

CIVIL CAUSE No. 19243

IN THE LLANO COUNTY DISTRICT COURT

OF THE STATE of TEXAS

IN RE: PETITION to District Court for Writ of Mandamus

Marc Sewell

Pro Se Petitioner

Vs.

The City Of Llano Texas

Respondent

MOTION FOR SANCTIONS

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I. Introduction

To the Honorable Judge Stubbs of the Llano District Court,

Please accept and consider this Motion for Sanctions regarding City Attorney Bovey's overt misrepresentation of facts in:

1. His RESPONSE TO DEFENDANT'S ORIGINAL ANSWER, COUNTERCLAIM, SPECIAL EXCEPTIONS, AND REQUEST FOR DISCLOSURE.
2. And his response to my settlement offer.

Mr. Bovey's defense argument is that, prior to discussion at the city council meeting, the City did not know the purpose for which they would use the grant. He asserts that the purpose of the grant being a "comprehensive plan" only came up during the discussion at the meeting. This is an overt misrepresentation of facts as I will show in this motion, from transcripts of the video tape of the meeting. The grant was called a "Comprehensive Plan Grant" throughout the meeting - the purpose of the grant was known before the meeting, at the start of the meeting, during the meeting, and the conclusion of the meeting. No other purpose was mentioned or discussed.

I assert that Mr. Bovey knowingly misrepresented the facts of the central aspect of his defense, the only substantive argument, with the intent to influence this Court as well as influence Llano City Council in rejecting a settlement offer¹ of \$378 that had no other conditions.

¹ Appendix E – Sewell Settlement Offer #2

II. Misrepresentation of Facts in City Attorney Bovey's Response to Petition

1. Mr. Bovey's Facts ¶2.8 on page 3 say that "during the course of the City Council's brief discussion..., the term 'comprehensive plan' was used when describing allowable uses of the grant funds ..." This is an absolute misrepresentation of the facts and is intended to deceive the Court. From the introduction of the agenda item to the closing statement, the purpose of the grant was described as for a "Comprehensive Plan." It was called "the Comprehensive Plan Grant" by the Mayor. There was no discussion of "allowable uses" as Mr. Bovey asserts. "Comprehensive Plan" was not characterized as an "allowable use." Comprehensive Plan was the clear objective of the grant. The phrase "allowable use" was never uttered. No other uses of the grant were mentioned or discussed. The purpose of the grant as an overhaul of the Comprehensive Plan was known prior to the meeting.

2. From the video transcript of the council meeting which will be shown at the hearing, the following are exact quotes:
 - a. City Manager Lewis introducing the H-1 Agenda Item, showing the true reason for the grant – "[grant] for the comprehensive plan"
 - b. Cindy Gutierrez from Gary R. Taylor & Associates - "discussing with Brenton different aspects of what to redo the city's comprehensive plan"
 - c. Cindy Gutierrez's last statement - "it is kinda just to overhaul city's comprehensive plan"
 - d. Mayor Virdell closing the subject, reinforcing the true reason for the grant – "Any comments on the Comprehensive Plan Grant?"
 - e. There was no discussion. Total about 2 minutes on the entire subject.

- f. There was one question from Alderman John Ferguson – “What’s in mind for this grant?”
 - g. Brenton Lewis responds to John Ferguson’s question – “basically it’s to overhaul the Comprehensive Plan.”
 - h. John Ferguson asks for confirmation – “Comprehensive Plan that would guide Planning & Zoning?”
 - i. Brenton responds to John Ferguson’s follow-up question – “Right. That’s right.”
3. This transcript clearly shows that the purpose for the grant was to “overhaul the City’s Comprehensive Plan.” The term “Comprehensive Plan” was uttered 8 times. There was no discussion of any other purpose for the grant. The grant was characterized by the mayor, city manager, and consultant as “Comprehensive Plan Grant” and purpose was “to overhaul the comprehensive plan.”
4. The acknowledgement of the consultant, Cindy Gutierrez, that there were discussions between she and City Manager Brenton Lewis, on “what to redo the city's comprehensive plan”, shows that the purpose of Comprehensive Plan was known prior to the council meeting.
5. Mr. Bovey goes on to say in Facts” ¶12.8 that “there was no discussion of substance of the City’s Comprehensive plan.” Of course there wasn’t because the subject was never announced to citizens or council prior to the meeting so no one, not even council members was prepared to discuss.

6. The written minutes² of the meeting by City Secretary Toni Milam for item H1 indicated “Cindy presented – to overhaul City’s comp. plan”

Thus, the transcript of the meeting unequivocally proves that City Attorney Bovey’s assertions were false. Since all city management and the video of the meeting, for which Mr. Bovey would have had access and should have accessed, state the true purpose of the grant, the evidence demonstrates that Mr. Bovey knowingly misrepresented facts in a legal document presented to the Llano District Court.

² Appendix A – 2/2/15 City Council Meeting Minutes – Comp Plan

III. Misrepresentation of Facts in Counteroffer to Petitioner and City Council

1. In the red highlighted areas of paragraph #7 in City Attorney Bovey's counteroffer to my settlement offer³, Mr. Bovey asserts his primary defense that **"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"** and that **"listing all the consequences that could flow from an action may overwhelm, rather than inform, a reader of the notice."**

Mr. Bovey goes on to provide legal references for this assertion.

As proven in Section II above, His assertion is knowingly false. The Comprehensive Plan was not a "consequence" that "could flow from an action" but rather it was the ONLY purpose of the grant and was known prior to the meeting. The issue isn't a listing of "all the consequences" but rather the statement of the ONLY known purpose of the grant – the overhaul of the Comprehensive Plan. This known purpose was known prior to the council meeting.

2. In the red highlighted areas of paragraph #10 in City Attorney Bovey's counteroffer³ to my settlement offer⁴, Mr. Bovey asserts that **"Changes to the comprehensive plan were not the subject of Agenda Item H-1."**

As shown in Section II above, His assertion is knowingly false. The City Manager, Mayor, and consultant all characterized the project as "The Comprehensive

³ Appendix C – City Attorney Bovey's Response to Settlement Offer

⁴ Appendix D – Sewell Settlement Offer #1

Grant.” City Manager Brenton Lewis even introduced the purpose of the grant as Comprehensive Plan at the start of agenda item H-1 – before any discussion or presentation. The consultant, Cindy Gutierrez, acknowledged in the video that there were prior discussions between her and City Manager Brenton Lewis, on “what to redo the city's comprehensive plan.” This shows that the purpose of Comprehensive Plan was known prior to the council meeting and Mr. Bovey’s assertion is false.

Thus, the transcript of the meeting unequivocally proves that City Attorney Bovey’s assertions were false. A grant for the overhaul of the comprehensive plan was the ONLY subject of Agenda Item H-1.

Since all city management and the video of the meeting, for which Mr. Bovey would have had access and should have accessed, say the true purpose, the evidence demonstrates that Mr. Bovey knowingly misrepresented facts to the Llano City Council and petitioner in a document regarding settlement of cause 19243.

IV. Prayer

Thus, it is unequivocal that the subject of Agenda Item H-1 was a grant for the sole purpose to overhaul of the Comprehensive Plan and no other purpose was discussed or mentioned. Mr. Bovey had access to those who knew this and the video that proves this. Therefore, it is unequivocal that Mr. Bovey knowingly misrepresented facts to this Court and the Llano City Council.

It is extremely complex and difficult for a citizen to object to illegal city actions. Local lawyers were not willing to assist. It makes it even more difficult when the City Attorney knowingly misrepresents the facts to mislead this Court and Llano City Council. Sanctions are the only way to curb that deviant behavior.

It would also not be ethical for the Citizens of Llano to pay Mr. Bovey's costs and fees for his misrepresentation of facts that, had the truth been told, may have precluded all actions, costs and fees.

I therefore request:

1. sanctions on Mr. Bovey for knowingly asserting key facts in his brief and counteroffer that I have shown to be knowingly and unequivocally false.
2. that all costs relating to cause 19243 that have been paid to City Attorney Bovey by the City of Llano be refunded.
3. that any outstanding invoices or future legal fees or court fees relating to cause 19243 be absorbed by City Attorney Bovey.

Marc T. Sewell

Appendix A - 2/2/15 City Council Meeting Minutes - Comp Plan

2.2.15 MV, TK, GL, ~~RF~~, AH, BM

CTD: 5:30

Pledge: AH

Prayer: E LIGHT

F) none

G-1+2)

(BM) (GL) unanimously approved

H-5) LK gave explanation of what happened on bill

JF - asked a ? LK - corrected him ^{with explanation}

JF - asked for an example of 2 bills - ^{old way} ^{new way}

put on webpage, give to newspapers.

LK - yes we can do that.

AH - cheaper rate if filed or adjustable

LK - should be the same

H-1) Cindy presented - to overhaul city's comp. plan

JF - would guide planning & zones! BL correct

(BM) (TK) unanimously approved

H-2) replace gates - pneumatic operator

Appendix B - 2/2/15 City Council Meeting Agenda Item H-1



NOTICE OF MEETING
OF THE
CITY COUNCIL OF
LLANO, TEXAS

This notice is posted pursuant to the Texas Open Meetings Act. 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.

Mayor Mike Virdell

Below is the same agenda item H-1 marked-up to show that:

1. In red, describes that a grant is being requested
2. In blue, describes that the mayor is authorized in all matters pertaining to the grant
3. Nowhere in the agenda item notice does it say what the grant is be used for, the requested grant amount, or the cost to the city. It simply says "approve a grant" for anything for any amount. An analogous, illegal, notice would be "The city wants to borrow from Llano Bank and the mayor will decide how much and what for."

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.

Mayor Mike Virdell

Appendix C – City Attorney Bovey’s Response to Settlement Offer

From: Cary Bovey [<mailto:cary@boveylaw.com>]

Sent: Thursday, March 05, 2015 9:28 AM

To: 'Marc Sewell'; blewis@cityofllano.com; mvirdell@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
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(512) 904-9441
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cary@boveylaw.com

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Appendix D – Sewell Settlement Offer #1

From: Marc Sewell [<mailto:marcs@simonlabs.com>]

Sent: Tuesday, March 03, 2015 11:47 AM

To: 'Cary Bovey'; blewis@cityofllano.com; mverdell@cityofllano.com; bmiller@cityofllano.com; jferguson@cityofllano.com; glang@cityofllano.com; tkeller@cityofllano.com; ahopson@cityofllano.com

Cc: 'Jennifer Bunting'; 'Judge Evan Stubbs'

Subject: Cause 19243, Open Meetings Act Violation, Settlement Offer

TO: Llano City Attorney Bovey, City Manager Lewis, Mayor Virdell, and Llano Council Members,

SUBJECT: Cause 19243, Open Meetings Act Violation, Settlement Offer

I offer to settle [Cause 19243](#) with the following conditions:

1. Void the vote on the Comprehensive Plan Grant.
2. Either reschedule the vote with two weeks' notice or, preferably, start a citizen committee for the Comprehensive Plan.
3. Reimburse court filing costs.

Past experience shows that the City spent over \$18,000 to not answer obvious zoning law violations. That request for judicial review is ongoing and will return to the 3rd Court of Appeals shortly.

We are again at the same point of the city spending taxpayer money to cover up an obvious statute violation to prevent citizens from knowing about and controlling the zoning law changes regarding the property they own.

From previous experience, we know that the city attorney will spew procedural objections to avoid answering the obvious statute violations. The violation here is undeniable: the agenda item notice did not specify *Comprehensive Plan*, or cost, thusly violating the Open Meetings Act and thusly is voidable.

Please do the proper thing for the citizens and property owners of Llano.

Marc Sewell

Appendix E – Sewell Settlement Offer #2

From: Marc Sewell [<mailto:marcs@simonlabs.com>]

Sent: Monday, March 30, 2015 9:28 AM

To: 'Cary Bovey'

Cc: bmiiler@cityofllano.com; tkeller@cityofllano.com; ahopson@cityofllano.com; 'John Ferguson'; 'Gail Lang'; mverdell@cityofllano.com; 'Jennifer Bunting'; 'Judge Evan Stubbs'

Subject: Settlement Offer #2 - Cause 19243

Mr. Bovey,

There were two events last Thursday that influence my previous settlement offer:

1. The P&Z Commission voted to delay council discussions on the zoning overhaul until after the election of new council members.
2. City Manager Brenton Lewis sent a [nonresponsive, disrespectful response](#) to my grant complaint which allowed me to appeal to the Department of Agriculture.

Thus, I am willing to defer resolution of the Comprehensive Plan issue to the new council, the Department of Agriculture, and HUD.

I will therefore dispose of my petition in exchange for reimbursement of my filing fees, \$378.

The city is about to spend thousands of taxpayer dollars on depositions, briefs, motions, hearings, and state and federal appeals. This simple settlement seems the best resolution for Llano citizens.

Marc Sewell

Appendix F – Misrepresentations in Bovey Response to Petition

2.8 During the course of the presentation and the City Council’s brief discussion concerning Resolution 2015-02-02-1, the term “comprehensive plan” was used when describing allowable uses of the grant funds if the planning grant is awarded to the City of Llano by the Texas Department of Agriculture. However, there was no discussion of the substance of the City’s comprehensive plan or any recommended changes to the comprehensive plan, nor was there any action taken changing the City’s comprehensive plan, nor was there any discussion or action taken on hiring a consultant to evaluate or change the City’s comprehensive plan. All discussion and action taken pursuant to Agenda Item H-1 related to Resolution 2015-02-02-1 and authorizing the filing of a Texas Community Development Block Grant program application with the Texas Department of Agriculture in order for the City of Llano to receive grant funds to be used for planning purposes and said discussion and action complied with the Texas Open Meetings Act.

Appendix G – Certificate of Service

Certificate of Service

I certify that I have served this Motion for Sanctions on all other parties—which are listed below—on 4/9/15 as follows:

1. Llano City Attorney Carey Bovey **via email**
Law office of Cary L. Bovey, PLLC
2251 Double Creek Drive, Suite 204
Round Rock, TX 78664
(512) 904-9441
cary@boveylaaw.com
2. Llano City Secretary Toni Milan **in person**
City of Llano
301 West Main
Llano, TX 78643
(325) 247-4158
tmilam@cityofllano.com

Marc T. Sewell
108 Summit
Llano, TX 78643-1127
325-247-2508
marcs@simonlabs.com