

# Bond Case Briefs

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### **Acciona Windpower North America, LLC v. City of West Branch, Iowa**

**United States Court of Appeals, Eighth Circuit - February 7, 2017 - F.3d - 2017 WL 490412**

Wind turbine manufacturer brought action against city, alleging breach of tax increment financing (TIF) development agreement for urban renewal project.

After entry of partial summary judgment in manufacturer's favor, bench trial was held. The United States District Court entered judgment in manufacturer's favor, and city appealed.

The Court of Appeals held that:

- City was obligated by TIF development agreement to pay tax rebate to manufacturer once it paid its taxes for given fiscal year;
- Manufacturer did not make judicial admission that rebates were never appropriated;
- TIF agreement did not impermissibly limit city's ability to decline to pay rebates; and
- District court did not abuse its discretion in permitting manufacturer to change its damages calculation on eve of trial and declining to impose sanctions.

Under Iowa law, city was obligated by tax increment financing (TIF) development agreement to pay tax rebate to wind turbine manufacturer once it paid its taxes for given fiscal year, even though agreement provided that all rebate payments were "subject to annual appropriation of the City Council," where agreement specified that city was required to annually certify "amount obligated for appropriation for rebate," and that, if city decided to obligate rebate for appropriation, "rebate shall be paid to [manufacturer] within thirty days of receipt by the City of the incremental taxes paid."

In manufacturer's action against city for breach of tax increment financing (TIF) development agreement, manufacturer's statement in its summary judgment papers that it was undisputed that "City did not appropriate the \$265,140 rebate" to be paid to it for fiscal year was best read as poorly worded effort to admit that it is undisputed that rebates were never paid, rather than as judicial admission that rebates were never appropriated, where manufacturer had always argued that rebate was appropriated, just not paid.

Under Iowa law, tax increment financing (TIF) development agreement that required city to pay tax rebate to wind turbine manufacturer once it paid its taxes for given fiscal year did not impermissibly limit city's ability to decline to pay rebates. TIF agreements were clearly authorized by state law and were to be liberally construed.

District court did not abuse its discretion in permitting manufacturer to change its damages calculation on eve of trial and declining to impose sanctions in its action against city for breach of tax increment financing (TIF) development agreement, despite city's contention that manufacturer revealed too late that it would seek damages for two fiscal years, where manufacturer sought compensatory damages for multiple fiscal years from beginning of its lawsuit, its pretrial clarification that it would seek compensatory damages for both fiscal years was entirely consistent

with theory of damages it articulated at outset of case, and damages calculation used by manufacturer appeared to have been based on information in parties' agreement and documents originally in city's control.

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