FBT Gibbons Secures Victory for Solar Development at Court of Appeals

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"If something walks like a duck, acts like a duck, and quacks like a duck, it's a duck." — Judge Easton's concurrence

FBT Gibbons attorneys recently secured a precedent-setting victory in the Kentucky Court of Appeals, clarifying that local governments may only adopt local land use regulations for merchant electric generating facilities if they follow properly established planning and zoning frameworks.

In a published opinion, the Kentucky Court of Appeals held that local land-use restrictions on solar development — such as setbacks, screening, height limits, and decommissioning requirements — are planning and zoning regulations that are valid only if adopted in compliance with the mandatory requirements of Kentucky's zoning enabling statute (KRS Chapter 100).

The case arose from ordinances enacted by Breckinridge County, Kentucky, in 2022 and 2025 to regulate solar energy systems. At the time, the county had not adopted a comprehensive plan or established a planning commission, which are prerequisites to adoption of planning and zoning regulations under Kentucky's zoning enabling statute. Despite labeling the ordinances as exercises of its home rule authority over commerce and natural resources, the county imposed detailed siting, setback, screening and other requirements on solar projects, including those pending before the Kentucky Siting Board.

FBT Gibbons represented Clover Creek Solar Project and its participating landowners regarding a proposed 100 MW merchant electric generating facility located in Breckinridge County. Clover Creek Solar Project challenged both ordinances as unlawful zoning measures. While the trial court upheld the county's authority, the Kentucky Court of Appeals reversed.

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The appellate court emphasized that Kentucky's statutory provisions regarding state approval of siting proposals for merchant electric generating facilities, KRS 278.700 *et seq.*, grants primacy to local planning and zoning regulations — but only where a county has properly complied with the zoning requirements to adopt such regulations. Because Breckinridge County had not done so, its ordinances were invalid.

In a unanimous opinion, the Kentucky Court of Appeals further clarified that Kentucky's home rule statute (KRS 67.083) does not permit counties to bypass zoning requirements by characterizing land-use regulations as measures addressing commerce or conservation. Although home rule powers are broad, they do not allow counties to bypass state statutory requirements for adopting planning and zoning regulations. In a concurring opinion, Judge Easton underscored this point, noting: "To simply say it is not intended to be a zoning ordinance does not make it so."

Key Takeaway

Counties seeking to impose land-use regulation on solar development projects must do so through formal planning and zoning processes. Attempts to impose land-use restrictions outside that framework are subject to challenge and are invalid under Kentucky's zoning framework. For more information about how this decision could impact any planned or future projects, contact the authors or any member of FBT Gibbons' Renewables team.

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