NO. 2012072

JOHN CHASE, ET AL	)(	IN THE DISTRICT COURT
v.	)(	198TH JUDICIAL DISTRICT
CITY OF BRADY, TEXAS, ET AL	)(	McCULLOCH COUNTY, TEXAS

ORDER GRANTING DEFENDANTS' PLEA TO THE JURISDICTION

On this the 19th day of July, 2012, the Court considered the First Amended Plea to the Jurisdiction of the City of Brady, Texas, the Zoning Board of Adjustment of the City of Brady, Texas, Gail Lohn in her official capacity as Mayor of the City of Brady, Mary Bradshaw, Brendan Weatherman, Missi Davis, Linda Lott, and James Stewart, in their official capacities as members of the City Council of the City of Brady, and James Minor, in his official capacity as City Manager of the City of Brady ("Defendants"), the Plaintiffs' response, and the argument of counsel.

Having considered the evidence and argument of counsel, and following review of the statutes and submitted case authority the Court finds that:

1. The Zoning Board of Adjustment of the City of Brady, Texas is a quasi-governmental entity authorized by statute;

2. The City of Brady provided for the appointment of a Zoning Board of Adjustment; (ZBA) in its 2003 Zoning Ordinance;

3. The Brady ZBA was empowered by the 2003 City of Brady Zoning Ordinance and the Texas Local Government Code with the authority to establish rules, regulations and by laws for its own government;

4. The Brady ZBA, at the time of the cause of action, had not established any applicable rules;

5. Per statute, the Appellant of a City decision must file an appeal within a reasonable time as determined by the Rules of the ZBA;

6.　　　As a consequence of the ZBA not having any rules in place at the time of Appellant's action, Appellant's appeal to the ZBA was not untimely and the administrative remedies in this case have not been exhausted.

The Court hereby finds that it does not have subject matter jurisdiction and Plaintiffs' claims are dismissed.

SIGNED this _2 4_ day of July, 2012.

M. REX EMERSON
198th District Judge

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