

Bond Case Briefs

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AllEnergy Corporation v. Trempealeau County Environment & Land Use Committee

Supreme Court of Wisconsin - May 31, 2017 - N.W.2d - 2017 WL 2349200 - 2017 WI 52

Silica sand mining company sought certiorari review of county environment and land-use committee's denial of its conditional-use permit application for non-metallic mineral mining.

The Circuit Court affirmed the committee's decision. Mining company appealed. The Court of Appeals affirmed. Mining company appealed.

The Supreme Court of Wisconsin held that:

- Committee kept within its jurisdiction;
- County ordinance on non-metallic mineral mining was not unconstitutionally vague;
- Substantial evidence supported committee's denial of permit; and
- Any fulfillment of all of the specific conditions specified in county ordinance did not entitle mining company to the permit.

County environment and land-use committee considered the factors that the county board of supervisors per ordinance directed the committee to consider in denying sand silica mining company's conditional-use permit application for non-metallic mineral mining, and thus committee kept within its jurisdiction, where committee members who voted against the permit based their decision on such items as the impact of the proposed mine on the general health, safety, and welfare of the public, the wise use of county's material resources, the aesthetic implications of the siting of the mine, and the adverse effects of the mine on the environment, including water quality, ground water, wetlands, scenic beauty, wildlife, and recreational opportunities.

County ordinance that required county environment and land-use committee to consider various factors such as effect on area property, noise, odor, dust, surface water drainage, and natural beauty in deciding whether to grant a permit for non-metallic mineral mining was not unconstitutionally vague; ordinance did not blanket the committee with unfettered discretion.

Substantial evidence supported county environment and land-use committee's denial of silica sand mining company's conditional-use permit application for non-metallic mineral mining, where there were public expressions of concern about the mining project's effect on a nearby creek, mine's potential to aggravate flooding in a flood-prone area, mine's effect on the area's aesthetics, and health problems caused by sand and dust.

Any fulfillment by silica sand mining company of all of the specific conditions specified in county ordinance on non-metallic mineral mining did not entitle mining company to a conditional-use permit, despite argument that mining company could not be required to satisfy subjective and generalized conditions in the ordinance; no language in the ordinance guaranteed that a conditional-use permit would be granted if all requirements were met, and an "entitlement approach" to conditional-use permits had no basis in precedent.

