

IN THE SUPREME COURT OF MISSOURI

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No. SC94339

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State of Missouri ex rel. RUTH CAMPBELL, et al.

Appellants,

v.

COUNTY COMMISSION OF FRANKLIN COUNTY

Respondent, and

UNION ELECTRIC COMPANY, D/B/A AMEREN MISSOURI

Respondent.

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On Appeal from the Circuit Court of Franklin County  
The Honorable Robert D. Schollmeyer

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**SUBSTITUTE REPLY BRIEF OF APPELLANTS RUTH CAMPBELL ET AL.**

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## ARGUMENT

### I. THE CIRCUIT COURT ERRED IN DISMISSING COUNT I BECAUSE THE FACTS ALLEGE A CLAIM THAT THE “HEARING” HELD BY THE FRANKLIN COUNTY COMMISSION WAS INVALID IN THAT THE COMMISSION PROHIBITED THE PUBLIC FROM ADDRESSING THE SOLE PROJECT AUTHORIZED BY THE PROPOSED ZONING AMENDMENTS.

#### A. Respondents Disregard The Fact That They Filed, And The Circuit Court Granted, Motions to Dismiss Based on the Allegations in Count I.

Point One of this Appeal seeks reversal of the Circuit Court’s ruling granting Respondents’ Motions to Dismiss Count I of Appellants’ Petition for failure to state a claim. Respondent Franklin County’s Substitute Brief ignores the posture of Point One, and proceeds directly to the merits as if this Court had original jurisdiction over Count I. Respondent Ameren complains (at 26) that “Appellants want review of their Petition only.”

In the Circuit Court, Respondents filed Rule 55 Motions to Dismiss Count I for failure to state a claim. R.70,83(Vol.1).<sup>1</sup> By targeting Count I but not Count II with their Motions, Respondents knew that the Circuit Court would subsequently address Count II

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<sup>1</sup> Both Respondents styled their Motions as “Motion...For Judgment on the Pleadings, or, in the Alternative, to Dismiss Counts I, III, IV, V, and VI of Plaintiff’s Petition.”

R.70,83(Vol.1). In granting the Motions, the Circuit Court expressly treated them as Motions to Dismiss. R.8(Vol.1)(May 21, 2012).

on the merits and, in that context, review the record of the County's proceedings. Rather than have the Circuit Court address both Counts I and II on the merits in light of the County's record, however, Respondents sought and obtained dismissal of Count I at the pleading stage.

Respondents' Motions referred solely to the Petition. R.70-73(Ameren), 83-85(County) (Vol.1). The Circuit Court granted those Motions, and Point One seeks appellate review of that decision.

Respondents have now changed their tune and prefer that Count I be resolved on the merits – starting and ending at the appellate level. Having chosen the path of seeking dismissal of Count I at the pleading stage, Respondents are now inappropriately urging this Court to reach outside of its appellate jurisdiction to review Count I on the merits *ab initio*. The appropriate remedy for the Circuit Court's erroneous dismissal of Count I is a remand to the Circuit Court.

Respondents fail to note that the Circuit Court did not even have a reviewable record when it ruled on the Motions to Dismiss. Ameren ignores this reality in arguing (at 32-33) that the Circuit Court should have analyzed the Motions to Dismiss Count I against the record rather than the Petition. In fact, neither the parties nor the Circuit Court addressed the record – or could have addressed the record – because it was not in a complete and reviewable form until well after the Circuit Court granted Respondents' Motions.

Respondents filed their Motions in February 2012, and the Circuit Court granted them in May 2012. R.6,8(Vol.1). While the County initially filed a box of documents in

response to the writ of certiorari in January 2012, R.5(Vol.1), the collection of documents in the box did not become a reviewable record until October 2012 – five months *after* the Court dismissed Count I. R.8(Vol.1). In April 2012, while Respondents’ Motions to Dismiss were under advisement, Ameren filed a Motion seeking the appointment of a referee to take additional evidence. R.7(Vol.1). Clearly Ameren did not think the record was complete, as it sought to supplement it.<sup>2</sup> Neither did the County; it continued adding key documents to the “record” it had initially filed.<sup>3</sup> In July 2012, the Circuit Court set a deadline for the parties to file “any objections to ‘record.’” R.9(Vol.1). Both Ameren and Labadie Neighbors filed timely objections, and Ameren later submitted additional objections. R.9-11(Vol.1). Following a hearing on the objections, the Circuit Court issued

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<sup>2</sup> Ameren (at 27) criticizes Appellants because they “declined to request a referee to compensate for the alleged unfair hearing limitation.” The hearing requirement is designed to provide information from the public to the County Commission before it votes on zoning amendments. An after-the-fact hearing in the Circuit Court is no “compensation” for the County’s failure to provide a statutorily-required hearing before adopting zoning amendments. Ameren’s point is also inconsistent with its vacuous argument (at 30) that Count I should not be remanded to the Circuit Court for decision on the merits because “Appellants had their hearing – before the Commission.” But Count I alleges that the “hearing” held by the Commission was not legally valid.

<sup>3</sup> In June and July 2012, after the Court granted the Motions to Dismiss, the County submitted its zoning regulations, Master Plan, and zoning map. R.9(Vol.1).

an Order in September 2012 resolving all outstanding issues regarding the scope of the record. R.11(Vol.1). On October 11, 2012, the County filed its corrected record. *Id.*

Ameren waves a magic wand called “certiorari” to try to escape from its self-created straightjacket. First, Ameren erroneously argues (at 25) that “[i]n a certiorari case, the trial court is a court of appeal.” There is no support for this argument.<sup>4</sup> The fact that the circuit court reviews the record of the County Commission does not convert it into an appellate court. Furthermore, this certiorari case arises not under common law but under a statutory provision, §64.870.2, which recognizes distinct roles for the circuit court and the court of appeals.

Second, Ameren’s invocation of certiorari is of no avail; all roads lead to the remand of Count I when viewed through the certiorari lens. If Respondents’ position is that the Circuit Court should have *sua sponte* converted Respondents’ Motions to Dismiss into the certiorari equivalent of Motions for Summary Judgment and resolved Count I on the merits, then that option was not available to the Circuit Court at the time Respondents’ Motions were pending because the County’s record was incomplete. Thus, remand is necessary because the Circuit Court erroneously ruled on Count I before a

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<sup>4</sup> Ameren cites *State ex rel. Modern Fin. Co. v. Bledsoe*, 426 S.W.2d 737, 740 (Mo.App.1968), which makes no statement about the trial court serving as a court of appeal in certiorari cases. To the contrary, the decision refers repeatedly to the action of the circuit court in that case – without any statement or suggestion that it was acting as an appellate court.

reviewable record was available. If Respondents are suggesting that the Circuit Court was under an obligation to review the record when ruling on Count I, then they must agree that the Court erred in granting the Motions based on the Petition.<sup>5</sup> Thus, remand is necessary because the Circuit Court erroneously ruled on Count I without considering the record. If Respondents are asking this Court to pretend that the Circuit Court's decision to grant the Motions to Dismiss was based on the record, then that hypothetical is quite different from the facts of this case. The suggestion that the Circuit Court's ruling on the Motions to Dismiss should be treated as a ruling on the merits because there existed a box of incomplete documents in the courthouse must fail. There was no reviewable record available to the Court and the parties until months after the Circuit Court dismissed Count I. This theory is based on what might have been rather than what was.

Ameren relies principally on *State ex rel. Modern Finance Co. v. Bledsoe*, 426 S.W.2d 737 (Mo.App.1968) to support its plea that this Court resolve Count I on the merits. (Ameren Br. at 26, 32). Its reliance is misplaced. That case ruled that in a certiorari case, the respondent has two choices upon the issuance of a writ. It may file the record ("return") in response to the writ, in which case the court should rule on the merits of the petition based on a review of the record. 426 S.W.2d at 740. Alternatively, it may

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<sup>5</sup> All three Judges on the Court of Appeals panel agreed that the Circuit Court erred in granting Respondents' Motions to Dismiss. The majority held that the Circuit Court erred because Count I states a claim for relief. The dissent concluded that the Circuit Court erred because it did not review the record to resolve Count I on the merits.

move – before the record is filed – to dismiss or quash the writ, in which case the motion “is in effect a demurrer, confessing all facts well pleaded.” *Id.*<sup>6</sup> Here, while Respondents filed their Motions to Dismiss after the County filed a partial record, the Court granted the Motions before the County filed the complete record. Applying *Modern Finance Co.* to the facts here, the Circuit Court should be reversed either because (1) it erroneously granted the Motions to Dismiss when the well-pleaded facts state a claim for relief, or (2) it entertained the Motions to Dismiss as pleading motions instead of denying them as untimely because a (partial) record had already been filed.

Respondents urge this Court to address the merits of Count I because the complete record is now available. To do so, the Court would have to disregard the statute governing judicial review of County zoning decisions, which requires that these record review cases be resolved at the outset by the Circuit Court, with the right of appeal thereafter. §64.870.2, R.S.Mo; *Gash v. Lafayette County*, 245 S.W.3d 229 (Mo.banc 2008). By contrast, statutes in certain other contexts specify that record review matters be brought directly to the appellate court. *See, e.g.*, §644.071, R.S.Mo. (cases seeking review of utilities’ water pollution permits must be filed directly in the court of appeals, while cases involving other water permits must be filed in circuit court); §386.510, R.S.Mo. (original jurisdiction over review of Public Service Commission decisions vested in court

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<sup>6</sup> The court also says that the demurrer “search[es] the whole record,” 426 S.W.2d at 740, but “the whole record” cannot be the record of the lower tribunal because this option arises only when respondent “move[s] to quash the writ before return has been made.” *Id.*

of appeals). If the legislature wanted to expedite the process and send certiorari matters involving County zoning decisions directly to the appellate courts, it could have done so. It did not. Respondents' arguments here invite this Court to contravene the plain language of §64.870.2.

The issue actually raised by Respondents' Motions, and ruled on by the Circuit Court, was whether the allegations in Count I are sufficient to state a claim for relief. Point One seeks appellate review of the Circuit Court's decision to dismiss Count I for failure to state a claim. It is well-settled that the appellate court reviews the Petition to see whether the well-pleaded facts are sufficient to state a claim for relief. *See, e.g., City of Lake Saint Louis v. City of O'Fallon*, 324 S.W.3d 756, 759 (Mo. banc 2010).<sup>7</sup> Similarly, it is black-letter law that the appellate court does not reach the merits when reviewing a Circuit Court's dismissal for failure to state a claim. Appellants' Substitute Br. at 35-36.

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<sup>7</sup> Ameren seeks (at 34) to bolster its argument that this Court should resolve Point One on the merits by misleadingly citing statements in Appellants' brief addressing the standard of review with respect to Point Two, which is a review on the merits of Count II. The portion of Appellants' Substitute Brief addressing Point One (at 26) makes clear that this Court undertakes *de novo* review of the Circuit Court's decision to dismiss Count I for failure to state a claim.

**B. Count I States A Claim That The Commission Violated Its Legal Duty To Hold A Valid Hearing Before Adopting The Zoning Amendments.**

Respondents pay little heed to the issue posed by Point One: whether Count I of Appellants' Petition states a claim for relief. The County totally neglects to address the Point One issue. Ameren devotes one page to it (38-39), positing that the Petition fails because the allegations include statements that an event called a hearing was held, Appellants were allowed to speak, and Appellants submitted testimony and documents in opposition to the proposed amendments.

Ameren conveniently ignores the allegations that are critical to Count I, and that state a claim that the County failed to hold a legally-valid hearing. Ameren ignores the allegations that in a public hearing to consider zoning amendments initiated by Ameren and applying solely to its proposed Labadie landfill, the County precluded members of the public from voicing their concerns about Ameren's proposed Labadie landfill. R.24, ¶¶57-58, 60, R.26-27, ¶¶76-80, R.27-28, ¶¶82-84(Vol.1). Ameren ignores the allegations that the County interrupted speakers to prevent them from expressing their concerns about the proposed Labadie landfill. R.27-28, ¶¶83-84(Vol.1). Ameren ignores the allegations that the County's rule against discussing Ameren's proposed Labadie landfill at the hearing, together with its interruption of speakers, chilled others from even attempting to express their concerns about Ameren's proposed Labadie landfill. R.28, ¶85 (Vol.1). Ameren ignores the allegations that these actions of the County prevented members of the public from voicing their concerns regarding the true subject of the

zoning amendments – Ameren’s proposal to build a coal ash landfill next to the Labadie plant, in the Missouri River floodplain and floodway. R.28, §§86-88(Vol.1).<sup>8</sup>

The plain language of §64.875, R.S.Mo., and the County’s zoning regulations, Art. 14, §323, R.1926(Vol.10), requires a hearing *on* the subject of the proposed amendments. Perhaps there is no Missouri case law precisely on point because of the absurdity of officials preventing the public from expressing their concerns at a “hearing” called for the very purpose of inviting public comment on the proposed amendments. However, the case law strictly applying the pre-hearing notice requirement (Appellants’ Substitute Brief at 31-33) means little if, after receiving notice and attending the hearing, members of the public are prevented from voicing their concerns.

Respondents and Amicus raise a parade of horribles policy argument, claiming that enforcement of the hearing requirement would violate separation of powers and require courts to micromanage local governments. Their argument stems from the false premise that Count I alleges that the hearing was unlawful because of statements of the Presiding Commissioner. To the contrary, Count I alleges that the County Commission’s actions – the rule it set prohibiting comments about Ameren or the proposed landfill site, and the enforcement of that rule by repeatedly interrupting speakers – rendered the hearing invalid. The illegality stems not from the Commissioner’s comments, but from

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<sup>8</sup> It is noteworthy that Respondents have abandoned their argument to the Court of Appeals that the landfill zoning amendments were generic in nature and not designed specifically to advance Ameren’s proposed Labadie landfill.

the County's attempt to control and limit the public's comments. The County instructed the public that speakers were not to use the words "Ameren" or "fly ash" and interrupted speakers attempting to discuss Ameren's proposed Labadie landfill site – notwithstanding that the purpose of the proposed amendments was to authorize Ameren to dispose of fly ash in the Missouri River floodplain next to the Labadie plant. R.26-28, ¶¶76-84, 86-88(Vol.1).

The County's argument (at 8) that this case aims to have "courts ... direct the specifics of how all public hearings must be held" is quite wide of the mark. This case addresses the unique facts present here. Appellants seek no relief directing the County how to proceed. Appellants raise no objections to the various procedural limitations the County imposed at the hearing, such as limiting all speakers to seven minutes. Appellants seek a ruling that the "hearing" held here, precluding members of the public from voicing their concerns regarding the subject of the proposed amendments, does not satisfy the legal requirement for a valid hearing under §64.875, R.S.Mo., and the County's zoning regulations, Art. 14, §323, R.1926(Vol.10). Clearly the County cannot reasonably claim that its actions in holding public hearings required by State and County law are beyond judicial review.

Finally, Respondents' arguments – going beyond the Petition – that the Record undermines Count I are unavailing. Conceding that it imposed a rule against mentioning Ameren or the proposed landfill site, and that it interrupted speakers who attempted to mention their concerns about Ameren's proposed Labadie landfill, the County claims that

such actions were “quickly abandoned.” (County Substitute Brief at 5. See also Ameren Substitute Brief at 34.)

In fact, the County announced its “no-Ameren” rule at the outset of the hearing, enforced it on several occasions throughout the first hearing session, and never announced a change in rules or invited those whose testimony had been interrupted – or those who had been intimidated from speaking altogether – to return and voice their concerns.

The County held its hearing in two sessions. The hearing commenced on December 10, 2010 and was continued to February 8, 2011. R.1215, 1241-42(Vol.7). The Presiding Commissioner announced at the outset of the December 2010 session:

If we go off on a tangent about Ameren or about fly ash and all that, ... I will interrupt you.

R.849(Vol.5). He and the County Counselor then interrupted several speakers throughout that entire session. Appellants’ Substitute Brief at 39-41. The County’s claim that its efforts to prevent speakers from addressing Ameren’s proposed Labadie landfill were “quickly abandoned” is belied by the fact that among the speakers interrupted was Appellant Richard Stettes, whose testimony appears two-thirds of the way through the transcript of the December hearing session. R.1099-1111(Vol.6)(Stettes testimony); R.829-1246(Vols.5-7)(December Transcript).

When the hearing resumed on February 8, 2011, the County did not announce any change in the rule that speakers could not address Ameren or its proposed Labadie landfill. Nor did the County invite those who had been interrupted or intimidated from

speaking their concerns at the December 2010 session to testify or supplement their testimony. To the contrary, it stated that those who had testified at the December 2010 session could not speak at the February 2011 session. R.471(Vol.3).

The County held what Ameren's Substitute Brief (at 35) describes as a "special meeting" on April 7, 2011. The Commission asked nine speakers from the December and February sessions to return for questioning. The Commission had not asked questions at the public hearing itself. R.847-848(Vol.5), R.469 (Vol.3). That the County did not enforce the no-Ameren rule at the April 2011 meeting has no bearing on the validity of the statutorily-required public hearing held on December 10, 2010 and February 8, 2011.<sup>9</sup> Apart from the nine invited speakers, members of the public were not allowed to speak at the April 2011 session and it was not a public hearing.

Respondents' suggestion that the no-Ameren rule was some harmless mistake is undermined by the heavy-handed nature with which the County enforced its rule.<sup>10</sup> It

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<sup>9</sup> The County repeatedly instructed the speakers at the April 2011 session that they could only discuss material that they had covered at the public hearing. R.173-175,217,277-278,351-352(Vol.2), R.375,383,400,427(Vol.3).

<sup>10</sup> Ameren's argument (at 33) that a "substantial or significant prejudice" test governs the validity of the County's hearing is without legal support. Ameren's argument begins by mischaracterizing this as a "hearing misconduct" case. Count I does not allege or suggest "misconduct;" it alleges that the hearing was not legally valid because members of the public were prevented from addressing the subject matter of the proposed zoning

interrupted at least one speaker on multiple occasions. R.1029,1037,1039(Vol.6). It threatened to have security remove Appellants' counsel when she attempted to object to the speaker interruptions and to the dictates as to which words were acceptable and unacceptable . R.1031-35, 1051-53(Vol.6). The County Counselor interrupted a speaker attempting to discuss traffic associated with the proposed landfill and told her that she could say "coal ash" but not "proposed landfill." R.1050-51(Vol.6).<sup>11</sup> That some speakers were able to mention Ameren or the proposed Labadie site without being interrupted did not cure the County's rule against discussing the true subject of the proposed zoning amendments and its repeated, heavy-handed, enforcement of that rule.

Nor did the County cure the illegality of the public hearing by making changes to the draft zoning regulations. (County Substitute Brief at 6-7.) After telling speakers what they could and could not discuss, what words they could and could not use, interrupting

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amendments. There is no doctrine of "hearing misconduct" in Missouri case law and Ameren cites none. It cites an Am.Jur.2d selection that does not even use the phrase "significant" prejudice, and a federal case applying federal law in an adjudicatory context where the Labor Board expanded rather than limited procedural rights.

<sup>11</sup> The County Counselor's instruction that speakers could discuss "coal ash" conflicts with the Presiding Commissioner's instruction that speakers could not discuss "fly ash," R.849(Vol.5), which is a type of coal ash covered by the landfill zoning regulations. R.130-134)(Vol.1)(definitions of "coal combustion products," "coal combustion residuals," "fly ash," and "utility waste landfill").

speakers who did not hew the line, and creating an intimidating atmosphere, the County is in no position to pronounce that it nonetheless heard and addressed the public's concerns.

In sum, the allegations of Count I state a claim for relief that the County failed to hold a valid hearing in precluding members of the public from discussing the subject of the amendments – Ameren's proposed Labadie landfill. The Circuit Court's ruling to grant Respondents' Motion to Dismiss should be reversed and remanded for a resolution of Count I on the merits.

**II. THE CIRCUIT COURT ERRED IN UPHOLDING THE FRANKLIN COUNTY COMMISSION'S DECISION TO ADOPT THE COAL ASH LANDFILL ZONING AMENDMENTS BECAUSE THE AMENDMENTS ARE UNLAWFUL IN THAT THEY FAIL TO PROMOTE THE COUNTY'S HEALTH, SAFETY, AND GENERAL WELFARE.**

**A. The County's Reason For Adopting The Amendments Finds No Support In The Record.**

The County argues (at 8-10) that it adopted the landfill zoning amendments in order to maintain Ameren's Labadie plant in operation. This argument is supported neither by Ameren nor by the Record. There is no evidence that the Labadie plant would close if Ameren is not able to build a new coal ash landfill at the proposed Labadie site. To the contrary, Ameren's consultant testified that if denied permission to build a coal ash landfill at its preferred site, Ameren could find another disposal location off-site.

R.620(Vol.4). Similarly, Ameren’s Brief (at 52-54) confirms that the alternative to the proposed Labadie landfill is “the export of ash out of the County.”<sup>12</sup>

**B. Ameren Relies On A Fabricated Definition Of The Key Term**

**“Promote.”**

Ameren’s Brief (at 28, 44, 45, 47) repeatedly mischaracterizes the central issue as whether the County made a “good land use policy” or “zoning policy” decision. But Franklin County applies a more precise test to its zoning amendments: they “must promote the health, safety, ... and general welfare of Franklin County.” R.1927(Art. 14, §325)(Vol.10)(emphasis supplied).

Undoubtedly because the Record contains no evidence that the Amendments meet this test, Ameren invents its own definition of “promote.” Appellants’ Substitute Brief (at 47) demonstrated that the plain meaning of promote – furthering, enhancing, making something better – governs. Ameren makes scant reference to the “promote” test and, eschewing the plain language definition, claims without the benefit of citation that promote means “to support, *or not to detract from.*” Ameren Br. at 53 (emphasis added). While Ameren references §64.815, R.S.Mo., as a zoning enabling provision that also uses the term, the cited provision neither supports its “promote” definition nor applies here.

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<sup>12</sup> Ameren argues for the zoning amendments because they avoid trucking coal ash out of the plant. R.620-621(Vol.4), Ameren Br.at 52-54. However, Ameren has also identified rail and barge – which would have little or no community impact – as viable ash transport options. R.3677(Vol.20).

That statute authorizes counties to adopt master plans; it does not address zoning amendments. Moreover, unlike the County's zoning regulations, it does not specify that master plans "must promote" public health, safety, and welfare. Would Ameren tell its employees that although it was not increasing their salaries or responsibilities, they were being "promoted" because it was not "detracting from" their salaries and responsibilities?

Most of Ameren's arguments attempting to bolster the County's decision to adopt the zoning amendments conflate its interests with those of the County. For example, Ameren claims (at 48-50) that the zoning amendments further public welfare because they benefit Ameren, a public utility. There are at least two fatal flaws in this argument. First, Ameren is a private, for-profit corporation with shares traded on the New York Stock Exchange, managed by a board of directors and accountable to its shareholders. R.3668(Vol.20); 25 MO. PRAC., BUSINESS ORGANIZATIONS §15.1. Its interest is maximizing profit, not necessarily ensuring Franklin County's health, safety, and welfare. Second, while Ameren bases its public welfare argument on the Labadie plant, the zoning amendments do not affect the plant, which will continue operating regardless of the outcome of this litigation.

Similarly, Ameren's argument (at 53-54) that the Labadie site is the "best location" may reflect Ameren's interests but not those of Franklin County's residents. Ameren's claim that the County selected the most appropriate location for a coal ash landfill (at 53) proceeds from the false assumption that the County had some duty to select a location for Ameren to dispose of its waste products. To the contrary, the County's duty is to promote the health, safety, and welfare of the County.

Both Ameren (at 50) and the County (at 9) argue that a new coal ash landfill is better than the plant's existing, leaking ash ponds. But there is no indication that Ameren will cease using the ash ponds, remove coal ash from them, or clean up any contamination that the leakage has caused. Regardless of whether or where Ameren constructs a new coal ash landfill, Franklin County will live forever with the legacy of the plant's existing ash disposal ponds. The landfill would simply add more coal ash disposal risk to the area; it would not eliminate the risks posed by the existing ponds. Moreover, Ameren's argument ignores the fact that Appellants' concerns focus on the risky location of the proposed landfill – the only location allowed under the Amendments – rather than its design if employed at an appropriate location. The Commission's refusal to hear facts specific to the Labadie site is particularly irrational in this context.

Finally, Ameren's argument (at 56-57) that the proposed landfill could proceed in the absence of the zoning amendments as an "accessory use" fails because the plant is a non-conforming use that predated the County's zoning regulations, and the regulations preclude the expansion of a non-conforming use. R.1816, Art.6, §121; R.1818, Art.6, §124(a)(Vol.10).

### **CONCLUSION**

For the reasons set forth in Appellants' Substitute Brief and above, the Court should reverse the Circuit Court's ruling to dismiss Count I for failure to state a claim for relief, and remand to the Circuit Court to resolve Count I on the merits. The Court should reverse the Circuit Court's judgment in favor of Respondents on Count II because (a) a

ruling in favor of Appellants on Count I would nullify the County's decision to adopt the zoning amendments and/or (b) the Record provides no evidence that the zoning amendments promote the County's health, safety, and welfare.

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**CERTIFICATE OF COMPLIANCE AND SERVICE**

The undersigned certifies that this Substitute Reply Brief of Appellants Ruth Campbell et al. includes the information required by Rule 55.03 and complies with the limitations contained in Rule 84.06(b).

Relying on the word count feature of Microsoft Word 2010, the undersigned certifies that the total number of words contained in this brief, exclusive of the cover, certificate of compliance and service, and signature block, is 4,043.

The undersigned hereby certifies that an electronic copy of the above Substitute Reply Brief of Appellants Ruth Campbell et al. was served by electronic filing pursuant to Rules 103.05 and 103.08.

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