

FILED
June 5, 2014
Third Court of Appeals
Jeffrey D. Kyle
Clerk

Appellate Docket Number 03-13-00580-CV
Texas Third Court of Appeals

Motion to Extend Time

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

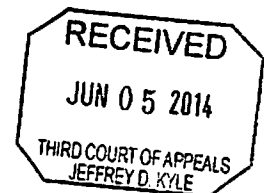
Appellee:

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



TO THE HONORABLE THIRD COURT OF APPEALS:

Under Texas Rules of Appellate Procedure 10.5(b)(1), I submit this motion to extend time for Mandate to Issue scheduled for 6/16/14.

History

Despite my arguing that Judge Garrett completely disposed my cause #18504, this court ruled that “The trial court’s denial of a writ of certiorari does not end a suit for judicial review brought pursuant to section 211.011.” That conclusion allowed me to request¹ that Judge Garrett have a hearing to completely dispose of “all pending parties and claims” and he complied with a status hearing on 5/14/14. I have attached the transcript².

That hearing was unsuccessful in effecting the judicial review and a new issue arose that my case style prevented the continuation of the judicial review – that the city attorney didn’t know who his client was and that the court didn’t know upon whom to serve orders. Judge Garrett said that he didn’t know how to effect the judicial review and asked me how to do it. He ordered me to change the case style so that he may proceed. He never addressed that his order denying the writ of certiorari was erroneously based on a notification requirement - which was the basis of my appeal to this court. He did say that he was not allowed to amend or retract the order denying the writ.

¹ Appendix B – Letter to Judge Garrett Requesting a Hearing

² Appendix C – District Court Status Hearing Transcript

My response³ to Judge Garrett demonstrated that the Supreme Court said my case style was fine and that the judge should proceed with the judicial review. Judge Garrett has not responded to this letter.

Justification for Extended Time

1. The Motion for Interlocutory Appeal⁴ submitted to the district court would eliminate this court's issue with disposition and thus allow this court's jurisdiction; would allow Judge Garrett to proceed with the judicial review; and ultimately, cause the city to justify their zoning decision.
2. Denying this request would cause either an appeal to the Texas Supreme Court or a new appeal to this court, both which would be costly to the courts and the citizens of Llano. The City of Llano has already spent about \$20,000 to prevent a citizen from exercising constitutional rights and avoid answering the citizen's complaint.
3. Support a citizen's right to question a city's zoning action. After a year of not addressing the basic three legal violations by the City of Llano, it would be helpful for this court to have the opportunity to address citizen's real complaints. Surely, some deference is due at this point to allow a citizen to question the city without a having law degree.

³ Appendix D – Letter to Judge Garrett after Hearing

⁴ Appendix A – Motion to District Court for Interlocutory Appeal

Prayer

My prayer is that this court will extend time so that I may resolve the lower court disposition issue which this court raised during my appeal so that Judge Garrett may effect the judicial review .

M. Sewell

Marc Sewell

Appendix

**Appendix A – Motion to District Court for Interlocutory Appeal
Cause #18504**

Llano District Court

Motion for Interlocutory Appeal

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

Vs.

Llano Board of Adjustment (Chairman Mikel Virdell)

Petitioner:

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

Petitionee Attorney:

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

TO: Judge Garrett, Llano District Court:

Based upon Civil Practices and Remedies Code §51.014(d), I request permission for an interlocutory appeal because:

- 1. We have a controlling question of law regarding the requirement for the petitioner to notify the petitionee when presenting a petition for judicial review to the district court under Local Government Code §211.011.**
- 2. We have a controlling question of law regarding how to effect a judicial review after an order denying a writ of certiorari under Local Government Code §211.011.**
- 3. We have a controlling question of law regarding the proper case style for a petition for judicial review under Local Government Code §211.011.**
- 4. An immediate appeal from the order denying the writ would materially advance the ultimate termination of the litigation. As it stands, the cause is stalled.**

Please grant this motion for Interlocutory Appeal.

Marc Sewell

Appendix B – Letter to Judge Garrett Requesting a Hearing

**Marc Sewell
108 Summit
Llano, TX 78643**

April 6, 2014

**Judge Allan Garrett
108 E. Polk, Suite 74,
Burnett, TX 78611**

Subject: Cause 18504

Judge Garrett,

As you are aware, I filed an appeal, 03-13-00580-CV, of your order on my petition for judicial review, cause 18504. The Third Court of Appeals has ruled that, despite your emails to the contrary, you did not completely dispose of my cause. “The trial court’s denial of a writ of certiorari does not end a suit for judicial review brought pursuant to section 211.011.”

Thus, this cause is still open in your court and your previous denial of a hearing was overruled. I, therefore, request a hearing to discuss your notification concern and complete disposition of my petition. Alternately, I request the writ of certiorari be issued pursuant to section 211.011(c).

The City of Llano has spent over \$18,000 on this issue to-date. A hearing would surely cause more to be spent. I respectfully suggest that an economical and expedient course of action would be to simply ask the city to respond to my complaint and avoid a hearing. There is no cost to the city regardless of the outcome except more wasted legal fees.

I hope that you will consider what is in the best interest of the citizens of Llano. They deserve to see that their city government can be held accountable for their actions and that their property rights can be protected.

Marc Sewell

cc City Attorney Carey Bovey

cc City Mayor Mike Virdell

Appendix C – District Court Status Hearing Transcript

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REPORTER'S RECORD
VOLUME 1 of 1 VOLUMES
CAUSE NO. 18504

IN RE: PETITION TO DISTRICT * IN THE DISTRICT COURT
*
COURT FOR JUDICIAL REVIEW OF * LLANO COUNTY, TEXAS
*
BOARD DECISION * 33RD JUDICIAL DISTRICT

HEARING

On the 14th day of May, 2014, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable Allan Garrett, Judge
Presiding, held in Llano, Llano County, Texas.

Proceedings reported by computerized stenotype
machine.

STEPHANIE A. LARSEN, CSR, RPR

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APPEARANCES

MARC SEWELL
108 Summit
Llano, Texas 78643
Petitioner Pro Se

CARY L. BOVEY
SBOT No. 02717700
2251 Double Creek Drive, Suite 204
Round Rock, Texas 78664-3831
(512)904-9441
Attorney for City of Llano

LUKE COCHRAN
SBOT No. 24087319
2251 Double Creek Drive, Suite 204
Round Rock, Texas 78664-3831
(512)904-9441
Attorney for City of Llano

STEPHANIE A. LARSEN, CSR, RPR

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CHRONOLOGICAL INDEX

Hearing
5/14/14
Volume 1

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STEPHANIE A. LARSEN, CSR, RPR

1 (Open court)

2 THE COURT: The Court will recall Cause No. 18504,
3 In RE: Petition to District Court for Judicial Review of Board
4 Decision.

5 All right. And just for the record you're
6 Mr. Sewell, correct?

7 MR. SEWELL: Yes, sir.

8 THE COURT: And you're here representing yourself?

9 MR. SEWELL: Yes, sir.

10 THE COURT: All right. And for y'all, if y'all don't
11 mind making an announcement for the record?

12 MR. BOVEY: Yes, sir. Cary Bovey for the City and
13 the to-be-clarified respondents, Your Honor.

14 MR. COCHRAN: Luke Cochran representing the same.

15 THE COURT: All right. And I guess before we start
16 off I should say -- well, let's go to your clarification
17 request first because that will help Mr. Sewell as well
18 depending upon what comes out of that.

19 MR. BOVEY: Yes, sir. Your Honor, as you're aware,
20 this case was filed last year, and it was filed as a challenge
21 to some actions of the planning and zoning commission and the
22 city council of the City of Llano.

23 And Mr. Sewell filed this case as a -- he applied for
24 a writ of certiorari from the Court which you denied, but he
25 never did name any defendants, he never did serve anybody, he

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1 never had citations issued. The City nor any other defendant
2 accepted service. We didn't waive service.

3 So we really -- when this case was appealed to the
4 Court of Appeals, there were several individuals who were not
5 named in the original petition. And if you recall, there was
6 communication.

7 May I approach the bench, Your Honor?

8 THE COURT: Please.

9 MR. SEWELL: May I object at this point?

10 THE COURT: Well, you'll get your turn. As soon as
11 he's done, you'll be able to...

12 MR. SEWELL: Yes, sir.

13 MR. BOVEY: There's a copy of the original petition
14 and the email that was sent to Mayor Virdell and myself as the
15 city attorney -- and Lisa Bell was copied on that
16 communication -- in which he states that he was not suing the
17 City nor anybody named in the petition. He was simple trying
18 to get a court -- get this Court to look at the zoning action.

19 And when this case was appealed to the Court of
20 Appeals, then the City appeared on the listed defendants. The
21 mayor, who was not originally listed in the petition itself,
22 was listed on the appeal. So, as you know, the Court of
23 Appeals dismissed for lack of jurisdiction. And at this point
24 we really don't know who the defendants are because he never
25 did designate anybody as a defendant, didn't serve anybody,

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1 didn't have citations issued. So that's one of the first
2 issues that I'd like to clarify with the Court.

3 THE COURT: Just so y'all know too, due to that
4 procedural history, that's why I wanted everyone to get in here
5 in one room to kind of figure out where we were.

6 Mr. Sewell, did you want to respond to -- just to
7 what he said right there? Don't go into anything else but just
8 kind of what he said about the defendants and...

9 MR. SEWELL: Yes. Well, first of all I'd like to
10 object to him bringing that up. This is a status hearing and
11 no -- and those weren't listed as pending issues, and in this
12 hearing we're only supposed to be discussing pending hearings.

13 I did research. First of all, in the law that we're
14 under, 211.011, which is the judicial review law, it does not
15 have a status hearing in it. The first step in the process is
16 me presenting the position to the district court which
17 establishes jurisdiction, and I believe I did that correctly.
18 Step 2 in the process was who can file that petition, and
19 that's standing, and one of them was a taxpayer. I'm a
20 taxpayer, so I had standing. And then the third step is
21 issuing the writ of certiorari, and that's the Court's job as
22 it's stated in the law.

23 There's no notification required in my first two
24 steps. The step that contains notification is in Step 3, and
25 it's the Court's responsibility to do that.

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1 That said though, I would like to keep this -- I
2 presented to the Court two issues to be resolved before we
3 proceed. The City attorney didn't provide any.

4 And so according to Black's Law Dictionary, court
5 rules usually require that the filing of a status conference
6 statement prior to the conference, and that Rule 166 pretrial
7 conference says that to consider all pending dilatory issues
8 and pleas, motions, and exceptions. Okay? Lumped together as
9 issues.

10 So it's my contention that it -- once we get past
11 your motion to dismiss, I'm hoping we'll follow the process,
12 and the next step of the process is to issue the writ, and
13 that's the point where all of these dilatory issues can be
14 brought forward. That's according to the process in the law.

15 And it starts at the Constitution. Texas
16 Constitution says I have the right to redress grievances. Rule
17 2001 dot -- I forget the number. Sixty-three, I think? No.

18 2001.176 is the general rule for judicial review in
19 the state, and that says, yes, I should've notified, but it
20 also says that I am allowed -- or that that rule is overruled
21 for up -- for statutory judicial reviews. So in other words
22 because there's a zoning judicial review, that is the rule, not
23 2001.176. It's superceded by this specific one, and the
24 specific one does not require me to notify. It's the Court's
25 responsibility to do that.

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1 I can also -- I don't -- see, I'm not prepared to get
2 into the details of this issue because they're not -- they
3 weren't expected. The status hearing was only supposed to
4 cover the two issues that I've presented.

5 But I've got some notes here that in the Supreme
6 Court of Texas said that once a party files a petition after a
7 zoning board decision that jurisdiction exists. So at this
8 point, I submit, a jurisdiction exists; therefore anything else
9 is a procedural defect which you can waive. Or I have the
10 right under Rule 63 and a couple of other rules to argue, and I
11 will be prepared to do that once the City answers the original
12 complaint.

13 THE COURT: Well, this is -- the purpose of the
14 hearing today and me setting a status hearing was to get all
15 this lined out so that we can have some sort of hearing later.
16 So I don't want to get into any of the substantive issues
17 either, just so we're both clear. What I would like to know is
18 from I guess respondent's counsel -- the respondents to be
19 named later -- procedurally the process. There was an
20 application for a writ filed. The writ was denied. That was
21 appealed from. There was an argument regarding, you know, it
22 needing to be dismissed for want of jurisdiction.

23 MR. BOVEY: Yes, sir.

24 THE COURT: The Court of Appeals agreed with that.

25 MR. BOVEY: Yes, sir.

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1 THE COURT: But of course because it's not a final
2 order; the case is still ongoing. Where I'm at -- at least
3 this is the way I see it. And I may be wrong. That's why I
4 want to bring everybody together to talk about it so nobody
5 would think I only talk to Mr. Sewell or only talk to you.

6 At this point don't the specific respondents need to
7 be named and served with process?

8 MR. BOVEY: Your Honor, that's my position. I really
9 don't know who I'm supposed to defend and represent in this
10 case if he hasn't designated who the defendants are. Whenever
11 his petition is originally filed, he needs to sue the City, the
12 board of adjustment, the P and Z, the city council, whomever
13 he's arguing made a mistake in the process for whatever his
14 allegations are as laid out in the petition. But there needs
15 to be a designation of defendants, and he hasn't done so. And
16 so that, I think, is a pending issue with this Court is that,
17 you know, who do I represent as a representative of the City.

18 I'm the City attorney, but he hasn't designated
19 whether it's the City, whether it's the board of adjustment,
20 certain individuals, that need to respond to his allegations.
21 So that's part of what I would like to ask the Court to do is
22 to get -- to order you -- to have you order him to designate
23 who the defendants are in this lawsuit and have them properly
24 served, et cetera.

25 THE COURT: Now, Mr. Sewell, do you understand what

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1 he's saying? He's saying that in order for him to --

2 And I'm happy you're here because one of the tactics
3 you could've chosen to take, and may have chosen to take, is
4 just not to respond and stay out.

5 MR. BOVEY: Yes.

6 THE COURT: So I was trying to bring him to the
7 courtroom. Because you understand as we sit here, he has no
8 reason to be here except to try to get these issues ironed out
9 so he knows who he's going to represent.

10 So I guess what I'm getting at is do you know as we
11 sit here -- and I'm not going to hold you to it. You can
12 obviously amend your pleadings and add or subtract whomever you
13 want, but it seems to me by reading your original application
14 that you have some beef with the P and Z. Is that right?
15 Planning and zoning commission?

16 MR. SEWELL: Well, it's a continuum. The P and Z
17 starts it, and the city council approves it. According to the
18 law though, it's the Court's responsibility to decide who --
19 how to serve it.

20 In the Supreme Court, *Tellez v. The City of Socorro*,
21 they said that procedural defects can be waived, such as wrong
22 party. "We agree with the court of appeals that the local
23 Government Code" -- 211.011 -- "does not specify whom suit
24 shall be filed." So as a citizen, I shouldn't know who to file
25 it. There's two alternatives. You file it against the City

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1 which is where all suits against government belong is against
2 the City. But -- and I have the rule for that if you want to
3 look that up.

4 But I specified, you know, where I thought it would
5 go. And it says in -- in Tellez that -- they suggested the
6 zoning board is the proper party because they must be served
7 with the writ. So the Supreme Court says when you submit the
8 writ, it's to the zoning board. But they didn't pass --

9 THE COURT: But the writ was denied.

10 MR. SEWELL: The writ was denied because I didn't
11 notify, and that's -- I have an argument suggesting that was --

12 THE COURT: Well, where we are procedurally, at least
13 in my mind, you filed a writ, the writ was denied, it goes up
14 on appeal, it's affirmed and says your case is not over, but
15 there's no writ, so it goes back down and now is the time where
16 we need -- or I shouldn't say "we" -- where you need to say,
17 okay, here are the people -- or not people -- here are the
18 boards that specifically caused --

19 MR. SEWELL: I appealed on notification as the main
20 issue. The Appeals Court said we can't rule on that because
21 it's still active in this Court. So they didn't say that you
22 or I were wrong on that issue; they just ignored it. Not
23 ignored it but didn't answer it. Didn't answer it. And I have
24 to come back here, which is what I'm doing, to revisit that
25 issue. I would like to argue that notification isn't

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1 necessary, and I'm prepared to do that. And that it is
2 ambiguous on how you, you know, address it, the writ to the
3 City. And I admit the law is not clear on that.

4 THE COURT: Well, let me ask you this: If a court --
5 and you've read a lot of it so I appreciate you being -- your
6 candor to the Court -- if a court denies the writ, what's the
7 next step? If there aren't any appeals or anything like that.
8 If there's a writ filed without naming -- you know, for lack of
9 a better term -- without naming names as defendant, writ is
10 filed, the Court reviews it. Right? And then the court says
11 in this case I'm going to deny the writ. Then what's the next
12 step for that aggrieved citizen?

13 MR. SEWELL: Well, that happened in this Tellez case
14 for almost the same -- for almost a similar reason. And the
15 answer is that, as far as I know, you appeal. And they
16 never -- Tellez won the appeal but I don't know what happened
17 after that. They don't say that.

18 THE COURT: What's your understanding -- I mean just
19 hypothetically, a writ is filed, the writ is denied, then what
20 is the aggrieved citizen to do?

21 MR. BOVEY: The Court of Appeals made it clear that
22 they didn't have jurisdiction because you cannot appeal the
23 denial of a writ of certiorari. They didn't say the denial was
24 improper. They didn't say that -- as Mr. Sewell alleges in his
25 letter to you of April 6 -- that, well, the court was

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1 displeased with this court -- or the Court of Appeals was
2 displeased because you didn't have a hearing. They did not
3 mention that.

4 I think what happens next is that there are pending
5 issues that the Court pointed out. And the Court of Appeals
6 did also agree with the City's position that this action did
7 not involve an action of the board of adjustment. The action
8 that Mr. Sewell is complaining of involves a legislative action
9 of the planning and zoning commission and the city council.

10 Therefore, you know at some point, Your Honor, I'm
11 going to bring to you a plea to the jurisdiction saying that
12 you don't have jurisdiction over this case under 211.011
13 because that doesn't apply to a legislative action when the
14 city council amends an ordinance. 211.011 applies to an action
15 of the board of adjustment, which there was no board of
16 adjustment action in the case at all.

17 So I think what you have before you at this point,
18 the writ application has been denied. I think that still
19 stands. The Court of Appeals decision does not change that.
20 And then as the Court of Appeals mentioned, there are a couple
21 of pending issues in terms of relief that he has requested. He
22 has requested that this Court rescind the adoption of an
23 ordinance, and he has also requested that this Court enter
24 fines, misdemeanor fines, against certain named individuals
25 which Mr. Sewell believes that wrongly acted in this case.

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1 And I'll read this for you, but I don't think you
2 have jurisdiction to do either one of those things. I think
3 you can find an ordinance unconstitutional, you can find it
4 invalid, but I don't think you can, as a district court,
5 rescind an ordinance, take a legislative action and rescind an
6 ordinance.

7 I also -- as far the criminal charges that he would
8 like assessed against the individuals, the State hasn't brought
9 any charges against the named individuals in the petition. And
10 we're talking about ordinance violations. The ordinance
11 violations, the exclusive and original jurisdiction of an
12 ordinance violation is in municipal court. And so that would
13 be my position. There are a couple of pending issues that at
14 some point in the near future I'm going to ask this Court to
15 address, but --

16 THE COURT: Let's figure out who you're representing
17 first. I mean don't you at this point need --

18 MR. BOVEY: I agree.

19 THE COURT: He needs to name who the aggrieving
20 parties are so that he can --

21 MR. BOVEY: I agree.

22 THE COURT: -- go get service against them and then
23 you get to appear and --

24 MR. BOVEY: Yes, sir, I agree with that. That would
25 be the immediate next step, yes, sir.

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1 MR. SEWELL: Can I hand this out?

2 THE COURT: Sure. Sure. Thank you.

3 MR. SEWELL: Let me quickly address one of the
4 jurisdiction items that should shut that one down.

5 In the Supreme Court, Texas, *Tellez v. the City of*
6 *Socorro*, and also in *Davis v. Zoning Board of Adjustment*, the
7 writ was the procedure by which the trial court conducted
8 review. Jurisdiction exists once a party files a petition in a
9 case, which I did. So at the point I filed the petition,
10 jurisdiction existed. And you can't undo jurisdiction if
11 they're denied, so there was jurisdiction.

12 And they also went on to say that any procedural
13 defects like who gets sued can be waived or should be handled
14 in other ways. There was no requirement or need for me to
15 notify up until Step 3. And I have 211.011 up there. It's
16 called Step C. They -- classically when you sue the city
17 government, you say the City of Llano, so if he wants somebody
18 to put on the top of the page: The City of Llano.

19 According to *Tellez* though, you can also say the
20 zoning board. But they didn't pass the law. Now let me --

21 MR. BOVEY: Your Honor, may I response to his point
22 about *Tellez*?

23 MR. SEWELL: He's chewing them up. I need to answer
24 these, please.

25 It also says that the -- that I said in my letter

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1 that the Supreme Court -- or that I -- I forget his words but
2 all -- the Appeals Court.

3 All the Appeals Court did was say that they can't
4 address my notification issue because there's a jurisdiction
5 issue because of the writ did not say those magic words. That
6 in other words, if your denial of writ said "by ruling of on
7 the merits and disposing of all claims," if it said that, then
8 they would've been able to look at my appeal, but because it
9 didn't say that, I had to come back here and kind of get you to
10 say that is the -- and as far as --

11 THE COURT: I need to you present your claim against
12 someone who you think did something wrong. You can't just say,
13 "I think somebody did something wrong," have no one show up,
14 get a court order against nobody, and then say let's go take it
15 on appeal if you don't get it.

16 MR. SEWELL: Well --

17 THE COURT: From your own standpoint -- I'm trying to
18 help you -- from your own standpoint, if you don't have an
19 order against some entity, then you don't have an order. Do
20 you understand that part of it? You can't just have an order
21 in the blue that says the Court thinks X, Y, and Z. You've got
22 to have someone that's doing something that you don't like.
23 Are you trying to avoid paying for service of process? Is that
24 what's happening?

25 MR. SEWELL: No, no, no. I don't mind that. This is

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1 nothing to do with that. I'm trying to follow the law and do
2 it right, and I don't want to get caught up. I've spent the
3 last nine months getting caught up.

4 THE COURT: No, I'm with you. That's why we're
5 having this meeting today. Here's the bottom line: You need
6 to pick out who you're going to name as defendants, serve
7 process upon them so that you can bring those ultimate issues
8 that the trial court and the appellate court haven't heard yet
9 to the Court with the proper people who you're accusing of
10 doing wrongdoing, so that the Court can make a decision on
11 that.

12 MR. SEWELL: Well then, as soon as I say something,
13 then it's going to be wrong. And the Supreme Court --

14 THE COURT: No, no. And I can -- if you have a
15 procedural defect in there somewhere, trust me, I'm going to
16 give you some deference as a pro se litigant. You're going to
17 have the deference you need that you will not get hung up on a
18 minor procedural issue, okay?

19 MR. SEWELL: Okay. City of Llano is whom -- is who I
20 would say. Because there's a rule that says when you're suing
21 the government entity, you have to sue the government entity,
22 not the officers within the government, so the City of Llano.

23 In Tellez though it admits that that's ambiguous, but
24 it's okay if you're wrong.

25 THE COURT: Okay. Do you have a response to that?

STEPHANIE A. LARSEN, CSR, RPR

1 I'm going to see if he has a response.

2 MR. BOVEY: Your Honor, I would just say what Tellez
3 stands for is that if there was an improper pleading, the
4 pleading was against the city, the city waived it because they
5 didn't object to that, and so what the Court of Appeals said
6 was when that happens, you have waived your objection to that.

7 You know, this is a very niche area of the law in
8 terms of the board of adjustment action and how it's handled.
9 He still has to name defendants. And what happened in Tellez
10 is the plaintiff named the incorrect defendant, but the Court
11 of Appeals found that, well, the city didn't object to that and
12 allowed the case to proceed on that basis, and so that's what
13 happened in that case.

14 I need to know who I represent and who I'm defending
15 against. I think, you know, there are issues with respect to
16 his use of 211.011. I think that's incorrect. Again, we'll
17 obviously deal with that at a future time.

18 THE COURT: Well, you've got to have a client before
19 we get to that --

20 MR. BOVEY: I agree. That's --

21 THE COURT: Do you kind of see where I -- that's why
22 I wanted to have us here because I was in this process. I
23 appreciate both of y'all being here because this is to try to
24 get us to a point where you have some resolution one way or
25 another, Mr. Sewell, so that whether you like the resolution or

STEPHANIE A. LARSEN, CSR, RPR

1 whether you want to appeal it on up, you have it in front of
2 you. But right now --

3 MR. SEWELL: Well, the City of Llano is who I have
4 the objective with, and within the City of Llano there were
5 several parties that caused the problem. The law -- the
6 ordinance change that was done was done illegally. So there
7 was a law being broken, and I'm a citizen trying to complain
8 about that. And this -- I shouldn't have to be caught up in
9 these little ambiguities, especially when the law doesn't
10 require you to.

11 THE COURT: Well, let me say that this isn't an
12 ambiguity. In every case -- well, I shouldn't say that --
13 99 percent of the cases, there's a petitioner or a plaintiff,
14 and then there's someone that they're accusing of doing
15 something wrong. That's not an ambiguity. That's --

16 MR. SEWELL: Well --

17 THE COURT: -- nuts and bolts.

18 MR. SEWELL: The --

19 THE COURT: So are you proposing to amending your
20 pleading to make the accusations against the City of Llano?

21 MR. SEWELL: Well, first of all --

22 THE COURT: Let's go off the record. Let's go off.
23 We don't need a record.

24 (Whereupon proceedings continued off the record until
25 concluded.)

STEPHANIE A. LARSEN, CSR, RPR

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STATE OF TEXAS

COUNTY OF LLANO

I, Stephanie A. Larsen, Official Court Reporter in and for the 33rd District Court of Llano County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record in the above-styled and numbered cause, all of which occurred in open Court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is \$126.00 and was paid by Petitioner.

WITNESS MY OFFICIAL HAND on this the 22nd day of May, 2014.

/s/Stephanie Larsen
Stephanie A. Larsen
Texas CSR No. 6921
Expiration Date: 12-31-14
Official Court Reporter
33rd District Court
Llano County, Texas
P.O. Box 554
Marble Falls, Texas 78654
(512) 715-5230

STEPHANIE A. LARSEN, CSR, RPR

Appendix D – Letter to Judge Garrett after Hearing

Marc Sewell
108 Summit
Llano, TX 78643

May 16, 20214

Judge Allan Garrett
108 E. Polk, Suite 74,
Burnett, TX 78611

Subject: Cause 18504 Status Hearing

Dear Judge Garrett,

During the status hearing for Cause 18504 on 5/14/14, you suggested that I change my case style to include the City of Llano so that we may proceed to a “disposal of all pending claims”. I thought I understood at the time but now do not.

The premise for this change, as I recall, is that the city attorney does not know who his clients are and the court doesn’t know where to send instructions. The city attorney has mailed \$18,000+ worth of invoices so he seems to know who his clients are. The city attorney and co-council, the mayor, the city manager, and the city secretary were present at the hearing so the court knows where to send notices. I fail to see how adding a party to the case style enhances the situation. I have requested a transcript which I will study to see what I have forgotten.

I hesitate to just amend the case style for it doesn’t seem to be benign. It was apparent in the hearing that the city attorney would deluge the court with all sorts of pleadings and motions and spend another \$20,000 of taxpayer funds to not answer my complaint - as he has done in the appeals court. The city manager and mayor do not seem to be concerned by this waste but I am.

My assertion that it is the court’s responsibility, §211.011(c), to initiate the judicial review is substantiated by the Texas Supreme Court in *Tellez v. City of Socorro*. *Tellez* also demonstrates that my case style is adequate as it stands and it may be altered later after the city has replied to my brief. Thus I contend that the ball is in the court’s court and it is the court’s current responsibility to initiate the judicial review without any action on my part.

I was surprised that a judge is not able to correct an order should I prove that an error occurred. I reported the “notification” error before your denial order was issued as well as the same day the order was issued. At that time I also satisfied the notification problem and requested a hearing to resolve. I appealed the same day you indicated “disposed.” After the final Appeals Court’s action, I immediately

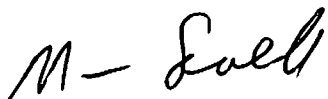
requested the hearing to address the error. So, it seems reasonable that the court had plenty of notice and opportunity to fix or stay the order. I am researching this.

That said, I have taken the following actions to assist:

1. I have asked again to settle.
2. I have suggested to the City Council(attached) that they answer my complaint without waiting for an order from the court as was done in *Hagood v. City of Houston*
3. I am investigating "interlocutory" which seems to bypass the need to "dispose of all claims."

Thank you for your patience and deference in the hearing. I don't like being in the position of expending your time but I want to completely understand this judicial process for I will be back again in a few months with a more serious situation containing more violations of the same laws and would like that to go smoothly.

Marc Sewell

A handwritten signature in black ink that reads "M - Sewell". The signature is written in a cursive, slightly slanted style.

cc City Attorney Carey Bovey

cc City Mayor Mike Virdell

attachment: email to council

Attachment: Email to Llano City Council Regarding Settlement

Council Members,

I propose an alternative to settling on my judicial review legal action: City Council instructs the city manager and P&Z chairman to answer my complaint without waiting for the court to order it. The City of Houston has done this and there is case law that demonstrates it.

This approach bypasses all the expensive legal wrangling and also demonstrates respect for citizens. At present, you are spending \$thousands to prevent from answering my complaint but will eventually have to answer. Why waste the money? Just present your position on the 3 zoning issues.

So to summarize, there are three options before you:

1. Settle with no cost or future liability. This is the best answer if Brenton has misunderstood the law. You can verify the law for free by asking the TML or the AG.
2. Answer the complaint without waiting for a court order to do so. This will cost about \$125 for the city attorney to review your answer. This is the best answer if you think I have misunderstood the law.
3. Continue on present course and spend another \$20,000 or more to delay options 1 or 2.

As a citizen of Llano, I recommend option #1 or #2. I'll bet every citizen in Llano would also.

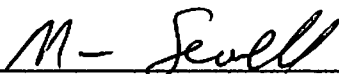
Marc Sewell

Appendix E - 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 3/5/14 as follows:

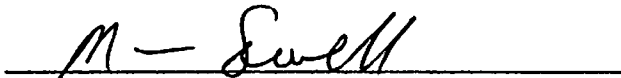
1. Llano City Attorney Carey Bovey **via email**
Law office of Cary L. Bovey, PLLC
2251 Double Creek Drive, Suite 204
Round Rock, TX 78664
(512) 904-9441
cary@boveylaaw.com
2. Llano City Secretary Toni Milam **in person** for distribution to: Board of Adjustment
Chairman/Mayor Mikel Virdell, City Attorney 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 F - 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 494 words.



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

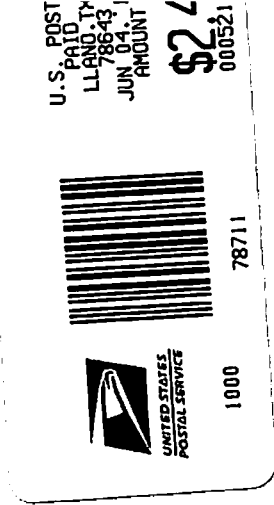
Appendix G - Certificate of Conference

As required by Texas Rule of Appellate Procedure 10.1(a)(5), I certify that, on 6/4/14, I have conferred with Carey Bovey regarding my Motion to Extend Time. He opposes the motion.



Marc T. Sewell
108 Summit
Llano, TX 78643-1127
325-247-2508

MARC SEWELL
109 SUMMIT
LLANO, TX 78643



THIRD COURT OF APPEALS
PO BOX 12547
AUSTIN TX 78711