Appellate Docket Number 03-13-00580-CV

Texas Third Court of Appeals

Motion for Rehearing

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

Vs.

Llano Board of Adjustment (Chairman Mikel Virdell)

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 Not Required

Table of Contents

Under Texas Rules of Appellate Procedure 49.1, I submit this motion for rehearing based on the following:

1. The appellate court's decision was based on case law that is not pertinent.
2. The district court did completely dispose of my judicial review petition.
3. The true issue is not jurisdiction but judicial abuse of discretion which caused a violation of the state and federal constitutions.
4. Motion for sanctions was dismissed as moot, but was not moot.

Arguments

Lehmann v. Har-Con Corp Is Not Pertinent

I believe this court erred in the same way the district court did by treating my case with the same approach as a *regular case*. A *judicial review* is not the same as a *regular case*, as the Texas Supreme Court espouses in *Tellez v. City of Socorro*[1]:

> "The procedures for challenging a zoning board's decision are rather unique." The judicial review process for a zoning board decision is defined in statute §211.011.

The first and salient difference is who is in control at the start. After initial filing, a *regular case* is controlled by the lawyer – motions, briefs, etc - while a *judicial review* is

---

1

Appendix C - *Tellez v. City of Socorro* on page 15.

controlled by the judge – writ of certiorari, hearing, etc. This distinction is fundamental to my case and not addressed by *Lehmann v. Har-Con*[2] which only considers *regular* cases.

It is during this initial judge-controlled phase that Judge Garrett erred and, since this phase does not exist in a regular case, rules and case law are not pertinent, unless they specifically reference this unique phase and situation: Judge errs while in control of process, prior to initiating the judicial review - which *Lehmann v. Har-Con* does not.

Judge Garrett erred by arbitrarily denying my judicial review, which violates the process defined in the statute. According to *Jelinek v. Casas*[3], this is abuse of discretion in initiating a case, which is the central point in my appeal and is not considered by *Lehmann v. Har-Con Corp.*

It is Judge Garrett's abuse of discretion in a judicial review petition, in a process activity that does not exist in a regular civil case, which is the issue in my appeal. As such, the jurisdictional discussion in *Lehmann v. Har-Con* is not pertinent because it has not considered this particular "finality" or any similar.

District Court Said It Was Final

The district court action was final as it pertains to my petition for judicial review. By denying a writ[4], disposing of my cause[5], denying my request[6], and refusing alternate

---

[2] *Lehmann v. Har-Con* was cited by this court in their judgment so I will not reproduce the 30 pages.
[3] Appendix A - *Jelinek v. Casas* on page 13
[4] Appendix F - Judgment from District Court on page 20
[5] Appendix G, email #5 on page 22: "The cause is now considered disposed"
[6] Appendix G, email #3 on page 21: "denied your request" - my request was a judicial review.

avenues like §211.011(e)[7], the district court made it clear that they were not going to do a judicial review based on lack of notification[8].

By not allowing the judicial review, the district court's action automatically disposed of all my claims. There was no other path in §211.011 to initiate a zoning judicial review. *Lehmann v. Har-Con* does not cover this situation.

Since the court's action was an abuse of discretion – not based in law – the appeals court has jurisdiction.

Hagood v. City of Houston Zoning Bd. of Adjustment Is Not Pertinent

Hagood[9] is not a pertinent case reference because the situation differs extensively from mine. The district judge in *Hagood* based his discretionary decision on the city having satisfied the requirements of §211.011(d) and thus precluding the need for a writ of certiorari:

> "In the present case, it is uncontested that it was not necessary for the trial court to "grant a writ of certiorari directed to the zoning board of adjustment" because the board automatically filed in the trial court all of the records from the board of adjustment's proceedings, as well as a verified response that stated "pertinent and material facts that show the grounds of the decision under appeal." Thus, the zoning

[7] Appendix G, emails #1,2, and 4 request hearing or alternatives.
[8] Appendix G, email #3 "you needed to notice the opposing sides"
[9] Since this court cited *Hagood v. City of Houston Zoning Bd. of Adjustment* and the copy that Jeff Kyle graciously sent me is copyrighted, I have not included the case in the appendix.

board of adjustment filed the "return" required by section 211.011(d) of the Local Government Code without a writ of certiorari first being granted and served on it."

In my case, Judge Garrett based his discretionary decision on a process error – my lack of notification. As I have described in my brief[10], Section 211.011(c) shows that it is the district court's responsibility to notify, not mine. Judge Garrett never began my case, whereas the *Hagood's* case was based on the merits of their case and not procedural error made by the judge.

The foundation of my judicial review would be answered by "usage changes are text changes and not regulation changes because _____." Had the City of Llano complied with §211.011(d), as in *Hagood*, and simply answered that question, this appeal would not have been necessary.

I did not petition the court for a writ of certiorari, but rather for a judicial review based on §211.011. Following §211.011(a) and (b)[11], the judge takes the responsibility for effecting the judicial review, which is typically the issuance of a writ of certiorari. There are other options for the judge to execute the judicial review as this court has pointed out with §211.011(e). Regardless, the district judge must initiate the judicial review and this is where the district court erred.

[10] My initial brief, page 12-13, Issue #1
[11] Appendix B - Local Government Code Sec 211.011. Judicial Review on page 13

The district judge acted unilaterally, before any judicial review had been initiated, to deny a judicial review, not based on any law, as I have shown in my brief[12]. At least *Hagood* had his grievance addressed. I never got that far. Said differently and metaphorically, *Hagood* got to bat and swing at the ball. I never even got to the dugout because Judge Garrett didn't even start the game. He called the game for a reason not in the rule book.

I agree with *Hagood* that there is not a right to a writ, hearing, or trial, but that is not my situation. There is a right to a judicial review, for which I was denied, and the *Hagood* case does not address that situation.

So, my appeal has to do with procedural error by a district court judge that denied my access to the court. "Appellate courts review actions and decisions of the lower courts on questions of law or allegations of procedural error."[13] This is exactly my situation and thus the appellate court has jurisdiction.

§211.011(e) and §211.011(f) Are Not Pertinent

This court's opinion suggests that §211.011(e) and §211.011(f) are available despite a writ of certiorari being denied. §211/011(e) is an option for the court after the board's return as described in §211.011(d). There was no board return and Judge Garrett did not request testimony even though I recommended a §211.011(e) solution. Even if this was an option for me, it was denied[14].

[12] My initial brief, Issues #1, 2, and 3
[13] From supreme court website document: Subject-Matter Jurisdiction of the Courts
[14] Appendix G - Email Correspondence between Sewell & District Court, email #1 on page 21

Section 211.011(f) deals with the court review of the appeal to the board of adjustment and occurs well into a judicial review. §211.011(f) is not for an appeal for a rejected judicial review and thus not pertinent to the initiation of a judicial review.

More than Abuse of Discretion

Judge Garrett's abuse of discretion denied my access to the judicial review process. This, however, is more than just abuse of discretion; this is a constitutional violation. By denying a judicial review, Judge Garrett denied my open access to the courts, due process, and the opportunity to redress grievances.

Even if my arguments against "final disposition of all pending claims" are not acceptable to this court, I contend that the Texas and US Constitutions take precedent over a "settled law" still being argued in Texas courts and legislature[15].

By blocking my entry into the zoning judicial review process, I was denied Open Access to the Courts and Due Process of Law as required by Texas Constitution Article I sections 13, 19 and 27 and the 5th and 14th amendments to the US Constitution[16]. The Supreme Court of the United States has also interpreted Due Process to include Procedural Due Process in civil cases, which is particularly relevant to this case.

---

[15] *Lehmann v. Har-Con* presents an extensive debate on jurisdiction; the discussion in *Texas Judicial System Sudject-Matter Jurisdiction of the Courts* from the Supreme Court Website states "Thus, the jurisdiction scheme of courts in Texas is a 'crazy quilt' of more exceptions than rules" demonstrates the Supreme Court finds the subject controversial, and 78th Legislature House Bill 4 and 1294 show continuing changes.

[16] Appendix D – Constitution on page 17

I also contend that the application of "final by disposing all claims" as a criteria for appeal is a violation of Substantive Due Process by using an arbitrary, irrelevant to the cause, "rule" to prevent my access to the appeals court.

Thus, my violated constitutional rights should supersede the finality requirement should this court not be persuaded by my other arguments.

Email is a Valid Form of Court Communication

I notice that this court's judgment referenced the district court order denying writ of certiorari saying it did not dispose of all claims. This court did not mention the *Facts*[17] I presented of district court follow-up emails[18] that specifically said "disposed." Should this court determine that a district court email is unacceptable to show finality, this court should find the district court accountable and not me. The district court requested email, responded to email, and did not in any way curtail the use of email. There are no published rules that deny the use of email. As a pro se, sans law degree, my valid expectation is that email is an acceptable form of evidence in a court. I will gladly amend my brief to add this district court error to my claims should this court so instruct me.

Board of Adjustment Equals City Council in Llano

While this court's judgment, in the last paragraph of page 2, brings up the subject of statute 211.011(a) Board of Adjustment being the violator of law, neither this court nor

[17] Facts section of my original brief
[18] Appendix G – Emails #3 and #5

Mr. Bovey have ever argued against that my assertion that §211.011(g) specifies that *City Council* is synonymous with *Board of Adjustment* in Llano. Nor has this court or Mr. Bovey argued against my other supporting documentation in my Reply to Motion to Dismiss on this subject. Thus, my assertion that §211.011(a) applies to the illegal decision made by Llano City Council stands uncontested and should not fairly be a grounds for dismissal.

Aggravated Perjury Is Not Moot

My motion for sanctions for perjury was denied as moot. The issue in the motion for sanctions is independent of the appeal issues and stands self-supporting. The remedy requested, removal of perjurious document from the record, is still outstanding, executable completely within the control of the court, and important. This description is the antithesis of moot[19].

This issue is also important to the judicial system as the violation was uncontested perjury in a signed and sworn affidavit, attached to a motion that succeeded in terminating the appeal, and was followed-up by a reply to the court that tried to obfuscate and justify the perjury. Not only is this a violation of the law, a violation of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT [20], a violation of the Texas Lawyer's Creed[20], but an insult to the court. I would think that the court would welcome this motion to preserve the dignity of the judicial system.

---

[19] In American law, a matter is moot if further legal proceedings with regard to it can have no effect, or events have placed it beyond the reach of the law. Thereby the matter has been deprived of practical significance or rendered purely academic.
[20] See my discussion of numerous violations in my APPELLANT'S REPLY TO APPELLEES' REPLY TO APPELLANT'S RESPONSE TO APPELLEES' MOTION FOR DAMAGES

A case lost does not make a sanction moot as *Merrell Dow Pharmaceuticals, Inc. v. Havner*[21] shows. In this case, the Supreme Court opinion denied the motion for rehearing in one line while three pages were devoted to and recommending sanctions. The Supreme Court also referenced the same violations I did in my motion for sanctions such as the Texas Disciplinary Rules of Professional Conduct and Texas Civil Practices and Remedies Code §§10.001-10.005[22].

The Texas Supreme Court seemed extremely upset and driven to act based on their statements such as:

- "attacks on the integrity of that court"
- "we are obligated to maintain the respect due this Court and the legal system we took an oath to serve"
- "Courts possess inherent power to discipline an attorney's behavior

It is also pertinent that, in *Merrill Dow Pharmaceuticals, Inc. v Havner*, the Supreme Court stated a concern for "the public's confidence in the judicial process" should it not sanction for bad behavior. What confidence will the citizens of Llano have in the judicial process when they discover that it is moot for their city manager and city attorney to lie to the Third Court of Appeals in a signed, sworn affidavit? What confidence will the citizens have knowing it is OK for a Llano District Court Judge to violate the law by not allowing a judicial review of an illegal city zoning action as long as that judge does not craft his

[21] Appendix E – *Merrell Dow Pharmaceuticals, Inc. v. Havner* on page 18
[22] Appendix H – Texas Civil Practices and Remedies Code Chapter 10 on page 23

opinion correctly? What confidence will the citizens have that the city will not violate the law again and deprive them of their property rights without repercussion?

Aggravated perjury, facilitated by a lawyer, is a grave violation of the judicial system. I humbly suggest that, during a rehearing, this court will become as outraged by Mr. Bovey's behavior as the Texas Supreme Court was in *Merrill Dow Pharmaceuticals, Inc. v Havner.*

Prayer

I was denied a judicial review because Judge Garrett did not follow the process in the law. I am now being denied an appeal because Judge Garrett said "disposed" in an email instead of his Order. City Manager Brenton Lewis and City Attorney Carey Bovey commit aggravated perjury in this high court and it is moot. The City of Llano denied 79 Llano citizens their property rights without repercussion. This is not right. Something is wrong with the Texas Judicial System.

I believe I have successfully argued that the case law references in this court's judgment are not pertinent and that Judge Garrett erred and abused his discretion, thus denying me of a statute-specified judicial review, as well as violating my state and federal constitutional rights. I believe that I have also shown that the district court completely disposed of my request for judicial review and that the appeals court has jurisdiction. . I also believe that I

have successfully argued all other issues presented in this court's opinion. Thus, I request that my motion for rehearing be approved.

Also, I have shown that my motion for sanctions for perjury is not moot and important to the dignity of the court. I request that my motion for rehearing be approved.

M. Sewell

Marc Sewell

108 Summit

Llano, TX 78643

Appendix

Appendix A - *Jelinek v. Casas*

The test for abuse of discretion requires us to determine whether the trial court acted in an arbitrary or unreasonable manner without reference to any guiding rules or principles. Jelinek v. Casas, 328 S.W.3d 526, 539 (Tex. 2010).

Appendix B - Local Government Code Sec 211.011. Judicial Review

TEXAS LOCAL GOVERNMENT CODE

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

(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 C - *Tellez v. City of Socorro*

TELLEZ v. CITY OF SOCORRO

Supreme Court of Texas.

Juan Manuel TELLEZ, Petitioner v. CITY OF SOCORRO, Respondent.

No. 05-0629.

-- June 01, 2007

Justo Fernandez-Gonzalez, El Paso, for Juan Manuel Tellez. Richard Contreras, El Paso, for City of Socorro.

Subject-matter jurisdiction "involves a court's power to hear a case." U.S. v. Cotton, 535 U.S. 625, 630, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002); accord CSR Ltd. v. Link, 925 S.W.2d 591, 594 (Tex.1996). Because the trial court had power to hear this appeal of a zoning board's decision, we hold the court of appeals erred in dismissing it for lack of subject-matter jurisdiction.

Juan Tellez has operated an auto salvage yard in the City of Socorro in El Paso County since 1982. He alleges that six months after he purchased an adjacent lot in 1998 for the same use, the City enacted its first zoning laws and designated the lot as residential. He filed suit after the City's Zoning Board of Adjustment denied his application for a non-conforming use permit. See Black's Law Dictionary 577 (8th ed.2004) (defining "non-conforming use" as "Land use that is impermissible under current zoning restrictions but that is allowed because the use existed lawfully before the restrictions took effect."). The trial court affirmed the Board, and Tellez appealed again. Rather than reaching the merits, the court of appeals dismissed the suit sua sponte for lack of subject-matter jurisdiction. 164 S.W.3d 823, 830 (Tex.App.-El Paso 2005).

The procedures for challenging a zoning board's decision are rather unique. The Local Government Code requires such challenges to be filed within ten days after a board's decision, to be made by "verified petition stating that the decision of the board of adjustment is illegal . and specifying the grounds of the illegality," and to be initiated by writ of certiorari directed to the board indicating when its "return" must be made. Tex. Loc. Gov't Code § 211.011(a)-(c).

In Davis v. Zoning Board of Adjustment, we rejected a claim that failing to serve the writ of certiorari required by the Code deprived the courts of subject-matter jurisdiction. 865 S.W.2d 941, 942 (Tex.1993) (per curiam). Instead, we held that service of the writ was the procedure by which a trial court conducts its review; jurisdiction exists "[o]nce a party files a petition within ten (10) days after a zoning board decision." Id.

Here, the court of appeals dismissed Tellez's suit because he sued the City of Socorro rather than its Zoning Board, and because his petition did not specify how the Board's decision was illegal. The City never objected to either defect. Although subject-matter jurisdiction cannot be waived, see Dubai Petroleum Co. v. Kazi, 12 S.W.3d 71, 76 (Tex.2000), these procedural defects can be waived because they do not affect subject-matter jurisdiction (as we held in Davis).

We agree with the court of appeals that, while the Local Government Code does not specify against whom suit should be filed, its requirements suggest that zoning boards are the proper party as they must be served with the writ, file a verified answer, and pay costs if found to have acted in bad faith. See Tex. Loc. Gov't Code § 211.011. But whether suit should be dismissed because the zoning board was not joined as a defendant is a prudential rather than jurisdictional question. See Tex.R. Civ. P. 39; Brooks v. Northglen Ass'n, 141 S.W.3d 158, 162-63 (Tex.2004); Cooper v. Texas. Gulf Indus., Inc., 513 S.W.2d 200, 204 (Tex.1974). By failing to object, the City waived any complaint that the proper party was its appointed Board. Tex.R.App. P. 33.1; Brooks, 141 S.W.3d at 163.

Similarly, while the Code requires specific allegations of illegality, nothing indicates the Legislature intended compliance to be jurisdictional. See Univ. of Texas Sw. Med. Ctr. v. Loutzenhiser, 140 S.W.3d 351, 359 (Tex.2004). If the City considered Tellez's petition deficient, it could have objected. Having failed to do so, it waived any defect, and the court of appeals erred in dismissing the appeal on this basis. See Roark v. Allen, 633 S.W.2d 804, 809-10 (Tex.1982).

Accordingly, without hearing oral argument, see TEX. R. APP. P. 59.1, we grant Tellez's petition for review, reverse the judgment of the court of appeals, and remand the case to that court for further proceedings.

PER CURIAM.

Appendix D – Constitution

Texas Constitution Article I

Sec. 13. EXCESSIVE BAIL OR FINES; CRUEL AND UNUSUAL PUNISHMENT; REMEDY BY DUE COURSE OF LAW. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

Sec. 19. DEPRIVATION OF LIFE, LIBERTY, ETC.; DUE COURSE OF LAW. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Sec. 27. RIGHT OF ASSEMBLY; PETITION FOR REDRESS OF GRIEVANCES. The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.

US Constitution

Amendment 5 - Trial and Punishment, Compensation for Takings

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 14 - Citizenship Rights

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Appendix E – *Merrell Dow Pharmaceuticals, Inc. v. Havner*

ON MOTION FOR REHEARING

ORDER

The motion for rehearing filed on behalf of the Havners is overruled. However, the tenor of that motion requires that we address the conduct of Respondents' counsel.

This is not the first time in this case that the Havners' counsel have engaged in less than exemplary conduct. Following the decision of the original panel of the court of appeals, which had reversed the judgment of the trial court and rendered judgment that the Havners take nothing, Robert C. Hilliard filed two briefs with the court of appeals which that court, sitting en banc, found to be "insulting, disrespectful, and unprofessional." Merrell Dow Pharmaceuticals, Inc. v. Havner, 907 S.W.2d 565, 566 (Tex.App.—Corpus Christi 1994) (en banc) (per curiam). The court of appeals further concluded that the briefs "evidence[d] a violation of the Texas Disciplinary Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness." Id. The court of appeals accordingly forwarded copies of those briefs to the Office of General Counsel of the State Bar of Texas pursuant to Texas Code of Judicial Conduct, Canon 3(D)(2). Id.

In assessing the appropriate response to the motion for rehearing that has now been filed by Hilliard and his cocounsel in this Court, we agree with another of our courts of appeals who recently found it necessary to address attacks on the integrity of that court:

A distinction must be drawn between respectful advocacy and judicial denigration. Although the former is entitled to a protected voice, the latter can only be condoned at the expense of the public's confidence in the judicial process. Even were this court willing to tolerate the personal insult levied by [counsel], we are obligated to maintain the respect due this Court and the legal system we took an oath to serve.

In re Maloney, 949 S.W.2d 385, 388 (Tex.App.—San Antonio 1997, no writ) (en banc) (per curiam); see alsoJohnson v. Johnson, 948 S.W.2d 835, 840–41 (Tex.App.—San Antonio 1997, writ requested) 1 (sanctioning counsel fordisparaging remarks about the trial court and forwarding the court of appeals' opinion to the Office of General Counsel, concluding that a substantial question had been raised about counsel's honesty, trustworthiness, or fitness as a lawyer).

Courts possess inherent power to discipline an attorney's behavior. " 'Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence.' " Chambers v. NASCO, Inc., 501 U.S. 32, 43, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991) (further observing that a federal court has the power to control admission to its bar and to discipline attorneys who appear before it) (quoting Anderson v. Dunn, 19 U.S. (6 Wheat.) 204, 227 (1821)); see also Public Util. Comm'n v. Cofer, 754 S.W.2d 121, 124 (Tex.1988); Johnson, 948 S.W.2d at 840–41.

The Disciplinary Rules governing the conduct of a lawyer provide:

*733 A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

TEX. DISCIPLINARY R. PROF'L CONDUCT preamble ¶ 4, reprinted in TEX. GOV'T CODE, tit. 2, subtit. G app. A (Vernon Supp.1997) (TEX. STATE BAR R. art. X, § 9).

Rule 8.02(a) of the Disciplinary Rules specifically states:

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory official or public legal officer, or of a candidate for election or appointment to judicial or legal office.

Id. Rule 8.02(a).

The Legislature has also provided a mechanism for courts to sanction counsel who file pleadings presented for an improper purpose or to harass. TEX. CIV. PRAC. & REM.CODE §§ 10.001—10.005. In addition, one of the lawyers for the Havners, Barry Nace, is a non-resident attorney. His appearance in Texas courts is subject to the Rules Governing Admission to the Bar, including Rule XIX.

The specific portions of the "Respondents' Motion for Rehearing" filed in this Court that raise particular concerns are the "Statement of the Case for Rehearing" (pages 1–5), the "Brief of the Argument" (pages 8, 14, and 16), and the "Prayer for Relief" (pages 19–20). Counsel for Respondents Robert C. Hilliard of the firm of Hilliard & Muñoz, Barry J. Nace of the firm of Paulson, Nace, Norwind & Sellinger, and Rebecca E. Hamilton of the firm of White, White & Hamilton, P.C., are hereby afforded the opportunity to respond as to why the Court should not

1) refer each of them to the appropriate disciplinary authorities;

2) prohibit attorney Nace from practicing in Texas courts;

and

3) impose monetary penalties as sanctions.

Any response must be filed in this Court by 5:00 p.m.,

Monday, November 24, 1997.

Done at the City of Austin, this 13th day of November, 1997.

Appendix F - Judgment from District Court

NO. 18504

MARC T. SEWELL	§	IN THE DISTRICT COURT
	§	
V.	§	
	§	
	§	
BRENTON LEWIS, DIANNE FIRESTONE, LETITIA McCASLAND, MARCY METHVIN, TODD KELLER, JEANNE PURYEAR AND TOM MILAM	§	424TH JUDICIAL DISTRICT
	§	
	§	
	§	
	§	LLANO COUNTY, TEXAS

ORDER DENYING WRIT OF CERTIORARI

After consideration of the Verified Petition for Judicial Review, it is hereby ordered that the Writ of Certiorari is DENIED.

SIGNED on July 23, 2013.

JUDGE PRESIDING

Appendix G - Email Correspondence between Sewell & District Court

EMAIL Number 1.

From: Marc Sewell [mailto:marcs@simonlabs.com]
Sent: Thursday, July 25, 2013 4:29 PM
To: 'Lisa Bell'
Subject: RE: Cause no. 18504 - Judicial Review

From your communication, I understand that you have not denied my petition for judicial review rather you have denied a writ of certiorari as a possible procedure for affecting the judicial review. Since you provided no detail and I am confident of the merits of my petition, I must deduce that I made a procedural error. I have attempted to fix that by sending a copy of the petition to the Mayor and Chairman of the Board of Adjustment, Mike Virdel (mvirdell@cityofllano.com), and the City Attorney, Cary Bovey (cary@boveylaw.com).

I also request a hearing.

Marc Sewell

EMAIL Number 2.

From: Marc Sewell [mailto:marcs@simonlabs.com]
Sent: Thursday, August 01, 2013 9:13 AM
To: 'Lisa Bell'
Subject: RE: Cause no. 18504 - Judicial Review

There are other ways to do a Judicial Review. I am surprised that my request was denied without an explanation. I request a hearing to discuss this. I paid for it. marc

EMAIL Number 3.

From: Lisa Bell [mailto:33coordinator@dcourttexas.org]
Sent: Thursday, August 01, 2013 11:47 AM
To: Marc Sewell
Subject: Re: Cause no. 18504 - Judicial Review

Mr. Sewell,

I believe you were told that you needed to notice the opposing sides and then set it for a hearing and you informed us that was not necessary. The Judge reviewed it by submission and denied your request.

EMAIL Number 4.
From: Marc Sewell [mailto:marcs@simonlabs.com]
Sent: Thursday, August 01, 2013 2:22 PM
To: 'Lisa Bell'
Subject: RE: Cause no. 18504 - Judicial Review

I eventually notified the opposing side and attorney and sent you the confirmation. I would now like to set the hearing. If the Judge reviewed my petition, what did he find that caused the denial?

Thank you,
marc

EMAIL Number 5.
From: Lisa Bell [mailto:33coordinator@dcourttexas.org]
Sent: Thursday, August 01, 2013 2:55 PM|
To: Marc Sewell
Subject: Re: Cause no. 18504 - Judicial Review

You did this after the judgment was signed and submitted to the court. The cause is now considered disposed.

Appendix H – Texas Civil Practices and Remedies Code Chapter 10

Sec. 10.001. SIGNING OF PLEADINGS AND MOTIONS. The signing of a pleading or motion as required by the Texas Rules of Civil Procedure constitutes a certificate by the signatory that to the signatory's best knowledge, information, and belief, formed after reasonable inquiry:

(1) the pleading or motion is not being presented for any improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) each claim, defense, or other legal contention in the pleading or motion is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) each allegation or other factual contention in the pleading or motion has evidentiary support or, for a specifically identified allegation or factual contention, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) each denial in the pleading or motion of a factual contention is warranted on the evidence or, for a specifically identified denial, is reasonably based on a lack of information or belief.

Added by Acts 1995, 74th Leg., ch. 137, Sec. 1, eff. Sept. 1, 1995.

Sec. 10.002. MOTION FOR SANCTIONS. (a) A party may make a motion for sanctions, describing the specific conduct violating Section 10.001.

(b) The court on its own initiative may enter an order describing the specific conduct that appears to violate Section 10.001 and direct the alleged violator to show cause why the conduct has not violated that section.

(c) The court may award to a party prevailing on a motion under this section the reasonable expenses and attorney's fees incurred in presenting or opposing the motion, and if no due diligence is shown the court may award to the prevailing party all costs for inconvenience, harassment, and out-of-pocket expenses incurred or caused by the subject litigation.

Added by Acts 1995, 74th Leg., ch. 137, Sec. 1, eff. Sept. 1, 1995.

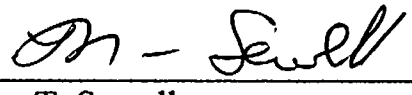
Appendix I – Certificate of Service

Certificate of Service

I certify that I have served this Motion for Rehearing for Docket Number 03-13-00580-CV on all other parties—which are listed below—on 2/10/14 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 Milam **in person** for distribution to: Board of Adjustment Chairman/Mayor Mikel Virdell, City Attorney Carey Bovey
   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

Appendix J - Certificate of Compliance

I certify that this motion 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 2660 words.

Marc Sewell

108 Summit

Llano, TX 78643

Appendix K – Certificate of Conference

Not required based on Texas Rules of Appellate Procedure Rule 49.12.

= SEWELL

SUMMIT

10, TX 78643

THIRD COURT of APPEALS

PO BOX 12547

AUSTIN, TX 78711