s Findings and Resolution concerns a proposed billboard to be erected by Defendant StreetMediaGroup, LLC (“StreetMediaGroup”) on property located at 4414 East Harmony Road (“the Property”).

3. The Board’s approval is a quasi-judicial decision subject to review pursuant to C.R.C.P. 106(a)(4).

4. The City files this action seeking review of the Board’s decision because the Board’s quasi-judicial decision exceeded its jurisdiction and abused its discretion.

5. The Board exceeded its jurisdiction and abused its discretion in approving the proposed billboard in multiple ways. The Board failed to properly interpret and apply the Larimer County Land Use Code (the “LUC”). The Board did not follow the findings and recommendation of the Larimer County Development Services Team, the staff charged by the Board with interpreting and applying the LUC (“County Staff”) and failed to provide any alternative analysis,

rationale, or grounds supported by competent evidence in the record contradicting the analysis, findings, rationale and conclusion of County Staff. The Board's interpretation and application of the LUC are inconsistent with the clear language of the LUC and are not supported by competent evidence contained in the record before the Board. The Board's factual findings are not supported by competent evidence contained in the record before the Board.

PARTIES

6. The City is a home rule city of the State of Colorado organized and existing with all powers and authority granted to home rule cities in Article XX of the Colorado Constitution.

7. The City's address is 300 Laporte Avenue, Fort Collins, Colorado, 80521.

8. The Board is the decision maker in this matter and the proper entity to sue pursuant to C.R.S. § 30-11-105.

9. Larimer County's address is 200 W. Oak Street, Fort Collins, Colorado 80521.

10. StreetMediaGroup is a Colorado limited liability company.

11. StreetMediaGroup's address is 161 Saturn Drive, Unit 5A, Fort Collins, Colorado 80525.

JURISDICTION AND VENUE

12. The Board's Findings and Resolution is a final quasi-judicial decision subject to review under C.R.C.P. 106(a)(4).

13. This Court has subject matter jurisdiction to review quasi-judicial decisions of the Board pursuant to C.R.C.P. 106(a)(4).

14. The City files this Complaint within twenty-eight days of the Board’s approval of the July 28, 2020, quasi-judicial Findings and Resolution so it is timely pursuant to C.R.C.P. 106(b).

15. Venue before the Court is proper because both the City and Board are in the County of Larimer, State of Colorado, StreetMediaGroup is located in the County of Larimer, State of Colorado, and the dispute involves property located in the County of Larimer, State of Colorado.

GENERAL ALLEGATIONS

16. Fort Collins and Larimer County, pursuant to C.R.S. §§ 29-1-203 and 29-20-105, entered into an Intergovernmental Agreement (Regarding Cooperation on Managing Urban Development) on June 24, 2008. [See Intergovernmental Agreement (Regarding Cooperation on Managing Urban Development (“IGA”), attached hereto and incorporated herein as Exhibit A].

17. The IGA was entered into by Fort Collins and Larimer County “for the purposes of implementing their respective master plans, establishing effective means of joint planning and management of urbanization within their jurisdictions, assuring that urban development occurs only as urban level facilities and services are able to be provided, assuring that urban development that occurs in the unincorporated portion of Larimer County in the vicinity of the City of Fort Collins is annexed to the City as soon as possible, providing effective means for the appropriate maintenance of public improvements intended to serve urban development, and assuring that urban development in the vicinity of the City of Fort Collins does not negatively impact road and storm drainage systems in unincorporated Larimer County, or appropriately mitigates those negative impacts;”. [See IGA, at 2, Exhibit A].

18. To facilitate this goal, the IGA creates the Fort Collins Growth Management Area (the “GMA”). [See IGA, ¶ 1 and Exhibit 1 attached to IGA, Exhibit A].

19. On January 16, 2017, the IGA was amended to change the GMA. [See Amendment Number One to Intergovernmental Agreement (Regarding Cooperation on Annexation, Growth Management and Related Issues), attached hereto and incorporated herein as Exhibit B].

21. The Property is located in the GMA.

22. The Property is also immediately adjacent to property owned by the City.

23. The Property is zoned C—Commercial under the LUC.

24. The Property is a 6.46-acre parcel of land owned by the State Board of Land Commissioners (the “State Land Board”) and StreetMediaGroup entered into a lease with the State Land Board on September 4, 2018, to lease 400 square feet of land and 1,000 square feet of aerial space on the Property for the purpose of placing an outdoor advertising structure or billboard.

25. LUC § 10 imposes regulations on all signs, including billboards, located in any of Larimer County’s zoning districts. [See LUC § 10.0, attached hereto and incorporated herein as Exhibit C].

26. The LUC provides: “The purpose of this section is to protect the health, safety and welfare of the public; to provide the public and property owners with an opportunity for safe and effective identification of uses and locations within the county; and to avoid clutter and protect and maintain the visual appearance and property values of the agricultural, residential, business, commercial and industrial areas of the county.” [See LUC § 10.1, Exhibit C].

27. On March 24, 2020, StreetMediaGroup filed with Larimer County an Appeal Request Form for an off-premises electronic billboard to be located on the Property (the “Billboard”) that is not consistent with LUC § 10 in several respects.

28. The LUC identifies several types of signs that are prohibited in all Larimer County zoning districts. In pertinent part, the LUC provides:

The following signs are not allowed in any zoning district.

...

B. Signs which contain any flashing, rotating, animating or otherwise moving features. The appearance of electronic or changeable message signs cannot change more frequently than once every minute.

...

E. Billboards, off-premises signs, except that a home occupation and an accessory rural occupation may have a temporary, off-premises directional sign as described in section 10.6.K.

[LUC § 10.5, Exhibit C].

29. StreetMediaGroup’s proposal for its Billboard requested a complete exemption from Larimer County’s prohibition in LUC § 10.5.E. on billboards and off-premises signs.

30. StreetMediaGroup’s proposal for its Billboard requested a six second change or dwell time for electronic messages much less than the one minute required by LUC § 10.5.B.

31. The Property is located in a nonresidential zoning district.

32. The LUC provides freestanding signs in nonresidential districts may have a maximum sign-area size of 90 square feet per side. [See LUC § 10.11.B.2., Exhibit C].

33. The LUC provides freestanding signs in nonresidential districts may have a maximum height of 18 feet above grade. [See LUC § 10.11.B.2., Exhibit C].

34. The LUC provides freestanding signs in nonresidential districts must have a setback measured from the right-of-way of at least 36 feet. [See LUC §§ 10.11.B.2. and 10.B.3., Exhibit C].

35. StreetMediaGroup's proposal for its Billboard requested 240 square feet per sign face in excess of the maximum 90 square feet per side face allowed by the LUC.

36. StreetMediaGroup's proposal for its Billboard requested a height of 30 feet above grade in excess of the maximum height of 18 feet above grade allowed by the LUC.

37. StreetMediaGroup's proposal for its Billboard requested a setback of 30 feet from the right-of-way less than the 36 feet setback from the right-of-way required by the LUC.

38. On April 29, 2020, City Manager Darin Atteberry wrote Larimer County Manager Linda Hoffman a letter concerning StreetMediaGroup's proposal, which letter was submitted to the Board by County Staff as part of the materials provided to the Board for the June 1, 2020, appeal hearing. In pertinent part, Mr. Atteberry's letter to Ms. Hoffman stated:

As we continue to foster and strength our partnership, I would like to again request your help in responding to some City Council concerns related to electronic signage. As you know, the City has a history of high standards for commercial signage. Regulation of signage is of critical importance to our residents, as signage directly impacts the community's image and character, and can play a significant role in defining how Fort Collins is perceived at its entryways.

Larimer County recently received a proposal for a digital billboard near Harmony Road and I-25, within the City of Fort Collins Growth Management Area (GMA) and adjacent to City-owned natural areas. The property is almost completely surrounded by land within the City's jurisdiction and lies within the Harmony 'Gateway Area' which has been subject to an 18-month public process to define a future vision for how the area will develop over time. In March 2019, the County received an application similar to the current digital billboard proposal in the same location. At that time, the City submitted concerns regarding impacts within the City of Fort Collins GMA. These same concerns apply to the current proposal. Attached to this letter are details of these concerns and conflicts with the City sign regulations, relationship to the Arapaho Bend and Eagle View Natural Areas and

proposed Harmony Corridor Plan Amendments for the Gateway Area, including design standards, which are pending a 2nd reading with City Council. We encourage the County to consider the City's Harmony Gateway Plan when reviewing the current proposal to support our shared community goals.

[See Letter from Darin Atteberry, April 29, 2020, attached hereto and incorporated herein as Exhibit D].

39. Proposals deviating “from a standard or requirement imposed by [the LUC]” are submitted to and considered by the Board. [See LUC § 22.2.1.A.3., attached hereto and incorporated herein as Exhibit E].

40. The LUC has a specific provision governing the Board's consideration of an appeal from the sign regulations in LUC § 10. In its entirety, this provision provides:

To approve an appeal from the applicable requirements in section 10 of this code the county commissioners must consider the following review criteria and find that each criterion has been met or determined to be inapplicable:

A. Approval of the appeal is consistent with the purpose and intent of this code;

B. There are extraordinary or exceptional conditions on the site which would result in a peculiar or undue hardship on the property owner if section 10 of this code is strictly enforced;

C. Approval of the appeal would not result in an economic or marketing advantage over other businesses which have signs which comply with section 10 of this code.

[See LUC § 22.2.5., Exhibit E].

41. County Staff reviewed the issue and determined StreetMediaGroup's proposal for its Billboard did not meet the required criteria under LUC § 22.2.5.

42. With respect to LUC § 22.2.5.A., County Staff concluded the proposal did not meet this criterion, stating:

According to Section 10.1 of the Land Use Code, the purposes of the sign regulations is to “protect the health, safety and welfare of the public; to provide the public and property owners with an opportunity for safe and effective identification of uses and locations within the county; and to avoid clutter and protect and maintain the visual appearance and property values of the agricultural, residential, business, commercial and industrial areas of the county.”

The intent of the regulations within Section 10 of the Land Use Code is to now allow off-premises signs, to provide consistent regulation for the allotment of commercial signage, and to have sign regulations consistent with the regulations adopted by the City of Fort Collins and the City of Loveland.

Larimer County’s sign regulations were deliberately written to be consistent with the regulations adopted by the City of Fort Collins and the City of Loveland to reduce the potential for nonconformities should signs permitted in unincorporated Larimer County by annexed to one of those cities.

Approval of the appeal would allow this property to have a billboard when new billboards have been prohibited since June 15, 1992 and would the billboard to be 30 feet tall when the maximum height of a freestanding sign is 18 feet (1.7 times taller than allowed) with 240 square feet per sign face when a maximum size is 90 square feet per sign face (2.7 times larger than allowed).

In the applicants’ project description, it is noted that removal of the five billboards from other locations in the Fort Collins area will reduce visual clutter. Staff notes that as nonconforming signs, the intent is for the five billboards to be removed over time as their physical condition deteriorates. This would ultimately result in the removal of the five signs without being replaced by a permanent electronic message sign.

The City of Fort Collins provided comments (including in attachment G) that indicate the proposal appeals conflict with their current sign regulations. Their regulations do not allow new off-p[remises signage, allow one message per minute on electronic sign displays, do not allow electronic message center displays on pole signs, and limit pole signs to 18 feet in height and 80 square feet per sign face.

The property is within the Harmony Gateway Area which is a subarea of the Harmony Corridor Plan. According to the City’s comments, an amendment to the City’s Harmony Corridor Plan is pending a second reading with the Fort Collins City Council. The proposed amendment would prohibit billboards and would also prohibit electronic message center signs on properties within the Harmony Gateway.

The City of Fort Collins Natural Areas Department provided comments expressing concern about the impact of light from the proper billboard on wildlife in the adjacent Arapahoe Bend Natural Area and nearby Eagle View Natural Area.

The Development Services Team's assessment is that approval of the appeal would not be consistent with the intent and purpose of the Land Use Code. The proposal does not comply with this criterion.

43. With respect to LUC § 22.2.5.B., County Staff concluded the proposal did not meet this criterion, stating:

No sign permits have previously issued for a freestanding sign on the property. There have been five permits issued for walls signs which cumulatively are well under the overall sign allotment for the property.

If Section 10 of the Land Use Code is strictly enforced, the owners of businesses located on the property would have the ability to obtain permits for a freestanding sign along the property's Harmony Road frontage, a freestanding sign along the property's I-25 frontage, and permits could be obtained for additional wall signage. Each of the two freestanding signs could be 18 feet tall with two 90-square foot sign faces.

The strict enforcement of Section 10 would not allow for the construction of a new billboard of any size, would not allow for a freestanding sign (on-premises or off-premises) taller than 18 feet tall or larger than 90 square feet per sign face and would not allow for an electronic sign with a hold time between messages of less than 60 seconds.

Staff has not reviewed compelling evidence that there are extraordinary or exceptional conditions on the site that would result in a peculiar or undue hardship on the property owner if Section 10 of the Land Use Code is strictly enforced.

Staff finds that the proposal does not comply with this criterion.

44. With respect to LUC § 22.2.5.C., County Staff concluded the proposal did not meet this criterion, stating:

Approval of the appeal would allow this property to have a billboard when new billboards are no longer permitted and would allow the billboard to be 30 feet tall when the maximum height of a freestanding sign is 18 feet (1.7 times taller than allowed) with 240 square feet per sign face when a maximum size of a freestanding sign face is 90 square feet (2.7 times larger than allowed). The sign elevation at

sidewalk level is approximately 16 feet, however the Larimer County Land Use Code does not contain provisions for elevation-related compensation. It would also allow the sign at a lesser setback than required by the Code for smaller signs and would also a hold time of 6 second between messages when a 60 second hold time is required. The Colorado Department of Transportation's minimum hold time between messages is 4 seconds.

Approval of the appeal would provide an economic and marketing advantage over businesses that comply with Section 10 of the Land Use Code by allowing the following: increased sign height, increased sign and copy size, presence of electronic message display, reduced copy hold time, and placement within an area where off-premises signs are otherwise prohibited.

Staff finds that the proposal does not comply with this criterion.

45. County Staff made the following findings:

The Development Services Team finds that approval of the proposed appeal is not consistent with the purpose and intent of the Land Use Code, that there are not extraordinary circumstances on the site which would result in an undue hardship on the property owner if Section 10 were strictly enforced, and approval of the appeal would result in an economic or marketing advantage over other businesses which have signs which comply with Section 10 of the Land Use Code.

46. Based on its analysis of the LUC and findings, County Staff recommended the Board deny StreetMediaGroup's sign appeal.

47. The Board considered StreetMediaGroup's appeal in a noticed public hearing it conducted on June 1, 2020.

48. County Staff's analysis, findings and recommendation were provided to the Board as part of the June 1, 2020, hearing.

49. At the conclusion of the June 1, 2020, public hearing, the Board voted to approve StreetMediaGroup's proposal, but did not issue a written decision at that time.

50. On July 6, 2020, Fort Collins City Manager Darin Atteberry and Fort Collins City Attorney Carrie M. Daggett wrote the Board to ask it to reconsider its vote to approve

StreetMediaGroup's proposal for the Billboard. [See Letter from Darin Atteberry and Carrie M. Daggett, July 6, 2020, attached hereto and incorporated herein as Exhibit F].

51. On July 28, 2020, the Board issued its Findings and Resolution approving in all respects StreetMediaGroup's appeal for the Billboard. [See Findings and Resolution, attached hereto and incorporated herein as Exhibit G].

52. The City now seeks review of the Board's quasi-judicial decision to approve StreetMediaGroup's appeal for the Billboard pursuant to C.R.C.P. 106(a)(4).

FIRST CLAIM FOR RELIEF
(Review Pursuant to C.R.C.P. 106(a)(4))

53. Plaintiff incorporates herein the allegations in paragraphs 1 through 52 above.

54. C.R.C.P. 106(a)(4) permits this Court to review the Board's quasi-judicial decision approving StreetMediaGroup's appeal for the Billboard to determine if the Board exceeded its jurisdiction or abused its discretion.

55. In approving StreetMediaGroup's appeal for the Billboard, the Board both exceeded its jurisdiction and abused its discretion.

56. In approving StreetMediaGroup's appeal for the Billboard, the Board misinterpreted and misapplied each of the required criteria provided by LUC § 22.2.5.

57. The Board inappropriately and without a legitimate basis did not follow County Staff's interpretation and application of the criteria under LUC § 22.2.5 and the Board failed to provide any alternative analysis, rationale, or grounds contradicting the analysis, findings, rationale and conclusion of County Staff.

58. The Board's failure to follow County Staff's interpretation and application of the criteria under LUC § 22.2.5 and failure to provide any alternative analysis, rationale, or grounds

supported by competent evidence in the record and a reasonable and supported interpretation of the LUC constitute an abuse of discretion.

59. No competent evidence exists in the record created before the Board on June 1, 2020, and July 28, 2020, concerning the Board's consideration of StreetMediaGroup's appeal for the Billboard (the "Record") to support the Board's decision not to follow County Staff's interpretation and application of the criteria under LUC § 22.2.5.

60. The Board's decision not to follow County Staff's interpretation and application of the criteria under LUC § 22.2.5 failed to provide any alternative analysis, rationale or grounds supported by competent evidence in the Record that contradicts the analysis, findings, rationale and conclusion provided at the June 1, 2020, public hearing by County Staff.

61. The Board's interpretation and application of LUC § 22.2.5.A. in StreetMediaGroup's appeal is not supported by competent evidence in the Record.

62. The Board's reasoning concerning LUC § 22.2.5.A does not support how the erection of the Billboard meets the purposes and intent of the LUC and of LUC § 10 in particular.

63. The Board's reliance on StreetMediaGroup's representation to take down eight of its existing non-electronic billboards in Larimer County is misplaced and an abuse of discretion because taking down these billboards was not made a condition precedent to the Board's approval and nothing contained in the Board's Findings and Resolution requires StreetMediaGroup to actually remove these existing billboards.

64. The Board's interpretation, analysis, and conclusion concerning LUC § 22.2.5. is not consistent with the interpretation and application of this criterion by County Staff and the

Board failed to provide any alternative analysis, rationale, or grounds supported by competent evidence in the Record and a reasonable and supported interpretation of the LUC.

65. The Board’s interpretation and application of LUC § 22.2.5.B. is not supported by competent evidence in the Record.

66. Since LUC § 22.2.5.B. considers only hardships suffered by the “property owner,” the Board’s reasoning concerning LUC § 22.2.5.B. does not address or support how any peculiar or undue hardship exists for the State Land Board, the owner of the Property.

67. Any peculiar or undue hardship to StreetMediaGroup as a lessee of a small portion of the property owner is irrelevant and immaterial for consideration of the criterion in LUC § 22.2.5.B.

68. There is no competent evidence in the Record describing what the hardship would be to the State Land Board as the property owner or to StreetMediaGroup as a lessee.

69. Conditions on real property typically considered extraordinary or exceptional conditions causing a peculiar or under hardship for a property owner are physical conditions of the property such as an odd-shaped lot, unusual topography or other physical conditions unique to the particular property and not conditions shared by other properties.

70. No specific topographical or physical conditions exist on the Property and no competent evidence exists in the Record supporting the existence of any such extraordinary or exceptional conditions on the Property.

71. The specific variances allowed for StreetMediaGroup’s Billboard—exemption from the prohibition of off-premises billboards; increase in the sign height from a maximum of 18 feet above grade to 30 feet above grade; increase in the sign face from 90 square feet to 240 square

feet; the change in the setback requirement from 36 feet to 30 feet; and the reduction of one-minute message frequency to six seconds—are not linked with any competent evidence in the Record before the Board to any specific topographical or physical condition existing on the Property to meet this criterion.

72. StreetMediaGroup’s rationale for these variances from the requirements of LUC § 10 are not linked to any specific topographical or physical conditions on the Property, but rather are conditions shared by other properties in the area.

73. The Board’s interpretation of LUC § 22.2.5.C. is not supported by competent evidence in the Record.

74. The Board’s reasoning concerning LUC § 22.2.5.C. does not support how approval of the Billboard would not result in an economic or marketing disadvantage over other business which have signs which comply with LUC § 10.

75. The Board’s interpretation and application of LUC § 22.2.5.C. is inconsistent with its plain language.

76. No competent evidence exists in the Record to support any conclusion concerning any new advertising opportunity for specific small businesses or non-profits from the erection of StreetMediaGroup’s Billboard.

77. No competent evidence exists in the Record that other businesses with off-premises billboards that strictly comply with LUC § 10 will not suffer an economic or marketing disadvantage in comparison to StreetMediaGroup’s Billboard.

78. The Board’s Findings and Resolution are not supported by competent evidence in the Record before the Board.

79. The Board's interpretation and application of LUC § 10 and LUC § 22.2.5. in its Findings and Resolution constitute an abuse of discretion.

80. The Board's Findings and Resolution constitute a quasi-judicial decision in which the Board exceeded its jurisdiction and abused its discretion and there is no plain, speedy, and adequate remedy otherwise provided by law.

PRAYER FOR RELIEF

WHEREFORE, for the foregoing reasons, Plaintiff City of Fort Collins, Colorado respectfully requests the Court grant the following relief against Defendants the Board of County Commissioners of Larimer County, Colorado, and StreetMediaGroup, LLC:

A. Find and declare the Board exceeded its jurisdiction and abused its discretion in its Findings and Resolution approving the proposed Billboard;

B. Find and declare the Board's Findings and Resolution approving the proposed Billboard are not supported by competent evidence contained in the Record before the Board;

C. Find and declare the Board's interpretation and application of the LUC in the Findings and Resolution constitute the Board exceeding its jurisdiction and abusing its discretion;

D. Award the City its attorney fees and costs pursuant to Colorado law; and

E. All other and further relief as the Court deems just and appropriate under the circumstances.

Dated this 25th day of August, 2020.

Respectfully submitted,

/s/ Andrew D. Ringel

Andrew D. Ringel #24762
Hall & Evans, L.L.C.
1001 17th Street, Suite 300
Denver, CO 80202
303-628-3300
Fax: 303-628-3368
ringela@hallevans.com

and

John R. Duval #10185
Deputy City Attorney
Claire Havelda #36831
Assistant City Attorney
City Attorney's Office
300 Laporte Avenue
P.O. Box 500
Fort Collins, Colorado 80522
970-221-6652
Fax: 970-221-6327
jduval@fcgov.com
chavelda@fcgov.com

**ATTORNEYS FOR PLAINTIFF
THE CITY OF FORT COLLINS
COLORADO**

Address of Plaintiff:

The City of Fort Collins
300 Laporte Avenue
P.O. Box 500
Fort Collins, Colorado 80522