

Appellate Docket Number 03-13-00580-CV

Texas Third Court of Appeals

Appellant's 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

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(d) Statement of the Case.

Nature of Case	The case was a petition for judicial review ¹ , based on Local Government Code 211.011 ² , of an illegal zoning ordinance change.
Trial Court	Llano County 424 th District Court, Judge Allan Garrett
Trial Disposition	Writ of Certiorari was denied ³ by Judge Garrett due to Sewell not following process. No review of merits was allowed.

(e) Statement Regarding Oral Argument.

An oral argument is requested. TRAP 39.1⁴ says that, after reading the brief, the Court may decide that oral argument is unnecessary – which I hope is the case. I only ask for an oral argument to answer any questions, explain any confusing aspects of my brief or errors I might have made in preparing and arguing my appeal. I believe that had I spoken with Judge Garrett, I could have resolved all issues and my complaint could have been resolved based on merit.

¹ Appendix B – Cover from Original Petition page 20

² Appendix C - Local Government Code Sec 211.011. Judicial Review page 21

³ Appendix A - Judgment from District Court page 19

⁴ Appendix H – TRAP Rule 39.1 Oral page 25

(f) Issues Presented

Issue #1 – Did the District Judge err in not following procedure defined in Local Government Code 211.011?

Issue #2 – Did the District Court err by not providing the alternate procedure they were following?

Issue #3 - Did the District Judge err in denying a writ of certiorari based on non-compliance with an incorrect and undisclosed alternate procedure?

Issue #4 - Did the District Court err in changing the case style?

(g) Statement of Facts

1. On 6/25/13, I, Marc Sewell, presented a verified petition for judicial review based on Texas Local Government Code Section 211.011⁵ as stated specifically on the cover page of the petition⁶. The District Court Clerk assigned Trial Court Cause Number of 18504.
2. As instructed by District Court Clerk, I, on ~6/27/13, called The District Court Administrative Assistant, Shelia Stewart, for instructions on next steps. She said they needed time to review.
3. On 7/2/13, I called Shelia Stewart to follow-up and she said they were determining how to handle judicial reviews for this was new to them.
4. On 7/8/13, I sent a follow-up email to Shelia Stewart asking for “status and instructions should you require anything from me.”(EMAIL Number 1 pg 28)
5. On 7/9/13, Shelia Stewart responded that the Judge would “review the file” on 7/11/13 in Llano. (EMAIL Number 2 pg 28)
6. I responded the same day, asking: “Do I need to be there? Do I need to notify the other parties? Have the other parties submitted a response?”
(EMAIL Number 3 pg 28) I asked this because I had given a copy of the petition

⁵ Appendix C - Local Government Code Sec 211.011. Judicial Review page 21

⁶ Appendix B – Cover from Original Petition page 20

to the Llano Chief of Police because I was told to by County Court Clerk when I had first tried to file. He probably had given a copy to the City Manager or Mayor. I presume this because the Mayor said he had a copy.

7. Same day response from Shelia Stewart was “The judge will review the file only. There is no setting at this time. **As for your question on notification to other parties, we cannot advise you on any legal procedures.** You may find the answer to any questions you may have at the following websites which are available to Pro Se individuals: Texas Law Help.org or tyla.org.” Neither of these sites provides information on judicial reviews.

(EMAIL Number 4 pg 29)

8. On 7/12/13, I followed-up asking what the judge had determined. (EMAIL Number 5 pg 29)
9. On 7/16/13, the District Court Coordinator, Lisa Bell responded: “You will need to follow proper procedure[sic] for this to be brought before the Judge for hearing. We cannot give you legal advise[sic]. You may need to seek advise[sic] from an attorney.” (EMAIL Number 6 pg 29)
10. I responded by stating: “According to Local Government Code Chapter 211.011 (c): ‘On presentation of the petition, the court may grant a writ of certiorari... .’ I have presented the verified petition so the next step is the court’s.

I request that either 1) the writ be directed to the board or 2) a hearing be scheduled. **If you have a different procedure, please provide that procedure.** Providing your procedure is not providing legal advice. It is providing procedure.” (EMAIL Number 7 pg 30)

11. Lisa Bell responded: “Have you properly noticed the opposing side?”

(EMAIL Number 8 pg 30)

12. My response was: “I thought of that but the 211.011 (c) statute says that the court does that with a 10 day deadline to respond. If I notified them formally, they would be compelled to respond with an answer which is the not process in the statute. Also since I am not suing the city, the notification didn’t make sense. I am petitioning the judge for a review which I did according to 211.011(a) and (b). The ball seems to be in the court’s court with 211.011(c). The 211.011 process seems to supersede the processes for normal civil lawsuits. The misdemeanor penalty in section 211.012 also has many confused about the process. The Llano Chief of Police has a copy and I believe the mayor and city manager have copies. Also, my thought was that if the judge rejects my petition for some reason, there is no sense worrying the board and council members. **That said, I will do whatever the judge asks.**” I included a copy of Sec 211.011 in the email. (EMAIL Number 9 pg 30)

13. After I sent numerous, unanswered requests for status, Lisa Bell, on 7/23/13, sent the denial⁷. (EMAIL Number 10 pg 31 and Appendix A - Judgment from District Court on pg 19)
14. The same day, I asked “What was the reason for denial? Did I do something wrong or was there lack of merit?” (EMAIL Number 11pg 31)
15. On 8/1/13, I repeated: “May I please have the specific reason for the denial? What exactly did I not do or do incorrectly?” (EMAIL Number 12 pg 32)
16. On 8/1/13, Lisa bell responded: “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 13 pg 33)
17. On 8/15/13, I filed an appeal to the Third Appeals Court.

⁷ Appendix A - Judgment from District Court on page 19

(h) Summary of the Argument

I contend that the zoning statute 211.011⁸ completely defines the process for requesting a judicial review of illegal zoning actions and that Judge Garrett should have followed that process. He did not follow that process in the statute but rather an alternate process that was neither completely disclosed to me nor proper. Thus, he denied my request for judicial review based on not following an undisclosed, improper procedure.

⁸Appendix C - Local Government Code Sec 211.011. Judicial Review page 21

(i) Argument

Issue #1 – The District Judge erred in not following the procedure defined in Local Government Code 211.011.

The District Judge denied my petition for judicial review of a zoning ordinance change saying that I did not follow proper procedure by not notifying the opposing sides (Fact #16 on pg 10). However, I petitioned for a judicial review under Local Government Code 211.011 (Fact #1 on pg 7) which does not require any notification.

Government Code Section 2001.001(3)⁹ states that the purpose of Code Chapter 2001⁹ is to “restate the law of judicial review of state agency action” and Code Section 2001.176¹⁰ provides that restatement. Section 2001.176 (b)(2)¹⁰ does say that “a copy of the petition must be served” However, Section 2001.176(b)¹⁰ qualifies that statement by saying that “Unless otherwise provided by statute:”

Local Government Code 211.011¹¹ is that “provided by statute” for zoning judicial reviews so it supersedes the general statute 211.176¹⁰ and provides the sole procedure for presenting a petition for judicial review of municipal zoning.

Local Government Code 211.011(a)¹¹ is step one in the zoning judicial review procedure stating that a *taxpayer* may present a *verified petition* to the *district*

⁹ Appendix D - Texas Government Code Sec. 2001.001 Purpose on page 23

¹⁰ Appendix E - Texas Government Code Sec. 2001.176 Judicial Review on page24

¹¹ Appendix C - Local Government Code Sec 211.011. Judicial Review on page21

court. Code 211.011(b)¹² is a time limit on presentation. Code 211.011(c)¹² transfers action from the petitioner to the court and instructs the court to “notify” the city board for reply within a time period. Code 211.011¹² specifically states the court does the notifying and not the petitioner.

Thus:

1. Code 211.011¹² is the sole procedure for a zoning judicial review and is the one I requested.
2. Code 211.011¹² specifically does not require the petitioner to notify anyone.
3. The district Judge erred by requiring “notifying of other parties.”
4. The District Judge erred in denying a writ of certiorari based on not “notifying of other parties.”

Issue #2 – The District Court erred by not providing the alternate procedure they were following.

So, if the statute did not require notification:

1. What is the source of the District Judge’s requirement?
2. What process was being followed that contained the *notify* requirement?

¹² Appendix C - Local Government Code Sec 211.011. Judicial Review on page 21

3. And why was that process not supplied to me when I requested several times¹³?

TRCP Rule 3a Local Rules¹⁴ defines the criteria for a change to procedure. TRCP Rule 3a(1)¹⁴ requires that local rules not be inconsistent with other rules however “notify” would be inconsistent with Code 211.011¹⁵. Thus, a violation.

TCRP Rule 3a(6)¹⁴ requires that no *local rule of practice* be applied to determine the merits of any matter. By creating an improper local rule requiring notification and using that rule to deny the review on merits, the District Judge violated TCRP Rule 3a(6)¹⁴.

The local rules for the Llano District Court¹⁶ are posted on their website. While it is difficult to prove something doesn't exist, I contend that the local rules do not contain a rule on judicial review nor an amendment to Code 211.011¹⁵. Appendix I on page 27 shows a search on the District Court Local Rules showing no occurrence of “judicial review.”

¹³ Facts 2,4,6 on page 7; facts 7,9,10 on page 8; and facts 11,12 on page 9

¹⁴ Appendix F – TRCP 3a Local Rules on page 25

¹⁵ Appendix C - Local Government Code Sec 211.011. Judicial Review on page 21

¹⁶ Appendix I – No Local Rule Proof on page 27

Logically, requiring notification would contradict Code 211.011¹⁵ and distort its process. Had I notified the parties, it would have signaled them to respond to my complaint prior to the Judge issuing the writ of certiorari and giving the true required instructions. I explained this¹⁷ to the Judge but offered to *notify* anyway. Thus, there was no other proper procedure that would have required that I *notify*.

Issue #3 - The District Judge erred in denying a writ of certiorari based on non-compliance with an incorrect and undisclosed alternate procedure.

So, the Judge did not follow 211.011¹⁸ and there wasn't another proper procedure that required notification. I followed 211.011¹⁷. Thus the District Judge was incorrect in denying the writ certiorari.

Issue #4 - The District Court erred in changing the case style.

In the District Court's Denial Order, the court changed my case style from a request for judicial review to a traditional "vs." style by selecting names from my petition and using them as defendants. The names in my petition were those of all involved who I believe were culpable for the violations. I say that because they were ones who erroneously represented the zoning laws and who were experienced in the zoning law so their illegal actions were overt. These names were in my

¹⁷ Fact 12 on page 9

¹⁸ Appendix C - Local Government Code Sec 211.011. Judicial Review on page 21

petition and not on my petition cover and not intended to be used until later for determination of penalty.

Also, Section 211.011(c)¹⁹ explicitly says that the writ be “directed to the board” and TRCP Rule 33²⁰ requires that any suits against an incorporated city shall be in its corporate name. Thus, my specification of “Llano City Planning and Zoning Commission and Llano City Council” was correct and should not have been changed. The appellate court propagated this error.

I believe this error further demonstrates that the District Court was following a process other than the one described in Section 211.011¹⁸.

Discussion About Frivolous

To address the possible Appellate Court concern regarding *frivolous*, I proffer that denying 79 property owners of their rights is not frivolous. Most would say that zoning laws are a violation of the Fifth Amendment. Telling us what we can do with our property is an affront to our ownership and feeling of freedom. Zoning proponents say that zoning laws protect property owners from their neighbors and to help the city plan for services. Without pursuing that debate, I will say that our

¹⁹ Appendix C - Local Government Code Sec 211.011. Judicial Review on page 21

²⁰ Appendix G – TRCP Rule 33 on page 25

Texas zoning laws do try to protect us from excessive abuse by transient government officials – if they are followed, which they were not.

I chose this particular issue to bring forward because of its simplicity. Simplicity is not synonymous with frivolous. The City must be accountable to the law and the first “ticket” might give them pause.

Even more so, it is actually extremely important because the Llano Zoning Commission has unilaterally started a “complete overhaul” of the zoning ordinance and we don’t want zoning commissioners to think they can, at their caprice, ignore the law and property owner desires while changing citizens’ property rights.

Thus, if this request for judicial review is not based on the merits of my complaint, the city government will be even more emboldened and citizens will continue to lose their property rights.

(j) Prayer

Thus, I respectfully request that the Appeals Court overturns the Order to Dismiss and instructs the District Court to issue the writ of certiorari as defined in Sec 211.011²¹.

Alternately, I respectfully request that the Order to Dismiss be overturned and the District Judge be instructed to present the process to be followed in effecting a Judicial Review.

I believe my complaint is serious and will have long term effects on the behavior of the Llano City Government. I humbly request that my complaint ultimately be judged on the merits of my accusation of illegal activity and not on my inadequacies as a pro se petitioner.

Marc Sewell

108 Summit

Llano, TX 78643

²¹ Appendix C - Local Government Code Sec 211.011. Judicial Review on page 21

(k) Appendix

Appendix A - Judgment from District Court

NO. 18504

MARC T. SEWELL

V.

**BRENTON LEWIS, DIANNE
FIRESTONE, LETITIA McCASLAND,
MARCY METHVIN, TODD KELLER,
JEANNE PURYEAR AND
TOM MILAM**

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IN THE DISTRICT COURT

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 B – Cover from Original Petition

STATE OF Texas) IN THE County _____ COURT
) SS:
COUNTY OF Llano) CASE NUMBER: _____ (created by County)
IN RE: PETITION to County Court for Judicial Review of Board Decision)

VERIFIED PETITION UNDER Local Government Code Sec 211

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

VERIFICATION

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

(signed) M. Sewell

Marc T. Sewell
Print your name

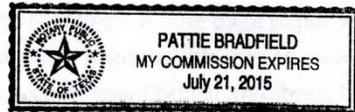
108 Summit
Mailing Address

Llano, TX 78643
Town, State and Zip Code

325-247-2508
Telephone number, with area code

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

Pattie Bradford (Seal)
Notary Public



Appendix C - 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 D - Texas Government Code Sec. 2001.001 Purpose

TEXAS GOVERNMENT CODE

TITLE 10. GENERAL GOVERNMENT

SUBTITLE A. ADMINISTRATIVE PROCEDURE AND PRACTICE

CHAPTER 2001. ADMINISTRATIVE PROCEDURE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2001.001. PURPOSE. It is the public policy of the state through this chapter to:

- (1) provide minimum standards of uniform practice and procedure for state agencies;
- (2) provide for public participation in the rulemaking process; and
- (3) restate the law of judicial review of state agency action.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Appendix E - Texas Government Code Sec. 2001.176 Judicial Review

TEXAS GOVERNMENT CODE

TITLE 10. GENERAL GOVERNMENT

SUBTITLE A. ADMINISTRATIVE PROCEDURE AND PRACTICE

CHAPTER 2001. ADMINISTRATIVE PROCEDURE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2001.176. PETITION INITIATING JUDICIAL REVIEW. (a) A person initiates judicial review in a contested case by filing a petition not later than the 30th day after the date on which the decision that is the subject of complaint is final and appealable.

(b) Unless otherwise provided by statute:

(1) the petition must be filed in a Travis County district court;

(2) a copy of the petition must be served on the state agency and each party of record in the proceedings before the agency; and

(3) the filing of the petition vacates a state agency decision for which trial de novo is the manner of review authorized by law but does not affect the enforcement of an agency decision for which another manner of review is authorized.

(c) A Travis County district court in which an action is brought under this section, on its own motion or on motion of any party, may request transfer of the action to the Court of Appeals for the Third Court of Appeals District if the district court finds that the public interest requires a prompt, authoritative determination of the legal issues in the case and the case would ordinarily be appealed. After filing of the district court's request with the court of appeals, transfer of the action may be granted by the court of appeals if it agrees with the findings of the district court concerning the application of the statutory standards to the action. On entry of an order by the court of appeals granting transfer, the action is transferred to the court of appeals for decision, and the agency decision in the contested case is subject to judicial review by the court of appeals. The administrative record and the district court record shall be filed by the district clerk with the clerk of the court of appeals. The court of appeals may direct the district court to conduct any necessary evidentiary hearings in connection with the action.

Appendix F – TRCP 3a Local Rules

Texas Rules of Civil Procedure

RULE 3a. LOCAL RULES

Each administrative judicial region, district court, county court, county court at law, and probate court, may make and amend local rules governing practice before such courts, provided:

- (1) that any proposed rule or amendment shall not be inconsistent with these rules or with any rule of the administrative judicial region in which the court is located;
- (2) no time period provided by these rules may be altered by local rules;
- (3) any proposed local rule or amendment shall not become effective until it is submitted and approved by the Supreme Court of Texas;
- (4) any proposed local rule or amendment shall not become effective until at least thirty days after its publication in a manner reasonably calculated to bring it to the attention of attorneys practicing before the court or courts for which it is made;
- (5) all local rules or amendments adopted and approved in accordance herewith are made available upon request to members of the bar;
- (6) no local rule, order, or practice of any court, other than local rules and amendments which fully comply with all requirements of this Rule 3a, shall ever be applied to determine the merits of any matter.

Appendix G – TRCP Rule 33

Texas Rules of Civil Procedure

RULE 33. SUITS BY OR AGAINST COUNTIES

Suits by or against a county or incorporated city, town or village shall be in its corporate name.

Appendix H – TRAP Rule 39.1 Oral Argument

Texas Rules of Appellate Procedure

Rule 39. Oral Argument; Decision Without Argument

39.1. Right to Oral Argument

A party who has filed a brief and who has timely requested oral argument may argue the case to the court unless the court, after examining the briefs, decides that oral argument is unnecessary for any of the following reasons:

- (a) the appeal is frivolous;
- (b) the dispositive issue or issues have been authoritatively decided;
- (c) the facts and legal arguments are adequately presented in the briefs and record; or
- (d) the decisional process would not be significantly aided by oral argument.

Appendix I – No Local Rule Proof

Local_rules.pdf - Adobe Reader

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Tools Sign Comment

judicial review

Reader has finished searching the document. No matches were found.

Search results show no local rules for “judicial review”

OK

Search here for judicial review

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LOCAL RULES OF COURT
OF
THE DISTRICT COURTS
& THE COUNTY COURT-AT-LAW¹
OF
THE COUNTIES OF BLANCO, BURNET, LLANO & SAN SABA

DRAFT
VERSION OF JAN 12, 2006



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District Courts
1701 E. Polk St.
Burnet, Tx 78611
512-756-5436
fax 512-756-8478
www.dcourt.org

Burnet County
Court-at-Law
220 S. Pierce St.
Burnet, TX 78611
512-756-5449
fax 512-756-_____

¹ Of only Burnet County at the time of adoption of these Rules.

Appendix J - Email Correspondence between Sewell & District Court

EMAIL Number 1.

From: Marc Sewell [mailto:marcs@simonlabs.com]

Sent: Monday, July 08, 2013 9:03 AM

To: 'Shelia.Stewart@co.llano.tx.us'; '33424districtcourt@gmail.com'

Subject: Case #18504

Dear Shelia Stewart

Regarding Case #18504, Sewell Petition for Judicial Review presented on 6/25/13

The last time we talked on 7/2/13, you were determining how to handle my petition for judicial review. May I please have a status and instructions should you require anything from me?

Thank you,

Marc Sewell

108 Summit

Llano, TX 78643

EMAIL Number 2.

From: Sheila Stewart [mailto:33424districtcourt@dcourttxas.org]

Sent: Tuesday, July 09, 2013 9:39 AM

To: marcs@simonlabs.com

Subject: Cause no. 18504 - Judicial Review

Mr. Sewell,

The Judge will be in Court in Llano on Thursday, July 11th, and he will review the above mentioned file at that time.

Thanks

Sheila

EMAIL Number 3.

From: Marc Sewell [mailto:marcs@simonlabs.com]

Sent: Tuesday, July 09, 2013 10:23 AM

To: 'Sheila Stewart'

Subject: RE: Cause no. 18504 - Judicial Review

Do I need to be there? Do I need to notify the other parties? Have the other parties submitted a response? Thanks, Marc

EMAIL Number 4.

From: Sheila Stewart [mailto:33424districtcourt@dcourttxas.org]

Sent: Tuesday, July 09, 2013 11:39 AM

To: Marc Sewell

Subject: Re: Cause no. 18504 - Judicial Review

The judge will review the file only. There is no setting at this time. As for your question on notification to other parties, we cannot advise you on any legal procedures. You may find the answer to any questions you may have at the following websites which are available to Pro Se individuals: Texas Law Help.org or tyla.org.

Thanks
Sheila

EMAIL Number 5.

From: Marc Sewell [mailto:marcs@simonlabs.com]

Sent: Tuesday, July 16, 2013 9:34 AM

To: 'Lisa Bell'

Cc: 'Sheila Stewart'

Subject: RE: Cause no. 18504 - Judicial Review

Shelia Stewart said to contact you while she was on vacation regarding my petition for judicial review. Can you please tell me what the judge decided during his review last Thursday?

Thank you,
Marc Sewell

EMAIL Number 6.

From: Lisa Bell [mailto:33coordinator@dcourttxas.org]

Sent: Tuesday, July 16, 2013 10:11 AM

To: Marc Sewell

Subject: Re: Cause no. 18504 - Judicial Review

You will need to follow proper procedure for this to be brought before the Judge for hearing. We cannot give you legal advice. You may need to seek advice from an attorney.

Thank you,
Lisa Bell

EMAIL Number 7.

From: Marc Sewell [mailto:marcs@simonlabs.com]

Sent: Tuesday, July 16, 2013 11:49 AM

To: 'Lisa Bell'

Subject: RE: Cause no. 18504 - Judicial Review

I have asked for a hearing date and was told that the court didn't know how to handle a judicial review. That determination was to have been made last Thursday. According to Local Government Code Chapter 211.011 (c): "On presentation of the petition, the court may grant a writ of certiorari..." I have presented the verified petition so the next step is the court's.

I request that either 1) the writ be directed to the board or 2) a hearing be scheduled. If you have a different procedure, please provide that procedure. Providing your procedure is not providing legal advice. It is providing procedure.

I will be handling this issue pro se.

Marc Sewell

EMAIL Number 8.

From: Lisa Bell [mailto:33coordinator@dcourttxas.org]

Sent: Tuesday, July 16, 2013 1:53 PM

To: Marc Sewell

Subject: Re: Cause no. 18504 - Judicial Review

Have you properly noticed the opposing side?

EMAIL Number 9.

From: Marc Sewell [mailto:marcs@simonlabs.com]

Sent: Tuesday, July 16, 2013 2:39 PM

To: 'Lisa Bell'

Subject: RE: Cause no. 18504 - Judicial Review

I thought of that but the 211.011 (c) statute says that the court does that with a 10 day deadline to respond. If I notified them formally, they would be compelled to respond with an answer which is the not process in the statute.

Also since I am not suing the city, the notification didn't make sense. I am petitioning the judge for a review which I did according to 211.011(a) and (b). The ball seems to be in the court's court with 211.011(c). The 211.011 process seems to supersede the processes for normal civil lawsuits. The misdemeanor penalty in section 211.012 also has many confused about the process.

The llano Chief of Police has a copy and I believe the mayor and city manager have copies. Also, my thought was that if the judge rejects my petition for some reason, there is no sense worrying the board and council members.

That said, I will do whatever the judge asks.

I have attached the statute to which I refer.

BTW, I did seek advice of local lawyers and they declined.

Thank you for the prompt responses.

Marc

EMAIL Number 10.

From: Lisa Bell [mailto:33coordinator@dcourttxas.org]

Sent: Tuesday, July 23, 2013 1:41 PM

To: Marc Sewell

Subject: Re: Cause no. 18504 - Judicial Review

Please finds attached Order for this cause.

EMAIL Number 11.

From: Marc Sewell [mailto:marcs@simonlabs.com]

Sent: Tuesday, July 23, 2013 2:16 PM

To: 'Lisa Bell'

Subject: RE: Cause no. 18504 - Judicial Review

What was the reason for denial? Did I do something wrong or was there lack of merit?

Thanks,

Marc

EMAIL Number 12.

From: Marc Sewell [mailto:marcs@simonlabs.com]

Sent: Thursday, August 01, 2013 3:42 PM

To: 'Lisa Bell'

Subject: RE: Cause no. 18504 - Judicial Review

Most would say that zoning laws are a violation of property rights. I believe that the authors of the Texas Zoning Laws realized this and were extremely diligent in crafting citizen protections into the law. The section on notification is detailed and simple and meant to assure property rights are not secretly stolen by government. The section on Judicial Review was another protection and seems to have been written to put the onus on government to determine that property rights were not violated. The penalty section was also specific in defining the punishment for any violation, by government officials, of the zoning ordinance – *misdemeanor, punishable by fine, imprisonment, or both* – and was meant to be a significant deterrent.

In attempting to follow Section 201.011, I was sent back and forth to 9 county offices with different instructions on how to “present” the petition for Judicial Review. Some said it was criminal because of the misdemeanor penalty. Some said it was civil but the forms for filing didn’t have “Judicial Review” or anything close on them to check. I even met with Judge Brascom and County Attorney Maybray who didn’t know how to “present.”

I was told countless times to hire a lawyer. I don’t believe this is in the spirit of Section 201.011 but I tried anyway. Two local attorneys declined to assist as did a very expensive municipal law expert in Austin. It shouldn’t be this difficult. If I were getting divorce, the county website gives me the process and the forms. But nowhere could I find a process for Judicial Review.

I have written a Letter to the Editor and 2 articles for LlanoWatch.org on the zoning commission violations. I have spent \$252 and countless hours on the Judicial Review. One article on LlanoWatch goes into specific detail on the violations and includes all the documentation. I have totally exposed my argument. The City remains silent other than to say “it is legal.”

With this background, you can see why it is disappointing not to have a Court opinion on the merits of my petition. I am just asking the Court to determine: “is a property usage change a text change or a regulation change?” I would hate to have gone this far and not received that answer particularly given that so many professionals in town didn’t know the process, I shouldn’t be denied the answer because I didn’t know the process - if that is the reason for denial.

May I please have the specific reason for the denial? What exactly did I not do or do incorrectly?

Thank you,

Marc Sewell

EMAIL Number 13.

From: Lisa Bell [mailto:33coordinator@dcourttxas.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.

Appendix K – Certificate of Service

Certificate of Service

I certify that I have served the Appellate Brief for Docket Number 03-13-00580-CV on all other parties—which are listed below—on 9/25/13 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. 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
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325-247-2508
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