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City of Peculiar

Fax

FILED³

MAY 11 2006

Missouri Public
Service Commission

To: Mark Dawson, Aquila	From: Mike Fisher, City Administrator
Fax: 743-3854	Pages: 4
Phone: 737-7701	Date: September 15, 2004
Re: Approval process	CC: None

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• **Comments:**

Mark:

Attached is the letter from Gilmore & Bell regarding the approval process for the peaking facility. We are looking at scheduling a Joint Planning & Zoning Commission and Board of Aldermen meeting for Tuesday, October 26. This meeting would accomplish the amendment to the Comprehensive Plan to include Bremer's property & designate it for use as a public utility and approve the development plan (concept plan to us Peculiarites). As David indicates, only the P & Z approval is required for State law; however, locally P & Z recommends to Council, so the Council's approval is necessary. After the meeting, all of the necessary approvals would be completed, except for any review of the building plans, which we will probably cover in the Chapter 100 discussions.

I think we are in the same mode of thinking regarding the land being the lynch pin. Council and the County are willing to issue the grading permit, but having the land tied up sounds like it is everyone's safety threshold for the next step, i.e., grading permit.

I will know location tomorrow on the Mayor's breakfast.

Exhibit No. 55

Case No(s) EA-20060309
date 4-26-06 Rptr KF

GILMORE & BELL

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ST. LOUIS, MISSOURI
WICHITA, KANSAS
LINCOLN, NEBRASKA

September 14, 2004

Mike Fisher
City Hall
600 Schug Avenue
Peculiar, MO 64078

Re: Process to evaluate and approve location, extent and character of Aquila electric power plant

Dear Mr. Fisher:

You have asked for advice regarding the proper process for the City to consider and evaluate the location of an electric power plant proposed by Aquila on land that will be annexed into the City. This letter discusses the process under state statute, and provides recommendations to allow the City to cooperatively and expediently consider the request by Aquila.

Section 89.380 of the Revised Statutes of Missouri (RSMo) provides that, whenever the location, extent and character of a street or public facility or public utility, whether public or privately owned, has been included in the recommendations and proposals of the Comprehensive Plan for the City, such facility or utility shall not be constructed or authorized by the City until the location, extent and character thereof has been submitted to and approved by the Planning Commission. If the Planning Commission approves the location, extent and character of the facility or utility, then construction may proceed. If the Planning Commission disapproves the location, extent and character of the facility or utility, then appeal may be taken to the board that made the submission to the City, which can overrule the Planning Commission's disapproval by a two-thirds vote of that entire board.

Following the process set forth in 89.380, RSMo, in this instance recognizes the proper distinction between zoning for *private* land uses and planning for *public* land uses. Section 89.020, RSMo, authorizes the City to enact zoning regulations that govern the location and use of buildings, structures and land for "trade, industry, residence and other purposes." The Missouri Supreme Court has ruled that this phrase does not authorize municipalities in Missouri to regulate public facilities through its zoning powers. See *State ex rel. St. Louis Union Trust Co. v. Ferriss*, 304 S.W.2d 896, 900 (Mo.banc 1957). Instead, Section 89.380, RSMo, provides a planning process to consider and approve the proper location, extent and character of public facilities and public utilities in a public forum, while granting final authority to the board that made such request to overturn a denial by the Planning Commission.

Section 89.380 is triggered when the location, extent and character of the proposed public facility or public utility has been included in the recommendations and proposals of the City's Comprehensive Plan. Since the property on which the facility is proposed is not yet annexed into the City, the City's Comprehensive Plan does not yet include this property or the recommended

land use for this property. Therefore, the Comprehensive Plan should first be amended, to include land-use recommendations and proposals for such property when it is annexed into the City. Section 89.340, RSMo, provides the City with the authority to include in the Comprehensive Plan recommendations regarding the general location and extent of public utilities, whether publicly or privately owned. Following this plan amendment, and after the designated property is annexed into the City, the Planning Commission may consider and vote to approve the location, extent and character of the electric plant on the designated property. After such consideration and vote by the Planning Commission, construction of the facility may proceed in accordance with the Planning Commission's approval. The City may desire to add additional procedures to this process involving the Board of Aldermen, but the above-described steps are those required by state statute to amend the Comprehensive Plan and approve the location, extent and character of the public utility.

Under Section 89.380, RSMo, these steps may be followed after the property is annexed into the City to allow public consideration of the proposed electric plant and approve the location, extent and character of the plant on the designated property:

1. Submission of the proposed electric plant by Aquila and the Public Service Commission (PSC) to the Planning Commission. This submission will request that the Planning Commission approve the location, extent and character of the electric plant on the designated property pursuant to Section 89.380, RSMo.
2. Schedule two Planning Commission agenda items at one meeting:
 - A. Public hearing to amend the Comprehensive Plan, to include the designated property in the Comprehensive Plan and make recommendations and proposals regarding the appropriate land use on this property.
 - B. Agenda item to consider the request by Aquila and PSC to approve the location, extent and character of the electric plant on the designated property.
3. Publish notice of Planning Commission public hearing to amend the Comprehensive Plan. Pursuant to Section 89.360, RSMo, fifteen days prior notice of the time and place of the public hearing must be published in at least one newspaper having general circulation within the City.
4. At one Planning Commission meeting:
 - A. Hold the public hearing to amend the Comprehensive Plan;
 - B. Adopt a Resolution to amend the Comprehensive Plan;
 - C. Consider the proposed location, extent and character of the electric plant on the designated property; and

Mike Fisher
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- D. Adopt a Resolution to approve the location, extent and character of the electric plant on the designated property.

Section 89.380, RSMo, does not require prior public notice of the agenda item to consider the location, extent and character of the electric plant, but the City may provide published or mailed notices of this item, if so desired. The Planning Commission meeting at which these agenda items are considered may be a joint meeting of the Planning Commission and Board of Aldermen, so long as the Planning Commission follows the procedural steps outlined above and adopts resolutions which amend the Comprehensive Plan and approve the location, extent and character of the electric plant on the designated property. It is important to note that Section 89.380, RSMo, provides the Planning Commission, and not the Board of Aldermen, with the authority to take these actions, relative to its planning functions. The City may add additional procedures involving the Board of Aldermen, but the procedures described above involving the Planning Commission are those required by state statute to amend the Comprehensive Plan and approve the location, extent and character of the electric plant.

Section 89.380 does not describe what level of documentation is needed for the Planning Commission to consider a request under that statute. The plans, maps, materials and documentation that are typically required by the City to evaluate a concept plan or preliminary site plan should be sufficient to allow the Planning Commission to conduct a complete evaluation of the location, extent and character of the proposed electric plant. A future change in use of the property, or expansion of the approved facility, would again be subject to City review and approval under the appropriate regulations -- either the zoning regulations for private uses involving trade, industry or commerce, or the planning process of 89.380, RSMo, for public facilities and public utilities.

Please let me know if you have any questions or need further assistance regarding this process.

Very truly yours,



David W. Bushek, AICP

c: E. Sid Douglas III