

<p>Larimer County, Colorado, District Court  Larimer County Justice Center  201 La Porte Avenue, Suite 100  Fort Collins, Colorado 80521-2761  (970) 494-3500</p>	<p>Court Use Only</p>
<p><b>Plaintiff:</b> THE CITY OF FORT COLLINS, COLORADO, a municipal corporation,  v.  <b>Defendants:</b> BOARD OF COUNTY COMMISSIONERS OF LARIMER COUNTY, COLORADO; STREETMEDIAGROUP, LLC</p>	
<p>Jeannine S. Haag, Reg. No. 11995  William G. Ressue, Reg. No. 34110  Frank N. Haug, Reg. No 41427  Larimer County Attorney's Office  224 Canyon Ave., Suite 200  Post Office Box 1606  Fort Collins, Colorado 80522  Telephone: (970) 498-7450  Fax: (970) 498-7430  <a href="mailto:jeanninehaag@larimer.org">jeanninehaag@larimer.org</a>  <a href="mailto:wressue@larimer.org">wressue@larimer.org</a>  <a href="mailto:fhaug@larimer.org">fhaug@larimer.org</a></p>	<p>Case No. 20 CV 30580   Courtroom 4B</p>
<p style="text-align: center;"><b>DEFENDANT BOARD OF COUNTY COMMISSIONERS' ANSWER</b></p>	

Defendant Board of County Commissioners of Larimer County, Colorado, by their undersigned attorneys answer as follows Plaintiff's Complaint for Judicial Review Under C.R.C.P. 106(a)(4):

**INTRODUCTION**

1. Admit.
2. Admit.
3. Admit.
4. Deny.

5. Deny.

### **PARTIES**

6. Admit.

7. Admit.

8. The Board admits that, as the quasi-judicial decision maker, it is a proper party in this action and that Defendant StreetMediaGroup is an indispensable party.

9. Admit.

10. The Board is without knowledge sufficient to know the truth of the allegation and therefore deny same.

11. The Board is without knowledge sufficient to know the truth of the allegation and therefore deny same.

### **JURISDICTION AND VENUE**

12. Admit.

13. Admit.

14. The Board does not dispute that the Complaint was filed within 28 days of the Board's issuance of the Findings and Resolution.

15. Admit.

### **GENERAL ALLEGATIONS**

16. The Board admits it is party to an Intergovernmental Agreement with Fort Collins dated June 24, 2008 (IGA). The Board is without knowledge sufficient to know whether the IGA was within the record before the Board when making the quasi-judicial decision under review in this action, and therefore this admission is not intended to waive any objections to the scope of the record on review.

17. Without admitting its admissibility in this proceeding, the provisions of the IGA speak for themselves and the Board denies any recitation or interpretation of such provisions inconsistent therewith.

18. Without admitting its admissibility in this proceeding, the provisions of the IGA speak for themselves and the Board denies any recitation or interpretation of such provisions inconsistent therewith.

19. The Board admits it is party to a January 16, 2017 amendment of the IGA (amendment). The Board is without knowledge sufficient to know whether the amendment was within the record before the Board when making the quasi-judicial decision under review in this action, and therefore this admission is not intended to waive any objections to the scope of the record on review.

20. There is no paragraph 20.

21. Without admitting the admissibility of the IGA or amendment, the Board admits this allegation.

22. The Board admits the Property directly abuts a parcel owned by Fort Collins.

23. Admit.

24. The Board Admits the property owner is the Colorado Board of Land Commissioners who signed the application. The Board is without knowledge and therefore denies information about the specific terms of the lease.

25. The Land Use Code (LUC) speaks for itself. Defendants deny any characterization, interpretation or construction inconsistent therewith.

26. The LUC speaks for itself. Defendants deny any characterization, interpretation or construction inconsistent therewith.

27. The Board admits StreetMediaGroup filed an Appeal Request Form on March 25, 2020 for an off-premises sign to be located on the Property (Appeal Request). The Board denies the remainder of this allegation.

28. The LUC speaks for itself. The Board denies any characterization, interpretation or construction inconsistent therewith.

29. The Appeal Request speaks for itself. The Board denies any characterization, interpretation or construction inconsistent therewith.

30. The Appeal Request speaks for itself. The Board denies any characterization, interpretation or construction inconsistent therewith.

31. Admit.

32. The LUC speaks for itself. The Board denies any characterization, interpretation or construction inconsistent therewith.

33. The LUC speaks for itself. The Board denies any characterization, interpretation or construction inconsistent therewith.

34. The LUC speaks for itself. The Board denies any characterization, interpretation or construction inconsistent therewith.

35. The Appeal Request speaks for itself. The Board denies any characterization, interpretation or construction inconsistent therewith.

36. The Appeal Request speaks for itself. The Board denies any characterization, interpretation or construction inconsistent therewith.

37. The Appeal Request speaks for itself. The Board denies any characterization, interpretation or construction inconsistent therewith.

38. The Board admits the record includes a letter dated April 29, 2020 from Fort Collins City Manager Darin Atteberry to Larimer County Manager Linda Hoffmann (Atteberry Letter). The Atteberry Letter speaks for itself and the Board denies any characterization, interpretation or construction inconsistent therewith.

39. The LUC speaks for itself. The Board denies any characterization, interpretation or construction inconsistent therewith.

40. The LUC speaks for itself. The Board denies any characterization, interpretation or construction inconsistent therewith.

41. The Board admits that the planning staff report (Staff Report) recommended the Board deny the Appeal Request. The Staff Report speaks for itself and the Board denies any characterization, interpretation or construction inconsistent therewith. The Board denies that Larimer County staff had authority to approve or deny the Appeal Request or determine whether such request satisfies the LUC.

42. The Board admits that the planning staff report (Staff Report) recommended the Board deny the Appeal Request. The Staff Report speaks for itself and the Board denies any characterization, interpretation or construction inconsistent therewith. The Board denies that Larimer County staff had authority to approve or deny the Appeal Request or determine whether such request satisfies the LUC.

43. The Board admits that the planning staff report (Staff Report) recommended the Board deny the Appeal Request. The Staff Report speaks for itself and the Board denies any characterization, interpretation or construction inconsistent therewith. The Board denies that

Larimer County staff had authority to approve or deny the Appeal Request or determine whether such request satisfies the LUC.

44. The Board admits that the planning staff report (Staff Report) recommended the Board deny the Appeal Request. The Staff Report speaks for itself and the Board denies any characterization, interpretation or construction inconsistent therewith. The Board denies that Larimer County staff had authority to approve or deny the Appeal Request or determine whether such request satisfies the LUC.

45. The Board admits that the planning staff report (Staff Report) recommended the Board deny the Appeal Request. The Staff Report speaks for itself and the Board denies any characterization, interpretation or construction inconsistent therewith. The Board denies that Larimer County staff had authority to approve or deny the Appeal Request or determine whether such request satisfies the LUC.

46. The Board admits that the planning staff report (Staff Report) recommended the Board deny the Appeal Request. The Staff Report speaks for itself and the Board denies any characterization, interpretation or construction inconsistent therewith. The Board denies that Larimer County staff had authority to approve or deny the Appeal Request or determine whether such request satisfies the LUC.

47. Admit.

48. Admit.

49. The Board admits that it voted and approved StreetMediaGroup's Appeal Request at the conclusion of the public hearing on June 1, 2020, and that such approval was reduced to writing in the form of a Findings and Resolution signed by the Board on July 28, 2020.

50. The Board admits that after it voted and approved StreetMediaGroup's Appeal Request on June 1, 2020, Fort Collins City Manager Darin Atteberry and Fort Collins City Attorney Carrie M. Daggett wrote a letter to the Board dated July 6, 2020 (Daggett Letter). The Board denies that the Daggett Letter is part of the record on review in this action as it was submitted after evidence closed and the Board had voted and approved the Appeal Request. To the extent the Daggett Letter is considered over the objection of the Board, such letter speaks for itself and the Board denies any characterization, interpretation or construction inconsistent therewith.

51. The Board admits that it issued a written Findings and Resolution on July 28, 2020, confirming its vote and approval of the Appeal Request on June 1, 2020. The Board denies any allegation that the Board was free to reconsider, take additional evidence, or change its approval of the Appeal Request after its June 1, 2020 vote and approval.

52. This is not an allegation and therefore does not require an answer.

**FIRST CLAIM FOR RELIEF**

53. This is not an allegation and therefore does not require an answer.

54. The Board admits the Court has jurisdiction under C.R.C.P. 106(a)(4) to review the Board's quasi-judicial decision approving the Appeal Request.

55. Deny.

56. Deny.

57. Deny.

58. Deny.

59. Deny.

60. Deny.

61. Deny.

62. Deny.

63. Deny.

64. Deny.

65. Deny.

66. Deny.

67. Deny.

68. Deny.

69. The allegation in this paragraph presents a legal conclusion and therefore is denied.

70. Deny.

71. Deny.

72. The Board is without sufficient information to know StreetMediaGroup's logic or thinking behind its Appeal Request and therefore denies this allegation.

- 73. Deny.
- 74. Deny.
- 75. Deny.
- 76. Deny.
- 77. Deny.
- 78. Deny.
- 79. Deny.
- 80. Deny.

**AFFIRMATIVE DEFENSES**

1. The Court’s review is exclusively under C.R.C.P. 106(a)(4) and limited to a determination of whether the Board exceeded its jurisdiction or abused its discretion based on the evidence in the record that was before the Board. An award of attorney fees and costs is not an available remedy under C.R.C.P. 106(a)(4).

2. The Board’s decision is supported by competent evidence and is not arbitrary, capricious, contrary to law or an abuse of discretion.

3. The Board’s decision did not exceed its jurisdiction.

WHEREFORE, the Board respectfully requests this Court enter judgment affirming its decision.

Dated: September 17, 2020

LARIMER COUNTY ATTORNEY’S OFFICE

By: s/Jeannine S. Haag  
Jeannine S. Haag, Reg. No. 11995  
William G. Ressue, Reg. No. 34110  
Frank Haug, Reg. No. 41427  
Attorneys for Defendants

## CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing DEFENDANT BOARD OF COUNTY COMMISSIONERS' ANSWER was served using the Colorado Courts E-Filing system this 17<sup>th</sup> day of September, 2020, which will send notification to the following:

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s/Jennifer D. Infeld