

**Summary of SC94339, *Ruth Campbell, et al. v. County Commission of Franklin County, and Union Electric Company, d/b/a Ameren Missouri***

Appeal from the Franklin County circuit court, Judge Robert D. Schollmeyer  
Argued and submitted November 13, 2014; opinion issued February 3, 2015

**Attorneys:** The challengers were represented by Maxine I. Lipeles of Washington University School of Law in St. Louis, (314) 935-5837. The county commission was represented by Mark S. Vincent and Joseph W. Purschke of the Franklin County counselor's office in Union, (636) 583-3118; and Ameren was represented by William R. Price Jr., Timothy J. Tryniecki, Daniel J. Burke Jr. and James J. Virtel of Armstrong Teasdale LLP in St. Louis, (314) 621-5070, and Steven P. Kuenzel of Kuenzel LLP in Washington, Missouri, (636) 239-7861.

The Missouri Municipal League, which submitted a brief as a friend of the Court, was represented by B. Allen Garner of Allen Garner Law LLC in Independence, (816) 478-3848.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** Challengers to a county's amendment of its zoning regulations to permit construction of a coal-ash landfill next to a power plant appeal the circuit court's judgment in favor of the county commission and the utility. In a unanimous decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri reverses the circuit court's judgment and remands (sends back) the case for further proceedings. The circuit court erred in dismissing the challengers' claim that the commission failed to conduct a legally sufficient hearing, as required by state statute, before adopting the zoning amendments. For a hearing to be sufficient, members of the public must be able to present their side of the case and the commission must listen to the public's arguments. The challengers' petition stated a valid claim that the commission's hearing was not sufficient. Because the circuit court first must determine whether the commission conducted a legally sufficient hearing, its final judgment upholding the commission's decision to adopt the amendments was premature.

**Facts:** The Franklin County commission amended the county's land use regulations to permit the construction of coal-ash landfills continuous to the boundary of property on which a public utility power plant is situated. Several individuals and an organization (collectively, the challengers) filed a petition in the circuit court challenging the legality of the zoning amendments, which permit Ameren Missouri to build a coal-ash landfill adjoining its power plant in Labadie. They claimed the zoning amendments are unlawful because they do not promote the health, safety and general welfare of the county's citizens. They also claim the commission's adoption of the amendments was unlawful and unreasonable because the commission failed to conduct a valid public hearing given that speakers at the public hearing were not allowed to discuss Ameren or its proposed site for a coal-ash landfill and were interrupted if they attempted to do so. The circuit court granted Ameren's motion to intervene in the case. The circuit court ultimately entered judgment in favor of the commission and Ameren, dismissing the challengers' claim regarding the public hearing and upholding the commission's decision to adopt the amendments. The challengers appeal.

## **REVERSED AND REMANDED.**

**Court en banc holds:** (1) The statute establishing the procedure for judicial review of a challenge to zoning amendments assumes the circuit court will address the merits of the zoning challenge according to the record. But the court did not reverse, affirm or modify the decision brought up to review in the challenger's claim that the commission did not conduct a legally sufficient hearing but instead dismissed it for failure to state a claim. This Court is not required to undertake an original determination of the merits of that claim. Instead, this Court must determine whether the circuit court erred in dismissing the claim by analyzing what constitutes a legally sufficient public hearing.

(2) The circuit court erred in dismissing the challengers' claim that the commission failed to conduct a legally sufficient hearing before adopting the zoning amendments allowing coal-ash landfills. A state statute requires that a county commission shall not amend its zoning ordinances except after recommendation of the county zoning commission and after hearings. The statute does not define "hearing" or prescribe the requirements for a valid hearing, and no Missouri court has determined what constitutes a sufficient hearing under this statute. The fact that the hearing required by the statute is a public hearing is established by the fact that the statute requires public notice of the hearing, and it would be nonsensical to require public notice for a non-public hearing. The commission's hearing here was public. The question is whether the hearing was sufficient. The dictionary definition of "hearing" includes a session in which witnesses give testimony; an opportunity to be heard, to present one's side of a case, or to be known or appreciated; and listening to arguments. Given that plain language meaning, the legislature meant for members of the public to be able to present their side of the case and for the commission to listen to the public's arguments. For that to occur, the commission must allow speakers to address the subject of proposed zoning amendments. The challengers' petition, however, alleges that: the zoning amendments authorize the presence of coal-ash landfills next to and under common ownership with an existing power plant without mentioning Ameren by name; that Ameren's Labadie plant is the only power plant in the county; that Ameren publicly proposes to build a new coal-ash landfill on its property adjacent to the plant; that, during the hearings regarding the amendments, the commission announced the public could not speak about Ameren's landfill proposal; and that the limitation on discussion had a chilling effect on discussion at the hearing. Construing the petition broadly and assuming the truth of the challengers' allegations, the challengers have stated a viable claim that the commission enacted the zoning amendments without a legally sufficient hearing.

(3) Because the circuit court first must determine whether the commission conducted a legally sufficient hearing, its final judgment upholding the commission's decision to adopt the amendments was premature.