

STATE OF Texas) IN THE County _____ COURT
) SS:
 COUNTY OF Llano) CASE NUMBER: _____ (created by County)

IN RE: PETITION to County Court for Judicial Review of Board Decision)

VERIFIED PETITION UNDER Local Government Code Sec 211

Comes now the Petitioner Marc T. Sewell and pursuant to Texas Local Government Code Section 211.011 petitions the Court for a Judicial Review of Llano City Planning and Zoning Commission and Llano City Council. Petition is attached in laymen's terms and format since Texas Local Government Code Section 211.011 says that a taxpayer may present the petition.

VERIFICATION

I affirm, under the penalties for perjury, that the foregoing representations are true.

(signed) *M. Sewell*

Marc T. Sewell
 Print your name

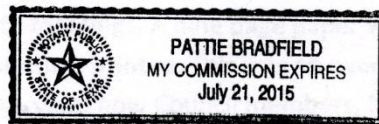
108 Summit
 Mailing Address

Llano, TX 78643
 Town, State and Zip Code

325-247-2508
 Telephone number, with area code

Sworn to and subscribed
 before me
 this 20th day of June, 2013

Pattie Bradford (Seal)
 Notary Public



COMPLAINT: Violation of Local and State Zoning Regulations

MEETING: Planning and Zoning Commission Public Hearing and Meeting, City Council Public Hearing and Meeting

MEETING DATE: 6/13/13 at 5:30pm, 6/17/13 respectively

AGAINST: City Manager Brenton Lewis, Planning and Zoning Commission Chairwoman Dianne Firestone, P&Z Commissioner Letitia McCasland , P&Z Commissioner Marcy Methvin, Alderman Todd Keller, Alderwoman Jeanne Puryear, and City Secretary Tony Milam

SUBMITTED BY: Marc Sewell, Llano Taxpayer

SUMMARY: In a scheduled Planning and Zoning Commission meeting there were the following violations of City and State Zoning Code:

1. Violation of Llano City Ordinance 735 (Section 110-53 in Municode) – Changes were made to zoning regulations without written notification to individual property owners.
2. Violation of Llano City Ordinance 735 (Section 110-53 in Municode) and Texas State Zoning Code Chapter 211.007 – No preliminary report describing the change was created prior to the Public Hearing.
3. Violation of Texas State Zoning Code 211.004 – The requested change was not in compliance with the Comprehensive Plan.

DETAILS:

1. Appendix A contains the meeting notice showing: *D. Public Hearing regarding amending the text and uses of the Zoning ordinance No. 735; specifically in the SF-1 Overlay District.* It also shows: *discuss and consider possible action regarding amending the text and defining uses of the Zoning Ordinance No. 735; specifically in the SF-1 Overlay District, and making recommendations to City Council.*
2. City manager, Brenton Lewis, and P&Z Chairman, Dianne Firestone, said no individual property owner notification was necessary because the changes were only text changes (not regulation changes) which do not require notification as required by 110-53 (Appendix B). However, the meeting agenda (Appendix A) states that the changes will be text and usage amendments and usages were changed and passed. State Statutes 211.003(5) (Appendix C) and 211.005 (Appendix C) demonstrate that usages are regulations and thus require notification.
3. This ordinance changes (Appendix D) were passed by P&Z Commission and by City Council.

POSSIBLE MALFEASANCE:

1. The meeting was a disguised attempt to expedite a zoning change for a single property owner.
2. Violations were discussed before and during both meetings. A nine page paper was presented at the City Council Meeting describing the violations with statutes printed. This was an overt violation of the laws.
3. Two council members, Todd Keller and Jeanne Puryear, now Council members, had previously been Planning and Zoning Commissioners, the former a Chairman, who had experience with the law and the notification process.

4. The City Manager stated that he had 20 years experience as a Zoning Administrator and he verified that no notification was necessary.
5. The highlighting and underlining in Appendix B were done by the City and was presented to Marc Sewell prior to the 6/13/13 P&Z meeting in response to an inquiry regarding individual notification to property owners of the ordinance change. This demonstrates they knew the law prior to the meeting by overtly chose to violate it.

REQUESTED ACTIONS:

1. Ordinance changes rescinded.
2. Misdemeanor offense charges and fines under Section 211.0012 (Attachment E) against City Manager Brenton Lewis, Planning and Zoning Commission Chairwoman Dianne Firestone, P&Z Commissioner Letitia McCasland , P&Z Commissioner Marcy Methvin, Alderman Todd Keller, Alderwoman Jeanne Puryear, and City Secretary Tony Milam.

Marc Sewell
108 Summit, Llano, TX 78643
325-247-2508

Appendix A: Planning and Zoning Commission Meeting Notice



**NOTICE OF MEETING
OF THE
PLANNING AND ZONING COMMISSION
OF
LLANO, TEXAS**

This notice is posted pursuant to the Texas Open Meetings Act. Notice is hereby given that a **Regular Called Planning and Zoning Meeting** of the City of Llano, Texas, will be held on **Thursday, June 13, 2013 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:

A. CALL TO ORDER

B. PUBLIC COMMENTS-Non-Agenda Items

C. CONSENT AGENDA ITEMS All consent agenda items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council member so requests, in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the Agenda.

1. Approval of the Planning and Zoning minutes as written, dated February 26, 2013.

Toni Milam, City Secretary

D. PUBLIC HEARING

1. The City of Llano Planning and Zoning Commission will hold a public hearing on Thursday, June 13, 2013 at 5:30 p.m. in City Hall Council Chambers located at 301 W. Main Street to receive written and/or oral comments from the public, regarding amending the text and defining uses of the Zoning Ordinance No. 735; specifically in the SF-1 overlay district.

E. REGULAR AGENDA ITEMS

1. Discuss and consider possible action regarding amending the text and defining uses of the Zoning Ordinance No. 735; specifically in the SF-1 Overlay District, and making recommendations to the City Council.

Brenton Lewis, City Manager

2. Discuss and consider action specifying meeting dates and times for future meetings.

Brenton Lewis, City Manager

3. Discussion only regarding the Planning and Zoning Commission's future projects.

Brenton Lewis, City Manager

F. ADJOURNMENT

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the Planning and Zoning Commission of the City of Llano, was posted on the bulletin board in front of Llano City Hall, 301 W. Main, Llano, Texas, by 5:30 p.m. on Monday, June 10, 2013, which is readily accessible to the public at all times. Said Notice remained so posted continuously for at least seventy two (72) hours preceding the scheduled time of said Meeting. I further certify that the following news media were properly notified of this meeting as stated above: The Llano News, The Llano County Journal, KHLB Radio, and KXAM TV.


Toni Milam, City Secretary, TRMC

6-10-13
Date

Appendix B: Municode Section 110-53 of City Zoning Ordinance

Sec. 110-53. Public hearing and notice.

Prior to making its report to the city council, the planning and zoning commission shall hold at least one public hearing on each application. Before the tenth day before the hearing date before the planning and zoning commission, written notice of each public hearing before the planning and zoning commission on a proposed change in a zoning classification shall be sent to each owner, as indicated by the most recently approved municipal tax roll, of property within 300 feet of the property in which the change in classification is proposed. The notice shall be served by its deposit in the municipality, properly addressed with certified postage paid, return receipt requested in the United States Mail. Before the 15th day before the date of the hearing, notice of the time and place of the hearing must be published in an official newspaper or a newspaper of general circulation in the municipality. Before the 20th day before the date of the hearing, property subject to zoning action will be posted with notice of the time and place of the planning/zoning hearing and the time and place of the city council hearing. Sign shall be a minimum of 18 inches × 18 inches and posted to be visible from frontage street. Sign shall state in a minimum of two-inch letters, CITY OF LLANO NOTICE OF PUBLIC HEARING. Specifics regarding time, place and content of the public hearing shall be in at least 16 point type below. Notice shall include city staff contact and phone number if additional information is required. **Changes in the ordinance text which do not change zoning regulations and/or zoning district boundaries do not require written notification to individual property owners.** Notices for the public hearing for changes to the ordinance text before the city council will also be published at the same time notice of the planning and zoning commission meeting is published but before the 15th day before the date of the hearing, notice of the time and place of the hearing must be published in an official newspaper or a newspaper of general circulation in the municipality.

(Ord. No. 735, § I(30.3), 7-21-1997; Ord. No. 1037, § I, 5-1-2006; Ord. No. 1152, 12-21-2009)

State law reference— Hearing and notice, V.T.C.A., Local Government Code §§ 211.006, 211.007

Appendix C: Text vs. Regulation

These two statute sections demonstrate that usage is a regulation.

Sec. 211.003. ZONING REGULATIONS GENERALLY. (a) The governing body of a municipality may regulate:

- (1) the height, number of stories, and size of buildings and other structures;
- (2) the percentage of a lot that may be occupied;
- (3) the size of yards, courts, and other open spaces;
- (4) population density;
- (5) the location and use of buildings, other structures, and land for business, industrial, residential,

Sec. 211.004. COMPLIANCE WITH COMPREHENSIVE PLAN. (a) Zoning regulations must be adopted in accordance with a comprehensive plan and must be designed to:

- (1) lessen congestion in the streets;
- (2) secure safety from fire, panic, and other dangers;
- (3) promote health and the general welfare;
- (4) provide adequate light and air;
- (5) prevent the overcrowding of land;
- (6) avoid undue concentration of population; or
- (7) facilitate the adequate provision of transportation, water, sewers, schools, parks, and other public requirements.

Sec. 211.005. DISTRICTS. (a) The governing body of a municipality may divide the municipality into districts of a number, shape, and size the governing body considers best for carrying out this subchapter. Within each district, the governing body may regulate the erection, construction, reconstruction, alteration, repair, or use of buildings, other structures, or land.

Appendix D : Ordinance Changes Passed by P&Z Commission and City Council

Section 4. Specific Uses

In the SF-1 Overlay District the following Permitted Specific Uses shall be allowed, in addition to Specific Uses defined in Section 8B, City of Llano Zoning Regulations, Ordinance 735, and Ordinance 1231:

Home Occupation	Accountant or Bookkeeping Office	Architect's Office
Engineering Office	Insurance Office	Office, General, Professional
Barber Shop or Beauty Salon	Florist	Gunsmith
Palm Reading	Soil Testing Laboratory	

All other conditions for approval are outlined in Section 20, City of Llano Zoning Regulations, Ordinance 735, and Ordinance 1231.

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
1	USE CHART														
2	CITY OF LLANO, TEXAS														
3	ZONING ORDINANCE														
4															
		A Agricultural	SF-1 Single-family-1	SF-1 Single-Family Overlay District	SF-2 Single-family-2	SF-3 Single-family-3	SF-4 Single-family-4	GR General Residential	OM Office Medical	R Retail	NBD North Business District	CBD Central Business	C Commercial	I Industrial	
5															
6	1. Primary Residential Uses														
7	Accessory dwelling unit	*	S	S		S	S	S	S				S		
8	Caretaker/guard residence	*												*	*
9	Community home	*	*	*	*	*	*	*	*	*				*	*
10	Detached private garage	*	*	*	*	*	*	bullet	*	*	S			*	*
11	Detached single-family dwelling	*	*	*	*	*	*	bullet	*	*		*	*	*	*
12	Mobile home	*	*	*	*	*	*	bullet	*	*	S			*	*
13	Home occupations	*	*	*	*	*	*		*	*	S			*	*
14	Industrialized housing	*	*	*	*	*	*	bullet	*	*				*	*
15	Manufactured housing, less than five years old						S	*							
16	Manufactured housing, greater than five years old							S							
17	Manufactured home park	*						*							
18	Multiple-family dwelling	*						*	*						
19	Recreational vehicle park	*												S	
20	Retirement home and/or nursing home	*				S	S	S	*	*	*			*	*
21	Single-family dwelling with retail use	*							S	S	*	S	S	*	*
22	Single-, two- or multifamily use above first floor level	*							*		*	*	*	*	*
23	Two-family dwelling	*				*	*	*	*	*				*	*
24	2. Educational, Institutional, Public and Special Uses														

Appendix E : Misdemeanor Penalty

Sec. 211.012. ENFORCEMENT; PENALTY; REMEDIES. (a) The governing body of a municipality may adopt ordinances to enforce this subchapter or any ordinance or regulation adopted under this subchapter.

(b) A person commits an offense if the person violates this subchapter or an ordinance or regulation adopted under this subchapter. An offense under this subsection is a misdemeanor, punishable by fine, imprisonment, or both, as provided by the governing body. The governing body may also provide civil penalties for a violation.

(c) If a building or other structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if a building, other structure, or land is used in violation of this subchapter or an ordinance or regulation adopted under this subchapter, the appropriate municipal authority, in addition to other remedies, may institute appropriate action to:

(1) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

(2) restrain, correct, or abate the violation;

(3) prevent the occupancy of the building, structure, or land; or

(4) prevent any illegal act, conduct, business, or use on or about the premises.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.