

From: Cary Bovey [<mailto:cary@boveylaw.com>]
Sent: Thursday, March 05, 2015 9:28 AM
To: 'Marc Sewell'; blewis@cityofllano.com; mverdell@cityofllano.com; jferguson@cityofllano.com; glang@cityofllano.com; tkeller@cityofllano.com; ahopson@cityofllano.com; bmiiller@cityofllano.com
Cc: luke@boveylaw.com; tmilam@cityofllano.com
Subject: RE: Cause 19243, Open Meetings Act Violation, Settlement Offer

Mr. Sewell,

You filed a lawsuit against the City of Llano ("City") on February 23, 2015 alleging "that the City of Llano violated the Texas Open Meetings Act, Government Code § 551, by failing to provide sufficient information in the 2/2/15 Council Meeting Notice..." You specifically allege that "...Agenda Item H-1 violated the notification requirement of the Texas Open Meetings Act since it did not state the subject of the grant being requested....It also did not state the amount being requested." The City was served with your lawsuit on February 24, 2015. Pursuant to Texas Rule of Civil Procedure 99 (b) the City has until Monday, March 23, 2015 at 10 a.m. to answer your lawsuit.

The City will timely respond to your lawsuit, and in the course of seeking dismissal of this case on the merits, will request the court to assess the costs of litigation and reasonable attorney's fees against you as authorized by applicable law to mitigate the amount of taxpayer funds that are expended defending against your lawsuit. I further remind you that as the plaintiff and initiator of this lawsuit, you have the ability to minimize the costs and attorney's fees associated with this litigation by dismissing your lawsuit at any time.

Though not required by the Texas Rules of Civil Procedure, in a good faith effort to resolve this case, the statutes and case law showing the legal sufficiency of the City's notice concerning Agenda Item H-1 are outlined below for your edification.

Texas Government Code § 551.041 requires that a governmental body "give written notice of the date, hour, place, and subject of each meeting held by the governmental body."

The City's Notice of Meeting stated in pertinent part:

"Notice is hereby given that a **Regular Called Council Meeting** of the City of Llano, Texas, will be held on **Monday, February 2, 2015 at 5:30 PM.** in the City Hall Council Chambers at 301 W. Main Street, Llano, Texas 78643, at which time the following subjects will be discussed:

...

H. REGULAR AGENDA ITEMS

1. Discuss and consider action on the approval of Resolution 2015-02-02-1, authorizing the filing of a Texas Community Development Block Grant program application to the Texas Department of Agriculture; and authorizing the Mayor to act as the City's Executive Officer and authorized

representative in all matters pertaining to the City's participation in the Texas Community Development Block Grant Program."

As required by Texas Government Code § 551.041, the notice posted by the City contains the date, hour, place, and subjects of the February 2, 2015 meeting. Texas courts have held the test to determine whether a notice complies with the Texas Open Meetings Act ("TOMA") is "whether a notice is sufficiently specific to alert the general public to the topic to be considered." *Odessa Texas Sheriff's Posse, Inc. v. Ector County*, 215 S.W.3d 458, 472 (Tex. App.—Eastland 2006, pet. denied); *see also City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762, 765 (Tex.1991). The court will engage in a comparison between the content of the notice given and the action taken at the meeting. *Point Isabel Indep. Sch. Dist. v. Hinojosa*, 797 S.W.2d 176, 180 (Tex. App.—Corpus Christi 1990), writ denied (Jan. 23, 1991).

The City's notice for the February 2, 2015 meeting notified the public that the City Council would discuss and consider action on the approval of Resolution 2015-02-02-1, authorizing the filing of a Texas Community Development Block Grant program application to the Texas Department of Agriculture and authorizing the Mayor to act as the City's Executive Officer and authorized representative in all matters pertaining to the City's participation in the Texas Community Development Block Grant Program. At the meeting a presentation was made regarding Resolution 2015-02-02-1 and its contents, as well as the filing of an application with the Texas Community Development Block Grant program. Brief discussion was had regarding Resolution 2015-02-02-1 and then the City Council took action on Resolution 2015-02-02-1, approving it unanimously. The discussion at the meeting and action taken regarding Resolution 2015-02-02-1 were in accordance with the notice given to the public. The City is not obligated to state all the consequences, such as possible future changes to the comprehensive plan, which could flow from the approval of Resolution 2015-02-02-1 and the filing of the grant application. *See Save Our Springs Alliance, Inc. v. City of Dripping Springs*, 304 S.W.3d 871, 889 (Tex. App.—Austin 2010, pet. denied); *see also Turnpike Auth. v. City of Fort Worth*, 554 S.W.2d 675, 676 (Tex.1977). In fact, Texas courts have held that listing all the consequences that could flow from an action may overwhelm, rather than inform, a reader of the notice. *City of San Antonio*, 820 S.W.2d at 766; *see also Save Our Springs Alliance, Inc.*, 304 S.W.3d at 889. Additionally, with regard to your complaint that Agenda Item H-1 did not state the amount of the grant being requested, § 551.041 does not contain any legal requirement that the notice provide such information.

Your petition implies that the City is trying to amend the comprehensive plan without input from citizens, which is inaccurate. In fact, state law expressly provides for public participation in the comprehensive planning process. Texas Local Government Code § 213.003 states:

(a) A comprehensive plan may be adopted or amended by ordinance following:

(1) a hearing at which the public is given the opportunity to give testimony and present written evidence; and

(2) review by the municipality's planning commission or department, if one exists.

(b) A municipality may establish, in its charter or by ordinance, procedures for adopting and amending a comprehensive plan.

Any changes to the City's comprehensive plan will be made in accordance with Texas Local Government Code § 213.003 and citizens will have the opportunity to give testimony and present written evidence regarding the plan.

Changes to the comprehensive plan were not the subject of Agenda Item H-1. Agenda Item H-1 notified the public that the City Council would discuss and consider action regarding the filing of a grant application with the Texas Community Development Block Grant program, which is exactly what occurred at the February 2, 2015 City Council meeting.

If received, the grant would provide the City with up to \$32,145 from the State of Texas to use in expediting its planning efforts for the benefit of the Llano community. As noted above, the citizens of Llano will have the opportunity to comment, testify, and present evidence during the comprehensive planning process. Your lawsuit seeks to prevent the City of Llano from acquiring these funds from the State of Texas, increasing the planning costs to the taxpayers of Llano.

Again, as the plaintiff and initiator of this lawsuit, you have the ability to end this litigation by dismissing your lawsuit at any time. If you choose to move forward with this litigation, the City will seek dismissal of this case on the merits, and will request the court to assess the costs of litigation and reasonable attorney's fees against you as authorized by applicable law to mitigate the amount of taxpayer funds that are expended defending against your lawsuit.

Cary Bovey

Cary L. Bovey
Law Office of Cary L. Bovey, PLLC
2251 Double Creek Dr., Suite 204
Round Rock, Texas 78664
(512) 904-9441
Fax (512) 904-9445
cary@bovelaw.com

Confidential / Privileged Attorney-Client Communication

Notice - This transmission may be: 1) subject to the attorney-client privilege, 2) attorney work product, or 3) strictly confidential. If you are not the intended recipient of this message, you may not disclose, print, copy or disseminate this information. If you have received this message in error, please reply and notify the sender (only), and delete the message. Unauthorized interception of this email is a violation of federal criminal law. Unless otherwise noted, this message does not create an attorney-client relationship in the absence of such relationship.