TILTING FOR WINDMILLS: ILLINOIS COURT REVERSES VILLAGE BAN ON WIND FARM CONSTRUCTION

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On 1 August 2025, the Illinois Appellate Court for the Third Circuit struck down a local ordinance purporting to ban construction of a wind farm as outside the village's statutory authority and contrary to Illinois public policy. Following up on a state law prohibiting county level bans on renewable resource facilities, this decision will significantly clarify the authority of towns and villages to regulate the construction of wind and solar farms. For developers of renewable resource facilities, this decision will provide an important guidepost when dealing with units of local government.

Hickory Wind, LLC (Hickory) planned to build a large wind farm in LaSalle County, Illinois. Several of the turbines were located on land within 1.5 miles of the boundaries of the Village of Cedar Point (Cedar Point), which were within the village's jurisdiction for zoning purposes. In response to the plans, Cedar Point adopted an ordinance prohibiting the construction of wind energy conversion structures or wind turbines, which would provide more than 120% of the electrical demand on the parcel on which they were constructed. To make the intent of its ordinance crystal clear, Cedar Point's ordinance incorporated a recital stating “it was to be in the best interests of the Village and its citizens, to prohibit wind farms, wind energy conversion systems or electric-generating wind devices” within Cedar Point's jurisdiction. Hickory sued Cedar Point but lost on summary judgment in the trial court.

In *Hickory Wind, LLC v. Village of Cedar Point et al*, the appellate court reversed the trial court and affirmed the summary judgment in favor of Hickory. The Court held that Cedar Point was a nonhome rule unit of government, meaning its powers were controlled by statute, and that the legislature expressly granted Cedar Point the power to regulate wind energy conversion systems within its jurisdiction. However, the Court emphasized that “regulation and prohibition are not the same thing.” The Court held that the ordinance was a prohibition because the ordinance prohibited all wind farms, wind energy conversion systems, and electric-generating devices; and cited Illinois zoning law to hold that the power to regulate a legal use did not include the power to prohibit that use.

In addition, the Court noted Cedar Point's ordinance undermined the strong Illinois policy in favor of developing renewable resources and reducing carbon emissions, citing both the legislature's declaration to rapidly transition to 100% clean energy by 2050 and the legislature's statement that it is necessary to improve the process for procuring electricity to serve Illinois residents. As a result, Cedar Point's ordinance was held to be an invalid exercise of its regulatory authority.

The Court's decision clearly requires local municipalities to exercise their zoning authority thoughtfully with respect to renewable-resource facilities. An Illinois law setting out requirements for counties to consider in exercising their zoning authority could provide useful guidance in evaluating municipal zoning decisions and

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procedures. Since the law in question did not apply to local units of government such as towns and villages, it was not directly relevant to all other units of government, but the decision still evidences both the state's commitment to the construction of renewable resources and the need for local municipalities to exercise caution when regulating renewable resource facilities through statutorily given authority. They must keep in mind the Court's direction that regulation is not the same thing as prohibition.

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