

District Court, Larimer County, State of Colorado Larimer County Justice Center 201 La Porte Avenue, Suite 100 Fort Collins, Colorado 80521-2761 (970) 494-3500	DATE FILED: February 26, 2021 3:43 PM CASE NUMBER: 2020CV30580 ▲ COURT USE ONLY ▲
Plaintiff: THE CITY OF FORT COLLINS, COLORADO, a municipal corporation, v. Defendants: BOARD OF COUNTY COMMISSIONERS OF LARIMER COUNTY, COLORADO; STREETMEDIAGROUP, LLC	
ORDER GRANTING MOTION TO DISMISS CROSSCLAIMS	

THIS MATTER comes before the Court on Defendant Board of County Commissioners of Larimer County’s Motion to Dismiss Defendant StreetMediaGroup, LLC’s Cross Claims. The cross claims in StreetMedia’s answer allege that StreetMedia is entitled to declaratory and injunctive relief on the grounds that the Larimer County Land Use Code is unconstitutional in its procedure for approving signs. The Board argues that such relief would be improper and StreetMedia lacks standing. StreetMedia filed a response arguing that it does have standing and relief would be proper. Having reviewed the record and applicable law, the Court now hereby finds and orders as follows:

I. LEGAL AUTHORITY

C.R.C.P. 12(b)(1) allows a Court to dismiss a case for “lack of jurisdiction over the subject matter,” and the plaintiff has the burden to prove jurisdiction. *Trinity Broadcasting of Denver, Inc. v. City of Westminster*, 848 P.2d 916, 924-25 (Colo. 1993). Standing is a component of subject matter jurisdiction and is a constitutional prerequisite to bringing a lawsuit. *Hansen v. Barron’s Oilfield Service, Inc.*, 429 P.3d 101, 103 (Colo. App. 2018). Standing in Colorado requires an injury-in-fact to a legally protected interest. *Ainscough v. Owens*, 90 P.3d 851, 856 (Colo. 2004). Standing is a doctrine developed to ensure the

separation of powers specifically designed to ensure courts do not encroach on the power of the legislature to make prospective laws. *Id.* Apart from this constitutional underpinning, judicial self-restraint, based upon considerations of judicial efficiency and economy, also has an effect on standing. *Wimberly v. Ettenberg*, 570 P.2d 535, 539 (Colo. 1977). An injury-in-fact may not be a “remote possibility of future injury” nor an “injury that is overly indirect and incidental” to the defendant’s action. *Id.*

II. ANALYSIS

StreetMedia’s constitutional claims appear to have no meaningful remedy, as there is no injury. StreetMedia’s sign was approved by the Board of County Commissioners of Larimer County. When the City of Fort Collins filed a complaint for an appeal under C.R.C.P. 106(a)(4), StreetMedia moved for a motion to dismiss on the basis of the City of Fort Collins lacking standing and the untimeliness of the City’s complaint, which the Court denied. StreetMedia now seeks to invalidate the entire sign approval procedure as unconstitutional. The problem for StreetMedia is that its sign was approved. In other words, StreetMedia has not suffered any injury, concrete or imminent, by having its sign approved by the procedure. No matter what the Court decides on StreetMedia’s claims, it would have no effect on the sign that is at issue in this case. If StreetMedia is indeed correct that the whole sign approval process is constitutionally defective, perhaps the proper relief would be to grant the City’s appeal and take down the sign. Arguably, if the procedure is defective than its approvals would be defective as well. However, it is clear that StreetMedia does not actually want that remedy.

Finding that StreetMedia has standing regarding its claims would undermine judicial efficiency. Standing requirements ensure that the cases coming before the court are actual controversies where parties have something at stake and will litigate thoroughly. StreetMedia has nothing at stake in bringing this cross claim because its sign is going to be up, whether or not the code is found to be constitutional in this matter. Moreover, StreetMedia did not allege imminent injury beyond having its sign approved,

and the Court will not consider StreetMedias claims in its response that it plans to apply for more signs in the future, as this is a remote possibility of injury and not properly alleged in the answer.

Therefore the Court shall GRANT the Board's motion to dismiss with respect to StreetMedia's cross claims for declaratory and injunctive relief for the Larimer County Code regarding its constitutionality. Because StreetMedia does not have standing to bring these claims, the Court lacks jurisdiction over the subject matter in StreetMedia's claims. The Court does not find it necessary to address the merits or whether declaratory or injunctive relief would be proper. To be clear, StreetMedia still has standing to defend the C.R.C.P. 106 appeal as it would be injured if the appeal overturned the sign approval.

SO ORDERED: February 26, 2021

BY THE COURT:



Daniel McDonald
District Court Judge