

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, MISSOURI**

**CONCERNED CITIZENS OF CRYSTAL CITY,** )  
**ET AL,** )  
**PLAINTIFFS,** )  
) )  
**v.** )  
) )  
**CITY OF CRYSTAL CITY, ET AL,** )  
**DEFENDANTS.** )

**Case No. 07JE-CC01264**

**ORDER**

On February 26, 2009 the Court took up Plaintiffs' motion for leave to file first amended petition and motion for *in camera* review. The Court took up Intervenor-Defendant Wings' motion to compel and motion for protective order. All motions were taken under advisement and counsel were directed to file copies of the motions to be ruled upon and responses with the Court in chambers. The parties filed additional briefs and the City filed a request for extension of time.

The Court has considered the briefs and arguments of counsel and makes the following orders:

1. Plaintiff's motion for leave to file its first amended petition is overruled.
2. Plaintiff's motion for *in camera* review of certain documents claimed to be privileged is overruled. The Court understands that those documents which the City exchanged with Wings Enterprises, Inc. have been produced by the City to Plaintiffs. The internal drafts and comments between the City and its counsel are privileged and are not subject to discovery. There is no question that the disputed documents fall into this category, therefore there is no necessity of an *in camera* review. Further, the Court finds that, under a plain reading of §610.021(2) RSMo., records relating to the leasing, purchase or sale of real estate by the City may be closed records; except that any minutes, vote or document which ultimately approves the transaction, shall be made public upon the execution of the document which memorializes that transaction.

3. As to the motion of Intervenor, Wings Enterprises, Inc., to compel complete answers to deposition questions, interrogatories and requests for production, it is ordered that:
- (a) Plaintiff William Ginnever shall produce a full and complete copy, in native format, of all information in his possession or control, that has been posted on the domain <http://www.clearpillar.com>. Alternatively, Ginnever may choose to make this information available to Wings' designee, for inspection and copying during normal business hours, for a period sufficient to inspect and copy that material.
  - (b) Deponents, including Plaintiff William Ginnever and Defendant Pamela Portell, shall answer deposition questions regarding the identity of users posting to the forum on the website <http://www.clearpillar.com>.
  - (c) Plaintiffs shall fully and completely answer Wings' interrogatories 2, 4 and 5 without objection or reservation.
  - (d) As to Wings' request that Plaintiffs produce videos taken by Roger Leonhardt, Plaintiffs have answered that they do not have possession of these videos. No evidence to the contrary has been produced. Wings and Plaintiffs are bound by this response.
  - (e) Plaintiffs shall produce the requested minutes of the C4 meetings and all documents requested in Intervenor's request for production Numbers 25 and 26.
  - (f) The Court is informed that there is no longer a dispute as to Intervenor's request for production Number 16.
4. As to the motion of Intervenor, Wings Enterprises, Inc. for a protective order, the motion is sustained. The only issues before the Court are whether the action taken

by the City of Crystal City was taken lawfully and whether that action may be set aside because of any failure to abide by the requirements of the law. This lawsuit confers no jurisdiction on the Court to determine the wisdom of operating a smelter on the subject property. Therefore, in this lawsuit, Intervenor shall not be required to respond to discovery requests regarding:

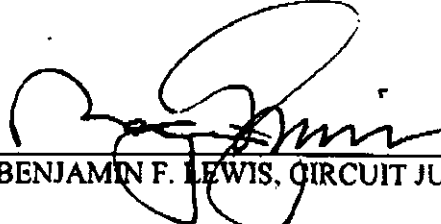
- (a) the type of fuel that will power the proposed smelter;
- (b) identification of the type or quantity of pollutants which might be emitted by the proposed smelter;
- (c) the technological processes to be used in the proposed smelter;
- (d) the proposed methods of disposing of waste which may be produced by the proposed smelter;
- (e) the type and quantity of wastes that might be placed in a slag pile at the proposed smelter;
- (f) the proposed location of any slag pile produced by the proposed smelter;
- (g) the type of products that the smelter might produce;
- (h) the number of jobs that might be created during the construction of the smelter;
- (i) the dollar amount of the salaries that employees might receive after completion of the smelter;
- (j) the amount of compensation that might be paid to the City of Crystal City per production unit from the smelter;
- (k) the names of investors who will finance the smelter;
- (l) the amount of product to be produced at the smelter each year;
- (m) the noise level generated by construction or operation of the smelter;

(n) the dust levels that will be present during the operation of the smelter.

5. Any pending motions may be called up for hearing and disposition on August 5, 2009

beginning at 10:00 A.M.

6/3/2009  
DATE

  
BENJAMIN F. LEWIS, CIRCUIT JUDGE

Fax copies to:

Kathleen G. Henry, 314-231-4181  
David P. Senkel, 636-797-2904  
Brycc J. Bartlett, 314-480-1505  
Michael A. Gordon, 314-727-6376