

Restrictive Wind Zoning Struck Down by Michigan Court

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A wind energy development company, Forest Hill Energy, recently won an order striking down alleged police power ordinances attempting to regulate the construction and operation of wind turbines in Clinton County, where the townships are otherwise subject to county zoning.

The Clinton County Zoning Ordinance already has an extensive wind energy ordinance. Three townships passed power policy ordinances that were more restrictive to wind energy development than the county ordinance. The additional restrictions related to height, noise, setbacks, and shadow flicker.

Forest Hill Energy brought suit seeking a declaration that the township ordinances were really zoning ordinances in disguise. In addition, since the ordinance subject to the county's zoning, the township ordinances were invalid because they were inconsistent with the county's zoning plan. The Clinton County Circuit Court agreed with Forest Hill Energy, holding that the townships could not get a "second bite at the zoning apple." The township ordinances were invalidated to the extent they were more restrictive than the county ordinance.

Forest Hill Energy obtained a special use permit to move forward with the construction of the 39 turbine project in Clinton County in January of 2012, and expects to move forward with construction beginning in late 2013.

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National Law Review, Volume III, Number 238

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