DATE FILED: March 17, 2021 2:18 PM
FILING ID: 8BE4092D5050A
CASE NUMBER: 2020CV30580

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

▲COURT USE ONLY ▲

Case Number: 2020CV030580

Division: 4B

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

PLAINTIFF'S RESPONSE TO DEFENDANT STREETMEDIAGROUP, LLC'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Plaintiff City of Fort Collins, 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 Response to Defendant StreetMediaGroup, LLC's Motion to Dismiss Plaintiff's Complaint, as follows:

INTRODUCTION

Defendant StreetMediaGroup, LLC ("StreetMediaGroup") filed its Motion to Dismiss Plaintiff's Complaint ("Motion") on February 24, 2021, asserting this Court should dismiss Plaintiff's Complaint on the basis of mootness premised on the construction and operation of the electronic billboard on the property located at 4414 East Harmony Road which is the subject of this litigation. Plaintiff City of Fort Collins ("City") respectfully submits this Response to the Motion. No legitimate basis exists for this Court to dismiss the Plaintiff's Complaint on mootness grounds.

ARGUMENT

I. THE CITY'S CHALLENGE TO THE BOARD OF COUNTY COMMISSIONERS OF LARIMER COUNTY'S JULY 28, 2020, FINDINGS AND RESOLUTION APPROVING THE STREETMEDIAGROUP SIGN APPEAL IS NOT MOOT OR AN EXCEPTION TO THE MOOTNESS DOCTRINE APPLIES

"A case is moot when a judgment would have no practical legal effect on the existing controversy." ***Diehl v. Weiser,*** 443 P.3d 313, 316 (Colo. 2019); ***Van Schaack Holdings, Ltd. v. Fulenwider,*** 798 P.2d 424, 426 (Colo. 1990). "Still, an issue is not moot when the judgment may result in significant collateral consequences to a party. Thus, in deciding whether an issue is moot, the court must consider both the direct and collateral consequences that can result from the judgment." ***People ex rel. C.G.,*** 410 P.3d 596, 599 (Colo. App. 2015) (citations and parentheticals

omitted). "Whether collateral consequences preclude an issue from being deemed moot turns on showing the reasonable possibility of such consequences. In other words, the standard requires a demonstration of more than an abstract, purely speculative injury, but does not require proof that it is more probable than not that the prejudicial consequences will occur." ***Id.*** (citations and parentheticals omitted). Two exceptions to mootness exist. First, an exception to the mootness doctrine allows a court to address issues that are capable of repetition yet evade review. ***Nowak v. Suthers,*** 320 P.3d 340, 343-44 (Colo. 2014); ***In re Application of Water Rights of Well Augmentation Subdistrict of the Cent. Colo. Water Conservancy Dist.,*** 221 P.3d 399, 416 (Colo. 2009); ***State Bd. of Chiropractic Exam'rs v. Sterjnholm,*** 935 P.2d 959, 971 (Colo. 1997). Second, an issue of great public importance is another exception to mootness. ***Grossman v. Dean,*** 80 P.3d 952, 960 (Colo. 2003); ***Englewood Police Benefit Ass'n v. City of Englewood,*** 811 P.2d 464, 465 (Colo. App. 1990). Application of these mootness principles here demonstrates the City's challenge to the Board's approval of the electronic billboard is either not moot or a mootness exception applies.

A. The City's Claims are Not Moot:

StreetMediaGroup relies on ***Zoning Bd. of Adjustment of Garfield Cnty. v. DeVilbiss,*** 729 P.2d 353 (Colo. 1986), to argue the construction and operation of the electronic billboard renders the City's challenge to the Board's action moot. [*See* Motion, at 4-5]. However, ***DeVilbiss*** has been distinguished by subsequent decisions and is distinguishable here and does not stand for the broad proposition advanced by StreetMediaGroup.

Initially, the unique and specific factual context of ***DeVilbiss*** is evident from the Colorado Supreme Court's decision. At the outset of its decision, the Colorado Supreme Court framed the issue based on the following pertinent factual recitation:

> In April 1980 the Snowmass Coal Company applied to the Board of County Commissioners of Garfield County for a special use permit to enable it to construct a coal-loading facility fifty-five feet in height in an area in which zoning restrictions limited all structures to twenty-five feet in height. J.E. DeVilbiss, a Garfield County landowner within the same zoning district as the loading facility, appeared at the hearing to oppose the application. The Board of County Commissioners granted the special use permit contingent upon approval of a height variance by the Board of Adjustment of Garfield County. On May 29, 1980, the Board of Adjustment held a public hearing on Snowmass Coal Company's application for height variance and granted the variance . . .
>
> On June 27, 1980, DeVilbiss filed a complaint in the district court seeking relief under C.R.C.P. 106(a)(4). He challenged the action of the Zoning Board of Adjustment as arbitrary, capricious, and in excess of its jurisdiction. . . . DeVilbiss did not seek a temporary restraining order or a preliminary injunction under C.R.C.P. 65, nor did he request a stay under C.R.C.P. 106(a)(4) of the Board of Adjustment's height variance and the issuance of building permits by the building official.
>
> In July and September of 1980, shortly after the action was filed in the district court, the Snowmass Coal Company received the requisite permits for the construction of the facility from the Garfield County Building Official, the Colorado Mined Land Reclamation Board, and the Colorado Air Pollution Control Board. Snowmass Coal Company proceeded with the construction of the facility, completing the facility and placing it in operation by October 1, 1981, after an expenditure of more than $7.7 million.

Id. at 354-55. Notably, ***DeVilbiss*** was decided by the Colorado Supreme Court under a prior version of C.R.C.P. 106(a)(4) which differed in the ability of a litigant to seek and obtain a stay against a government defendant without the need to post a bond under C.R.C.P. 65. The Colorado Supreme Court explained the difference between the prior version of C.R.C.P. 106(a)(4) and the current version as follows:

> Moreover, under our prior case law interpreting the former version of C.R.C.P. 106(a)(4) applicable to this case, a party filing a C.R.C.P. 106(a)(4) claim was able to avoid the requirement of posting security by requesting a stay order concurrently with the filing of the action. ***PII of Colorado v. District Court,*** 197 Colo. 239, 591 P.2d 1316 (1979). When such a request was made, the district court was empowered to stay the governmental action being challenged without regard to the security requirements of C.R.C.P. 65 [FN7]. Although such a stay order could not have been directed to the nongovernmental defendants joined in the C.R.C.P. 106(a)(4) action, a stay order directed to the governmental parties often would achieve the same practical effect as a preliminary injunction directed to all parties. *See* ***PII,*** 197 Colo. at 241, 591 P.2d at 1318.

Id. at 358.[1] Finally, the Court in ***DeVilbiss*** explained the narrow nature of its holding at the conclusion of the opinion as follows:

> We limit our holding to the particular facts of this case. When, as here, the defendant has applied for and received a variance and the necessary governmental permits for the construction of a coal-loading facility and then has proceeded at considerable expense to itself to complete the authorized facility during the pendency of the litigation seeking to permanently enjoin the construction of the facility, when the plaintiff has challenged the legality of the variance and has sought a permanent injunction prohibiting the construction of the facility but has failed to seek any form of temporary or preliminary injunctive relief to prohibit the commencement of construction and to preserve the status quo during the pendency of litigation, and when the substantial interest of the defendant would be detrimentally affected by judicial relief in the form of a permanent injunction requiring the removal or radical alteration of the completed project, a trial court may properly conclude that the permanent injunctive relief sought by the plaintiff is so inappropriate under the circumstances of this case as to render the plaintiffs' equitable claim moot. . . .

---

[1] In footnote 7 noted above, the Court explained: "We note in passing that although the version of C.R.C.P. 106(a)(4) in existence when this case was before the district court and the court of appeals did not require the posting of security in connection with a request for a stay order directed to the government officials joined as defendants in a C.R.C.P. 106 claim, *see* ***PII of Colorado v. District Court***, 197 Colo. 239, 591 P.2d 1316 (1979), C.R.C.P. 106(a)(4) has since been substantially amended. The present version, which became effective on January 1, 1986, now provides in subsection (a)(4)(IV) that the decision of the governmental body may be stayed 'pursuant to Rule 65 of the Colorado Rules of Civil Procedure.'" ***DeVilbiss,*** 729 P.2d at 358 n. 7. The current version of Rule 106 retains this requirement. *See* C.R.C.P. 106(a)(4)(V) ("The proceedings before or decision of the body or officer may be stayed, pursuant to Rule 65 of the Colorado Rules of Civil Procedure.").

Id. at 360.

Not surprisingly, given the fact-specific and narrow holding in ***DeVilbiss,*** courts regularly distinguish ***DeVilbiss***. *See, e.g.*, ***Save Cheyenne v. City of Colo. Springs,*** 425 P.3d 1174, 1177 (Colo. App. 2018) (distinguishing ***DeVilbiss*** based on dissimilar facts of the case and in particular lack of impact requiring "destruction of a fifty-five-foot tall, $7.7 million coal loading facility that already employed 250 people."); ***Sinclair Transp. Co. v. Sandberg,*** 350 P.3d 924, 927-28 (Colo. App. 2014) (distinguishing ***DeVilbiss*** and rejecting argument a challenge to a land use decision became moot based on the failure to seek temporary injunction allowing the use of the new pipeline and the removal of the original one noting a meaningful remedy may still be available depending on outcome of the appeal); ***Wells v. Lodge Properties, Inc.,*** 976 P.2d 321, 325 (Colo. App. 1998) (distinguishing ***DeVilbiss*** based on the construction not being complete, the building permit being issued after the filing of the action, and the plaintiff's unsuccessful attempt to obtain a temporary restraining order and preliminary injunction before the District Court); ***Russell v. City of Central,*** 892 P.2d 432, 436 (Colo. App. 1995) (distinguishing ***DeVilbiss*** based on the declaratory relief sought in the complaint); ***Northfork Citizens for Responsible Development v. Board of Cnty. Comm'rs of Park County,*** 228 P.3d 838, 847 (Wyo. 2010) (distinguishing ***DeVilbiss*** and noting "Expenditures made with knowledge of a court challenge are not expenditures made in good faith reliance upon a variance or a permit. We continue to hold that, in Wyoming, completion of a project under a variance or permit during the pendency of an appeal does not render the appellate issues moot."); ***Bowman v. York,*** 482 N.W.2d 537, 546 (Neb. 1992) (rejecting ***DeVilbiss*** under Nebraska law and concluding the failure to seek injunctive relief to stop construction was not a waiver of the right to continue to challenge the land use decision noting: "They very opposite is

true; they filed their appeal and promptly gave York Cold Storage notice that they had done so. York Cold Storage simply made a business decision to take the risk of construction, knowing that the grant of the variance was being challenged and might be reversed."). Tellingly, StreetMediaGroup cites no decision following ***DeVilbiss*** in its Motion. [*See* Motion, at 1-6]. Additionally, the City has not located any other decision arising in the C.R.C.P. 106(a)(4) land use approval context following ***DeVilbiss***.

Similarly, ***DeVilbiss*** is distinguishable here for several important reasons. First, the cost of construction of the electronic billboard at issue here pales in comparison to the $7.7 million at issue in ***DeVilbiss***. Second, StreetMediaGroup received its building permit after the City filed this litigation meaning StreetMediaGroup had notice of the lawsuit before it engaged in all its expenditures.[2] Third, the City challenges the Board's interpretation of the relevant provisions of the County's Land Use Code seeking a declaration from this Court the interpretation and its application to the electronic billboard were erroneous and therefore exceeded the Board's jurisdiction and constituted an abuse of discretion by the Board. [*See* Complaint for Review Pursuant to C.R.C.P. 106(a)(4), at 16]. Fourth, the Board has not argued the City's C.R.C.P. 106(a)(4) claim is moot. [*See* Motion, at 1]. Fifth, StreetMediaGroup has not presented any evidence to this Court about the cost associated with removing the electronic billboard or attempted to compare it to the $7.7 Million at issue in ***DeVilbiss.*** Sixth, as further argued below, adopting StreetMediaGroup's argument would represent a sea change in the law of C.R.C.P.

[2] The City filed its Complaint on August 25, 2020. [*See* Complaint for Review Pursuant to C.R.C.P. 106(a)(4)]. The Larimer County Sign Permit was issued on October 15, 2020, and the electronic billboard was installed on October 28, 2020. [*See* Declaration of Gary Young and Exhibits 1 and 2 to Defendant StreetMediaGroup, LLC's Response to Defendant Board of County Commissioners' Motion to Dismiss Crossclaim, at ¶ 5 and Exhibit 1].

106(a)(4) and inappropriately would require all C.R.C.P. 106(a)(4) litigants to seek injunctive relief pursuant to C.R.C.P. 65 in connection with all such claims. Nothing in ***DeVilbiss*** or any subsequent decision supports such a result.

Moreover, ***DeVilbiss*** does not stand for the broad proposition advanced by StreetMediaGroup. At bottom, StreetMediaGroup's argument would require ***all litigants*** pursuing claims under C.R.C.P. 106(a)(4) to also seek a preliminary injunction pursuant to C.R.C.P. 65 to prevent a private party from mooting the C.R.C.P. 106(a)(4) during its pendency by taking action pursuant to the approved zoning decision being challenged. Neither the plain language of C.R.C.P. 106(a)(4) nor logic supports any such result. Initially, the applicable provision of the Rule provides as follows: "The proceedings before or decision of the body or officer ***may*** be stayed, pursuant to Rule 65 of the Colorado Rules of Civil Procedure." C.R.C.P. 106(a)(4)(V) (emphasis added). The use of the permissive language "may" in this Rule means the Colorado Supreme Court in adopting it did not contemplate it was required for a litigant like the City to file a Rule 65 motion for preliminary injunction in all Rule 106(a)(4) actions. *See, e.g.,* ***Rocky Mt. Retail Mgmt., LLC v. City of Northglenn,*** 393 P.3d 533, 540 (Colo. 2017) (describing use of the word "may" as permissive rather than mandatory); ***A.S. v. People,*** 312 P.3d 168, 174 (Colo. 2013) (same).

Further, StreetMediaGroup's position ignores the practical impact of the rule it advances, the nature of review under C.R.C.P. 106(a)(4), and the specific issues raised by the City in this matter. Requiring litigants to seek and obtain a preliminary injunction pursuant to C.R.C.P. 65 in all C.R.C.P. 106(a)(4) does not make sense based on the structure of both rules and the nature of review under Rule 106. To obtain a preliminary injunction, a litigant is required to establish, among other factors, a reasonable probability of success on the merits. ***Rathke v. MacFarlane,***

648 P.2d 648 (Colo. 1982); ***Board of Commissioners v. Fixed Based Operators, Inc.,*** 939 P.2d 464, 467 (Colo. App. 1997). To do so at the outset of a Rule 106 action would require a litigant to meet this requirement without the certified record and to essentially prove in a preliminary proceeding the quasi-judicial governmental body abused its discretion or exceeded its jurisdiction on limited or incomplete facts. Moreover, because a C.R.C.P. 106(a)(4) action is limited to a review of the certified record before the quasi-judicial body, it would be at least incongruous if not prohibited for the litigant to make its Rule 65 showing with evidence extrinsic to the certified record. Holding a preliminary injunction hearing, presenting evidence, and taking testimony outside the four corners of the certified record would be inconsistent with the rules governing Rule 106(a)(4) actions. Then, if the injunction is denied, the challenged project approved by the lower tribunal can be built to moot the Rule 106(a)(4) challenge thereby swallowing the remedy Rule 106(a)(4) provides.

Additionally, as presented in detail in the Plaintiff's Opening Brief, the City has challenged the Board's interpretation and application of the three criteria found in the County's Land Use Code ("LUC") at LUC Section 22.2.5. The City has contested the Board's interpretation and application of these criteria respecting the approval of the billboard as an off-premises sign, the approval of the oversize billboard, the approval of the more limited setback, and the approval of the shorter 6 second hold time. [*See* Plaintiff's Opening Brief]. Based on the City's presentation of the issues, this Court will be required to address the Board's Findings and Conclusions respecting all three criteria on each of the issues for which the Board approved StreetMediaGroup's request to depart from the requirements of the LUC. This Court could readily, for example, reject the Board's approval of a 6 second hold time instead of the 60 seconds provided in the LUC and

reverse the Board on this basis which would require StreetMediaGroup to reprogram but not necessarily remove the sign. Similarly, this Court could reject the Board's approval of the shorter setback or the oversize billboard requiring StreetMediaGroup to modify and relocate the billboard rather than remove it completely. While the City steadfastly maintains the Board's Findings and Approval in its entirety are fundamentally flawed and ultimately no aspect of the approval of StreetMediaGroup's appeal should survive this Court's review, this Court does not have to reach this result. These types of more limited results from this Court amply demonstrate how the City's action is simply not moot based on StreetMediaGroup's construction and operations of the electronic billboard. *See* ***Russell,*** 892 P.2d at 436 (construction of rehearsal hall facility did not moot C.R.C.P. 106(a)(4) challenge to city council's approval of a special use review for the facility if court's judgment could have any practical legal effect).

The Court of Appeals addressed an analogous issue in ***Stor-N-Lock Partners #15 v. City of Thornton,*** 2018 COA 65 (Colo. App. 2018). There, the Court of Appeals rejected the rule proposed by the developer that a bond or other security should be required whenever a C.R.C.P. 106(a)(4) action challenges a land use approval. In rejecting this categorical rule, the Court of Appeals reasoned, in pertinent part, as follows:

> Whether Rule 106(a)(4) may be construed to require the plaintiff to post a bond, in conjunction with C.R.C.P. 65, in every land use case is a question of law that we review de novo. ***Garcia v. Schneider Energy Servs., Inc.,*** 287 P.3d 112, 2012 CO 62, ¶ 7. We interpret rules of procedure in the same manner as a statute, giving words their commonly understood and accepted meanings. ***Id.***
>
> Rule 106(a)(4) allows a party to seek review of the decision of a governmental body. Under subsection (a)(4)(V), the "proceedings before or decision of the body or officer may be stayed, pursuant to Rule 65 of the Colorado Rules of Civil Procedure." C.R.C.P. 65 in turn, governs the issuance of temporary restraining orders and preliminary injunctions. Thus, in the context of a Rule 106 proceeding, a plaintiff ***may*** seek a temporary restraining order or preliminary

injunction under Rule 65 to "stay . . . the effect of an adverse decision" by the governmental body. ***City of Colorado Springs v. 2354, Inc.,*** 896 P.2d 272, 274 (Colo. 1995).

. . . .

Under the plain language of Rule 65(c), the bond is intended to provide a remedy for a party "who is found to have been wrongfully enjoined or restrained" by an injunction or restraining order. *See* ***Kaiser v. Mkt. Square Disc. Liquors, Inc.,*** 992 P.2d 636, 643 (Colo. App. 1999).

Here, as Resolute concedes, its use of the property was not "enjoined or restrained" under Rule 65 because Stor-N-Lock did not seek, and the district court did not enter, a preliminary injunction or a temporary restraining order. Thus, there could be no occasion to determine whether it had been "wrongfully" enjoined or restrained from using the property, and no need for a remedy in the event of such a wrongful restraint.

That would seem to resolve the question. But Resolute insists that Stor-N-Lock's mere initiation of an action under Rule 106 increased the financial risk of proceeding with Resolute's development plan to such a degree that it was "effectively enjoined" by the litigation itself.

The majority of its briefing describes, persuasively, how the litigation has increased the financial risk associated with developing the property. Resolute reminds us that, under Colorado law, if the defendant proceeds in accordance with its permit, and the governmental entity's decision to issue the permit is subsequently reversed, the defendant may be precluded from further development or even required to remove completed improvements. *See* ***Russell v. City of Central,*** 892 P.2d 432, 436 (Colo. App. 1995) (holding that Rule 106 action to invalidate permit was not moot even though defendant had completed construction under a then-valid permit). *But see* ***Zoning Bd. of Adjustment v. DeVilbiss,*** 729 P.2d 353 (Colo. 1986) (deciding that Rule 106 action was moot were plaintiff failed to seek injunctive relief and the defendant had completed construction of its facility).

We are not unsympathetic to Resolute's predicament, but we must reject its attempt to equate an order that renders certain conduct legally impermissible with a lawful review process that renders legally permissible conduct more expensive. It is undisputed that Resolute may proceed with development of the property. If it chooses not to, based on its own subjective cost-benefit analysis, it may not seek damages (in the form of a forfeited bond) as a consequence of that choice.

> Moreover, the bond requirement "is an exception to the norm in American litigation that the parties bear their own costs and expenses." ***Mead Johnson & Co. v. Abbott Labs.,*** 209 F.3d 1032, 1033 (7th Cir. 2000). If we read the bond requirement into every land use case filed under Rule 106(a)(4), even when no injunction has been requested, the exception would, if not swallow, at least infringe, to an unacceptable degree, on the rule.

Id. at ¶¶ 42-50 (emphasis in original). This decision teaches multiple applicable lessons. First, the City was not required to seek a preliminary injunction along with its Rule 106(a)(4) challenge. Second, StreetMediaGroup's choice to proceed with its construction pursuant to the Board's approval subject to this litigation was its own cost-benefit analysis and it, not the City, must live with the impact of its decision. Third, if the City prevails, this Court possesses the authority to order StreetMediaGroup to remove the electronic billboard.

Indeed, this Court's February 26, 2021, Order Granting Motion to Dismiss Crossclaims foreshadowed this Court's understanding of these issues. Initially, in determining StreetMediaGroup lacked standing to pursue its crossclaims challenging the constitutionality of the Larimer County Land Use Code related to sign appeals, this Court concluded:

> 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.

[*See* Order Granting Motion to Dismiss Crossclaims, at 2]. Subsequently, in distinguishing SreetMediaGroup's standing to participate in defending against the City's Rule 106(a)(4) action, this Court noted: "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." [*See* Order Granting Motion to

Dismiss Crossclaims, at 3]. In combination, these two statements by this Court reflect the understanding StreetMediaGroup can defend against the City's Rule 106(a)(4) appeal because if the City prevails its injury would be the removal of the electronic billboard at issue.

B. The Exceptions to the Mootness Doctrine Apply Here:

Alternatively, if this Court concludes the City's C.R.C.P. 106(a)(4) action is mooted by StreetMediaGroup's construction of the electronic billboard at issue, the City requests this Court still consider the merits of the City's C.R.C.P. 106(a)(4) challenge under the two exceptions to the mootness doctrine. Both mootness exceptions have applicability here.

Initially, this matter represents an issue capable of repetition yet evading review. No question exists Larimer County retains its existing Land Use Code and unless this matter is reviewed by this Court, nothing will prevent future Boards of County Commissioners of Larimer County from incorrectly interpreting and applying the Land Use Code's sign appeal provisions as they did in this case. StreetMediaGroup itself has expressed its intent to submit other applications to Larimer County for similar electronic billboards. Unless one of those applications is adjacent to land owned by the City or within the area where the intergovernmental agreement between the City and Larimer County applies, the City will lack the ability to participate in the proceedings before the Board or challenge an adverse outcome under C.R.C.P. 106(a)(4). Under StreetMediaGroup's position, any other challenger would be required to seek a preliminary injunction under C.R.C.P. 65 and post the requisite security just to challenge a subsequent approval of an electronic billboard by the Board. StreetMediaGroup's argument for economic estoppel in this case and future cases amply demonstrates the possibility of the issues raised in the City's Complaint repeating themselves yet evading review by this Court.

Similarly, the public importance of this matter is also evident. A significant public interest exists in the courts ensuring a Board of County Commissioners appropriately follows applicable law. Further, the nature of this dispute as between two local governments also demonstrates its great public importance. As a result of the applicability of the two mootness exceptions, this Court may review this matter even if it concludes StreetMediaGroup's construction of the electronic billboard somehow moots the City's C.R.C.P. 106(a)(4) challenge.

CONCLUSION

In conclusion, for all the foregoing reasons, Plaintiff City of Fort Collins respectfully requests this Court deny Defendant StreetMediaGroup, Inc.'s Motion to Dismiss in its entirety, and for all other and further relief as this Court deems just and appropriate.

Dated this 17th day of March, 2021.

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

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of March, 2021, a true and correct copy of the foregoing was filed with the Court and served via Colorado Courts E-Filing System to the following email addresses:

Todd G. Messenger, Esq.
tmessenger@fwlaw.com

Amanda C. Jokerst, Esq.
ajokerst@fwlaw.com

Jeannine S. Haag, Esq.
haagjs@co.larimer.co.us

William G. Ressue, Esq.
wressue@larimer.org

Frank N. Haug, Esq.
haugfn@co.larimer.co.us

/s/ Nicole Marion .
Nicole Marion
of HALL & EVANS, L.L.C.,