

IN THE CIRCUIT COURT OF FRANKLIN COUNTY
STATE OF MISSOURI

State of Missouri, ex rel.)	
RUTH CAMPBELL, NANCY CAMPBELL,)	
EDWIN ELZEMEYER, JR., EULINE)	
ELZEMEYER, RICHARD STETTES,)	Cause No. _____
LORAIN STETTES, KARA CARTER,)	
JENNIFER CARTER NORRIS, KATHERINE)	Div. No. _____
CARTER THOMAS, and LABADIE)	
ENVIRONMENTAL ORGANIZATION,)	
)	
Relators)	
)	
v.)	
)	
BOARD OF ZONING ADJUSTMENT)	
OF FRANKLIN COUNTY,)	
)	
Respondent)	

VERIFIED PETITION FOR WRIT OF CERTIORARI

Come now Relators and for their claim for relief state as follows:

Overview

1. This action challenges the June 24, 2014 decision of the Franklin County Board of Zoning Adjustment, affirming the Franklin County Land Use Administrator’s decisions and determinations that Ameren’s proposed utility waste landfill complies with the County’s zoning requirements. Article 10, section 238(C)(3)(c), of the Unified Land Use Regulations of Franklin County requires at least two feet of separation between the liner underlying a utility waste landfill and the Natural Water Table. The Board’s decision is illegal because there will not be at least two feet of separation between the landfill’s liner and the Natural Water Table.

Jurisdiction and Venue

2. This court has jurisdiction over this action pursuant to § 64.870.2, R.S.Mo.
3. This action is timely filed within 30 days of the decision being challenged.
4. Venue is proper in Franklin County, where the affected property is located, pursuant to § 64.870.2, R.S.Mo.

Parties

5. Relator Ruth Campbell owns and resides on 63 acres of property that is approximately 0.02 mile from Ameren's Labadie power plant property and approximately 0.4 mile from Ameren's proposed coal ash landfill site. She relies on a groundwater well for drinking water, cooking, showering and all other domestic purposes, and is concerned that that the construction and operation in the Missouri River floodplain of a coal ash landfill near her property without the required two foot separation from groundwater will contaminate her groundwater well, threatening her health and reducing the value of her property.

6. Relator Nancy Campbell owns and resides on three acres of property that is approximately 0.6 mile from Ameren's Labadie power plant property and approximately 0.9 mile from Ameren's proposed coal ash landfill site. She also has an inheritance interest in her mother Ruth Campbell's property, described in paragraph 5 above. She relies on a groundwater well for drinking water, cooking, showering and all other domestic purposes, and is concerned that the construction and operation in the Missouri River floodplain of a coal ash landfill near her property without the required two-foot separation from groundwater will contaminate her groundwater well, threatening her health and reducing the value of her property. She raises alpacas, chickens, and goats on her property and is also concerned that contamination of her groundwater well will harm her livestock operations.

7. Relators Edwin and Euline Elzemeyer, husband and wife, own 80 acres of bottomland directly adjacent to Ameren's Labadie power plant property and approximately 0.9 mile from Ameren's proposed coal ash landfill site. About half of their bottomland property is leased out for farming, and the rest is wooded and used for hunting. They are concerned that the construction and operation of a coal ash landfill in the Missouri River floodplain near their bottomland property without the required two-foot separation from groundwater will contaminate their property, limit or eliminate the ability to use the property for farming and hunting, and reduce its value.

8. Relator Edwin Elzemeyer also shares ownership with other family members of a large homestead on 274 acres of property, 65 acres of which is tillable, located approximately 0.6 mile from Ameren's proposed coal ash landfill site. This property has a groundwater well used for drinking, showering, cooking, and other domestic purposes. Edwin and his wife Euline Elzemeyer are concerned that the construction and operation in the Missouri River floodplain of a coal ash landfill near Edwin's property without the required two-foot separation from groundwater will contaminate the groundwater well on which they rely for drinking water and other domestic purposes, threatening their health and reducing the value of the property.

9. Relators Richard and Loraine Stettes own a house, farmland, and a lake stocked with fish on 18 acres of property that is approximately 0.3 mile from Ameren's proposed coal ash landfill site. A groundwater well on their property provides water for gardening and other domestic purposes. They are concerned that the construction and operation in the Missouri River floodplain of a coal ash landfill near their property without the required two-foot separation from groundwater will contaminate their well and farmland and reduce the value of their property.

They are also concerned that if the landfill floods, the floodwaters will spread contaminants onto their property.

10. Relator Kara Carter owns property that is approximately 0.8 mile from and overlooks Ameren's proposed coal ash landfill site. She individually owns 7.89 acres and shares ownership with her two sisters of 5.69 acres of adjacent property that contains a home with a groundwater well, swimming pool, and streams and creeks. She is concerned that the construction and operation in the Missouri River floodplain of a coal ash landfill near her property without the required two-foot separation from groundwater will contaminate the groundwater well on which she relies for drinking, cooking, showering, swimming, caring for her dogs, and other domestic purposes and significantly reduce the value of her property.

11. Relator Jennifer Carter Norris owns property that is approximately 0.8 mile from and overlooks Ameren's proposed coal ash landfill site. She shares ownership with her husband of 7.89 acres and shares ownership with her two sisters of 5.69 acres of adjacent property that contains a home with a groundwater well, swimming pool, and streams and creeks. She is concerned that that the construction and operation in the Missouri River floodplain of a coal ash landfill near her property without the required two-foot separation from groundwater will contaminate the groundwater well on which she relies for drinking, cooking, showering, swimming, and other domestic purposes and significantly reduce the value of her property.

12. Relator Katherine Carter Thomas owns property that is approximately 0.8 mile from and overlooks Ameren's proposed coal ash landfill site. She shares ownership with her husband of 10.55 acres and shares ownership with her two sisters of 5.69 acres that contains a home with a groundwater well, swimming pool, and streams and creeks. She is concerned that the construction and operation in the Missouri River floodplain of a coal ash landfill near her

property without the required two-foot separation from groundwater will contaminate the groundwater well on which she relies for drinking, showering, swimming, and other domestic purposes, threaten her family's health, reduce the value of her property, and make the sale of her property virtually impossible.

13. Relator Labadie Environmental Organization, Inc. ("LEO") is a nonprofit corporation in good standing organized under the laws of the State of Missouri. LEO is a grassroots, non-partisan, citizens group that has been in existence for about five years and is engaged in advocacy seeking to prevent the siting of a coal ash landfill in the Missouri River floodplain. The above-mentioned individual Relators are members of LEO. LEO members who own property and reside near Ameren Missouri's Labadie plant and the proposed landfill site are concerned that the construction and operation in the Missouri River floodplain of a coal ash landfill without the required two-foot separation from groundwater will contaminate their groundwater wells, contaminate their land, impair their use and enjoyment of their properties, and reduce the value of their properties and businesses.

14. Respondent Franklin County Board of Zoning Adjustment ("BOZA") is the duly constituted county board of zoning adjustment created and existing under the laws of the State of Missouri and the Unified Land Use Regulations of Franklin County.

Franklin County Zoning Regulations

15. Franklin County is a non-charter county of the first classification and has opted into Alternative County Planning and Zoning pursuant to §§ 64.800-64.905, R.S.Mo.

16. The Unified Land Use Regulations of Franklin County ("Franklin County Zoning Regulations") were adopted pursuant to §§ 64.800 – 64.905, R.S.Mo., took effect on December 31, 1992, and have been amended from time to time.

17. The Land Use Administrator, also known as the Planning Director, is responsible for administering and enforcing the Franklin County Zoning Regulations.

18. Decisions of the Land Use Administrator may be appealed to the Board of Zoning Adjustment, which is authorized to reverse, affirm, or modify such decisions after holding an evidentiary hearing thereon.

19. Prior to October 25, 2011, the Franklin County Zoning Regulations did not list utility waste landfills as permitted or conditional uses in any zoning district.

20. On October 25, 2011, the Franklin County Commission amended the Zoning Regulations to make utility waste landfills permitted uses and establishing various requirements applicable to the construction and operation of such landfills (“landfill zoning amendment”). Article 10, section 238(C)(3)(c), of the landfill zoning amendment requires that landfills be underlain by a composite liner with an outer layer of clay or compacted soil. That section further specifies:

“The clay or composite soil component at the base of the Utility Waste Landfill shall be at least two (2) feet above the Natural Water Table in the site area.”

21. Article 10, section 238(A)(19) defines Natural Water Table as follows:

“The level at which water stands in a fully saturated unconfined aquifer as measured by shallow piezometers or wells. The natural water table is under static hydrologic conditions and uninfluenced by groundwater pumping or other engineered activities.”

Ameren’s Proposed Labadie Landfill

22. Union Electric Company d/b/a Ameren Missouri (“Ameren”) has proposed to construct a utility waste landfill adjacent to its Labadie power plant in the Missouri River floodplain in Franklin County.

23. In or about April 2012, Ameren submitted to Franklin County and the Missouri Department of Natural Resources (“DNR”) a document entitled Design Basis for Ground Water Level (“Design Basis Document”). The purpose of the Design Basis Document was to determine the Natural Water Table, as defined in the Franklin County Zoning Regulations, “as a basis for design of the UWL [utility waste landfill].”

24. The Design Basis Document states that the Natural Water Table as defined in the Franklin County Zoning Regulations is at elevation 464 feet at the proposed Labadie landfill site (“Ameren’s Natural Water Table determination”).

25. Franklin County did not object to Ameren’s Natural Water Table determination of elevation 464 feet.

26. Franklin County accepted Ameren’s Natural Water Table determination of elevation 464 feet.

27. In January 2013, Ameren submitted to Franklin County and DNR a copy of its Construction Permit Application (“Application”) for the proposed Labadie landfill.

28. Ameren resubmitted its Application to Franklin County and DNR with revisions dated August 2013 and November 2013. The revised Applications made no changes to Ameren’s Natural Water Table determination of elevation 464 feet.

29. The Application includes Appendix Z, entitled “Demonstration: Base of Utility Waste Landfill Liner in Intermittent Contact with Ground Water.” The Design Basis Document containing Ameren’s Natural Water Table determination was attached to Appendix Z.

30. Ameren’s Application states as follows:

- a. The Natural Water Table at the proposed Labadie landfill site is at elevation 464 feet.

- b. The composite liner below the landfill's sumps would be constructed at elevation 463 feet and then settle down to 462.2 feet.
- c. The lowest elevation of the liner elsewhere than the sumps will be at elevation 464 feet.
- d. The Natural Water Table in the northwest portion of the site is nearly 465 feet.

31. Ameren's Application also indicates that the liner elsewhere than the sumps will settle to elevations less than two feet above the Natural Water Table in portions of the site.

32. Ameren's Application is the only application submitted to Franklin County and the DNR that describes the construction of the proposed utility waste landfill, including the elevations at which the landfill liner will be constructed.

Decisions and Determinations of the Land Use Administrator

33. On September 18, 2013, the Land Use Administrator sent a letter to the Missouri Department of Natural Resources ("DNR") stating that Ameren's Application complies with the County's Zoning Regulations.

34. On October 10, 2013, the Land Use Administrator sent a letter to DNR clarifying the September 18th letter and reconfirming her September 18, 2013 decision that Ameren's Application complies with the County's Zoning Regulations.

35. On December 10, 2013, the Land Use Administrator sent a letter to DNR reconfirming her prior determinations that Ameren's Application complies with the County's Zoning Regulations.

36. On April 17, 2014, Ameren applied for a zoning permit for the construction of the proposed Labadie landfill.

37. On April 23, 2014, the Land Use Administrator issued a zoning permit to Ameren. The zoning permit recites that the proposed landfill complies with the County's Zoning Regulations.

Decision of the Board of Zoning Adjustment

38. In January 2014, Relators filed an Appeal to the Board of Zoning Adjustment ("BOZA"), contesting as erroneous the Land Use Administrator's decisions and determinations on September 18, 2013, October 10, 2013, and December 10, 2013 that Ameren's Application complies with the County's Zoning Regulations. The County labeled the Appeal as File or Appeal 140002.

39. Relators' Appeal stated that the Land Use Administrator's decisions were erroneous because Ameren's proposed landfill was not two feet above the Natural Water Table, as required by Article 10, § 238(C)(3)(c) of the Franklin County Zoning Regulations, and because Ameren had not obtained a zoning permit, as required by § 46(a) of the Zoning Regulations.

40. On April 25, 2014, after Ameren applied for and the Land Use Administrator issued a zoning permit for the construction of the proposed Labadie landfill, Relators amended their BOZA Appeal to add a challenge to the Land Use Administrator's decision to issue the zoning permit.

41. On May 27, 2014, BOZA held an evidentiary hearing regarding Relators' Appeal.

42. At the BOZA hearing, Ameren presented a method of determining the Natural Water Table that was different from the method in its Design Document and Application. The County testified in support of this different method.

43. The County's attempt to repudiate its prior acceptance of Ameren's Natural Water Table determination of elevation 464 feet, as set forth in the Design Document and Application, is

contrary to the provisions and purposes of Article 10, section 238(C)(3)(c), of the Franklin County Zoning Regulations.

44. On June 24, 2014, BOZA voted to affirm the Land Use Administrator's decisions and determinations that Ameren's Application complies with the County's Zoning Regulations.

45. BOZA indicated that its decision was based on Natural Water Table determination that was offered by Ameren and the County solely for purposes of the BOZA hearing and is different from the Natural Water Table determination repeatedly set forth in Ameren's Design Document and Application.

46. Relators are aggrieved by BOZA's decision to affirm the Land Use Administrator's decisions and determinations that Ameren's Application complies with the County's Zoning Regulations.

47. BOZA's decision to affirm the Land Use Administrator's decisions and determinations was illegal, unreasonable, not authorized by law, and unsupported by competent and substantial evidence because Ameren's landfill liner will be in intermittent contact with groundwater, in violation of the Article 10, section 238(C)(3)(c), of the Franklin County Zoning Regulations.

48. BOZA's decision to affirm the Land Use Administrator's decisions and determinations was illegal, unreasonable, not authorized by law, and unsupported by competent and substantial evidence because Ameren's landfill liner will not be at least two feet above the Natural Water Table, in violation of the Article 10, section 238(C)(3)(c), of the Franklin County Zoning Regulations.

WHEREFORE, Relators respectfully request that this Court:

1. Issue a Writ of Certiorari directing Respondent Board of Zoning Adjustment of Franklin County to provide this Court on or before the date indicated in the Writ

with a certified copy of the full, true and complete record pertaining to the Board's decision in File or Appeal 140002, including without limitation the action taken and the data and records acted upon;

2. Upon review of the record, reverse the decision of the Franklin County Board of Zoning Adjustment and enter judgment that the proposed landfill described in Ameren's Application does not comply with Article 10, section 238(C)(3)(c), of the Unified Land Use Regulations of Franklin County; and
3. Grant such further relief as the Court deems just and proper.

Respectfully submitted,



Maxine I. Lipeles Mo. Bar 32529
Interdisciplinary Environmental Clinic
Washington University School of Law
One Brookings Drive – CB 1120
St. Louis, MO 63130
314-935-5837 (phone); 314-935-5171 (fax)
milipele@wulaw.wustl.edu

Attorneys for Relators Ruth Campbell, et al.

STATE OF MISSOURI)
) ss
COUNTY OF FRANKLIN)

Ruth Campbell, of lawful age, being duly sworn upon her oath, states that she is one of the Relators herein, and that the facts stated herein are true according to her best knowledge, information and belief.

Ruth Campbell

Ruth Campbell

Subscribed and sworn before me this 18th day of July 2014.

Deborah K. Wren

Notary Public

My Commission Expires: 9-8-16



DEBORAH K. WREN
My Commission Expires
September 8, 2016
Franklin County
Commission #12545206

STATE OF MISSOURI)
) ss
COUNTY OF FRANKLIN)

Nancy Campbell, of lawful age, being duly sworn upon her oath, states that she is one of the Relators herein, and that the facts stated herein are true according to her best knowledge, information and belief.

Nancy Campbell

Nancy Campbell

Subscribed and sworn before me this 18th day of July 2014.

Deborah K Wren

Notary Public


My Commission Expires: 9-8-16



DEBORAH K. WREN
My Commission Expires
September 8, 2016
Franklin County
Commission #12545206

STATE OF MISSOURI)
) ss
COUNTY OF FRANKLIN)

Edwin Elzemeyer, Jr., of lawful age, being duly sworn upon his oath, states that he is one of the Relators herein, and that the facts stated herein are true according to his best knowledge, information and belief.



Edwin Elzemeyer, Jr.

Subscribed and sworn before me this 18 day of July 2014.



Notary Public

My Commission Expires: 9-8-16



DEBORAH K. WREN
My Commission Expires
September 8, 2016
Franklin County
Commission #12545206

STATE OF MISSOURI)
) ss
COUNTY OF FRANKLIN)

Euline Elzemeyer, of lawful age, being duly sworn upon her oath, states that she is one of the Relators herein, and that the facts stated herein are true according to her best knowledge, information and belief.



Euline Elzemeyer

Subscribed and sworn before me this 18th day of July 2014.



Notary Public

My Commission Expires: 9-8-16



DEBORAH K. WREN
My Commission Expires
September 8, 2016
Franklin County
Commission #12545206

STATE OF MISSOURI)
) ss
COUNTY OF FRANKLIN)

Kara Carter, of lawful age, being duly sworn upon her oath, states that she is one of the Relators herein, and that the facts stated herein are true according to her best knowledge, information and belief.

Kara Carter
Kara Carter

Subscribed and sworn before me this 21st day of July 2014.

Kathryn O'Flynn Herr
Notary Public

My Commission Expires: Sept. 13, 2015



STATE OF MISSOURI)
) ss
COUNTY OF FRANKLIN)

Loraine Stettes, of lawful age, being duly sworn upon her oath, states that she is one of the Relators herein, and that the facts stated herein are true according to her best knowledge, information and belief.

Loraine Stettes
Loraine Stettes

Subscribed and sworn before me this 18th day of July 2014.

Deborah K. Wren
Notary Public

My Commission Expires: 9-8-16



DEBORAH K. WREN
My Commission Expires
September 8, 2016
Franklin County
Commission #12545206

STATE OF MISSOURI)
) ss
COUNTY OF FRANKLIN)

Richard Stettes, of lawful age, being duly sworn upon his oath, states that he is one of the Relators herein, and that the facts stated herein are true according to his best knowledge, information and belief.

Richard Stettes

Richard Stettes

Subscribed and sworn before me this 18th day of July 2014.

Deborah K. Wren

Notary Public

My Commission Expires: 9-8-16



DEBORAH K. WREN
My Commission Expires
September 8, 2016
Franklin County
Commission #12545206

STATE OF MISSOURI)
) ss
COUNTY OF FRANKLIN)

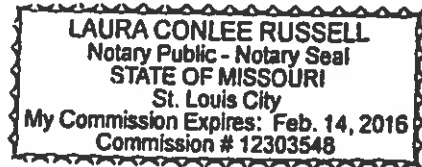
Jennifer Carter Norris, of lawful age, being duly sworn upon her oath, states that she is one of the Relators herein, and that the facts stated herein are true according to her best knowledge, information and belief.


Jennifer Carter Norris

Subscribed and sworn before me this 21st day of July 2014.


Notary Public

My Commission Expires: 2/14/2016



STATE OF MISSOURI)
) ss
COUNTY OF FRANKLIN)

Katherine Carter Thomas, of lawful age, being duly sworn upon her oath, states that she is one of the Relators herein, and that the facts stated herein are true according to her best knowledge, information and belief.



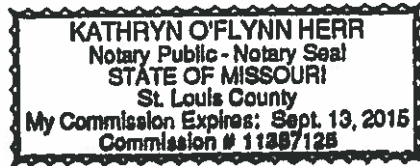
Katherine Carter Thomas

Subscribed and sworn before me this 21st day of July 2014.



Notary Public

My Commission Expires: Sept. 13, 2015



STATE OF MISSOURI)
) ss
COUNTY OF FRANKLIN)

Patricia Schuba, of lawful age, being duly sworn upon her oath, states that she is President of and authorized to act on behalf of the Labadie Environmental Organization, Inc., the Labadie Environmental Organization, Inc. is one of the Relators herein, and the facts stated herein are true according to her best knowledge, information and belief.



Patricia Schuba, President
Labadie Environmental Organization, Inc.

Subscribed and sworn before me this 18 day of July 2014.



Notary Public

My Commission Expires: 9-8-16



DEBORAH K. WREN
My Commission Expires
September 8, 2016
Franklin County
Commission #12545206