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Week of September 17

Welcome to CT Law of the Land. Developments in the law which can impact the state and municipal agency approval process for land use applications in Connecticut happen on almost a daily basis. These can range from important court decisions, to legislative changes, all of which can dramatically impact the approval and review process. On this page we will try to highlight some of those changes that might be of interest to our clients and prospective clients. We invite you to check back regularly to receive potentially important tips.

- SC19090, SC19091 - FairwindCT, Inc. v. Connecticut Siting Council

This decision upheld the Siting Council's authorization to a Pullman & Comley client to install wind turbine electrical generation facilities in Colebrook, Connecticut. The approval was challenged by environmental intervenors. First, the intervenors challenged whether wind turbines qualified as electric generation facilities under the Grid Resources exemption from Certificates of Need and Environmental Compatibility. The Court agreed with the Council that the Legislature intended to include all types of electric generating facilities within that exemption, not just traditional power plants. Next, the intervenors challenged the conditions that the Council attached to the approval permit. These conditions required such things as buffers, a management plan, noise controls, etc. The Supreme Court held that environmental intervenors generally do not have standing to challenge conditions which themselves do not cause pollution. Intervenors do have standing, however, to raise the fact that attaching conditions might reflect that the administrative agency never fulfilled its role to insure the project complied with its regulations. Reviewing the record, however, the Court concluded that there was sufficient evidence to support the Council's approval subject to environmental conditions. The facts in this case were distinguished from an earlier Inland/Wetlands decision where that agency simply ruled that a project was approved subject to complying with all Inland/Wetland Regulations. Such a simplistic approval suggests that the agency did not first reach a conclusion whether its own regulations were being satisfied. The Court added that if the intervenors in this case felt that the attached conditions were not being complied with, they had several remedies, including: bringing a

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declaratory ruling petition before the Council; bringing a nuisance claim; or bringing a CEPA claim.

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