

Appellate Docket Number 03-13-00580-CV

Texas Third Court of Appeals

Response to Appellee's Reply Brief

Marc T. Sewell Petition for Judicial Review
under Local Government Code Sec 211

Vs.

Llano Board of Adjustment (Chairman Mikel Virdell)

(a) Identity of Parties and Counsel

Appellant and Filer of this document:

Marc T. Sewell
108 Summit
Llano, TX 78643
Pro Se

Appellee:

City of Llano
Mikel Virdell Chairman & Mayor
301 West Main
Llano, TX 78643

Appellee Attorney:

Carey L. Bovey
2251 Double Creek Drive
Round Rock, TX 78664



Oral Argument Requested

TO THE HONORABLE THIRD COURT OF APPEALS:

Please accept this brief response to the Appellee's Reply Brief.

Other than the veracity of emails, the Appellee does not respond to the fundamental issue in my brief as to whether the process followed by the trial judge was correct. All other arguments, such as jurisdiction of the district court, are nonresponsive arguments that should be addressed by the District Court when and if my appeal is accepted. I will of course, gladly present rational responses in oral arguments should it be necessary.

As to the veracity of email:

1. The District Court initiated the use of email and could have, at any time, terminated that form of communication for another. Email communication is informative, real, and verifiable. Besides, my email log is more substantive evidence than the speculation in the appellee's brief.

2. Based on the process defined by Section 211.011¹, the City does not get involved or is even notified until after the writ of certiorari is issued – Section 211.011(c) . The judge chose to terminate the process prior to issuing the writ and

¹ Appendix A - Local Government Code Sec 211.011. Judicial Review on page 5

thus, no notification was required and no record was begun. The Email log is the only record.

3. For oral Arguments, I will attempt to get an affidavit or will subpoena the District Court clerks to validate the emails.
4. I will bring technical evidence to demonstrate the authenticity of the emails.

One question the Appeals Court might ask is: “Why would the City spend thousands of taxpayer dollars to prevent a judge from asking the City to respond to a citizen complaint - why spend money when no money is at stake? Even if this appeal is successful and the District Court Judge issues the Writ and finds I am correct, there is no cost to the City. My original question in my petition for judicial review is simply “is a change to zoning ordinance property usage a text change or a regulation change?” A simple question, easily answered in a paragraph. Why would the City spend thousands of dollars in legal fees to preclude answering a simple question from a taxpayer?

Prayer

Thus, I respectfully request that the Appeals Court decide the appeal on proper process and return this debate to the District Court. Please require the City of Llano to answer to the property owners of Llano.

A handwritten signature in blue ink that reads "M. Sewell" with a horizontal line underneath.

Marc Sewell

108 Summit

Llano, TX 78643

Appendix

Appendix A - Local Government Code Sec 211.011. Judicial Review

TEXAS LOCAL GOVERNMENT CODE

TITLE 7. REGULATION OF LAND USE, STRUCTURES, BUSINESSES, AND RELATED ACTIVITIES

SUBTITLE A. MUNICIPAL REGULATORY AUTHORITY

CHAPTER 211. MUNICIPAL ZONING AUTHORITY

SUBCHAPTER A. GENERAL ZONING REGULATIONS

Sec. 211.011. JUDICIAL REVIEW OF BOARD DECISION. (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.


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

Appendix B- Certificate of Service

Certificate of Service

I certify that I have served the Motion to Fix Case Information for Docket Number 03-13-00580-CV on all other parties—which are listed below—on 11/8/13 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. Board of Adjustment Chairman/Mayor Mikel Virdell **via email**
City of Llano
301 West Main
Llano, TX 78643
(325) 247-4158
mvardell@cityofllano.com

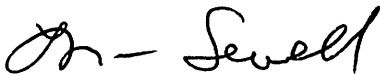


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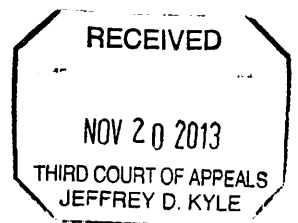
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Certificate of Compliance

I certify that the Appellant Reply Brief I submitted on 11/8/13 was prepared with Microsoft Office Word 2007, and that, according to that program's word-count function, the sections covered by TRAP 9.4(i)(1) contain 408 words.

M. Sewell

Marc Sewell

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MA

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THIRD COURT OF APPEALS
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