

**STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
COUNTY OF WINNEBAGO**

Alec Kaplanes, Patricia M. Michelsen,	}	
Daniel P. Frykman, Rita Welch, Kenneth	}	
E. Coonley, and Clifton W. Gano, Jr.,	}	
Plaintiffs,	}	In Chancery
	}	
vs.	}	Case No. 2008 MR 239
	}	
City of Rockford, Illinois,	}	
Defendant.	}	

**COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

COME NOW the Plaintiffs, Alec Kaplanes, Patricia M. Michelsen, Daniel P. Frykman, Rita Welch, Kenneth E. Coonley, and Clifton W. Gano, Jr., by and through their attorney, James M. Hess, and for their Complaint for Declaratory Judgment and Injunctive Relief pursuant to §2-701 of the Code of Civil Procedure, against the City of Rockford, Illinois, state as follows:

**COUNT I
PROCEDURAL DUE PROCESS**

1. Plaintiffs are the owners of property located in and near the City of Rockford, County of Winnebago, Illinois.
2. The Defendant City of Rockford, hereinafter “Rockford,” is a municipality located within the County of Winnebago, Illinois.
3. Rockford Blacktop Construction Co., hereinafter “Rockford Blacktop,” owns and operates a gravel quarry lying southwest of the intersection of South Mulford Road and Charles Street in the City of Rockford.
4. The property surrounding the quarry is primarily developed for residential uses.

5. Rockford Blacktop applied for a special use permit, hereinafter "SUP," to construct and operate an asphalt batch plant in an I-2 General Industrial District.

6. The Rockford Zoning Board of Appeals, hereinafter "ZBA," conducted a public hearing on said application which Plaintiffs attended along with many other owners of property located near the quarry.

7. Although the Plaintiffs and other objectors were allowed to address the ZBA, they were not allowed to cross-examine the witnesses who testified on behalf of the applicant contrary to 65 ILCS 5/11-13-25.

8. The Rockford City Council granted the application for a SUP on January 28, 2008.

9. There is, therefore, an actual controversy between the Plaintiffs and the Defendant.

10. Plaintiffs were denied procedural due process guaranteed by the U. S. and Illinois Constitutions by the refusal of the ZBA to allow them and other objectors to cross-examine the applicant's witnesses.

WHEREFORE, Plaintiffs pray that the Court:

A. Declare the SUP granted to Rockford Blacktop to construct and operate an asphalt batch plant to be illegal, unconstitutional, and invalid;

B. Direct the Defendant to rescind the authorization to construct and operate an asphalt batch plant on the property owned by Rockford Blacktop;

C. Award Plaintiffs their costs of suit; and

D. Grant Plaintiffs such other and further relief as the Court deems just.

COUNT II
SUBSTANTIVE DUE PROCESS

1-9. Paragraphs 1-9 of Count I are realleged as paragraphs 1-9 of Count II.

10. The application was for a use more appropriately located further from residential districts and uses.

11. The proposed use will have the following adverse affects in and near the Rockford Blacktop quarry:

- (a) dewatering of wells;
- (b) contamination of surface and subsurface water supplies;
- (c) increase in heavy truck traffic;
- (d) air pollution;
- (e) noise pollution;
- (f) damage to streets and roads;
- (g) loss of quiet enjoyment; and
- (h) decrease in property values.

12. The proposed asphalt batch plant is closer than 1000 feet to a residential district thereby requiring a SUP.

13. The Rockford City Council, in allowing a heavy industrial use in an area planned for light industrial uses, ignored its Year 2020 Comprehensive Plan.

14. The alleged benefits which may accrue to Defendant and Rockford Blacktop are far outweighed by the detrimental affect the proposed use will have on its neighbors.

15. The Rockford City Council in granting the SUP acted in an unreasonable, arbitrary, and capricious manner.

WHEREFORE, Plaintiffs pray that the Court:

A. Declare the SUP granted to Rockford Blacktop to construct and operate an asphalt batch plant to be illegal, unconstitutional, and invalid.

B. Direct the Defendant to rescind the authorization to construct and operate an asphalt batch plant on the property owned by Rockford Blacktop.

C. Award Plaintiffs their costs of suit; and

D. Grant Plaintiffs such other and further relief as the Court deems just.

COUNT III
INJUNCTION

1-16. Counts I and Count II are realleged as paragraphs 1-16 of Count III.

17. For the reasons set forth above, Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs pray that the Court:

A. Declare the SUP granted to Rockford Blacktop to construct and operate an asphalt batch plant to be illegal, unconstitutional, and invalid.

B. Direct the Defendant to rescind the authorization to construct an asphalt batch plant on the property owned by Rockford Blacktop.

C. Enjoin Rockford from issuing any permits for the construction or operation of said asphalt batch plant.

D. Award Plaintiffs their costs of suit.

E. Grant Plaintiffs such other and further relief as the Court deems just.

Alec Kaplanes, Patricia M. Michelsen,
Daniel P. Frykman, Rita Welch, Kenneth E.
Coonley, and Clifton W. Gano, Jr.
Plaintiffs

By: _____
James M. Hess, their attorney

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