

City of Peculiar

EX-19 - Evans

Fax

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 four 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.

FILED³

APR 5 2006

Missouri Public
Service Commission

Public

Hearing Exhibit No. 9

Date 3-20-06 Case No. EA-2006-0309

Reporter _____

RESOLUTION

RESOLUTION OF THE CITY OF PECULIAR, MISSOURI EXPRESSING THE OFFICIAL INTENT OF THE CITY TO ISSUE ITS TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS IN A PRINCIPAL AMOUNT NOT TO EXCEED \$150,000,000 TO FINANCE THE COSTS OF A PROJECT FOR AQUILA, INC.

WHEREAS, City of Peculiar, Missouri (the "City") is authorized and empowered under the provisions of Sections 100.010 to 100.200 of the Missouri Revised Statutes, as amended, and Article VI Section 27(b) of the Missouri Constitution (the "Act"), to purchase, construct, extend and improve certain projects (as defined in the Act) for the purposes set forth in the Act and to issue revenue bonds for the purpose of (i) providing funds to pay the costs of such projects and to lease or sell such projects to others upon such terms and conditions as the City shall deem advisable, or (ii) loaning the proceeds from the sale of such bonds to others upon such terms and conditions as the City shall deem advisable to provide funds to pay the costs of such projects; and

WHEREAS, Aquila, Inc., a Delaware corporation (the "Company"), has requested that the City (i) approve a project for the Company, consisting of the purchase, construction, extension, improvement of electric generation facilities, including land, buildings, fixtures and equipment (the "Project"), (ii) issue its revenue bonds in a principal amount not to exceed \$150,000,000 to provide funds to pay the costs of the Project, and (iii) lease the Project to the Company for the purpose of financing the costs of the Project, all in accordance with and pursuant to the Act; and

WHEREAS, the City desires to finance the costs of purchasing, constructing, extending, improving and equipping the Project by the issuance of its Taxable Industrial Development Revenue Bonds to be issued under the Act in a principal amount not to exceed \$150,000,000 (the "Bonds"), said Bonds to be payable solely out of payments, revenues and receipts derived by the City from the lease of the Project to the Company; and

WHEREAS, the City and the Company desire that the purchase, construction, extension, improvement and equipping of the Project commence as soon as practicable, and the City and the Company desire to set forth certain mutual conditions and obligations in connection with the Project;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF PECULIAR, MISSOURI, AS FOLLOWS:

Section 1. Findings and Determinations. The Board of Aldermen hereby finds and determines that the Project will promote the economic welfare and the development of the City, and the issuance of the Bonds by the City to pay the costs of the Project will be in furtherance of the public purposes set forth in the Act.

Section 2. Declaration of Official Intent. The Board of Aldermen determines and declares the intent of the City to finance the costs of the Project out of the proceeds of the Bonds to be issued pursuant to the Act in a principal amount not to exceed \$150,000,000. This Resolution shall constitute the City's intention, subject to the terms hereof, to issue the Bonds pursuant to the Act in amounts

prescribed by the Company up to \$150,000,000. The proceeds of the Bonds will be used to purchase, construct, extend, improve and equip the Project and to pay all expenses and costs of the City in connection with the issuance of the Bonds.

Section 3. Terms and Provisions. Subject to the conditions of this Resolution, and in the sole and exclusive discretion of the City, the City will (i) enter into a trust indenture with a bank or trust company, as corporate trustee, pursuant to which the City will issue the Bonds to pay the costs of financing the Project, including repayment to the Company of advances made by it in connection with the Project, with such maturities, interest rates, redemption terms, security provisions and other terms and provisions as may be determined by subsequent ordinance of the City; (ii) purchase, construct, extend, improve and equip the Project and enter into a lease agreement with the Company to lease (with an option to purchase) or sell or otherwise dispose of the Project to the Company, pursuant to which lease agreement such Company will make lease payments sufficient to pay the principal of and interest on the Bonds as the same become due and payable; and (iii) to effect the foregoing, adopt such resolutions and ordinances and authorize the execution and delivery of such security agreements and other instruments and the taking of such action as may be necessary or advisable for the authorization and issuance of the Bonds by the City and take or cause to be taken such other action as may be required to implement the aforesaid.

Section 4. Conditions to Issuance. The issuance of the Bonds and the execution and delivery of any documents related to financing the Project are subject to, in the sole and exclusive discretion of the City, (i) approval by the Board of Aldermen of the City, including the approval of the Plan for the Project required to be approved pursuant to the Act and the annexation in the City of the property upon which the Project will be constructed; (ii) approval by the Board of Directors of the Company; (iii) obtaining by the Company of any necessary governmental licenses, permits and approvals; and (iv) agreement by the City, the Company and the purchasers of the Bonds upon (a) mutually acceptable terms for the Bonds and for the sale and delivery thereof and (b) mutually acceptable terms and conditions of any documents related to the issuance of the Bonds and the Project, including an agreement relating to tax abatement with respect to the Project.

Section 5. Reimbursement of Expenditures. The Company has made certain expenditures in connection with the purchase, construction, extension, improvement and equipping of the Project, and expects to make additional similar expenditures after the date of this resolution and before the issuance of the Bonds, and the City desires and intends to reimburse the Company, but solely from proceeds of the Bonds, for such expenditures.

Section 6. Authorization to Proceed. The Company is hereby authorized to proceed with the purchase, construction, extension, improvement and equipping of the Project, including the necessary planning and engineering for the Project and entering of contracts and purchase orders in connection therewith, and to advance such funds as may be necessary to accomplish such purposes, and, to the extent permitted by law, the City shall reimburse the Company for all expenditures paid or incurred therefore, but solely out of the proceeds of the Bonds.

Section 7. Sale of the Bonds. The City shall sell the Bonds, but only on a firm underwriting or purchase basis, to such investment banking firm, financial institution or institutional investors as the Company shall obtain and the City shall approve, at such price as the Company and the City shall approve, such Bonds to be issued upon receipt of an unqualified approving opinion by Gilmore & Bell, P.C., in form and substance agreeable to the City, the Company and the purchaser or purchasers of such Bonds. The sale of the Bonds shall be the responsibility of the Company.

Section 8. Limited Liability. Any provision hereof to the contrary notwithstanding, nothing herein contained shall be construed to impose a charge against the general credit of the City or to impose any pecuniary liability upon the City except with respect to the proper application of the proceeds to be derived by the City from the sale of the Bonds and of the revenues and receipts to be derived by the City from any financing, leasing or sale of the Project.

Section 9. Further Authority. Gilmore & Bell, P.C. and McLiney & Company, together with the officers and employees of the City, are hereby authorized to work with the Company and the purchaser or purchasers of the Bonds, their respective counsel and others, to prepare for submission to and final action by the City all documents necessary to effect the authorization, issuance and sale of the Bonds and other actions contemplated hereunder in connection with the financing of the Project, the approval of the Plan for the Project pursuant to the Act and the annexation in the City of the property upon which the Project will be located.

Section 10. Effective Date. This Resolution shall take effect and be in full force immediately after its adoption by the Board of Aldermen of the City of Peculiar, Missouri.

Adopted by the Board of Aldermen this _____ day of September, 2004.

Mayor

(Seal)

ATTEST:

City Clerk

GILMORE & BELL

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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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

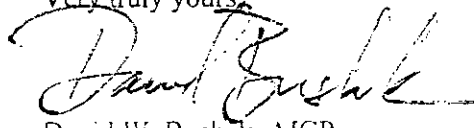
- D. Adopt a Resolution to approve the location, extent and character of the electric plant on the designated property.

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