

# City Responds to Questions Regarding Appeal

Wednesday, March 26, 2014

Carey Bovey, Attorney for the City of Llano, submitted this response regarding the appeal filed by Marc Sewell, which was detailed in the March 19 edition, in the article “Court Petition Has city Doling Out Big Bucks in Legal Fees”.

Marc Sewell filed a Petition for Judicial Review in the 33rd/424th Judicial District Court of Llano County, Texas, on June 25, 2013, asking the District Court to rescind amendments to the City of Llano’s zoning regulations that were enacted by Ordinance No. 1247 and also for “misdemeanor offense charges and fines” against certain named City of Llano officials and employees. Mr. Sewell did not properly serve any defendants at the District Court level and therefore the City did not appear or file a response. On July 23, 2013, the District Court issued an order denying Mr. Sewell’s Petition.

Mr. Sewell then filed an appeal of the District Court’s order to the Third Court of Appeals in Austin naming the City of Llano, Mikel Virdell, Brenton Lewis, Dianne Firestone, Letitia McCasland, Marcy Methvin, Todd Keller, Jeanne Puryear and Toni Milam as defendants. A review of the case information and pleadings on file with the Third Court of Appeals reveals that every document filed by the City defendants (referred to as “Appellees” by the Third Court of Appeals) was filed in response to an action taken by Mr. Sewell. The only exceptions to this are: 1) a letter to correct the City Attorney’s address; 2) Appellees’ Motion to Dismiss for lack of jurisdiction filed on October 11, 2013, which was filed by the City in an attempt to dispose of the case at an early stage and save the City the expense of filing a response brief; and 3) Appellees’ Motion for Damages, which was filed to seek reimbursement from Mr. Sewell for the expenses the

City incurred defending against his frivolous appeal.

Before filing the Motion to Dismiss, in accordance with the Texas Rules of Appellate Procedure, the City Attorney had a telephone conference call with Mr. Sewell detailing why the Third Court of Appeals did not have jurisdiction in this case. Mr. Sewell chose to oppose the Motion to Dismiss, forcing the City to prepare and file a response brief. It was Mr. Sewell’s decision to appeal, it was his decision to oppose the City’s Motion to Dismiss, and it was his decision to continue to file additional motions and documents with the Third Court of Appeals which required responses from the City.

Mr. Sewell’s position, as clearly documented by his numerous filings with the Third Court of Appeals, was that he should be allowed to sue the City and the City should never respond to his arguments, despite the inaccuracies of both the factual and legal conclusions made therein.

Throughout the entirety of Mr. Sewell’s efforts in appealing the case, the City consistently maintained that the Third Court of Appeals did not have jurisdiction; that Mr. Sewell’s arguments were irrelevant to the issue appealed; and that Mr. Sewell’s arguments were unfounded and had no basis in law or the facts contained in the appellate record. Mr. Sewell fought each of these positions despite numerous Texas cases cited by the City supporting its

arguments.

On January 29, 2014, the Third Court of Appeals issued a Memorandum Opinion agreeing with the City's position, granting the City's Motion to Dismiss and holding the Court did not have jurisdiction to hear the appeal. The Third Court of Appeals also agreed with the City's position that there was no action taken by the City of Llano Board of Adjustment and therefore Mr. Sewell erroneously tried to use Texas Local Government Code section 211.011 to support his appeal. The Court held "that because Sewell has not challenged actions taken by a board of adjustment, his claims are not governed by Texas Local Government Code section 211.011....Sewell's petition invokes a statute inapplicable to his claim...."

Despite the Third Court of Appeal's clear holding agreeing with the City's position, Mr. Sewell continues to fight a desperate battle, filing a Motion for Rehearing, which was overruled by the Court on February 19, 2014, and a Motion for En Banc Reconsideration which has not been ruled on as of March 19, 2014. With the latest filings, Mr. Sewell is now accusing the Third Court of Appeals, rather than the City, of misinterpreting the Texas Local Government Code and misunderstanding the Texas judicial process in general. The City is not required by the Texas Rules of Appellate Procedure to respond to these filings unless requested by the Third Court of Appeals, who has not requested a response, and therefore the City has fortunately not been forced to incur additional legal costs in defending its position in this case.