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Court of Appeals Confirms Procedure for Securing Right-to-Farm Exemption from Local Zoning for Agrivoltaics Projects

The Kentucky Court of Appeals recently ruled in favor of Frost Brown Todd (FBT) and its client, Stonecrop Solar, affirming that a declaratory judgment action and findings of facts by the local circuit court is the proper vehicle for confirming an agrivoltaics project is exempt from local zoning under the agricultural supremacy clause and the Right to Farm Act.

What Is Agrivoltaics?

The hallmark characteristic of agrivoltaics is the marriage of traditional farming techniques with electricity generation via solar panels, on the same property. The concept of agrivoltaics has emerged as an approach to maintain agricultural productivity and resolve potential conflict between solar and agricultural activities by providing mutual benefits to each sector.

Protections for Agricultural Use Under Kentucky Law

Kentucky law provides strong protections for the state's agricultural industry, including the exemption of property used for agricultural purposes from local planning and zoning regulation through the "agricultural supremacy clause." Similarly, Kentucky's right-to-farm law, KRS 413.072, exempts "agricultural operations" from local planning and zoning regulations. Taken together, Kentucky courts have interpreted these statutes to exempt an agricultural use from local zoning regulations. However, the statutes describe agricultural activities that are wholly separate from energy generation and did not contemplate a combined land use such as agrivoltaics.

Case History

In 2024, Stonecrop Solar submitted a letter to the director of the Hardin County Planning and Development Commission requesting the commission's concurrence that the proposed agrivoltaics operation constituted an agricultural use and was thus exempt from the county's zoning rules. The commission disagreed and directed Stonecrop to appeal its decision to the Hardin County Board of Adjustments. FBT filed a declaratory judgment action in Hardin County Circuit Court seeking an order finding that the agricultural supremacy clause and the Right to Farm Act extend their protections to the Stonecrop agrivoltaics project. However, the circuit court dismissed the case, concluding that it did not have appropriate subject-matter jurisdiction.

Court of Appeals Ruling

FBT appealed the circuit court's dismissal to the Kentucky Court of Appeals, arguing that the circuit court erred in finding it lacked subject-matter jurisdiction. The court of appeals unanimously agreed with FBT, finding that "the appropriate avenue to determine if a property is used for an agricultural purpose is to file an action in the circuit court." As such, Stonecrop was correct in filing an action for a declaratory order with the circuit court.

Why Is This Ruling Important?

The Kentucky Court of Appeals published their opinion, meaning that it sets statewide precedent. Now, developers seeking to avail themselves of Kentucky's strong agricultural protections have a clear procedural path. To ensure an agrivoltaics project receives the appropriate protections, the developer must file a declaratory judgment action with the local circuit court. Once the court affirms the protections apply, no local zoning approval is necessary. Additionally, the ruling confirms that local zoning administrators lack the authority to determine whether the Right to Farm Act or the agricultural supremacy clause applies to land uses within their district.

What's Next?

With the court of appeals' ruling in hand, the Hardin County Circuit Court will now need to determine whether Stonecrop's agrivoltaics project constitutes agricultural use under the relevant state laws. A decision in the affirmative will allow Stonecrop to bypass local zoning requirements and proceed to state permitting.

At FBT, we pride ourselves on understanding each client's objectives in the face of an evolving energy landscape—both in the courtroom and out in the field. For more information on how these developments could impact your business, please contact the authors or any member of Frost Brown Todd's [Renewables](#) team.

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