

No. 03-13-00580-CV

In the Court of Appeals  
For the Third Judicial District  
Austin, Texas

FILED IN  
3rd COURT OF APPEALS  
AUSTIN, TEXAS  
11/19/2013 12:08:46 PM  
JEFFREY D. KYLE  
Clerk

---

MARC T. SEWELL,  
*Appellant*

v.

CITY OF LLANO, MIKEL VIRDELL, BRENTON LEWIS, DIANNE  
FIRESTONE, LETITIA MCCASLAND, MARCY METHVIN, TODD KELLER,  
JEANNE PURYEAR, TONI MILAM<sup>1</sup>,  
*Appellees.*

---

On Appeal from the  
33<sup>rd</sup> Judicial District Court of Llano County, Texas

---

**APPELLEES' RESPONSE TO APPELLANT'S MOTION TO FIX CASE  
INFORMATION**

---

TO THE HONORABLE THIRD COURT OF APPEALS:

The City of Llano, Mikel Virdell, Brenton Lewis, Dianne Firestone, Letitia McCasland, Marcy Methvin, Todd Keller, Jeanne Puryear, and Toni Milam, the Appellees in the above styled and numbered appeal, through their attorney of

---

<sup>1</sup> Toni Milam is the Llano City Secretary. Her name is incorrectly listed in the style of the case as "Tom Milam."

record, file this Response To Appellant’s Motion To Fix Case Information, and respectfully show the Court the following:

1. Appellant requests that this Court “fix the case style in the record of docket #03-13-00580-CV to match the one I submitted in my appeal cover and that all parties except the City of Llano be removed.”<sup>2</sup> However, none of the “parties” listed, including the City of Llano, were ever made a party at the trial court level. Appellees were never served proper process pursuant to Texas Rules of Civil Procedure 99 and 106, nor did they make an appearance, or waive service of process.<sup>3</sup> Therefore, Appellant is asking that “parties” who were never made parties at the trial court level be removed, and that the City of Llano be made a party for the first time on appeal. Appellees assume “appeal cover” refers to Appellant’s Notice of Appeal, which states “IN RE: PETITION for Judicial Review under Local Government Code Sec 211”.<sup>4</sup> Again, this does not mention the City of Llano, whom was not made a party at the trial court level.

2. Appellant states in his motion: “Also, Section 211.011(c) explicitly says that the writ be “directed to the board” and TRCP Rule 33 requires that any suits against an incorporated city shall be in its corporate name. Thus, my specifications of “Llano City Planning and Zoning Commission and Llano City Council was

---

<sup>2</sup> Appellant’s Mot. To Fix Case Information 4.

<sup>3</sup> Brenton Lewis Aff. ¶ 7.

<sup>4</sup> See Clerk’s Record (the copy of which that was sent to Appellees’ is not paginated).

correct and should not have been changed. The appellate court propagated this error.”<sup>5</sup> This statement is incorrect for multiple reasons. First, § 211.011 (c) does explicitly state that the writ be directed to the board, and per subsection (a) of 211.011 board means a municipal board of adjustment, therefore Appellant’s “specifications of “Llano City Planning and Zoning Commission and Llano City Council” are not correct based on the plain, unambiguous language of § 211.011 which Appellant cites in his motion.<sup>6</sup> Second, Appellant states that his “specifications” were correct, but then requests that “all parties except the City of Llano be removed.”<sup>7</sup> If Appellant’s “specifications” were correct, why is Appellant now requesting that all parties except the City of Llano be removed, and why was the City of Llano not included in Appellant’s “specifications” at the trial court level? Appellant is attempting to dictate who is, and is not, a party to this appeal without regard for the rules of procedure of the Texas court system and the petition for judicial review that Appellant filed in the trial court.

3. Further, Appellant petitioned the trial court for a judicial review of “Llano Planning and Zoning Commission and the Llano City Council” under § 211.011 Texas Local Government Code.<sup>8</sup> If a party files a petition under §211.011 within ten (10) days after a zoning board of adjustment decision, the trial court has subject

---

<sup>5</sup> Appellant’s Mot. To Fix Case Information 2.

<sup>6</sup> Tex. Local Gov’t Code Ann. § 211.011 (West 2013).

<sup>7</sup> Appellant’s Mot. To Fix Case Information 4.

<sup>8</sup> See Clerk’s Record, VERIFIED PETITION UNDER Local Government Code Sec 211.

matter jurisdiction to hear and determine a claim that a board of adjustment acted illegally.<sup>9</sup> As Appellant points out in his own motion, Appellant complains of a legislative act of the Llano City Council in amending the City of Llano zoning regulations through the adoption of an ordinance (specifically Ordinance No. 1247, enacted by the Llano City Council on June 17, 2013), an act which in no way involved the Llano Board of Adjustment.<sup>10</sup> The trial court never had subject matter jurisdiction over the actions the Llano City Council took in amending the City's zoning ordinance, because Texas Local Government Code §211.011 only grants subject matter jurisdiction to review actions and decisions of a municipal board of adjustment. Therefore, this Court does not have subject matter jurisdiction to hear this appeal, and this cause should be dismissed.

### **Prayer for Relief**

Therefore, Appellees respectfully request that this Court deny Appellant's request to add the City of Llano as a party to this case; dismiss this cause for lack of subject matter jurisdiction; assess appellate costs against Appellant pursuant to Texas Rule of Appellate Procedure 43.4; and that this Court issue any other order to which Appellees are entitled.

Respectfully submitted,

/s/ Cary L. Bovey

---

<sup>9</sup> *Davis v. Zoning Bd. of Adjustment of City of La Porte*, 865 S.W.2d 941, 942 (Tex. 1993).

<sup>10</sup> See Appellant's Pet. For Judicial Review at 2.

Cary L. Bovey  
Law Office of Cary L. Bovey, PLLC  
2251 Double Creek Dr., Suite 204  
Round Rock, TX 78664  
[cary@bovelaw.com](mailto:cary@bovelaw.com)  
(512) 904-9441  
(512) 904-9445 (fax)  
State Bar No.: 02717700  
Attorney for Appellees

## CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing Appellees' Response To Appellant's Motion To Fix Case Information on Appellant, Mr. Marc Sewell, on November 19, 2013 by certified mail, return receipt requested to Mr. Marc Sewell, at 108 Summit, Llano, TX 78643 and by email to [marcs@simonlabs.com](mailto:marcs@simonlabs.com).

/s/ Cary L. Bovey

Cary L. Bovey  
Law Office of Cary L. Bovey, PLLC  
2251 Double Creek Dr., Suite 204  
Round Rock, TX 78664  
[cary@boveylaw.com](mailto:cary@boveylaw.com)  
(512) 904-9441  
(512) 904-9445 (fax)  
Bar Card: 02717700  
Attorney for Appellees

## CERTIFICATE OF COMPLIANCE

In compliance with Texas Rule of Appellate Procedure 9.4(i)(3), this motion contains 788 words.

/s/ Cary L. Bovey

Cary L. Bovey  
Law Office of Cary L. Bovey, PLLC  
2251 Double Creek Dr., Suite 204  
Round Rock, TX 78664  
[cary@boveylaw.com](mailto:cary@boveylaw.com)  
(512) 904-9441  
(512) 904-9445 (fax)  
Bar Card: 02717700  
Attorney for Appellees

# APPENDIX

**APPENDIX TABLE OF CONTENTS**

Affidavit of Llano City Manager, Brenton Lewis.....A

Texas Local Government Code §211.011 .....B

*Davis v. Zoning Bd. of Adjustment of City of La Porte,*  
865 S.W.2d 941, 942 (Tex. 1993).....C



MARC T. SEWELL,  
APPELLANT

V.

CITY OF LLANO, MIKEL VIRDELL,  
BRENTON LEWIS, DIANNE FIRESTONE,  
LETITIA McCASLAND, MARCY  
METHVIN, TODD KELLER, JEANNE  
PURYEAR, AND TONI MILAM,  
APPELLEES

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE COURT OF APPEALS

THIRD SUPREME JUDICIAL

DISTRICT OF TEXAS

AT AUSTIN, TEXAS

AFFIDAVIT OF BRENTON B. LEWIS

STATE OF TEXAS

COUNTY OF LLANO

§  
§  
§

Before me the undersigned authority, on this day personally appeared Brenton Lewis, Affiant, who by me first duly sworn upon his oath swears the following statements are true and are within the personal knowledge of Affiant:

“My name is Brenton B. Lewis. I am the City Manager of the City of Llano, Texas and have held that position since April 1, 2013. I hold a Bachelor of Business Administration degree in Management and have also completed 27 hours of coursework toward a Master of Public Administration degree. I have 29 years of professional experience working for local governments in Texas and other states, including 20 years of experience working as a zoning administrator.

As the City Manager, I am the City of Llano employee designated to provide staff support to the City of Llano Board of Adjustment, Planning and Zoning Commission, and City Council. My duties related to these afore-mentioned municipal governing boards include, but are not limited to: 1) coordinating the preparation of public meeting agendas; 2) preparing the agenda item reports, documents and other written materials for review and consideration by the members of said governing bodies; 3) attending the meetings of the said boards to provide City staff recommendations and other resources as requested; 4) presenting various agenda items and reports for review and consideration by the board members; 5) supervising other City employees to ensure that the meeting agendas, minutes, public notices, and similar items are properly prepared and published as required; and 6) other duties as requested by said governing boards.

As a result of the duties I perform as City Manager, as outlined hereinabove, I am personally familiar with the activities, operations, practices and decisions of the City of Llano Board of Adjustment, Planning and Zoning Commission, and City Council. The Planning and Zoning Commission held a regular meeting on June 13, 2013 at which meeting, after proper notice was published, a Public Hearing was held on proposed text amendments to Ordinance Nos. 735 and 1231 regarding an Overlay District in the Single Family 1 Zoning District. Further,

after said Public Hearing, the Planning and Zoning Commission voted to recommend to City Council that the proposed text amendments to Ordinance Nos. 735 and 1231 be approved by the City Council. A copy of the minutes (approved, but unsigned) of the June 13, 2013 Planning and Zoning Commission meeting is attached to this Affidavit as Exhibit "A" and incorporated herein for all purposes.

On June 17, 2013, the Llano City Council held a regular meeting at which meeting, after proper notice was published, a Public Hearing was held on proposed text amendments to Ordinance Nos. 735 and 1231 regarding an Overlay District in the Single Family 1 Zoning District. Further, after said Public Hearing, the City Council voted to approve the proposed text amendments to Ordinance Nos. 735 and 1231 by the enactment of Ordinance No. 1247. A copy of Ordinance No. 1247 and the minutes of the June 17, 2013 Llano City Council meeting are attached to this Affidavit as Exhibits "B" and "C" respectively, and incorporated herein for all purposes.

At no time did the Llano Board of Adjustment take any action, hold any meeting, or make any decision regarding the enactment of Ordinance No. 1247 by the Llano City Council. The Llano Board of Adjustment was not involved at all in the actions, hearings and decisions of the Llano Planning and Zoning Commission or the Llano City Council culminating in the enactment of Ordinance No. 1247 by the Llano City Council on June 17, 2013.

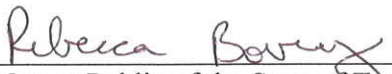
Further, I am aware that Marc T. Sewell filed a Petition for Judicial Review in Cause No. 18504, In the District of Llano County, 33<sup>rd</sup>/424<sup>th</sup> Judicial District, the Honorable J. Allan Garrett being the Presiding Judge ("District Court"). The City of Llano, Mikel Virdell (Mayor), Brenton Lewis (City Manager), Dianne Firestone (Planning & Zoning Commission Chairman), Letitia McCasland (Planning & Zoning Commission Member), Marcy Methvin (Planning & Zoning Commission Member), Todd Keller (City Councilmember), Jeanne Puryear (City Councilmember) and Toni Milam (City Secretary), listed as Appellees in No. 03-13-00580-CV, in the Court of Appeals, Third Supreme Judicial District of Texas, at Austin, Texas, as of the date of this Affidavit, have not been served with proper citation issued by the District Court in Cause No. 18504, nor have any of the Appellees made an appearance or waived service in Cause No. 18504."

Further Affiant sayeth not.

Signed this 9<sup>th</sup> day of October, 2013.

  
Brenton B. Lewis

Subscribed and sworn to before me by the said Brenton B. Lewis on this 9<sup>th</sup> day of October, 2013.

  
Notary Public of the State of Texas  
My commission expires: 9/4/2017

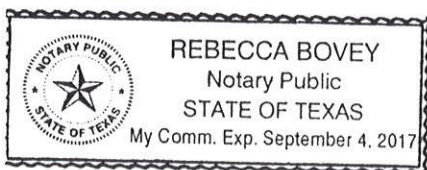




EXHIBIT "A"

City of Llano  
Regular Called Planning/Zoning Meeting Minutes  
June 13, 2013 – 5:30 p.m.

**A. CALL TO ORDER** Chairman Diana Firestone called the meeting to order at 5:32 with the following present: Marcy Methvin, Sam Oatman, Leticia McCasland and Stacey Mangum-Oliver was absent.

**B. PUBLIC COMMENTS-Non-Agenda Items**  
No public comments on 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*

Motion by Commissioner Methvin, with a second by Commissioner Oatman to approve the minutes of February 26, 2013. With there being no discussion, motion approved.

**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.

**Chairman Firestone opened the public hearing at 5:32. Public Comments were heard:**

**Marc Sewell spoke objecting to the process to get to this point. Mr. Sewell stated property owners were not property notified and that this meeting should have been held as a workshop since there were substantive changes.**

**Vivian Koerner is looking to put a beauty salon in the overlay district and asked about the process of obtaining a specific use permit.**

**Mayor Mike Virdell spoke in favor of opening up the SF-1 Overlay District to more uses; adding more value to the homes by adding more uses with expanded zoning. He stated it would be unlikely that a residence will sell without adding more uses. With there being no further comments, Chairman Firestone closed the public hearing at 5:40 p.m.**

**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*

After a brief discussion, motion by Commissioner McCasland, with a second by Commissioner Methvin to add the following uses of home occupation, accounting/book-keeping office, architect office, engineering office, insurance office, office general, barber/beauty salon, florist, gunsmith, palm reading and soil testing laboratory to the SF-1 Overlay District and to make the recommendation to the City Council. These additional uses would require a Specific Use Permit. Motion approved with Sam Oatman abstaining.

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

*Brenton Lewis, City Manager*

By-laws currently state the Commission will meet the third Thursday of each month. No formal action taken.

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

*Brenton Lewis, City Manager*

After a brief discussion, it was discussed to take one section at a time in reviewing and coming up with ideas for suggestions on changing the zoning ordinance.

## F. ADJOURNMENT

---

Diana Firestone, Chairman

---

Toni Milam, City Secretary

# EXHIBIT "B"

ORDINANCE NO. \_1247\_

AN ORDINANCE OF THE CITY OF LLANO, TEXAS AMENDING ORDINANCE NO. 1231; DEFINING ADDITIONAL SPECIFIC USES; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

Whereas the Planning and Zoning Commission and City Council of the City of Llano, have given the requisite notices by posting and publication, and have held due hearings to afford a full and fair hearing to all property owners generally, and the City Council of the City of Llano is of the opinion that the Ordinance is in compliance with the Comprehensive Plan,

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LLANO, TEXAS:

## SECTION 1. AMEND ORDINANCE 1231 BY INCLUSION OF SPECIFIC USES IN A SF-1 OVERLAY DISTRICT:

Section 1. Purpose-The City Council of the City of Llano finds that the preservation of residential properties and providing additional uses to the area defined within the overlay district will promote commerce and aesthetic continuity; encourage the orderly development along highway corridors; and is compatible with adjacent Zoning Districts and land uses.

### Section 2. Definitions

*Alteration:* A physical change to the exterior appearance of a building as seen from any public Right of Way. Alterations shall include the changing of roofing or siding materials; changing, eliminating , or adding doors, door frames, windows, window frames, shutters, fences, railings, porches, or balconies.

*Accounting or Bookkeeping Office:* A facility or group of offices for one or more professional accountants, bookkeepers, and support staff for conducting consultation, accounting or bookkeeping work and research, and to prepare other documents and correspondence.

*Architect's Office:* A facility or group of offices for one or more professional architects and support staff for conducting consultation, design work and research, and to prepare other documents and correspondence.

*Barber Shop or Beauty Salon:* An establishment providing to men or women services to improve their appearance, such as hair cutting, hairdressing, manicuring, facial treatment, and massage.

*Building:* A structure such as a house, garage, accessory structure or similar construction designed for shelter of any form of human activity or for personal property.

*CMU:* concrete block material commonly called cinder block. Standard CMU is finished flat and is erected with mortar between joints.

*Engineering Office:* A facility or group of offices for one or more professional engineers and support staff for conducting consultation, design work and research, and to prepare other documents and correspondence.

*Florist:* An establishment for the display and retail sale of flowers, small plants and accessories.

*Gunsmith:* A facility or group of offices where the repair, modification, design, or building of firearms is performed.

*Home occupation* means an occupation which is secondary to the primary use of a dwelling as a residence, conducted on residential premises solely by an occupant of the residence. A home occupation is one that is customarily carried on in the home, but does not include a business that:

- (1) Utilizes an advertisement, sign or display on the premises;
- (2) Employs persons other than the occupants of the residence;
- (3) Utilizes other than the ordinary household equipment;
- (4) Operates during hours other than 8:00 a.m.—6:00 p.m. for outdoor activities, and 8:00 a.m.—10:00 p.m. for indoor activities;
- (5) Involves more than six patrons on the premises at one time;
- (6) Conducts outdoor activities, unless the activities are screened from neighboring property;
- (7) Has exterior storage of material, equipment and/or supplies which are used in conjunction with such occupation;
- (8) Has offensive noises, vibrations, smoke, dust, odors, heat or glare beyond the property lines; and
- (9) Parking required is not more than four spaces, two of which are on site.

Examples of a home occupation are the teaching of music, swimming and operations carried on as telecommuting.

*Insurance Office:* A facility or group of offices for one or more professional architects and support staff for conducting consultation, design work and research, and to prepare other documents and correspondence.

*Normal Business Hours:* The period for conducting business or work defined as between the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday, and 8:00 a.m. through 12:00 noon Saturday.

*Office, General, Professional:* Means a room, or group of rooms, used for the provision of executive, management or administrative services. Typical uses include administrative offices and services, including real estate, insurance, property management, investment, personnel, travel, secretarial services, telephone answering and business offices of public utilities, organizations and associations, but excluding medical offices.

*Ordinary Maintenance and Repair:* Replacement or repair of like kind and quality of the original structure, façade, windows or doors.

*Overlay District:* A set of zoning requirements that are described in the Ordinance text, is mapped, and is imposed in addition to, or supplements, those of the underlying District. Development within the overlay zone must conform to the requirements of both zones or the more restrictive of the two. In certain cases, additional uses or requirements may be allowed that are not in the underlying District.

*Palm Reading:* An establishment where persons practice the art of palmistry or chiromancy.

*Residential:* A structure or building that is used for single family dwelling only. Residential also includes ancillary uses such as garages or accessory buildings that are incidental to the primary use.

*Soil Testing Laboratory:* A facility or group of offices that include a designated area for the analysis of soil to determine the content, composition, and other characteristics of the soil.

### Section 3. Area Defined

The SF-1 Overlay District is an area designated as a part of the City of Llano Zoning Regulations and Official Zoning Map by reference.

### 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.

### Section 5. Design Standards

The purpose of the design standards is to maintain the residential character of the corridor while allowing additional options and requirements under a Specific Use Permit. Normal maintenance and repair is allowed without restriction in the SF-1 Overlay District.

*Exterior Finishes:* All exterior finishes shall be masonry, wood or composite lap siding, or stucco. Alterations and additions shall be constructed with like material and quality as the existing structure. Standard CMU is not allowed as an exterior finish.

*Roof:* All roofs shall be constructed with a minimum 1 to 12 roof pitch. Allowed roofing materials include metal, asphalt shingles or composite shingles. Eaves shall be a minimum of eight inches.

*Landscaping:* Landscaping shall be maintained according to the City of Llano Property Maintenance Code. All parking areas shall be screened from Highway 16 by a minimum of 30" high plant screening excepting allowed drive way entrances or exits.

*Signs:* All signs shall conform to City of Llano Sign Ordinance No. 935.

### Section 6. Operation

All Specific Uses of 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 shall be allowed to operate only during normal business hours except in the case of emergencies. Use of the building or structure for special events, holiday parties or open houses after normal business hours shall be allowed.

Section 7. Conditions

The Planning Commission and City Council may impose additional conditions when granting specific Use Permits per Section 20, City of Llano Zoning Regulations, Ordinance No. 735, and Ordinance 1231.

SECTION 2. CONFLICT / SEVERABILITY

All ordinances of the City of Llano, Texas found to be in conflict with the provisions of this ordinance or the Zoning Regulations are hereby repealed. Should any sentence, paragraph, subdivision, clause or phrase be found unconstitutional, illegal, invalid the same shall not affect the validity of this ordinance as a whole, or any part of provision thereof other than the part decided to be invalid, illegal or unconstitutional, and the same shall not effect the validity of the Ordinance as a whole.

SECTION 3. PENALTY

Any person, firm or corporation violating any of the provisions or terms of this ordinance or the Zoning Ordinance, as amended, shall be subject to the same penalty as provided for the Zoning Regulations of the City of Llano, Texas, and upon conviction shall be subject to a fine not to exceed Two thousand dollars (\$2,000.00) for each offence, and each and every day such a violation is continued shall be deemed to constitute a separate offence.

SECTION 4. ENACTMENT

This Ordinance shall take effect immediately from and after its passage and the publication of the caption as the law in such cases provide.

PASSED AND APPROVED, this 17<sup>th</sup> day of June, 2013.



  
Mikel Virdell, Mayor

ATTEST

  
Toni Milam, City Secretary



	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	DISTRICT														
5		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	
6	<b>1. Primary Residential Uses</b>														
7	Accessory dwelling unit	*	S	S		S	S	S	S				S		
8	Caretaker/guard residence	*	*											*	*
9	Community home	*	*	*		*	*	*	*	*				*	*
10	Detached private garage	*	*	*		*	*	*	*	*				*	*
11	Detached single-family dwelling	*	*	*		*	*	*	;	;			S		*
12	Garage apartment	*	*	*		*	*	*	;	;			S		*
13	Home occupations	*	*	*	S	*	*	*	;	;			S		*
14	Industrialized housing	*	*	*		*	*	*	;	;			S		*
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	S	
22	Single-, two- or multifamily use above first floor level								*	*	*	*	*	*	
23	Two-family dwelling	*				*	*	*	*	*					
24	<b>2. Educational, Institutional, Public and Special Uses</b>														
25	Airport	*	*												
26	Athletic stadium or field, public	*	*	S		S	S	S	S	*	*			*	*
27	Athletic stadium or field, private	*	S											S	S
28	Child care or day care center	*	S	S		S	S	S	S	*	*			*	*
29	Church, including church related activities (i.e., day care, recreational building)	*	*	*		*	*	*	*	*	*	*	*	*	*
30	City, county, state and governmental offices	*	*	*		*	*	*	*	*	*	*	*	*	*
31	College, university or private boarding school	*	*											*	*
32	Community center, private	*	S	S		S	S	S	S	*	*	*	*	*	*
33	Farm, ranch, garden or orchard	*	*	*		*	*	*	*	*	*	*	*	*	*
34	Halfway house	*							S	*				*	*
35	Heliport and helistop	*	*						S	*				*	*
36	Hospital	*	*						S	*				*	*
37	Hospital for insane, liquor or narcotic related patients	*	S						S	S				*	*
38	Landing fields, private	*	S											*	*
39	Library, public	*	*	*		*	*	*	*	*	*	*	*	*	*
40	Metal accessory building, in excess of 200 square feet	*	*	*		*	*	*	*	*	*	*	*	*	*
41	Metal building, primary or main	*												*	*
42	Municipal uses operated by the city	*	*	*		*	*	*	*	*	*	*	*	*	*
43	Museum or art gallery, private	*							*	*	*	*	*	*	*
44	Parochial or private school	*	*	*		*	*	*	*	*	*	*	*	*	*
45	Private park	*	*	*		*	*	*	*	*	*	*	*	*	*
46	Private utilities	*	*	*		*	*	*	*	*	*	*	*	*	*
47	Public park or playground	*	*	*		*	*	*	*	*	*	*	*	*	*
48	Radio, television, or communications facilities (commercial)**	*	*	S		S	S	S	S	S	S	S	S	S	*
49	Religious or philanthropic institutions not listed	*	S	S		S	S	S	S	S	*	*	*	*	*
50	School, public	*	*	*		*	*	*	*	*	*	*	*	*	*
51	School, business or trade	*	*	*		*	*	*	*	*	*	*	*	*	*
52	<b>3. Office and Professional Uses</b>														
53	Accountant or bookkeeping office	*		S	S	S	S	S		*	*	*	*	*	*
54	Armed services recruiting center	*							*	*	*	*	*	*	*

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
			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 Commer cial	I Industrial
55															
56	Architect's office	*		S	S	S	S	S		*	*	*	*	*	*
57	Attorney Office				S										
58	Bank, savings and loan mortgage and and credit unions	*								*	*	*	*	*	*
59	Chamber of commerce									*	*	*	*	*	*
60	Check cashing service and loan agency									*	*	*	*	*	*
61	Dental Office				S										
62	Engineering office	*		S	S	S	S	S		*	*	*	*	*	*
63	Insurance office			S	S	S	S	S		*	*	*	*	*	*
64	Long distance communication service									*	*	*	*	*	*
65	Medical clinic or office	*			S					*	*	*	*	*	*
66	Medical laboratory	*								*	*	*	*	*	*
67	Minor medical emergency clinic									*	*	*	*	*	*
68	Office, general, professional	*		S	S	S	S	S	S	*	*	*	*	*	*
69	Radio broadcasting, without tower	*								*	*	*	*	*	*
70	Real estate sales office	*								*	*	*	*	*	*
71	Surveyor office									*	*	*	*	*	*
72	4. Retail and Related Uses														
73	Art and craft supply store	*								*	*	*	*	*	*
74	Bakery or bake shop, retail	*								*	*	*	*	*	*
75	Barbershop or beauty salon	*			S	S	S	S		*	*	*	*	*	*
76	Bicycle, lawnmower sales/repair, enclosed									*	*	*	*	*	*
77	Bookstore	*								*	*	*	*	*	*
78	Boot and shoe sales and repair	*								*	*	*	*	*	*
79	Building materials and hardware, inside	*								*	*	*	*	*	*
80	Building materials and hardware, outside	*											*	*	
81	Ceramics store	*								*	*	*	*	*	*
82	Clothing or apparel store, new	*								*	*	*	*	*	*
83	Computer sales	*								*	*	*	*	*	*
84	Convenience store with gas pumps										S		*	*	
85	Convenience store without gas pumps									*	*	*	*	*	*
86	Dance studio or gymnastics	*								*	*	*	*	*	*
87	Department and dry goods store, retail	*								*	*	*	*	*	*
88	Donut shop	*								*	*	*	*	*	*
89	Driving school									*	*	*	*	*	*
90	Dry cleaning or shoe pickup/drop off	*								*	*	*	*	*	*
91	Dry cleaning, small shop	*								*	*	*	*	*	*
92	Fabric store	*								*	*	*	*	*	*
93	Feedstore	*								*	*	*	*	*	*
94	Florist	*		S	S	S	S	S		*	*	*	*	*	*
95	Furnishings	*								*	*	*	*	*	*
96	Gift shop	*								*	*	*	*	*	*
97	Grocery store or food market	*								*	*	*	*	*	*
98	Gunsmith				S					*	*	*	*	*	*
99	Hobby or toy store	*								*	*	*	*	*	*
100	Ice cream or frozen yogurt sales	*								*	*	*	*	*	*
101	Key shop or locksmith									*	*	*	*	*	*
102	Kiosk	*								*	*	*	*	*	*
103	Laundromat, self-service	*								*	*	*	*	*	*
104	Manufactured housing sales	*								*	*	*	*	*	*
105	Meat market, retail	*								*	*	*	*	*	*
106	Medical aids and equipment									*	*	*	*	*	*
107	Musical instrument sales and repair									*	*	*	*	*	*
108	Novelty or jewelry shop	*								*	*	*	*	*	*
109	Nursery, retail	*		S	S	S	S	S		*	S	S	S	*	*
110	Outside display	*								*	*	*	*	*	*
111	Optical store	*								*	*	*	*	*	*

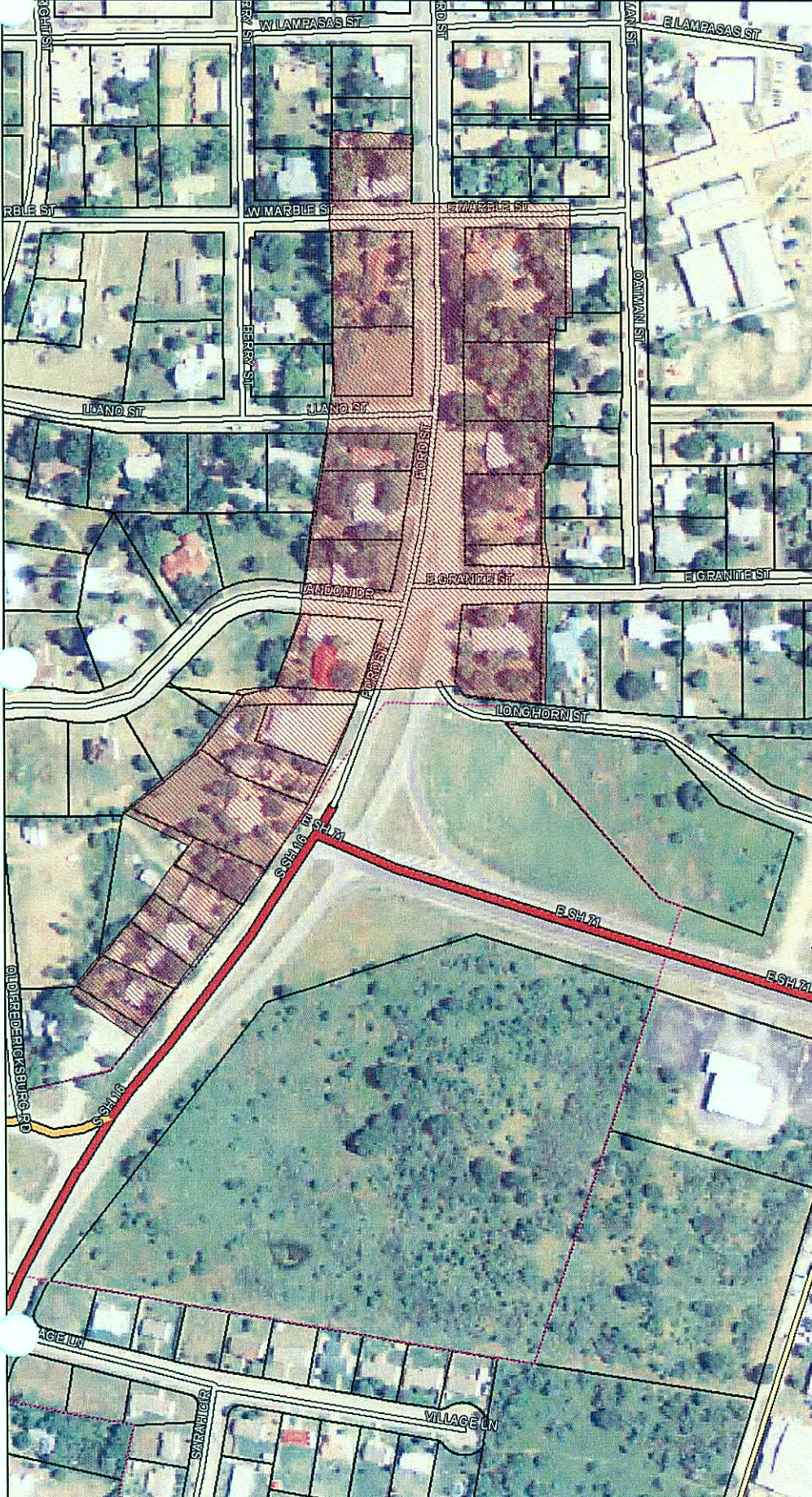








# SF-1 Overlay District



- City Street Labels
  - City Street Labels
- City Streets
  - City Streets
  - Private Drives
- Local Road Labels
  - Local Road Labels
- Local Roads
  - State Hwy
  - FM or RR Road
  - County Road
  - Other City Streets
  - Private Drives
- Extra-territorial Jurisdiction
  - Extra-territorial Jurisdiction
- City Limits
  - City Limits
- Rivers
  - Rivers
- LCAD Tax Parcels
  - Parcels

Data displayed were gathered by the City of Llano for municipal purposes. No guarantee is made regarding suitability for any other use or purpose.

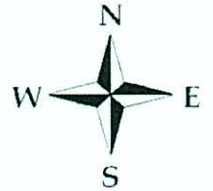




EXHIBIT "C"

City of Llano  
Regular Called City Council Minutes  
June 17, 2013 – 5:30 p.m.

**A. CALL TO ORDER**

Mayor Virdell called the City Council meeting to order at 5:37 p.m. Those in attendance were Mayor Pro-Tem Hazel, Alderman Hopson, Alderwoman Puryear, Alderman Keller, and Alderman Miiller;

**B. PLEDGE OF ALLEGIANCE**

**C. INVOCATION – Pastor Gretal Morgan**

**D. PUBLIC COMMENTS – Non Agenda Items**

No public comments

**E. PRESENTATION**

1. Jonathan Blackwell from the company LEED AP to make a presentation to the Mayor and Council regarding the electronic meter reading equipment.

***Brenton Lewis, City Manager***

Jonathan Blackwell with Aqua Metrics made a presentation to the Mayor and Council regarding the electronic meter reading equipment. Some of the highlights of the presentation include but were not limited to the accuracy of the meter reading equipment; utilizing existing towers. The project scope would replace all existing residential and commercial water meters and replace with Sensus iPERL and Omni water meters. Replacing all existing residential and commercial electric meters with Sensus AMI electric meters. Every meter will be connected to the Sensus FlexNet system enabling the City of Llano to read all meters remotely. Installation of all meters is included in scope; performed by a sister company Utiliuse. Installation also includes data integration into billing system and access to Utilicenter for daily project progress tracking. Logic Customer Connect is included, plus 5 years of annual support. This would be approximately a 7-12 month project schedule. Other additional benefits would be real-time monitoring of all water and electric meters. Alerts of tampering and other issues delivered to city daily; frequency controlled by city; water conservation capabilities; water rates not having to be adjusted, future water loss costs controlled; and efficiency warranty.

- F. 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 regular called City Council meeting minutes as written, dated June 3, 2013.

***Mayor Mike Virdell/Toni Milam, City Secretary***

2. Approval of the special called City Council meeting minutes as written, dated June 10, 2013.

***Mayor Mike Virdell/Toni Milam, City Secretary***

3. Approval on the request from the Llano County Library System Foundation for temporary street closure on Haynie Street for a street dance to be held on June 21, 2013.



*Mayor Mike Virdell/Toni Milam, City Secretary*

Motion by Mayor Pro-Tem Hazel, with a second by Alderwoman Puryear to approve the consent agenda as presented. With there being no discussion, motion approved.

## **G. PUBLIC HEARING**

Mayor Videll opened the public hearing at 5:58 p.m.

1. The City of Llano City Council will hold a public hearing on Monday, June 17, 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.

Marc Sewell, resident of Llano spoke during the public hearing portion of the meeting. Mr. Sewell stated there were four issues: technical errors, legal violations, no respect for property owners, and concerns regarding zoning overhaul. He recommended not approving these changes except for the beauty salon. Suggested finishing the comprehensive plan. Sherry Simpson, resident of Llano also spoke stating she isn't ready to see a palm reading use in the overlay district. With there being no further public comments, Mayor Virdell closed the public hearing at 6:15 p.m.

## **H. REGULAR AGENDA ITEMS**

1. Discuss and consider action on the approval of Ordinance 1247 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.

*Mayor Mike Virdell/Brenton Lewis, City Manager*

Motion by Alderman Bryan Müller, with a second by Mayor Pro-Tem Hazel to approve Ordinance 1247 amending the text and defining the following uses specifically in the SF-1 Overlay District: Barber/beauty salon, home occupation, accountant or bookkeeping office, architect office, engineering office, insurance office, office general professional, palm reading florist, gunsmith, and soil testing laboratory. With there being no further discussion, motion was approved.

2. Discussion and update on the "Llano Red Top Jail".

*Mayor Mike Virdell/Brenton Lewis, City Manager*

Sherri Zoch, Friends of the Llano Red Top Jail reported to Council that due to the contractor not being able to get bonding to perform the work. Ms. Zoch expressed a concern for future projects using local contractors not being able to secure the required bonding. She also advised the Council the Friends of the Llano Red Top Jail 501C3 was revoked by the IRS and they are currently working on getting their 501C3 status reinstated. She requested the City deed both the building and the property over to the Friends of the Llano Red Top Jail. No formal action taken.

3. Discuss and consider action on the award of the bid on the City of Llano Disaster Relief Project Raw Water Aeration System Improvement Project.

*Mayor Mike Virdell/Brenton Lewis, City Manager*

John Ferguson, resident spoke regarding the agenda item, and provided a list of questions proposed to Council. Mr. Ferguson inquired about the sediment, total cost per year, and any other purification, and if there were any other hidden costs. Marc Sewell asked what the budget was for this project, and stated there were incomplete business plans submitted by Staff.

Dan Hejl, with Hejl, Lee & Associates spoke briefly regarding the Disaster Relief Project Raw Water Aeration System Improvement project. After a lengthy presentation and discussion between Mr. Hejl and Council, questions were answered as was the cost of the project.

Motion by Mayor Pro-Tem Hazel, with a second by Alderman Müller to award the bid Excel Construction contingent upon a confirmation from the State on the approved contractor and subject to the approval of the change order number. With there being no further discussion, motion was approved.

4. Discuss and consider action regarding a Request for Proposal on audit services for FY12-13.

***Mayor Mike Virdell/Brenton Lewis, City Manager***

Sherry Simpson, resident, stated Neffendorf, the current auditor was a good auditor, however, during the last audit, they were asked to provide specific information and didn't.

Motion by Alderman Keller, with a second by Alderwoman Puryear to direct Staff to send a Request for Proposal for audit services for the FY12-13. With there being no further discussion, motion was approved.

5. Discuss and consider action regarding a business license.

***Mayor Mike Virdell/Brenton Lewis, City Manager***

Marc Sewell spoke regarding the business license and saw no benefit to business owners. Vivian Koerner spoke and agreed a business license is needed and had that been in place she may not have incurred issues when opening her business. Doris Messer stated it could be a process issue. Sherry Simpson agreed with Ms. Messer.  
No formal action taken.

6. Discuss and consider action on the approval of Ordinance 1246 regarding the creation of a Recreation Board, and the proposed by-laws.

***Mayor Mike Virdell/Brenton Lewis, City Manager***

Jessie Blackmon with the Llano Parks Project reported the group has filed for a 501C3 and is ready to move forward. Mayor Pro-Tem Hazel complimented the group for taking action themselves and stepping up.

Motion by Mayor Pro-Tem Hazel, with a second by Alderwoman Puryear to approve Ordinance 1246 creating the Recreation Board and proposed by-laws. With there being no further discussion, motion was approved.

7. Discuss and consider action on authorizing the hiring of a Permit Clerk in the Public Works Department.

***Mayor Mike Virdell/Brenton Lewis, City Manager***

Marc Sewell spoke regarding this agenda item. He state the hiring of a permit clerk is just the opposite of the direction the City needs to go. Don't need GED's, but rather needs more skill, and there was no salary in the job description, suggested hiring a temporary employee and to wait until after the budget process. Gail Lang spoke and stated she was offended by Mr. Sewell's comments about GED's being unskilled. Mr. Sewell did apologize for the comment. Sherry Simpson spoke and stated whenever the City had a Code Enforcement Officer, he worked well with the citizens. Alderwoman Puryear stated that with the previous Code Enforcement Officer, there were also complaints.

Motion by Alderman Keller, with a second by Mayor Pro-Tem Hazel to table this item until the budget hearings. With there being no further discussion, motion was approved.

8. Discuss and consider action on setting dates for the upcoming FY13-14 budget workshop sessions.

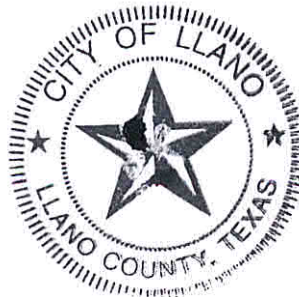
***Mayor Mike Virdell/Brenton Lewis, City Manager***

Discussion was held regarding the upcoming budget workshop sessions.

Motion by Mayor Pro-Tem Hazel, with a second by Alderwoman Puryear to direct Staff to set the budget schedules. With there being no further discussion, motion was approved.

**I. ADJOURNMENT 7:50 p.m.**

  
\_\_\_\_\_  
Mayor Mike Virdell



  
Toni Milam, City Secretary

---

Vernon's Texas Statutes and Codes Annotated

Local Government Code (Refs & Annos)

Title 7. Regulation of Land Use, Structures, Businesses, and Related Activities

Subtitle A. Municipal Regulatory Authority

Chapter 211. Municipal Zoning Authority (Refs & Annos)

Subchapter A. General Zoning Regulations (Refs & Annos)

V.T.C.A., Local Government Code § 211.011

§ 211.011. Judicial Review of Board Decision

Currentness

(a) Any of the following persons may present to a district court, county court, or county court at law a verified petition stating that the decision of the board of adjustment is illegal in whole or in part and specifying the grounds of the illegality:

- (1) a person aggrieved by a decision of the board;
- (2) a taxpayer; or
- (3) an officer, department, board, or bureau of the municipality.

(b) The petition must be presented within 10 days after the date the decision is filed in the board's office.

(c) On the presentation of the petition, the court may grant a writ of certiorari directed to the board to review the board's decision. The writ must indicate the time by which the board's return must be made and served on the petitioner's attorney, which must be after 10 days and may be extended by the court. Granting of the writ does not stay the proceedings on the decision under appeal, but on application and after notice to the board the court may grant a restraining order if due cause is shown.

(d) The board's return must be verified and must concisely state any pertinent and material facts that show the grounds of the decision under appeal. The board is not required to return the original documents on which the board acted but may return certified or sworn copies of the documents or parts of the documents as required by the writ.

(e) If at the hearing the court determines that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take evidence as directed. The referee shall report the evidence to the court with the referee's findings of fact and conclusions of law. The referee's report constitutes a part of the proceedings on which the court shall make its decision.

(f) The court may reverse or affirm, in whole or in part, or modify the decision that is appealed. Costs may not be assessed against the board unless the court determines that the board acted with gross negligence, in bad faith, or with malice in making its decision.

(g) The court may not apply a different standard of review to a decision of a board of adjustment that is composed of members of the governing body of the municipality under [Section 211.008\(g\)](#) than is applied to a decision of a board of adjustment that does not contain members of the governing body of a municipality.

**Credits**

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 363, § 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 646, § 1, eff. Aug. 30, 1999.

**Editors' Notes**

**REVISOR'S NOTE**

**2008 Main Volume**

The revised law omits as unnecessary the statement that persons may “jointly or severally” seek judicial review because other provisions adequately govern the filing of suits jointly or severally. For example, see [Rule 40, Texas Rules of Civil Procedure](#).

[Notes of Decisions \(115\)](#)

V. T. C. A., Local Government Code § 211.011, TX LOCAL GOVT § 211.011  
Current through the end of the 2013 Third Called Session of the 83rd Legislature

---

End of Document

© 2013 Thomson Reuters. No claim to original U.S. Government Works.

865 S.W.2d 941  
Supreme Court of Texas.

Albert W. DAVIS, Rita Davis, Betty  
Mills, and Edwin N. Mills, Petitioners,

v.

ZONING BOARD OF ADJUSTMENT OF  
the CITY OF LA PORTE, Respondent.

No. D-3831. | Nov. 24, 1993.

Landowners petitioned for review of decision of local zoning board of adjustment. The 269th District Court, Harris County, [David West, J.](#), granted board's plea and abatement, and appeal was taken. The Houston Court of Appeals, Fourteenth Judicial District, [853 S.W.2d 650](#), [Sam Robertson, J.](#), affirmed, and writ of error was sought. The Supreme Court held that failure to timely obtain service of writ of certiorari did not preclude judicial review of zoning board's decision.

Reversed and remanded.

#### Attorneys and Law Firms

\*[941 Jack G. Carnegie, Jack E. Urquhart](#), Houston, for petitioners.

\*[942 John D. Armstrong](#), La Porte, [Victor N. Makris](#), Houston, for respondent.

#### Opinion

PER CURIAM.

In this cause, we consider whether a trial court abused its discretion in dismissing a zoning board appeal. The court of appeals held that service of the writ of certiorari, as required by [section 211.011 of the Texas Local Government Code](#), is a jurisdictional prerequisite to appeal a zoning board's decision, and therefore upheld the trial court's dismissal of the Petitioners' case. [853 S.W.2d 650](#). We disagree, and therefore reverse.

Albert Davis and others (the "Davises") sought judicial review of a decision made by the Zoning Board of Adjustment of the City of La Porte (the "Board") allowing David and Debbie Couch to construct a large building on a residential

lot. After reviewing the Davises' petition, the court ordered the court clerk, upon the posting of a \$100 bond, to issue a writ of certiorari to the Board. The bond was not posted, and the writ was not served.

Eleven days before trial, the Board filed a plea in abatement complaining that it had not been served with the writ of certiorari. The Board did not seek dismissal for want of prosecution; nor did it attempt to establish that it had suffered any prejudice. The trial court granted the Board's plea in abatement and allowed the Davises thirty days to file an amended complaint. In a hearing conducted as the result of the Davises' amended complaint, the trial court dismissed the Davises' appeal. The court of appeals affirmed, reasoning that the Davises "did not timely invoke the jurisdiction of the court." [853 S.W.2d at 653](#).

[1] [2] Jurisdictional power is defined as "jurisdiction over the subject matter, the power to hear and determine cases of the general class to which the particular one belongs." [Middleton v. Murff](#), [689 S.W.2d 212, 213 \(Tex.1985\)](#). Once a party files a petition within ten (10) days after a zoning board decision, the court has subject matter jurisdiction to hear and determine a claim that a board of adjustment acted illegally. [See TEX.LOC.GOV'T CODE § 211.011](#).<sup>1</sup> The writ of certiorari is the method by which the court conducts its review; its purpose is to require a zoning board of adjustment to forward to the court the record of the particular zoning decision being challenged.<sup>2</sup> [See Tex.R.App.P. 54](#) (filing of a record is not jurisdictional); [Hare v. Hare](#), [786 S.W.2d 747, 748 \(Tex.App.—Houston \[1st Dist.\] 1990, no writ\)](#) (filing a bond is jurisdictional but service of a bond is not).<sup>3</sup>

[3] The statute does not contain a specific time limit for issuance of the writ; nor has the Board shown any prejudice caused by the delay. Thus, having complied with the procedures established by the legislature for challenging board of adjustment decisions, the Davises are entitled to their day in court. [See Scott v. Board of Adjustment](#), [405 S.W.2d 55, 56 \(Tex.1966\)](#). Accordingly, we conclude that the trial court abused its discretion in dismissing the Davises' appeal for lack of jurisdiction. We therefore grant Petitioner's application for writ of error and pursuant to Texas Rule of Appellate Procedure 170, without hearing oral argument, a majority of the court reverses the judgment of the court of appeals and remands this cause to the trial court for further proceedings.

Footnotes

- 1 “[A] petition must be filed within 10 days after the [board's] decision is filed in the board's office ... On the presentation of the petition, the court may grant a writ of certiorari directed to the board to review the board's decision.” [TEX.LOC.GOV'T CODE § 211.011](#)(b), (c).
- 2 The jurisdiction of district courts to issue writs is derived from the Texas Constitution. See [TEX. CONST. ART. V, § 8](#).
- 3 We disapprove the opinion in *City of Lubbock v. Bowns*, 623 S.W.2d 752 (Tex.App.—Amarillo 1981, no writ) to the extent it holds that a trial court's jurisdiction under [§ 211.011](#) depends upon service and return of the writ of certiorari.

---

End of Document

© 2013 Thomson Reuters. No claim to original U.S. Government Works.