



Township's Decision Regarding Wind Energy Upheld in Federal Court

Leslie A. Dickinson

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With the increased interest over the creation of wind energy conversion facilities in Michigan, townships throughout the state are being required to make decisions regarding land use and zoning of such facilities within their jurisdictions.

On November 3, a federal judge upheld one such decision by a township in the thumb-region, an area where many alternative energy companies are targeting to build wind farms. Tuscola Wind III, LLC, a wind energy developer, applied for a special land use permit to build a wind farm in Almer Township as part of a larger wind project with over 50 wind turbines in three townships within Tuscola County.

After extensive review and multiple public hearings at the Planning Commission and Township Board levels, the Township ultimately denied the application for failing to comply with some of the Township's Zoning Ordinance requirements. Consequently, Tuscola Wind III filed a complaint in federal court claiming an appeal from the Township Board's decision denying the special land use permit application.

The developer alleged that the Township's decision was not based on competent, material and substantial evidence and that the Township was implementing an "exclusionary zoning" policy by excluding wind energy conversion systems from the Township. On review, the U.S. District Court for the Eastern District of Michigan upheld the Township's decision, determining that Tuscola Wind III had not demonstrated that the denial of the application was contrary to law or not supported by substantial evidence.

Further, the Court determined that the Township Board had based its denial of the application on certain deficiencies in the application, which was a permissible basis for the Board to deny the application. Finally, the Court concluded that the Township's Zoning Ordinance requirements for wind energy facilities were unambiguous and the Township's interpretation of those requirements was reasonable.

AUTHORS/ CONTRIBUTORS

Leslie A. Abdoo

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Ultimately, this case emphasizes the great deference that courts give to municipalities when reviewing a municipal board's legislative decisions and interpretations of its ordinances, including when those decisions are controversial. The Township in this case was represented by Foster Swift shareholders Michael Homier and Laura Genovich, and insurance counsel.
