

IN THE CIRCUIT COURT OF THE 23rd JUDICIAL CIRCUIT
OF MISSOURI AT HILLSBORO, JEFFERSON COUNTY, MISSOURI

CONCERNED CITIZENS FOR CRYSTAL)
CITY, a nonprofit corporation;)
11572 River Hills Road)
Festus, MO 63028;)
DEBORAH MCKENNA;)
WILLIAM MCKENNA;)
JILL THOMAS;)
WILLIAM GINNEVER; and)
SHERYL BOSS;)
Plaintiffs,)
v.)
CITY OF CRYSTAL CITY, MISSOURI,)
a municipal corporation,)
130 Mississippi Avenue,)
Crystal City, MO 63019;)
THOMAS V. SCHILLY, Mayor; and)
DELLA SELMON, PAM PORTELL,)
PEGGY BROWN-LEMME, BEN DECLUE,)
BILL USHER, W. RICHARD PERRY,)
DAVID PICARELLA, RICHARD MEAD,)
Members of the City Council;)
130 Mississippi Avenue,)
Crystal City, MO 63019; and)
BOB FRENCH, Building Commissioner; and)
DEBBIE JOHNS, City Clerk,)
130 Mississippi Avenue,)
Crystal City, MO 63019;)
Defendants.)

Case No.
Division No.

FILED
NOV 27 2007
HOWARD WAGNER
CIRCUIT CLERK

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

Come now plaintiffs and for their cause of action state as follows:

1. Concerned Citizens for Crystal City ("Citizens"), is a nonprofit corporation organized and existing under the State of Missouri nonprofit laws. Its purpose is to

educate and protect the public about the environmental and commercial impacts of the proposed iron ore smelter.

2. Plaintiff Deborah McKenna is a resident and taxpayer of Crystal City. She will be adversely impacted by the sights, sounds and smells that will be emitted from the smelter.

3. Plaintiff William McKenna is a resident and taxpayer of Crystal City. He will be adversely impacted by the sights, sounds and smells that will be emitted from the smelter.

4. Plaintiff Jill Thomas is a resident and taxpayer of Crystal City. She is the 2d Vice-President of Concerned Citizens for Crystal City. She will be adversely impacted by the loss in property values that will result from the smelter.

5. Plaintiffs William Ginnever and Sheryl Boss are residents of Crystal City and own a house which abuts the industrial site. They will be adversely impacted by the loss of property values that will result from the smelter.

6. Defendant City of Crystal City is a municipal corporation, a third class city, located in Jefferson County, Missouri.

7. Defendant Thomas V. Schilly is the Mayor of the City of Crystal City. Defendants Della Selmon, Pam Portell, Peggy Brown-Lemme, Ben DeClue, Bill Usher, W. Richard Perry, David Picarely and Richard Mead are members of the City Council of the City of Crystal City. They are sued in their official capacities.

8. Defendant Bob French is the City Commissioner for the City of Crystal City.

9. Bob French is a public governmental body within the meaning of RSMo §610.010(4) and is sued in his official capacity.

10. Defendant Debbie Johns is the City Clerk and the Custodian of the Records.

11. Debbie Johns is a public governmental body within the meaning of RSMo §610.010(4) and is sued in her official capacity.

12. On August 12, 2007, Jill Thomas learned that the City Council had been negotiating with a Mr. James Kennedy of Wings Enterprises and agreed to allow him to build a coal-fired, pig iron ore smelter on the PPG (Pittsburg Plate Glass Company) property located in Crystal City. On information and belief, these negotiations took place behind closed doors, without the public's knowledge.

13. Residents formed the group Concerned Citizens for Crystal City to educate the public about the proposed coal-fired iron ore smelter.

14. On September 10, 2007, the Mayor signed a contract with PPG for the purchase of the old PPG property for \$2.2 million. The property is located in the City of Crystal City and consists of approximately 242 acres. (The contract is attached hereto as plaintiffs' exhibit 1.)

15. On September 10, 2007, the Mayor signed a lease with Wings Enterprises for the construction of a pig iron ore smelter on the property described in ¶14 above. (Attached hereto as plaintiffs' exhibit 2.)

Count I—Violation of Sunshine Law

16. Plaintiffs incorporate by reference ¶¶ 1-15 above.

17. On information and belief, on June 19, 2006, the Mayor called the Council Members, Mr. French and Ms. Johns into his office to a meeting at which Mr. Kennedy was present. The door was closed.

18. The June 19, 2006, meeting was not a regularly scheduled council meeting nor work session.

19. The Mayor, Council members, Bob French and Debbie Johns entered into a "Confidentiality Agreement" at this meeting on June 19, 2006. (Attached hereto as plaintiffs' exhibit 3.)

20. No minutes were taken during nor reported after this meeting.

21. According to the Confidentiality Agreement, Council Members were forbidden to talk about the meeting and Confidentiality Agreement upon penalty of legal action against them by the City of Crystal City and Wings Enterprises.

22. At the meeting, Mr. Kennedy gave a Powerpoint presentation showing charts and discussing his plans for a factory to make iron pellets, and a proposed barge transfer station, rail and conveyor ports, proposed slurry pipe and the purchase of yet another property, the Bradley property. The amount of dollars that the City would spend

on the property pursuant to the contract with PPG and would receive from the lease of land for an iron ore smelter was not discussed.

23. The Confidentiality Agreement prohibited the council members from disclosing any Confidential Information given to them by Mr. Kennedy, his representatives, and the council's representatives.

24. The Confidentiality Agreement provided, "If any information that Disclosing Party deems to be a trade secret is found by a court of competent jurisdiction not to be a trade secret for purposes of this Agreement, such information will in any event still be considered Confidential Information for purposes of this Agreement."

25. RSMo §610.011.1 states that it is the public policy of this state that meetings, records, votes, actions and deliberations of public governmental bodies be open to the public unless otherwise provided by law. RSMo §§610.010 to 610.200 shall be liberally construed and its exceptions strictly construed to promote this public policy.

26. RSMo §610.011.2 states that except as otherwise provided by law, all public meetings of public governmental bodies shall be open to the public.

27. RSMo §610.020.1 requires that all public governmental bodies give notice of the time, date and place of each meeting, and its tentative agenda, in a manner reasonably calculated to advise the public of the matters to be considered.

28. RSMo §610.020.7 requires that a journal or minutes of meetings be taken and retained by the public governmental body.

29. RSMo §610.022.1 requires that no meeting may be closed without an affirmative public vote of the majority of a quorum of the public governmental body.

30. RSMo §610.022.3 requires that any meeting closed pursuant to 610.021 shall be closed only to the extent necessary for the specific reason announced to justify the closed meeting.

31. RSMo §610.027.1 provides that any aggrieved person, taxpayer to, or citizens of this state may seek judicial enforcement of RSMo §§610.010 to 610.026.

32. RSMo §610.027.5 provides that upon a finding by a preponderance of the evidence that a public governmental body has violated any provision of §§610.010 to 610.026, a court shall void any action taken in violations of §§610.010 to 610.026, if the court finds that the public interest in the enforcement of the policy of §§610.010 to 610.026 outweighs the public interest in sustaining the public interest in sustaining the validity of the action taken in the closed meeting.

33. RSMo 610.030 states that the circuit courts have jurisdiction to issue injunctions to enforce §§610.010 to 610.115.

34. Defendants violated RSMo §610.020.1 when they held the June 19, 2006 meeting, because they failed to give notice of the time, date, place and tentative agenda of it in a manner reasonably calculated to advise the public of the matters to be considered. They did not make public the subject matter of the proposed contract, i.e., the purchase of the PPG property. They did not make public the subject matter of the proposed lease, i.e., the construction of an iron ore facility.

35. Defendants violated RSMo §610.020.7 because they failed to take and retain minutes of the June 19, 2006 meeting.

36. Defendants violated RSMo 610.022.3 because they closed the meeting for an extent greater than necessary for the specific reason announced to justify the closed meeting. They failed to discuss the consideration that would be paid for the purchase and lease of the PPG property, and they did discuss a proposed barge transfer station, rail and conveyor ports, proposed slurry pipe and the purchase of the Bradley property.

37. The Confidentiality Agreement violates RSMo §610.011.1 in that it prohibited the Council Members from sharing their deliberations with the public. It is the public policy of this state that all actions and deliberations of public governmental bodies shall be open to the public; yet the Confidentiality Agreement specifically violates this public policy by forbidding the Council Members to discuss the smelter upon legal action taken against them by their City.

38. The negotiation and execution of the contract and lease referred to in ¶¶ 14 and 15 above are actions taken in violation of §§610.010 to 610.026, RSMo.

39. The public interest in the enforcement of the policy of §§610.010 to 610.026, RSMo outweighs the public interest in sustaining the validity of the actions taken in the unlawfully closed meeting on June 19, 2006.

40. Plaintiffs are entitled to relief under RSMo § 610.027.

41. Unless immediately enjoined, the defendants' actions, in violation of the Sunshine Law, will cause substantial and irreparable harm to plaintiffs.

42. Defendants, in holding the closed meeting on June 19, 2006, knowingly violated the Sunshine Law, entitling plaintiffs to recovery of their costs and reasonable attorney fees.

43. Defendants, in entering into a Confidentiality Agreement which prohibited open deliberation, knowingly violated the Sunshine Law.

WHEREFORE, plaintiffs pray that this Court enter judgment against defendants:

- A. Declaring that defendants have knowingly violated §§610.010 et seq., RSMo.;
- B. Voiding the contract and lease;
- C. Enjoining defendants, their successors and all persons in active concert or participation with them from proceeding with the contract and lease;
- D. Ordering the defendants to pay the maximum civil fine permitted under the law for knowingly violating the Sunshine Law;
- E. Awarding plaintiffs their attorneys fees and costs and such other relief as the Court may deem meet and proper.

Count II—Violation of Sunshine Law

44. Plaintiffs incorporate by reference ¶¶ 1-43 above.

45. Defendants purposefully violated the Sunshine Law because they signed the Confidentiality Agreement, prohibiting the public from being informed of their deliberations for an indefinite amount of time in the future.

46. Defendants purposefully violated the Sunshine Law because they signed onto an agreement whereby they agreed to keep from the public anything the developer wished to keep confidential, even if a Court ruled the information was not a trade secret.

WHEREFORE, plaintiffs pray that this Court enter judgment against defendants:

- A. Declaring that defendants purposefully violated §§610.010 et seq., RSMo.;
- B. Voiding the purported contract and lease;
- C. Enjoining defendants, their successors and all persons in active concert or participation with them from proceeding with the contract and lease;
- D. Ordering the defendants to pay the maximum civil fine permitted under the law for purposefully violating the Sunshine Law;
- E. Awarding plaintiffs their attorneys fees and costs and such other relief as the Court may deem meet and proper.

Count III—Violation of Sunshine Law

47. Plaintiffs incorporate by reference ¶¶ 1-46 above.

48. The City Council held closed sessions during its scheduled council meetings on June 12, 2006, May 14, 2007, June 11, 2007, and July 9, 2007.

49. RSMo § 610.022.2 states that a public governmental body proposing to hold a closed meeting shall give notice of the time, date and place of such closed meeting.

50. Defendants violated RSMo §610.022.2 by failing to give notice of the closed June 12, 2006 meeting.

51. RSMo §610.022.1 requires that a public governmental body must announce publicly at an open meeting the specific reason for closing a public meeting.

52. Defendants violated RSMo §610.022.1 by failing to state publicly the reason for closing the June 12, 2006 meeting.

53. RSMo §610.022.1 provides that no meeting may be closed without an affirmative public vote of the public governmental body.

54. Defendants violated RSMo § 610.022.1 by failing to take a vote on the closing of the June 12, 2006 meeting.

55. At the meeting on May 14, 2007, the City Clerk asked for an executive session for “legal and real estate reasons.”

56. Defendants violated RSMo § 610.022.1 by failing to take a vote on the closing of the May 14, 2007 meeting.

57. At the meeting on June 11, 2007, Councilman Usher made a motion to go into Executive Session for “legal and real estate reasons.”

58. At the July 9, 2007 meeting, Commissioner DeClue made a motion to go into executive session for “real estate purpose.”

59. RSMo §610.022.1 requires that a public governmental body must announce publicly the specific reason for closing a public meeting.

60. RSMo §610.022.2 requires a public governmental body to give notice of the time, date and place of a closed meeting and the reason for holding it by reference to the specific exception allowed pursuant to the provisions of §610.021. The notice must comply with the procedures set forth in §610.020 for notice of a public meeting.

61. RSMo §610.020.1 requires public governmental bodies to give notice of the time, date and place of each meeting, and its tentative agenda, in a manner reasonably calculated to advise the public of the matters to be considered.

62. Defendants violated RSMo §610.022.2 and §610.020.1 when they went into closed sessions on June 12, 2006, May 14, 2007, June 11, 2007 and July 9, 2007, without giving notice of the specific exception allowed pursuant to §610.021 in a manner reasonably calculated to advise the public of the matters to be considered. The notice forms used before the May 14, June 11 and July 9, 2007 meetings contain the same seven words each time: "real estate purchase and lease of property." These seven words do not inform the public of the council's deliberations and actions. Furthermore, they do not distinguish between parcels of land that the City might be considering to buy; nor do these words inform the public of what use the property might be leased for.

63. The public had no idea that the Council was preparing to authorize the mayor to sign a lease for a coal-fired, iron ore smelter to be built 80 feet from plaintiffs' house.

64. RSMo §610.022.3 requires that a meeting closed pursuant to 610.021 be closed only to the extent necessary for the specific reason announced to justify the closed

meeting or vote. Public governmental bodies shall not discuss any business in a closed meeting which does not directly relate to the specific reason announced to justify the closed meeting or vote.

65. Missouri courts have interpreted this to mean the council may discuss the consideration (price) to be paid for the purchase or lease of property.

66. Defendants violated this in holding the closed meetings on June 12, 2006, May 14, 2007, June 11, 2007 and July 9, 2007, because they discussed matters not pertaining to the consideration of the contract and lease.

67. On May 14, 2007, the two new council members signed the Confidentiality Agreement.

68. RSMo §610.022.4 states that nothing in sections 610.010 to 610.028 shall be construed to require a public governmental body to hold a closed meeting, record or vote to discuss or act upon any matter.

69. Defendants violated RSMo §610.022.4 when they kept secret all information relating to the proposed smelter.

70. RSMo § 610.022.6 states that if any member of a public governmental body makes a motion to close a meeting, and another member believes that motion, if passed, would cause a meeting to be closed from the public in violation of any provision of Chapter 610, that member shall state his or her objection to the motion.

71. The Confidentiality Agreement violates RSMo §610.022.6 in that it prohibited council members from stating their objections to closing the meetings. It

forbade members from talking upon threat of litigation by the City they represent and by the lessee to the property.

72. The negotiation and execution of the contract and lease referred to in ¶¶14 and 15 are actions taken in violation of §§610.010 to 610.026, RSMo.

73. The public interest in the enforcement of the policy of §§610.010 to 610.026, RSMo outweighs the public interest in sustaining the validity of the actions taken in the unlawfully closed meetings on June 12, 2006, May 14, 2007, June 11, 2007, and July 9, 2007.

74. Plaintiffs are entitled to relief under RSMo § 610.027.

75. Unless immediately enjoined, the defendants' actions, in violation of the Sunshine Law, will cause substantial and irreparable harm to plaintiffs.

76. Defendants, in holding the closed meetings on June 12, 2006, May 14, 2007, June 11, 2007, and July 9, 2007, knowingly violated the Sunshine Law, entitling plaintiffs to recovery of their costs and reasonable attorney fees.

WHEREFORE, plaintiffs pray that this Court enter judgment against defendants:

A. Declaring that defendants have knowingly violated §§610.010 et seq., RSMo.;

B. Voiding the contract and lease;

C. Enjoining defendants, their successors and all persons in active concert or participation with them from proceeding with the contract and lease;

D. Ordering the defendants to pay the maximum civil fine permitted under the law for knowingly violating the Sunshine Law;

E. Awarding plaintiffs their attorneys fees and costs and such other relief as the Court may deem meet and proper.

Count IV—Violation of Sunshine Law

77. Plaintiffs incorporate by reference ¶¶ 1-81 above.

78. Defendants, in holding the closed meetings on June 12, 2006, May 14, 2007, June 11, 2007, and July 9, 2007, purposefully violated the Sunshine Law, because they purposefully closed the meetings for more than the extent necessary for the specific reason announced to justify the closed meeting or vote.

79. They purposefully closed the meetings because they were complying with the Confidentiality Agreement, and keeping all information relating to the smelter from the public. These purposeful violations entitle plaintiffs to recovery of their costs and reasonable attorney fees.

80. Defendants purposefully did not disclose to the public these items: they were going to lease the PPG property for the construction of a coal-fired iron ore smelter; there would be a conveyor belt built; there would be a slurry pipeline built; the City would take by eminent domain a popular farm; air and water pollution would result from the smelter; the DNR had been meeting with defendants to discuss environmental impacts that would result from the smelter.

81. Defendants purposefully violated the law in that they did not give notice of the meetings in a manner reasonably calculated to advise the public of the matters to be considered.

WHEREFORE, plaintiffs pray that this Court enter judgment against defendants:

- A. Declaring that defendants have purposefully violated §§610.010 et seq., RSMo.;
- B. Voiding the purported contract and lease;
- C. Enjoining defendants, their successors and all persons in active concert or participation with them from proceeding with the contract and lease;
- D. Ordering the defendants to pay the maximum civil fine permitted under the law for purposefully violating the Sunshine Law;
- E. Awarding plaintiffs their attorneys fees and costs and such other relief as the Court may deem meet and proper.

Count V—Declaratory Judgment for Violation of RSMo §77.080

82. Plaintiffs incorporate ¶¶ 1-81 above.

83. On September 10, 2007, the City Council passed two ordinances allowing the Mayor to sign a contract with PPG for the purchase of its property and to sign a lease with Wings Enterprises for the construction of a pig iron ore smelter (Ordinances numbers 1458 and 1459).

84. RSMo § 77.080 provides that if a proposed ordinance is read by title only, copies of the proposed ordinance shall be made available for public inspection prior to the time the bill is under consideration by the council.

85. The minutes of the September 10, 2007 council meeting reflect that ordinances numbers 1458 and 1459 were read by title only.

86. Defendants violated RSMo 77.080 because they did not make available to the public these ordinances before the September 10, 2007 meeting.

WHEREFORE, plaintiffs pray that this Court invalidate the ordinances, declare that the contract and lease are void because they were not signed pursuant to valid ordinances, and award plaintiffs their attorneys fees and costs and such other relief as the Court may deem meet and proper.

**Count VI— Declaratory Judgment for Violation of
RSMo Chapter 100**

87. Plaintiffs incorporate by reference ¶¶ 1-86 above.

88. RSMo §100.059.1 provides that the governing body of any municipality proposing a project for industrial development which involves conveyance of a fee interest in property to a municipality shall, not less than twenty days before approving the plan for a project as required by section 100.050, provide notice of the proposed project to the county in which the municipality is located and any school district that is a school district, junior college district, county, or city. Such notice shall include the information required in section 100.050, shall state the date on which the governing body of the municipality will first consider approval of the plan, and shall invite such school districts,

junior college districts, counties, or cities to submit comments to the governing body and the comments shall be fairly and duly considered.

89. RSMo §100.050.1 provides that a municipality proposing to carry out a project for industrial development shall first, by majority vote of the governing body of the municipality, approve the plan for the project. The plan shall include a description of the project; an estimate of the cost of the project; a statement of the source of funds to be expended for the project; a statement of the terms upon which the facilities to be provided by the project are to be leased or otherwise disposed of by the municipality; and such other information necessary to meet the requirements of sections 100.010 to 100.200.

90. Defendants took no public vote before approving this plan.

91. Defendants violated RSMo §100.059.1 by signing a lease for a project without giving notice that complies with RSMo §100.050 to the school district and county twenty days before approving the plan.

92. The school district currently receives revenue from the property taxes paid by PPG on the PPG property.

93. After the City owns the property, the school district will no longer receive this revenue.

94. Plaintiffs will be injured by the loss of revenue to the schools.

95. RSMo § 100.410(2) provides that an authority shall, by public notice published at least two times in a newspaper having a general circulation in its area of operation, prior to the consideration of any industrial development contract proposal,

invite proposals from, and make available all pertinent information to, private industrial developers or any persons interested in undertaking the development of an area, or any part thereof, which the governing body has declared to be in need of industrial development.

96. Defendants did not invite proposals from interested persons by public notice at least two times in a newspaper having a general circulation in its area of operation prior to the consideration of the proposal by Mr. Kennedy of Wings Enterprises.

97. Therefore, defendants violated RSMo § 100.410.

98. Plaintiffs will be injured by the failure of defendants to invite proposals because defendants decided upon a plan that will allow a smelter to be built that will emit air and water pollution and decrease property values.

WHEREFORE, plaintiffs pray that this Court declare that defendants violated RSMo §§ 100.410, 100.059 and 100.050, and order the City to comply with these statutes and award plaintiffs their attorneys fees and costs and such other relief as the Court may deem meet and proper.

**Count VII—Declaratory Judgment of Violation of RSMo §77.370
and Crystal City Ordinance Chapter 2, Article III, Section 2-71**

99. Plaintiffs incorporate ¶¶ 1-98 above.

100. RSMo § 77.370.1 provides that attorney shall be elected by the voters of the city. RSMo §77.370.3 provides that the council, by ordinance, may provide for the

appointment of an attorney, by the mayor with the approval of the council, in lieu of electing an attorney.

101. Crystal City Ordinance Chapter 2, Article III, Section 2-71 requires the city attorney to be elected by the qualified voters of the city.

102. The City held out the law firm of Breeze, Roberts, Ponder-Bates & Zimmer LLC to be its attorney on its website and letterhead during the year 2006 and 2007. That law firm had been the City attorney for approximately 50 years.

103. Defendants paid the law firm Thurman, Howald, Weber, Senkel & Norrick, LLC, for its services from at least October 2006 to the present, prompting the firm Breeze et al. to resign on September 19, 2007.

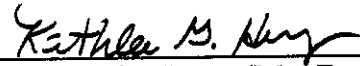
104. The new law firm helped defendants with the deals made concerning the lease and contract during the period in which plaintiffs knew nothing about the proposed smelter or the new law firm.

105. Defendants violated RSMo §77.370.1 and Crystal City Ordinance Chapter 2, Article III, Section 2-71 by failing to submit the new attorney to an election by the voters.

106. Defendants violated RSMo §77.370.3 by failing to approve the new law firm by ordinance of the council.

WHEREFORE, plaintiffs pray that this Court make and enter its order declaring that the City violated RSMo 77.370 and Crystal City Ordinance 2-71 and award plaintiffs

their attorneys fees and costs and such other relief as the Court may deem meet and proper.



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