

IN THE

CIRCUIT COURT

ERVIN DAVIS, et al.,

Plaintiffs,

VS.

FILED JUN 18 2007

County of St. Charles, Missouri
Dist. 3

No. 0611-CV02575

Circuit Clerk

ST. CHARLES COUNTY, MISSOURI, et al.,

ST. CHARLES COUNTY

6-18-07

Defendants,

JUDGMENT, p. 1 of 2

This is a contested case. Review is per 536.140.2 RSMO. Review is of an administrative decision of the St. Charles County Council which involved the exercise of discretion in the light of the facts, in that there is no mandate to vacate a public road upon the occurrence of certain events. The Court must give deference to the decision of the administrative body and not substitute its own discretion. The areas of inquiry are set out in 536.140.2(1) through (7) RSMO.

The standard for a county to vacate a county road per 228.110 RSMO is that the road is "useless, and the repairing of the same an unreasonable burden upon the district..." "useless has been defined as "of no public utility," Witte v. Sorrell, 219 S.W. 596 (S.C.); Burrows v. County Court of Carter County, 308 S.W. 2d 299, (S.D. 1957).

Therefore, the Court finds after thorough consideration of the record before it, that the decision of the County Council is: Unsupported by competent and substantial evidence upon the whole record (536.140.2(3) RSMO) and: Involves and abuse of discretion (536.140.2(7) RSMO) in that the record shows that the vacated portion of the old Koch road was in use at the time of the decision of the County Council and carried about 1,100 vehicles per day before the construction of new Koch Road and carried about 850 vehicles

So Ordered

Attorney

Lucy D. Rauch

6-18-07

LUCY D. RAUCH, Judge Div. 3 #27891

Attorney

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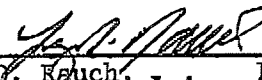
per day after the construction of new Koch Road. The standard of "no public utility" is thus not supported by competent and substantial evidence upon the whole record.

The Court finds that the decision of the council objected to by the remonstrators should be reviewed based on facts which are reflected in the record before the County Council at the time the decision was rendered and therefore the request to remand to the County Council for further evidentiary proceedings or to supplement the record is denied; the provision of the 4-4-07 Order that "Cause should be remanded for further findings" is set aside. Intervenor's request that the Petition be denied based upon the doctrine of laches for Plaintiffs' failure to proceed upon their request for stay of the vacation of the road is denied. The facts in the record reflect that the portion of old Koch Road in question was physically destroyed before the conditions precedent in County Ordinance 06-048 had been met and the record does not support a finding that the said portion of old Koch Road was "useless."

cc: See Attached.

So Ordered

Attorney


LUCY D. RAUCH, Judge Div. 3 #27891 6-18-07

Attorney

Copies transmitted to attorneys of record listed below by facsimile on 6-18-07 at approximately 4:40 PM and mailed to unrepresented parties listed below by U.S. Mail on 6-18-07 LDR

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