

Bond Case Briefs

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Holborn v. Deuel County Board of Adjustment

Supreme Court of South Dakota - February 10, 2021 - N.W.2d - 2021 WL 501343 - 2021 S.D. 6

Residents of Deuel County and neighboring counties filed petition for writ of certiorari challenging special exception permits (SEPs) to develop two wind energy systems (WES) in Deuel County, including claim that several members of Deuel County Board of Adjustment had interests or biases that disqualified them from considering SEPs.

The Circuit Court determined that two Board members had disqualifying interests and invalidated their votes, and reversed decision of Board granting SEPs. Applicants appealed.

The Supreme Court held that:

- Due process standard of serious objective risk of actual bias was not violated by Deuel County Board;
- Disqualification of members of Board was not warranted under statute that limited grounds for disqualification to “direct pecuniary interest” by public official;
- Disqualification of member was not warranted under statute allowing municipal, county, or township officers to communicate with and receive information from public “about any matter of public interest”;
- Prior advocacy by member of Board for wind energy in Deuel County, and his prior opposition to more stringent ordinance requirements for WESs, were not sufficient to rebut presumption of objectivity;
- Members’ support of wind energy development in Deuel County and financial benefit they derived from such development were not sufficient to rebut presumption of objectivity;
- Board members’ family and employment relationships were not sufficient to rebut presumption of objectivity; and
- Decision by Board to exclude unimproved land from definition of “business” under zoning ordinance was consistent with provisions of ordinance and purposes of setback requirements.