

REGULAR CALLED MEETING MINUTES
OF THE LLANO CITY COUNCIL
CITY HALL
301 WEST MAIN
LLANO, TEXAS
MONDAY
July 25, 2011
5:30 P.M.

CALL TO ORDER – Mayor Mike Reagor called the Regular Called Meeting to order with the following Council members present: J.R. Decker, Jeanne Puryear, Sherry Simpson and Gordon Hefner. Mayor Pro Tem Mike Hazel was absent due to a death in the family. Mayor Reagor asked if there would be any objection to changing the order of business. Hearing no objection, Mayor Reagor conducted business in the order as reflected in these City Council Meeting minutes of July 25, 2011.

PLEDGE OF ALLEGIANCE – Led by Councilman J.R. Decker

INVOCATION- Led by Lance Idol

PUBLIC COMMENTS – No public comments

PUBLIC HEARINGS

1. Discuss and consider approval of Regular Called City Council Meeting Minutes of July 18, 2011.

A motion was made by Councilwoman Jeanne Puryear and seconded by Councilwoman Sherry Simpson to approve the Regular Called City Council Meeting Minutes of July 28, 2011. With there being no further discussion, this motion carried.

2. Public Hearing – To hear testimony regarding consideration of a Historic Preservation District in the City of Llano, Texas. The proposed district is an overlay district more or less composed of the North Business District, North of the Llano River and Central Business District, South of the Llano River. This public hearing was opened at 5:34 p.m. Persons who had signed up to speak at this Public Hearing were given the opportunity to do so. Property owner in the proposed Historic Preservation District, Mr. Billy Hazelwood, voiced his opposition to the Historic Preservation District, because it takes property rights away from the owners of the property in the District. Gary Gatliff, property owner in the proposed Historic Preservation District, is not in favor of the Historic Preservation District, due to the City having more important things to do other than property rights. Property owner on the periphery of the proposed District, Lance Idol, addressed Council with an oratory regarding customs of the past, reality, posterity in generations to come, the fact that this is a living document that takes into consideration the owners, and the hope that the Ordinance will be fair and equitable today and tomorrow. Main Street Director Sarah Franklin thanked the Historic Preservation District Committee members and City Manager Finley deGraffenried for their work on the Historic Preservation Ordinance. She stated that you have to preserve what you have. The purpose of the Ordinance is not to infringe on anyone's rights. Her hope was for the City Council to pass the Ordinance. With there being no further testimony or comments, this Public Hearing was closed at 5:39 p.m.

3. Discuss and consider Ordinance No. 1187 amending Zoning Ordinance 735 of the City of Llano, Texas by amending section 7, adding a Historic Preservation District; adding section 19B "HPD"-Historic Preservation District. City Manager Finley deGraffenried advised the City Council that this document has been worked on since 2004. He advised the Council that the Committee was primarily composed of property owners in the proposed District and that it had been modified in accordance with the proposed District property owner's recommendations. Councilwoman Sherry Simpson voiced her concerns regarding the undeveloped areas and their proposed ratings. Mayor Reagor advised that the ratings at present are proposed and that the Historic Preservation Board, once they are appointed by the City Council, will approve all ratings. Councilwoman Simpson referenced the recommendation from the Planning/Zoning Board regarding the Little League Field and City Hall being included in the Historic Preservation District. Councilwoman Puryear asked if changes on ratings will come back to Council for approval and was advised by City Manager Finley deGraffenried that the Historic Preservation Board will approve changes.

A motion was made by Councilwoman Puryear and seconded by Councilman J.R. Decker to approve Ordinance No. 1187. With there being no further discussion, this motion passed with Councilman J.R. Decker, Councilwoman

Jeanne Puryear and Councilman Gordon Hefner voting for and Councilwoman Sherry Simpson voting against the motion.

4. Discuss and consider Ordinance No. 1188 an ordinance to enlarge and extend the boundary limits of the City of Llano to include the following described territory belonging to : William Crow, 1907 W Ranch Road 152, Llano, Texas. The tract of land hereon contains 20.00 acres more or less out of the Daniel T. Fitchett Survey No. 209, in Llano County, Texas, situated on the South side of the Llano River, adjacent to the Town of Llano, Llano County, Texas. Mayor Mike Reagor asked property owner, William Crow, if he would like to comment. Mr. Crow advised that he wants to open an R.V. Park on this property. He advised that he will have strict rules, regulations and will enforce them personally. He will plant nice trees and shrubbery, with plans to have 40 sites and an office at first with no waterfront sites at present, and in the future expand the number of sites. City Manager Finley deGraffenried advised that notifications and public hearings had been held in accordance with Texas State Statutes. The required Service Plan has been done. Planning/Zoning Public Hearing concerns regarding Water and Wastewater have been addressed as well as presenting this proposed plan to Police Chief James Schilling, who advised that the Park should not add additional stress to the workload of the Llano Police Department.

A motion was made by Councilman J.R. Decker and seconded by Councilwoman Jeanne Puryear to approve Ordinance No. 1188. Mayor Mike Reagor asked by additional discussion. Hearing none, this motion carried.

5. Public Hearing – To hear testimony regarding a request for a re-zone from Agriculture (A) to Commercial (C) for property located at 1907 W RR 152, Llano, Texas. Legal description of land described hereon contains 20.00 acres more or less out of the Daniel T. Fitchett Survey No. 220, Abstract No. 209 in Llano County, Texas.

This public hearing was opened at 6:07 p.m. Persons who had signed up to speak at this Public Hearing were given the opportunity to do so. Mr. Marc Sewell opened with questions to the City Council. Mayor Reagor advised that statements of information are taken in a Public Hearing, not questions to the City Council. Mr. Sewell continued with questions regarding the benefit of the commercial zoning and an assessment of spot zoning. Mr. Williams Crow advised that spot zoning has been researched and that the R.V. Park will be next to the Rodeo Arena. With there being no further comments or testimony, the Public Hearing was closed at 6:09 p.m.

6. Discuss and consider Ordinance No. 1189 allowing a re-zone from Agriculture (A) to Commercial (C) for property located at 1907 W RR 152, Llano Texas. Legal description of land described hereon contains 20.00 acres more or less out of the Daniel T. Fitchett Survey No. 220, Abstract No. 209 in Llano County, Texas. Mayor Reagor asked property owner William Crow if he would care to comment further. Mr. Crow advised that he felt he had covered his intentions previously. Finley deGraffenried advised Council that they had a letter from Planning/Zoning Chairman, Todd Keller, in their Council meeting packet that spoke for itself. Mrs. Kelli Tudyk, of the Planning/Zoning Commission, addressed Council with the information regarding a majority vote of the Board to re-zone the property from Agriculture (A) to Commercial (C) to bring a positive economic impact to Llano. She advised that Mr. Crow had presented all the information and that the majority of the Planning/Zoning Commission had recommended foliage, screening and a limit of 100 sites and a noise Ordinance. Mr. Sewell asked about the actual benefit to Llano and spot zoning. Mr. Sewell advised that spot zoning is illegal. Mayor Mike Reagor advised that in the opinion of the Llano City Attorney, that in this particular case, it is not spot zoning. Mr. Sewell asked to see the Opinion and was told by Mayor Reagor that it would be presented at the next Regular City Council Meeting. Mr. Sewell asked that his comments be entered into the official minutes.*

A motion was made by Councilman J.R. Decker and seconded by Gordon Hefner to approve Ordinance No. 1189 allowing a re-zone from Agriculture (A) to Commercial (C) for property located at 1907 W RR 152. Mayor Reagor called for additional discussion. Hearing none, this motion carried.

7. Public Hearing – To hear testimony regarding a request for a Specific Use Permit (SUP) for Recreational Vehicle Park for property located at 1907 W RR 152, Llano Texas. Legal description of land described hereon contains 20.00 acres more or less out of the Daniel T. Fitchett Survey No. 220, Abstract No. 209 in Llano County, Texas. Persons who had signed up to speak at this Public Hearing were given the opportunity to do so. Mr. Marc Sewell asked if he could ask questions. Mayor Reagor advised him that he could not. Mrs. Kay Stewart, property owner across the River from the R.V. park proposed location addressed her concerns regarding the R.V. Park. Her main concerns were regarding the water situation in the City. Mr. Jason Wootan commented that he believed Mr. Crow will conduct the R.V. Park in the right way. With there being no further comments or testimony this Public Hearing was closed at 6:40 p.m.

8. Discuss and consider Ordinance No. 1190 approving Specific Use Permit 334 for Recreational Vehicle Park for property located at 1907 W RR 152, Llano Texas. Legal description of land described hereon contains 20.00 acres more or less out of the Daniel T. Fitchett Survey No. 220, Abstract No. 209 in Llano County, Texas. Mayor Reagor asked Mr. William Crow if he cared to comment. He did not. City Manager Finley deGraffenried advised that the Council has a letter from the Planning/Zoning Commission regarding the recommendations for a maximum of 100 spaces, screening foliage, and passage of an Ordinance for R.V. Parks. Mayor Reagor advised that there had been a unanimous vote from the Planning/Zoning commission regarding recommendation of approval of the Specific Use Permit 334 for Recreational Vehicle Park. Mr. Sewell advised that he had voted against approving the Specific Use Permit. Mr. Sewell voiced his concerns regarding the water situation. Councilman J.R. Decker advised that the R.V. Park would not get water from the City until the City goes back into Stage II of the Drought Contingency Plan. Mr. Sewell then expressed his concerns regarding building in the floodplain. City Code Enforcer Randy Farnsworth explained that the City's floodplain rules regarding building in the floodplain are as strict as the County's. You have to build at least one (1) foot above the floodplain. A motion was made by Councilman J.R. Decker and seconded by Councilwoman Sherry Simpson to approve Ordinance No. 1190 approving Specific Use Permit 334 for Recreational Vehicle Park for property located at 1907 W RR 152, Llano, Texas. Mayor Reagor asked for additional discussion. Councilman J.R. Decker advised that Mr. Crow's Rules for his R.V. Park should be looked at for updating the R.V. Ordinance. Mayor Reagor advised that the R.V. Ordinance should be upgraded per today's standards in the interest of Public Safety issues. With there being no additional discussion, this motion carried by a unanimous vote.

9. Discuss and consider acceptance and written acknowledgement that all improvements are complete, have been accepted and approved for the Legend Hills Lift Station. City Manager Finley deGraffenried advised that all upgrades to the Legend Hills Lift Station have been made by the Legend Hills Apartments per Texas Commission on Environmental Quality requirements. He advised that it had been converted to three phase and that the owners were ready to deed the lift station to the City. A motion was made by Councilman J.R. Decker and seconded by councilwoman Jeanne Puryear to accept the written acknowledgement regarding the Lift Station. Mayor Reagor asked for additional discussion. Councilwoman Sherry Simpson asked if this lift station was now sufficient for the new R.V. park. Utilities Director Josh Becker advised that the lift station had run 1 ½ hour in three days and that his opinion was that it is sufficient. With there being no additional discussion this motion carried.

10. Discussion only City of Llano Water Statistics 2010. City Manager Finley deGraffenried advised that water statistics for 2010 were well under statistics for 2009 and that they are well under this year. There were no questions.

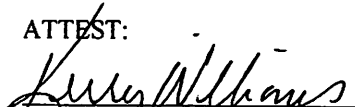
11. Discuss and consider Llano River flows and conservation stages. Mayor Reagor advised that this has been an exceptional drought and that the Llano River is an amazing river. Due to conservation measures, we are well under our permitted usage. City Manager Finley deGraffenried advised that the new City well has been rated at 100 gallons/minute. The production testing will be forwarded to City Engineer Dan Hejl for Certification. LCRA has completed the volumetric study. Well field development outside the corporate limits of Llano will be reviewed in the budget process for next fiscal year. Additional storage will be looked at by adding height to the Robinson and City Park dams. Mayor Reagor advised that the City will stay in Stage 4 for now. No Council action was taken on this item.

COUNCIL AND STAFF REPORTS


City Manager Finley deGraffenried – None

ADJOURNMENT – With there being no further business, the meeting was adjourned at 7:10 p.m.

ATTEST:


Kerry Williams, City Secretary




Mike Reagor, Mayor

08-01-2011
Date

*Handout from Mr. Sewell is attached and will be incorporated into the official minutes per request of the City Council.

Three questions directed to council members that will vote today:

1. What is the benefit to the citizens of Llano to have a commercial zone in the proposed residential area?
2. What is your assessment of this commercial rezoning being qualified as spot zoning and what is the basis of that assessment?
3. In closed meetings, the Meiers were given access to city water and sewer for an RV park while not annexed into the city. This was done while the nationwide news was reporting that Llano was about to run out of water and TCEQ made the front page saying they would fine us if we did not upgrade our sewer system. Were any of you involved in any way with the decision to grant the Meiers access to city water and sewer while they were and are and may remain in the county? If so, why?

Annexation as Commercial

- I suggest we discuss annexation and commercial rezoning as one topic since the Meiers rejected any other zoning options and would not annex if not commercial.
- The minority opinion of the Planning and Zoning commission was that the Meiers property should not be annexed and water and sewer access should be rescinded.
- The overriding issue is spot zoning. Spot zoning is defined as the reclassification of a parcel of land in a manner inconsistent with the existing zoning patterns of the area for the benefit of the owner and to the detriment of the community without any substantial public purpose.
- Spot Zoning is illegal. The Planning and Zoning Board, in the only unanimous vote on the subject, requested that the city attorney opine whether the Meier rezoning constitutes spot zoning. What was his opinion?
- This is a clear case of spot zoning.
- There are 4 criteria for spot zoning:
 1. Benefit to only one property owner – significant value to Meiers of increased property value, access to city water/sewer, 1' lower floodplain requirement, no subdivision treatment ...
 2. Use is different than the surrounding area – as map shows, the area is residential all the way to the business district to the east and HWY 87 to the west.
 3. Not in accordance with municipality land use strategy – as map tries to show, Llano has a concentrated commercial area and plenty of commercial property available for business use. There is no need for nor desire for a new commercial area. This also sets a commercial precedent and the next thing you know there will be a big strip mall that would suck the life out of our business district so not a long term benefit.
 4. No substantial benefit to surrounding area – There isn't any benefit of an RV park to the residents in the area and they have said they do not want it. There isn't any benefit to the city of Llano either:
 - We don't have water or sewer for 100-150 new transient families...
 - No difference to local business whether RV Park is in the city or county
 - No difference to jobs whether RV Park is in the city or county
 - No control since no zoning ordinance being imposed. We have a 50 page ordinance for subdivisions but none for a 100-150 family RV park.
- The state courts of Texas have recognized that simply looking at the state of the zoning map, without further analysis, is insufficient.

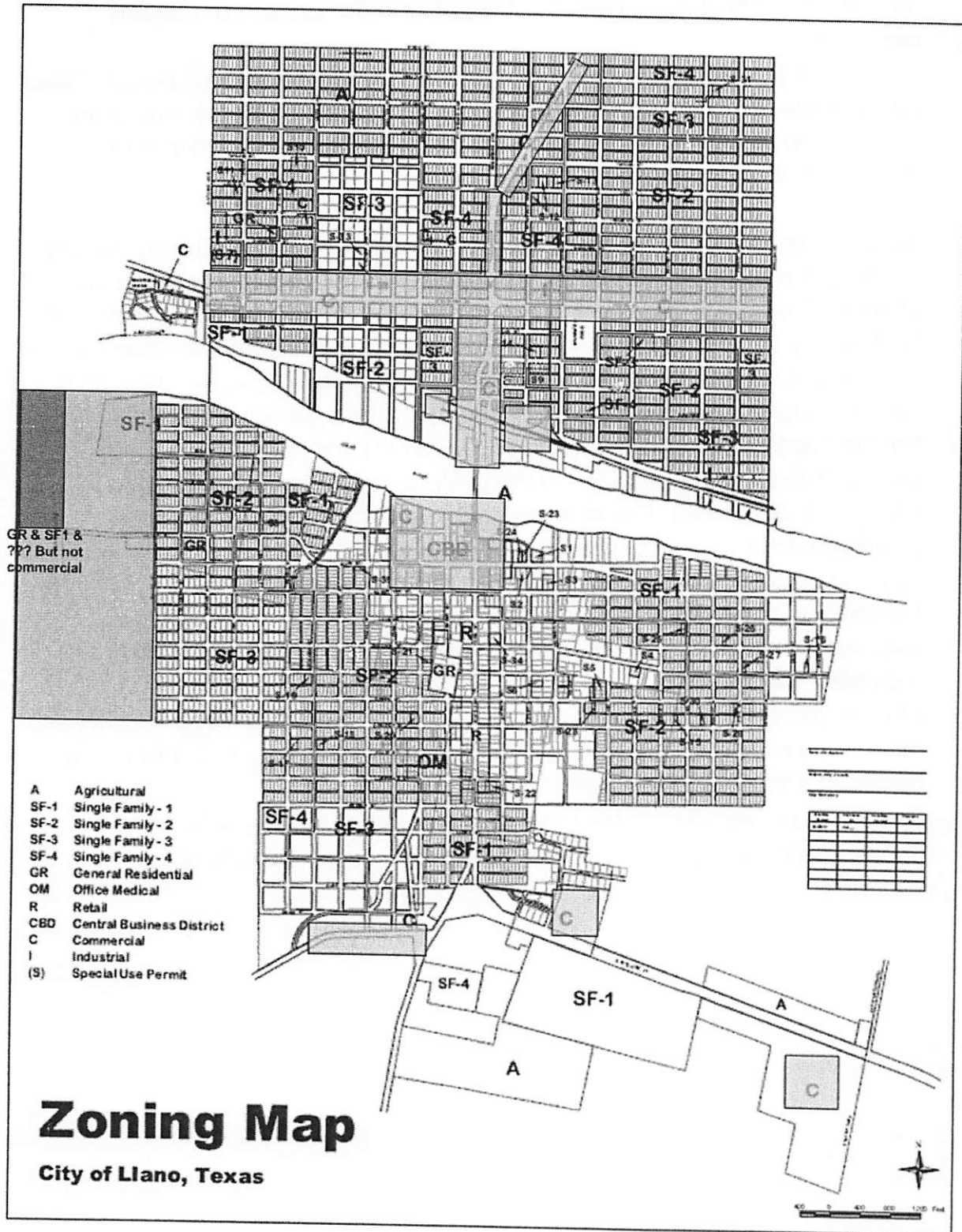
In *Burkett v. City of Texarkana*, the Texas Sixth District Court of Appeals observed:

"... spot zoning is descriptive of the process of singling out a small parcel of land for a use classification different and inconsistent with that of the surrounding area, for the benefit of the owner of such property and to the detriment of the rights of other property owners."

Texas courts imply improper motives are the root of evil in spot zoning. To find illegal spot zoning they look not only at the neighborhood, but also make an analysis of whether preferential benefits resulted for one, or a small number of landowners. In *Thompson v. City of Palestine*, the Texas Supreme Court has viewed spot zoning as *"preferential treatment which defeats a pr established comprehensive plan. It is piecemeal zoning, the antithesis of planned zoning."*

- So, the court will also look at the process used to pass the zoning change. Was there sufficient time for scrutiny by the public and sufficient impact analysis? Clearly not in this case. Closed meetings on water and sewer, minimum notification to public, 3 day notice to P&Z Commission, superficial/incomplete/incorrect city resource analysis, no time for the newspapers to report, over-crowded meeting agendas like this one with two major/controversial items, and questionable statements made by council members, P&Z members, and staff that showed bias.
- At best, you are on shaky legal grounds and it would be irresponsible for elected officials to risk legal battles or investigations at the taxpayers' expense for the benefit of a single property owner.
- You would not be acting in the best interest of Llano citizens, rather than the interest of one property owner, in annexing this property as commercial.

Approximate Llano Land Use Strategy for Commercial



I did the best I could with the zoning map provided by the city. They should update this map.

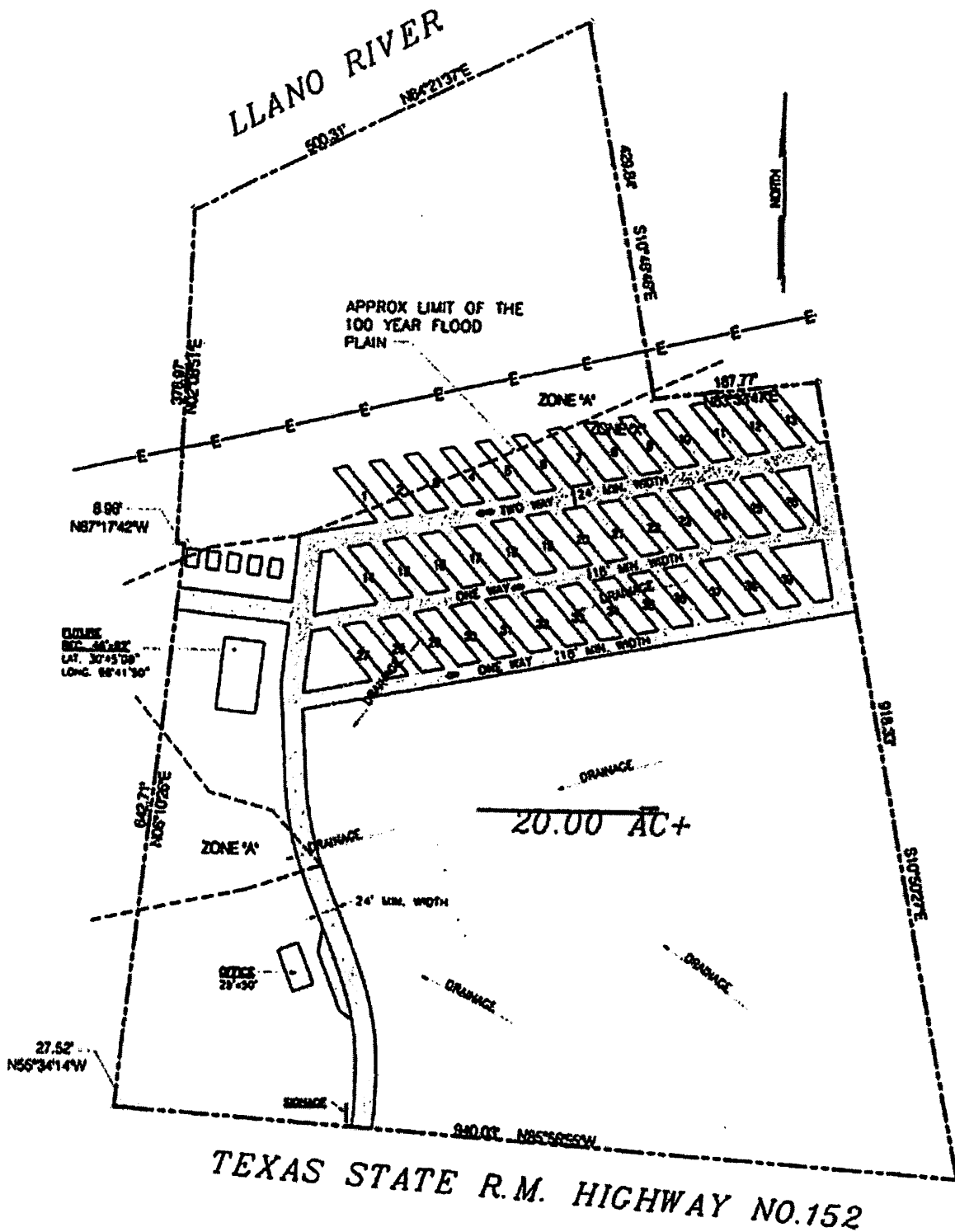
RV Park Special Use Permit

- There isn't enough water. This is obvious. Even with the low-balled analysis by city staff, there isn't enough water. And you can't bet on the future that a 430 million dollar pipeline will be put in or wells will be drilled. We cannot nor should not add 100-150 families to our water service.
- There is not enough sewer capacity. TCEQ report says "under capacity and leaking," City consulting engineer says lift station is "maxed out", neighbors complain of smell and outages, and there was no consideration of special conditions at an RV park like cleaning RV tanks, clubhouse showers and laundry which might get water from wells but dump grey water into city sewer. We cannot nor should not add 100-150 families to our sewer service.
- No RV Park ordinance is being proposed. A few rules in a special use permit which are typically enforced by the city building inspector, not by the police, which would be the case for an ordinance. So do we call Randy if someone exceeds length of stay or curfew?
- Extra load on city for fires, lost dogs, enforcement of Texas nuisance laws...

Providing Water and Sewer to County Property for RV Park

- Done in closed meeting(s) with no public awareness
- Done without any assessment of impact
- Done with grossly understated graphic of the scope of the RV park project – see presented and end-state graphics below
- Done during stage 3/4 water restrictions. There isn't sufficient water for current residents. How can you add 100-150 new families to the load? You are either selling water we don't have which would be fraud if I did it, or stealing water from residents to give to someone in the county which would be criminal theft if I did it. The analysis that was finally done at the request of the P&Z Commission was grossly inadequate, superficial, and inaccurate.
- Done while TCEQ is threatening fines because our sewer system is "under capacity and leaking".

Plan Submitted to County, TSEQ, City, Llano P&Z



605 544 28 88

