



is referred to as “Board.” References to the Certified Record will be by Volume, page number and, if applicable, line number. (Vol., p., l:)

## II. STATEMENT OF THE CASE

The City seeks judicial review of the Board’s quasi-judicial decision approving StreetMedia’s application to install an advertising sign that deviates from various sign standards in the Larimer County Land Use Code (the “Application”). Specifically, the City alleges the Board abused its discretion by misapplying provisions in the Larimer County Land Use Code (“LUC”) and that the record has no competent evidence to support the Board’s approval of the Application.

Review of a quasi-judicial decision under C.R.C.P. 106 has a very narrow scope, and the Board’s decision and application of its LUC are afforded great deference. The LUC has certain standards for signs that must be adhered to *unless* the Board approves a deviation. The criteria to approve a deviation are expressly provided in the LUC, and the Board (not County staff nor the City) is the quasi-judicial decision maker that decides whether such criteria have been satisfied based on evidence in the record. The opinions of County Staff and the City are relevant and valuable, but do not control. Whether the Board has previously approved prior applications to deviate from the sign standards is irrelevant, as each application stands on its own merits. The standard of review in this case is whether there is *any* evidence in the record to support the Board’s decision. Here, the Board received conflicting evidence about the applicable review criteria and reached a decision that the City disagrees with. That is not a basis on which the Board’s decision can be vacated. Because the record includes competent evidence to support the Board’s decision, there was no abuse of discretion and the decision must be affirmed.

### III. ISSUE ON REVIEW

Whether the Board abused its discretion by misinterpreting and misapplying the Larimer County Land Use Code and whether there is sufficient evidence in the record to support the decision.

### IV. STANDARD OF REVIEW & REGULATORY OVERVIEW

#### A. Judicial Review of the Board's Application of Law.

“In determining whether there was an abuse of discretion, courts may consider whether there was a misinterpretation or misapplication of governing law.” *Sierra Club v. Billingsley*, 166 P.3d 309, 312 (Colo. App. 2007). When a local regulation is clear and unambiguous, it should be construed as written so as to carry out the intent of the legislative body; however, “[i]f the language of an administrative rule is ambiguous or unclear, [the court] give[s] great deference to an agency’s interpretation of a rule it is charged with enforcing, and its interpretation will be accepted if it has a reasonable basis in law and is warranted by the record.” *Sierra Club*, supra at 312. “If there is a reasonable basis for the agency’s application of the law, the decision may not be set aside on review.” *Platte River Env’tl. Conservation Organiz. v. Nat’l Hog Farms*, 804 P.2d 290, 292 (Colo. App. 1990) (internal citations omitted). “Administrative interpretations are most helpful when the subject involved calls for the exercise of technical expertise or when the statutory language is susceptible of more than one reasonable interpretation.” *Id.* “Generally, a reviewing court should defer to the construction of a statute by the administrative officials charged with its enforcement. If there is a reasonable basis for an administrative board’s interpretation of the law, [the reviewing court] may not set aside the board’s decision.” *Lieb v. Trimble*, 183 P.3d 702, 704 (Colo. App. 2008).

## **B. Judicial Review for Support in the Record for the Board’s Decision.**

A court’s review of a quasi-judicial action under Rule 106(a)(4) “shall be limited to a determination of whether the body or officer has exceeded its jurisdiction or abused its discretion, based on the evidence in the record before the defendant body or officer.” Rule 106(a)(4)(I), C.R.C.P. The object of a Rule 106 proceeding is not to settle or determine disputed facts, but to investigate and correct errors of law of a jurisdictional nature and abuses of discretion. *Doran v. State Bd. of Medical Exmrs.*, 78 Colo.153, 240 P. 335, 337 (1925). The merits of the case are not involved. *State Bd. Of Medical Exmrs. v. Noble*, 65 Colo. 410, 177 P. 141 (1918). A mere disagreement with a ruling is not a sufficient showing of abuse of discretion. *Bristol v. County Court*, 143 Colo. 306, 352 P.2d 785, 786 (1960).

An abuse of discretion occurs only when there is **no** competent evidence to support the decision. *Ross v. Fire & Police Pension Ass’n.*, 713 P.2d 1304, 1305 (Colo. 1986). “No competent evidence” means that the ultimate decision of the lower tribunal is so devoid of evidentiary support that it can only be explained as an arbitrary and capricious exercise of authority. *Bentley v. Valco, Inc.*, 741 P.2d 1266, 1267 (Colo. App. 1987). A Board’s “findings may not be set aside merely because the evidence was conflicting or susceptible of more than one inference.” *Arndt v. City of Boulder*, 895 P.2d 1092, 1095 (Colo. App. 1994), *cert. denied* (1995); *see also Bristol v. County Court*, 352 P.2d 785, 786 (Colo. 1960) (finding that mere disagreement with a ruling is not a sufficient showing of abuse of discretion). The proper function of a district court under Rule 106 action is to affirm a lower tribunal where there is **any** competent evidence to support the tribunal’s decision. *Bauer v. City of Wheat Ridge*, 182 Colo. 324, 513 P.2d 203, 204 (1973).

### **C. Larimer County Sign Standards and Requirements.**

Unless a deviation is approved by the Board, the relevant sign standards and regulations are in Section 10 of the LUC as follows:

- Maximum sign-area is 90 feet per side with a maximum height of 18 feet above grade. Vol. V, LUC §10.11.B.2.
- Setback for signs is at least 36 feet from right-of-way. Vol. V, LUC §10.11.B.2; §10.11.B.2.3.
- Flashing, rotating, animated or otherwise moving features are not permitted, and message signs cannot change more frequently than once every minute. Vol. V, LUC §10.5.B.
- Off-premises signs are not permitted (with certain exceptions that are not relevant in this action). Vol. V, LUC §10.5.E.

### **D. Deviation from Sign Standards.**

The LUC allows applicants to “appeal” the sign standards and regulations which, if approved by the Board, allows for deviation from such standards and regulations. To approve an appeal from the applicable requirements of the sign standards (found in Section 10 of the LUC), the Board must consider the following review criteria and find that each has been met or is inapplicable:

1. Approval of the appeal is consistent with the purpose and intent of Section 10 of the LUC;
2. 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 the LUC is strictly enforced;
3. 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 the LUC.

Vol. V, LUC §22.2.5.

With respect to review criterion “1” above, the purpose and intent of the sign standards in Section 10 of the LUC is as follows: “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.” Vol. V, LUC §10.1.

## **V. ARGUMENT**

### **A. Summary of Argument.**

The Parties are in agreement as to the appropriate standards to apply in this case.<sup>1</sup> The LUC specifically provides in Section 22.2.5 that an applicant may appeal the standards of the Sign Code in Section 10 of the LUC to the Board. Further, the parties agree as to the three applicable criteria when the Board decides such appeals: (1) consistency with the purposes and intents of the LUC, (2) exceptional or extraordinary circumstances resulting in undue hardship where LUC strictly enforced, and (3) economic and marketing advantage. In this matter, the record is replete with discussion and evidence related to each of these criteria. The Board considered and weighed each criterion carefully. Further, although the City repeatedly references the comments made by staff and in the City’s referral documents, the ultimate decision on the appeal is left to the discretion of the Board as the quasi-judicial decision maker. The input of the staff and the referral agencies are important for consideration but are in no way binding on the Board.

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<sup>1</sup> See Plaintiff’s Opening Brief, page 17, Defendant StreetMedia’s materials, Vol. I p. 24.

Further, the City argues that the IGA between the City and the County should be considered, the implication being that it somehow restricts the authority of the Board to make a decision contrary to the City's liking. However, as noted by the assigned County staff planner Michael Whitley, the recommendation of the City "is not binding on either staff or the Board of County Commissioners." Vol. II-A, pp. 16-17. Per the IGA, the City's input is to be considered but the ultimate decision remains with the Board.

Although the City states there was a misapplication and misinterpretation of the LUC, the substance of its arguments is really a challenge to the weight of the evidence. The City does not adequately clarify how the Code was misapplied or misinterpreted, as a result the misapplication and misinterpretation arguments are addressed together with the abuse of discretion arguments. Particularly because the standard for misapplication or misinterpretation gives great deference to the decision making body, and if there is a reasonable basis for the body's application, the decision may not be set aside. *Platte River*, 804 P.2d 290, 292. Effectively, the City invites the Court to reweigh the evidence and come to a different conclusion than the Board. This ignores the role of a reviewing court in a C.R.C.P. 106 proceeding, which is to review the record for any competent evidence in support of the Board's decision. *Ross v. Denver Dep't of Health and Hosp.*, 883 P.2d 775, 778 (Colo. App. 1994) (citing *Sundance Hills Homeowners Assoc. v. Bd. of County Comm'rs*, 534 P.2d 1212, 1216 (Colo. 1975)). Here, the Board held a public hearing, at which no one, not even the City, appeared to make public comment. The Board asked a lot of questions and had lengthy deliberations. As part of the quasi-judicial proceedings, StreetMedia submitted a nearly 50-page brief with argument and evidence about each review criterion and how it was satisfied by the Application. Vol. I, pp. 16-61. As further argued in the paragraphs below, the Board appropriately

considered the applicable review criteria for StreetMedia’s appeal, and the decision granting the appeal is supported by competent evidence in the record.

**B. The decision of the Board was based on careful consideration of the purpose and intents of the LUC and the record contains ample evidence related to this criterion.**

The introductory paragraph of the LUC Sign Code includes an explicit statement on its purpose. LUC §10.1. Various purposes are laid out relating to health and safety, aesthetic values, promoting identification of uses and locations within the County, and protecting property values. The Findings and Resolution of the Board specifically addressed how this Application meets these purposes.

“The appeal is consistent with the purpose and standards because it will remove clutter and protects and maintains the visual appearance and property values of the area.” Vol. IV, p. 3. The Findings and Resolution continued to more specific analysis relating to the sign in this particular area stating “the sign is located in an area with background lighting, and the sign will not significantly affect that background lighting. The sign is also located at an intersection of two high speed roadways, which diminished concerns relating to dwell time. The appeal is consistent with implementation of the sign code because it removes clutter including removal of approximately eight other signs....It will beautify roadways and give small businesses an opportunity to communicate with customers. Further, the SITELINE technology employed by the sign allows for directional distribution of light so as to minimize interference and mitigate impacts of a lighted sign.” *Id.* The Board further demonstrated its commitment to the intents and purposes of the Sign Code in paragraph 8 of the Findings and Resolution by clarifying that StreetMedia would be removing 8 sign faces from the county thereby reducing clutter. Vol. IV, p. 2.

In their oral findings, each member of the Board explained their analysis relating to the purpose and intent of the code. Commissioner Donnelly discussed the need to support small businesses through availability of advertising so that people can locate them and their services. Vol. II-A, pp. 69-70. He further discussed StreetMedia's commitment to remove eight sign faces in Larimer County and his familiarity with those other signs. *Id.* p. 72. He stated clearly "as far as actually implementing the Land Use Code as we, as Commissioners, as our community has described it to us, this actually does more for that proposal, and to move that idea forward than probably anything else we've done in the last decade." *Id.* at p. 72, l:18-22. Commissioner Donnelly further stated that "this is very positive event for beautifying Larimer County roadways, for still giving opportunity for small business to be able to communicate with the potential customers... the technology exists to really mitigate a lot of the negative impacts of a lighted sign. And so, I think this is a very positive proposal." *Id.* at p. 73. Commissioner Donnelly concluded by noting that "this is a very creative solution that forward[s] the objectives of the county to remove billboards, also gives the folks an opportunity to continue their own business and help other businesses." *Id.* at p. 74. Commissioner Kefalas, in his discussion on the matter, discussed the various benefits of a sign like this for the community. *Id.* at p. 77. As well as stating that his decision is influenced by the new technology that this sign uses. *Id.* at 74, l:18-19.

Commissioner Johnson's comments indicate a clear deliberation and weighing of the factors involved. In the introduction to his comments, he stated explicitly "My job is to interpret the Application in light of the Code in front of us." *Id.* at 78, l:16-17. In considering the Application's consistency with the purposes of the LUC, Commissioner Johnson noted "the removal of other signs that the Land Use Code does speak to clutter and visual appearance." *Id.* at l:18-21. Further, he noted the commercial nature of the area in which the sign would be located and how the

proposed sign would not add to the clutter in that area. *Id.* at 1:22-24. Commissioner Johnson also referenced the proposed signs location along an Interstate and another road with a 55 mph speed limit and how the technology used for the sign and the background illumination proposed by the Application was appropriate under the circumstances. *Id.* at p. 80. Commissioner Johnson declared his support for the Application, a motion was made, and the Application was approved unanimously by the Board. *Id.* at p. 81. The Board's deliberation clearly demonstrates that it considered the purposes and intent of the sign code, namely aesthetic values, location and identification of businesses, health, welfare, and safety of the public, and the avoidance of clutter. Further, despite the City's statement that this criterion is only mentioned in the staff report<sup>2</sup>, the Board's Findings and Resolution expressly identifies the criterion and includes specific findings.

In addition to the Board's deliberation, the record shows argument and evidence from StreetMedia to support the Board's finding that the first criterion was satisfied. In StreetMedia's summation during the hearing it noted that:

[The proposed sign] furthers the purpose/intent of the Sign Code. It advances the health, safety, and welfare. It provides for safe and effective identification of uses. It avoids sign clutter and maintains visual appearance of the County through high-quality design and placement in relation to adjacent, elevated street. And five signs [8 sign faces] will be removed. This sign proposal does not affect property values, as is demonstrated by the empirical study that we provided to you.

*Id.* at pp. 60-61.

Clearly, StreetMedia provided, and each member of the Board carefully considered, the evidence relating to the intents and purposes of the LUC and the Board made appropriate findings that are supported by such evidence. There are also multiple examples of less explicit evidence

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<sup>2</sup> Plaintiff's Opening Brief, p. 18.

relating to the intent and purpose of the LUC throughout the record. For example, Commissioner Kefalas specifically addressed the consolidation of signage related to this appeal. Vol. II-A, p.14, l:2-7. Commissioner Donnelly addressed the context around the sign as being near large scale commercial uses. Vol. II-A, p. 18, l:23-25. This proximity to large commercial uses is also noted in StreetMedia’s presentation and in their brief submitted to the Board. See Vol. II-A, p. 43, l:22-25; Vol. I, pp. 21-23. There are various references to the sign’s ability to successfully co-exist with the surrounding context regarding wildlife, natural areas, and lighting. See Vol. II-A, p. 17, l:22 through p. 18, l:8; Vol. II-A, p. 9, l:16-22; Vol. II-A, pp. 64-68.

The City incorrectly argues that the record does not contain evidence relating to the purposes and intent of the LUC sign code. The evidence and deliberation outlined above clearly indicate that the Board appropriately considered the matter and made a finding based on ample evidence. The City simply ignores the fact that the Code specifically calls out the removal of clutter as a legitimate goal. Further maintaining visual appearance of the County, providing citizens with information as to services and businesses within the County, and protecting the health safety and welfare are all legitimate goals of the Sign Code that were evaluated on evidence presented to the Board.

**C. The Board made adequate findings relating to hardship and exceptional or extraordinary circumstances and the record contains significant evidence related to this criterion.**

The second criterion applicable to the Board’s decision was to consider whether 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 LUC is strictly enforced. The Board’s Findings and Resolution addressed this criterion by stating: “The Property is located at an elevation below the adjacent roadways, making placement and view of a sign more difficult. Further, the adjacent

roadways are high speed major roadways. The topography of the site creates a hardship that can be mitigated by the placement of the sign and the implementation of the strategies of directional lighting and dwell time as indicated in the Application. The placement of the sign as indicated...will increase its viewability and make it safer for motorists to view.” Vol. IV, p. 3.

StreetMedia presented, and the Board considered, various reasons why strict enforcement of the LUC would result in a hardship in this location. StreetMedia testified that its Application presents a “classic case” for a variance or an appeal, given the topography of the area and its proximity to major roadways. Vol. II-A, p. 46, l:12-16. The unique physical nature of the property was outlined in StreetMedia’s brief filed with the Board in support of the Application. Vol. I, pp. 21-23. StreetMedia also presented various photographs of the area and showed that “[t]he grade installation site is 16-feet below adjacent sidewalk. Strict compliance would deprive the Applicant of being able to have a sign at all here that made any sense.” Vol. II-A, p. 61, l:8-11.

Because of the topography of the location, StreetMedia demonstrated that although the proposed sign was 30-feet-tall, it would practically appear only as a 14-foot-tall sign. *Id.* On this point StreetMedia noted that without the height modification, a sign would not be placed in this location because of the visual obstruction. *Id.* at p. 60, l:14-16.

StreetMedia presented further evidence that the setback variance is needed to ensure safe viewing of the sign. Strict adherence to the code would increase the lack of safety of individuals viewing the sign, as well as decrease the ability of those individuals to see the sign. *Id.* at p. 55, l:16-25. With regard to the dwell time, StreetMedia noted that based on a Federal Highway Administration study, which was provided to the Board, the proposed six second loop is safe. *Id.* at p. 58, l:12-14; see also Vol. I, pp. 78-80. In its brief in support of the Application, StreetMedia discussed hardship for each separate appeal issue and included an executive summary. See Vol. I,

pp. 16-61, (executive summary on page 51.) StreetMedia specifically noted that given the size and speed of Harmony Road, a sign face of 90 feet is insufficient to deliver a message to the traveling public. See *Id.*, pp. 42-43.

StreetMedia further noted that the property is unique because it is one of the few on such a large interchange at the corner of an interstate and a major road. *Id.* at p. 49. StreetMedia further noted that strict application of the LUC, especially given the size of the adjacent roads, the absence of residential property nearby, the commercial nature of the area, as well as implementation of new technological techniques, would constitute a hardship. See *Id.* Commissioners Donnelly and Johnson similarly commented on the nature of the area noting its heavy commercial use. Vol. II-A, p. 18, l:23-25; *Id.* at p. 78, l:22-24. At this location, as discussed by StreetMedia and the Board, strict enforcement of the sign code regulations would prohibit a meaningful sign from existing.

The Board's discussion of the Application during the quasi-judicial hearing reflects their determination that the subject property is unique, and strict application of the sign regulations would result in a unique/peculiar or undue hardship. In addition to the Board's comments referenced above, Commissioner Johnson directly discussed the matter of hardship and the elevation and topography of the surrounding roadways. *Id.* at p. 24, l:22-25 to p. 25, l:1-15. He noted that that without a variation to the sign code, because of the topography and context, StreetMedia will suffer harm as a result, and commented "I do think there is a hardship because of the topography of the site having a pretty significant elevation below the roadway." *Id.* at pp. 24, 79, l:6-8.

Commissioner Donnelly also commented on the demonstrated uniqueness of the property and the hardship that would be experienced without the appeal (Vol. II-A, p. 69, l:15-16), and found this is a "high traffic, high-traveled roadway with higher speeds." *Id.* at p. 71, l:2-3. The record contains

ample competent evidence to support the Board's conclusion that strict enforcement of the sign regulations would present a peculiar *and* undue hardship.

With respect to this criterion, the City notes StreetMedia's status as a leaseholder in the subject property rather than the "owner" and argues only hardships incurred by the fee owner are relevant. The City's application of this criterion is overly literal and unreasonable. It is clear in the record that StreetMedia is the applicant and has a lease interest in a portion of the property for the purpose of installing a sign. Vol. I, p. 106. It is also established that the fee owner of the property is the State of Colorado Land Board, whose mission is to raise money for schools. *Id.* As the holder of an interest in the property, StreetMedia clearly falls within the criterion's reference to hardship. The purpose of the inquiry for this criterion is to weigh the impacts of strictly applying standards in the LUC. Why should it matter that the hardship is suffered by one holding a legal interest in a property rather than the fee owner? It should not matter, and the record reflects that the Board did not draw any such distinction when applying this criterion. Regardless, in addition to the hardship related to StreetMedia, the record has competent support for a hardship on the State Land Trust of approximately \$1,000,000.00 in lost revenue if StreetMedia is unable to install the proposed sign. *Id.* at p. 38, l:23-25. As argued by StreetMedia in the quasi-judicial proceedings, failure to allow the appeal to move forward would result in a hardship on the State Land Trust because the standards as written make it impractical to build a sign and for the State Land Trust to pursue its mission to generate revenue. See *Id.* at p. 46, l:17-21; p. 60, l:14-16.

Finally, the City asks the Court to discount the Board's consideration of the economic downturn or the aid that this sign may provide to the businesses and citizens of the County. This issue was discussed by the Board, and the Board determined the Application to be consistent with the purpose of the sign code by providing citizens and businesses with "effective identification of

uses and locations within the County.” To grant the Application, the Board was required to consider a broad range of factors, including the purposes of the sign code “to protect the health, safety and welfare of the public; [and] to provide the public and property owners with an opportunity for safe and effective identification of uses and locations within the county....” Vol. V, LUC, §10.1. The Board’s reference to the condition of the local economy and how StreetMedia’s proposed sign could provide advertising opportunities in aid of local businesses was responsible and proper, not evidence of an abuse of discretion.

In summary, the City argues there is no evidence of exceptional or unusual circumstances warranting approval of StreetMedia’s Application, and no hardship will be suffered if deviation from the sign standards is not granted. However, as shown above, there is competent evidence in the record to support the Board’s findings to the contrary and its application of the LUC. The Board recognizes the contrary arguments and evidence presented by the City, but the Court’s role in this action is not to reweigh the evidence.

**D. The Board reasoned that the sign would increase economic and marketing competitiveness.**

The Findings and Resolution addresses the issue of any economic and marketing advantage and states: “The appeal will not result in an unfair business advantage as the sign will permit variety of non-profit and business advertisement in a location that is highly visible to the public.” Vol. IV, p. 4. The Board pointed out on various instances during the hearing that they wanted to expand competition and equalize the playing field by allowing StreetMedia’s sign. This is consistent with the purpose and intent of the LUC to provide the public and property owners with an opportunity for safe and effective identification of uses and locations within the County. Commissioner Donnelly noted that “these cases...play a significant role in allowing our small local businesses to

be able to reach customers that they normally would have no opportunity to do. And it's even more stark when you think about it being right across the street from a Walmart. It gives a small shop, a small business...the opportunity to at least let potential customers know that they are in the marketplace." Vol. II-A, p. 70, l:9-16.

Commissioner Johnson addressed this issue stating: "I don't really think there's any economic or marketing advantage over other businesses...in this particular location, it's not advertising a business that's competing with any of the other businesses in the area, so I don't think the appeal would create any economic or marketing advantages." *Id.* p. 79, l:21-25; p. 80, l:1-3. Commissioner Kefalas similarly noted a commitment to providing the public with knowledge of the variety of businesses, non-profits, and services available in the county. See *Id.* at p. 77, l:1-11. He also noted that this sign provides a useful "tool" for accomplishing the goal of equalizing advertising space. See *Id.*

StreetMedia explained that the advertising industry works to level the playing field between businesses that are on main roads and those that are not. *Id.* at p. 47, l:6-8. It further explained that this sign will serve to create a more competitive rather than less competitive landscape for businesses in Larimer County. See *Id.* at l:9-12. StreetMedia's brief filed with the Board also stated "this sign will not be perceptibly more prominent than other signs in the area, further it will tend to level the playing field among businesses." Vol. I, p. 35. It is clear from the record that the Board considered the addition of the sign to increase competitiveness rather than stifle it. Further, the Board noted that due to the heavily commercial nature of the area where the sign was proposed, the proposed sign would not give StreetMedia an advantage over other sign companies. Instead, by allowing variances in the height and setback requirements, it provides StreetMedia the opportunity to compete with other advertisers in the area. The record shows the Board made a careful analysis

of the economic and market advantage criterion and its decision is supported by competent evidence in the record.

**E. Collateral Issue-Other Sign Code Appeals.**

The City references the absence of previous approvals by the Board of similar sign code appeals, suggesting it indicates deficiency with the Board's decision here. The Board strongly disagrees because it is untrue that there are no previously approved sign appeals and, regardless, this line of argument is irrelevant.

The Board's decisions on other sign code appeals are irrelevant to the Court's review under C.R.C.P. 106. Each application before the Board is decided on the merits of that application. The Court's charge in this action is to determine whether there is *any* competent evidence in the record to support the Board's decision granting StreetMedia's Application. The outcome of other applications for different signs in different areas has no relevancy to the Court's charge. Further, to the extent the Court is interested in prior decisions and rationale by the Board, the record shows Commissioner Donnelly's reference to the general attributes historically considered by the Board for sign code appeals: "every appeal, I think, that we have ever approved - this Board of County Commissioners ever approved has been on a high-traffic, high-traveled roadway with higher speeds. And this certainly meets that condition." Vol. II-A, pp. 71-72. Commissioner Johnson similarly had dialogue with Larimer County Planner Michael Whitley during the hearing about previous sign code appeals involving height and topography considerations. Vol II-A, pp. 25-26. Mr. Whitley testified that in the 12 years he has worked for Larimer County he can recall only five appeals related to signs and that "we actually see very few sign appeals come through." *Id.* at 1:6. That conversation went on to discuss other approved sign appeals on Mulberry and I-25 for American Furniture Warehouse and Tractor Supply. *Id.* While the Board believes the outcome of prior sign

code appeals is irrelevant to the question at hand—whether there is competent record support for the Board’s decision—the City’s argument that no similar sign code appeals have been approved by the Board is inaccurate.

## VI. CONSTITUTIONAL CLAIMS

The County has filed a motion to dismiss the constitutional crossclaims filed by StreetMedia and does not consider such claims to be germane to this Rule 106 brief. Further, as previously noted, the County approved StreetMedia’s sign and it has already been built. As shown above, the record has substantial support for the Board’s decision and StreetMedia’s constitutional arguments have no bearing on the adequacy of the record.

## VII. CONCLUSION

Based on the foregoing arguments and authority and the support in the record considered as a whole, the Board respectfully requests the Court affirm its decision.

Dated: February 26, 2021

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing ANSWER BRIEF OF BOARD OF COUNTY COMMISSIONERS OF LARIMER COUNTY, COLORADO was served via Colorado Court's E-filing system this 26<sup>th</sup> day of February, 2021, to:

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