

**AMENDED
AGENDA
CHILLICOTHE CITY COUNCIL
CITY COUNCIL CHAMBERS
DECEMBER 12, 2022
7:00 P.M.**

**CALL TO ORDER
PLEDGE OF ALLEGIANCE
ROLL CALL BY CLERK
READING OF MINUTES OF PREVIOUS MEETING BY CLERK
PETITIONS AND COMMUNICATIONS BY CLERK
PETITIONS AND COMMUNICATIONS FROM THE MAYOR, ALDERPERSON
COUNCIL COMMITTEE COMMUNICATION
ANYONE WITH BUSINESS CONCERNING CITY GOVERNMENT
PRESENTATION OF BILLS, TRANSFERS AND PAYROLLS FOR PAYMENT AND DISCUSSION**

MAYOR HUGHES

- 1. Approve – Waiving of Grave Opening Fee**
- 2. Electrical Aggregation – City Accounts**

PUBLIC WORKS COMMITTEE – ALDERPERSON GOULD

- 1. Approve – Priority One Road & Bridge Project – Drainage Improvement**
- 2. Approve – Midwest Engineering Invoice – Sycamore Street Improvement**

PUBLIC SAFETY COMMITTEE – ALDERPERSON JENKINS

- 1. Approve – Purchase of Laptop**
- 2. Approve – Purchase of Tires – Police Vehicle**

ECONOMIC DEVELOPMENT COMMITTEE – ALDERPERSON CONNOR

- 1. Approve – Purchase of Laptop**
- 2. Approve – George Rump Invoice – Cutright Park Restroom Project**

JUDICIAL COMMITTEE – ALDERPERSON CONNOR

- 1. Approve – Ordinance – Solar**
- 2. Approve – Ordinance – Swimming Pool Amendment**
- 3. Approve – Letter to County – FLM Complaint**

**CITY OF CHILLICOTHE
COUNCIL MEETING
MINUTES OF A REGULAR MEETING
DECEMBER 12, 2022**

A regular meeting of the City Council of the City of Chillicothe, Peoria County, Illinois, met in Regular Session in person December 12, 2022 at 7:00 P.M with Mayor Michael D. Hughes presiding and with proper notice having been posted.

Mayor Michael D. Hughes called the meeting to order at 7:00 P.M.

The Pledge of Allegiance, to the Flag of the United States of America, was recited.

Chairman Hughes directed Clerk Byrnes to take roll.

Physically Present:
Mayor Michael D. Hughes
Treasurer B.L. Bredeman
City Clerk Jill Byrnes

Alderpersons:
Dean Braun, Barry Bredeman, Patricia Westerman-Connor, Courtney Gehrig, Dennis Gould, Jeff Jenkins, Gary Sharp, Jacob VanBruwaene

Also, Physically Present:
Office Manager Denise Passage
Police Chief Jeremy Cooper
City Attorney Kevin Day
Attorney Bill Streeter
Engineer Dave Horton
Superintendent of Public Works Shawn Sutherland
Economic Development Director Amanda Beadles

Chairman Hughes declared a Quorum present.

The Minutes of the Regular Council Meeting held on November 28, 2022 were presented. Motion Alderperson Braun, second Alderperson Gould, that the Council dispense with the reading of the Minutes of the November 28, 2022 Regular Council Meeting and approve the Minutes as presented.

Motion Carried Via Voce Vote.

**CITY OF CHILLCOTHE
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Motion Alderperson Braun, second Alderperson Jenkins, that the Petitions and Communications from the Mayor and Alderpersons as presented be accepted and placed on file.

Roll Call Vote was:

Ayes: **Braun, Bredeman, Connor, Gehrig
Gould, Jenkins, Sharp, VanBruwaene**

Nays: **None**

Chairman declared motion carried.

COUNCIL COMMITTEE COMMUNICATIONS:

Alderperson Connor read a letter from residents Terry & Becky Bobell, stating their concerns regarding ground mounted solar systems. Alderperson Connor stated that she had received phone calls from 2 additional residents, Alderperson Sharp stated that he received 3 phone calls from residents against the ground mounted solar systems.

ANYONE WITH BUSINESS CONCERNING CITY GOVERNMENT:

Tracy Fox, Joyce Blumenshine, Kiersten Sheets and Mark Golden all spoke on the benefits of solar energy. They were all in opposition of the proposed Solar Ordinance prohibiting ground mounted solar energy and other sections of the proposed Solar Ordinance. They all thanked the Council for withdrawing the agenda item to approve the proposed Solar Ordinance.

PRESENTATION OF BILLS, TRANSFERS AND PAYROLLS FOR PAYMENT AND DISCUSSION:

Motion Alderperson VanBruwaene, second Alderperson Bredeman, that the bills as presented be paid and the payrolls and transfers be approved.

Roll Call Vote was:

Ayes: **Braun, Bredeman, Connor, Gehrig,
Gould, Jenkins, Sharp, VanBruwaene**

Nays: **None**

Chairman declared motion carried.

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MAYOR HUGHES:

Motion Alderperson Jenkins, second Alderperson Braun, that the Council waive the grave opening fee of \$600.00 for Nancy Gould, and offer our condolences to the family.

Roll Call Vote was:

Ayes: Braun, Bredeman, Connor, Gehrig
Jenkins, Sharp, VanBruwaene

Nays: None

Abstain: Gould

Chairman declared motion carried.

Motion Alderperson Jenkins, second Alderperson VanBruwaene, that the Council authorize the Mayor to sign a contract with the lowest supplier for a 36 month term length for electrical supplier for City owned accounts. During discussion, Jerod McMorris, from Good Energy, suggested to the council a 36 month electric service agreement for City owned contracts with Homefield Energy beginning January 2023 and ending January 2026 at the power price to be determined on December 13, 2022.

Roll Call Vote was:

Ayes: Braun, Bredeman, Connor, Gehrig
Gould, Jenkins, Sharp, VanBruwaene

Nays: None

Chairman declared motion carried.

PUBLIC WORKS COMMITTEE:

Motion Alderperson Gould, second Alderperson Sharp, that the Council approve the priority one Road & Bridge Project – Drainage Improvement in the amount of \$50,000.00 as an approved project.

Roll Call Vote was:

Ayes: Braun, Bredeman, Connor, Gehrig
Gould, Jenkins, Sharp, VanBruwaene

Nays: None

Chairman declared motion carried.

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Motion Alderperson Gould, second Alderperson Sharp, that the Council approve an expenditure of \$15,812.40, payable to Midwest Engineering, for engineering services for the Sycamore Street improvement project. Payable from the Motor Fuel Tax Account – Rebuild Illinois funding.

Roll Call Vote was:

Ayes: Braun, Bredeman, Connor, Gehrig
Gould, Jenkins, Sharp, VanBruwaene

Nays: None

Chairman declared motion carried.

PUBLIC SAFETY COMMITTEE:

Motion Alderperson Jenkins, second Alderperson Braun, that the Council approve an expenditure of \$1,123.00, payable to Pearl Technology, for the purchase of a laptop for the Police Department. Payable from the Police Protection Fund.

Roll Call Vote was:

Ayes: Braun, Bredeman, Connor, Gehrig
Gould, Jenkins, Sharp, VanBruwaene

Nays: None

Chairman declared motion carried.

Motion Alderperson Jenkins, second Alderperson Braun, that the Council approve an expenditure of \$772.04, payable to Peoria Tire, for the purchase of four tires for the Chevy Tahoe. Payable from the Police Protection Fund.

Roll Call Vote was:

Ayes: Braun, Bredeman, Connor, Gehrig
Gould, Jenkins, Sharp, VanBruwaene

Nays: None

Chairman declared motion carried.

**CITY OF CHILLCOTHE
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ECONOMIC DEVELOPMENT COMMITTEE:

Motion Alderperson Connor, second Alderperson Gould, that the Council approve an expenditure of \$1,123.00, payable to Pearl Technology, for the purchase of a laptop for the Economic Development Director. Payable from the General Fund.

Roll Call Vote was:

Ayes: **Braun, Bredeman, Connor, Gehrig
Gould, Jenkins, Sharp, VanBruwaene**

Nays: **None**

Chairman declared motion carried.

Motion Alderperson Connor, second Alderperson Jenkins, that the Council approve an expenditure of \$11,878.65, payable to George Rump Construction, for a partial payment of the Cutright Park Restroom Renovation. Payable from the TIF Central Business Account.

Roll Call Vote was:

Ayes: **Braun, Bredeman, Connor, Gehrig
Gould, Jenkins, Sharp, VanBruwaene**

Nays: **None**

Chairman declared motion carried.

JUDICAL COMMITTEE:

Motion Alderperson Connor, second Alderperson Braun that the Council approve Ordinance No. 22-12-39, an ordinance regarding the installation of private swimming pools.

Roll Call Vote was:

Ayes: **Braun, Bredeman, Connor, Gehrig
Gould, Jenkins, VanBruwaene**

Nays: **Sharp**

Chairman declared motion carried

**CITY OF CHILLICOTHE
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Motion Alderperson Connor, second Alderperson Bredeman, that the Council approve the letter to the Peoria County, Peoria County State's Attorney, and the Peoria County Environmental Health Division, as drafted by City Attorney Day filing a complaint regarding the FLM property and authorize the City Attorney to take the appropriate steps to submit the letter.

Roll Call Vote was:

Ayes: **Braun, Bredeman, Connor, Gehrig
Gould, Jenkins, Sharp, VanBruwaene**

Nays: **None**
Chairman declared motion carried

Motion Alderperson Braun, second Alderperson Jenkins to adjourn at 8:00 p.m.
Chairman Hughes declared the meeting adjourned.


Jill M. Byrnes
City Clerk





City of Chillicothe

908 N. Second St. • Chillicothe, IL 61523 • Phone: 309-274-5056 • Fax: 309-274-4853 • cityofchillicotheil.org

December 12, 2022

VIA CERTIFIED MAIL

Peoria County Planning and Zoning Department
c/o Director Kathi Urban
Peoria County State's Attorney
c/o Assistant State's Attorney Jennie Cordis Boswell
Peoria County Environmental Health Division
c/o Director Carey Panier

**Re: Peoria County Parcel Number 0519400003
FLM Enterprises, LLC - Mining Operations
Complaint and Request for Investigation and Remediation**

Dear Mr./Mrs. _____

As I believe you are aware, FLM Enterprises, LLC ("FLM") is conducting mineral extraction and mining operations on an 80-acre parcel in Peoria County just outside of the City of Chillicothe, Parcel Number 0519400003 (the "Property"). Please consider this a formal complaint regarding the Property and the mineral extraction and mining operations currently taking place on the Property. While the City of Chillicothe understands the decision rendered by the Third District Appellate Court in *FLM Enterprises, LLC v. Peoria County Zoning Board of Appeals* and the corresponding action taken by the Zoning Board of Appeals on September 8, 2022, our City Council and many citizens and nearby property owners firmly believe action may (and, respectfully, should) be taken by Peoria County to investigate, address, and abate the nuisances, hazards, safety risks, and detrimental environmental impacts created by the mineral extraction and mining operations on the Property.

Factual Background

The Property has been conveyed from owner to owner since the 1970s and is currently zoned A2. While extensive mining operations took place on other properties in the area, the Property was minimally used, mostly for storage. It remained largely dormant for a number of years. During its dormancy, Chillicothe residents purchased and/or built homes in neighborhoods adjacent to the Property.

In 2007, FLM purchased the Property. In the months leading-up to the purchase, FLM contacted the Peoria County Department of Planning and Zoning (the "Department") and inquired as to the validity of a nonconforming use certificate issued in 1974 that allowed mining and extraction of sand and gravel on the property. The Department confirmed the certificate was valid and issued a letter to FLM stating the same. In 2016, FLM received notification from the Department revoking the nonconforming use certificate "due to evidence that the covered uses were abandoned for approximately 10 years" and ordering FLM to cease and desist operations. Litigation subsequently ensued, resulting in the Third District decision referenced above in favor of FLM.

After the Third District's decision was rendered in January of 2020, but prior to action being taken by the Zoning Board of Appeals, FLM drastically changed its use of the Property and started active mining operations. These operations have steadily increased since that time. FLM's operations involve digging, drilling, crushing, loading, and hauling material, primarily using heavy equipment. This leads to many adverse effects on the neighboring properties, environment, and community as a whole. Those adverse effects include, but are not limited to:

1. **Noise.** The operation of heavy equipment, including rock crushers and grinders, which creates noise emissions in violation of Title VI of the Illinois Environmental Protection Act, the Noise Control Act of 1972, the Illinois Criminal Code, and common law doctrines prohibiting excessive noise emissions and nuisances. This noise should be limited to lawful decibel levels and limited to specific hours of operation.
2. **Dust, Airborne Particulate Matter, and Air Pollution.** The mineral extraction and mining activities create dust and harmful airborne particulate matter, which extend beyond the Property and into adjacent properties. Adjacent property owners have reported coatings of dust on their homes and vehicles. Adjacent property owners have also expressed concerns regarding the inhalation of dust and particulate matter by humans and animals. While these airborne particulates particularly affect adjacent neighborhoods, it also generates air pollution that adversely affects the entire Chillicothe community. The Centers for Disease Control and Prevention and the Environmental Protection Agency have found such inhalation can cause serious health problems. Any dust and/or airborne particulate matter should be confined to the Property. Mitigation and containment measures should be implemented to limit and contain dust and harmful airborne particulate matter.
3. **Vibration.** The mineral extraction and mining activities, particularly the use heavy machinery, rock crushers, and grinders, create vibrations beyond the Property, which shake and disrupt nearby homes. Adjacent property owners have reported feeling vibrations within their homes and have witnessed items within their home shake and vibrate uncontrollably. Neighbors have reported rattling dishes and wall-hangings and other unreasonable nuisances. These vibrations should be mitigated and controlled, so they do not extend beyond the Property and do not create unsafe conditions or nuisances.
4. **Safety.** The Property has limited, insufficient fencing to restrict access to the Property and confine on-site operations. This lack of fencing, combined with a large number of children who live within the neighboring subdivisions, causes significant health and safety risks. The Property should be secured with adequate fencing to limit access to the Property and confine FLM's operations.
5. **Water Supply.** The water supply of the City of Chillicothe comes from the San Koty aquifer. The aquifer is a vast underground water reservoir that services not only the City of Chillicothe, but other towns as well. The mining operation lies directly over a critical part of the aquifer. The City of Chillicothe and our citizens are greatly concerned about potential contamination of the aquifer and local communities' drinking water. The Property and FLM's operations should be

investigated and limited so as not to threaten or contaminate water sources. An environmental impact study would also be appropriate to identify, address, and prevent water contamination.

6. **Decreased Property Values.** FLM's operations and the conditions, hazards, and issues referenced above have caused the devaluation of nearby real estate meant to be single family residential. This diminishment in property value has been documented by nearby residents. Unless the aforementioned issues are sufficiently addressed by Peoria County, nearby properties will continue to decrease in value.

Avenues to Eliminate or Reduce the Impact of the Mining Operation

1. **Public Nuisance.** A public nuisance can be statutory or a common law nuisance. Section 47-5 of the Criminal Code (720 ILCS 5/47-5) enumerates public nuisances subject to prosecution. Among those are:

(1) To cause or allow... filth or a noisome substance to be collected, deposited, or to remain in any place to the prejudice of others.

(8) To erect, continue, or use a building or other place for the exercise of a trade, employment or manufacture that, by occasioning noxious exhalations, offensive smells or otherwise, is offensive and dangerous to the health of individuals or of the public.

Under the common law, a public nuisance occurs when an act or failure to act injures the safety, health or morals of the public, or causes substantial public annoyance, inconvenience, or injury.

The mining operation's noise, odor, dust, vibration, water pollution, air pollution, property value impact, and lack of safety all demonstrate that the mining operation, as it is operated, constitutes a public nuisance. The City of Chillicothe urges Peoria County to take action to mitigate or eliminate the negative and injurious effects of FLM's mineral extraction and mining activities.

2. **Environmental Concerns.** Peoria County's Environmental Health Division lists its goals as:
 - To identify and evaluate environmental sources and hazardous agents, and
 - To use surveillance, education, and enforcement to limit exposure to harmful physical, chemical, and biological agents and in air, water, soil, food, and other settings that may adversely affect human health.

The City of Chillicothe urges Peoria County and the Environmental Health Division to investigate the mining operation, due to its adverse effects on air, soil, water, and health. The Illinois Environmental Protection Act, the Noise Control Act of 1972, the Illinois Criminal Code, and common law doctrines prohibiting environmental nuisances provide a basis for Peoria County to take immediate, decisive action.

3. **Peoria County Code.** While the City of Chillicothe appreciates the effect of the nonconforming use certificate and Third District ruling and understands the difference between a special use and a nonconforming use, we respectfully request Peoria County review and consider Section 7.12 of the Peoria County Code of Ordinances as a guide in addressing the health, safety, and environmental issues raised above. Based on the implementation of this section, it can be concluded Peoria County has deemed the following restrictions and requirements appropriate for mineral extraction facilities within the County:

- a. No mineral extraction operation shall be carried out within one thousand (1,000) linear feet of any existing dwelling or within three hundred (300) feet of any existing structure (other than a dwelling), other than those owned by the facility, unless written permission is first obtained from the owner of such dwelling unit or structure;
- b. A perimeter setback of one hundred (100) feet shall be maintained free of equipment, stockpiles, and overburden;
- c. Mines shall be inspected by the Illinois Department of Mines and Minerals at least every three (3) months, and the operator of the mine shall send a copy of such record of inspection to the Peoria County Zoning Administrator;
- d. Fencing shall be required where a mineral extraction facility is adjacent to a residential area; and
- e. Mineral extraction facilities shall only operate between the hours of 7:00 a.m. to 8:00 p.m., unless further restricted by the County Board.

The foregoing restrictions and requirements, at a minimum, are appropriate for the FLM property. The existence of the nonconforming use certificate does not absolve FLM from operating its mineral extraction facility in accordance with relevant statutes or prevent Peoria County from addressing the concerns and issues raised above. The City of Chillicothe and its citizens are asking for your help. FLM's current mining operation is injurious to all of us. Our health, safety, and welfare are at stake. We trust you will agree enough is at stake to initiate an investigation of the Property and lawfully address the present health, safety, and environmental issues. Thank you for your time and consideration.

If you would like to discuss this further or if we can be of any assistance, please let us know.

Very truly yours,

CITY OF CHILLICOTHE

Mike Hughes, Mayor

PUBLIC COMMENT

Meeting: City Council

Meeting Date: Monday Dec 12, 2022

Time: 7:00pm

Place/Room: City hall

[illegible]