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Court upholds town's appeal of BRSA turbine

Union Beach continues efforts to block 380-foot-tall wind turbine

BY MIKE DAVIS

Staff Writer

A New Jersey Superior Court judge has denied the Bayshore Regional Sewerage Authority's (BRSA) motion to dismiss a lawsuit by Union Beach that seeks to block the authority's plans to locate a 380-foot-tall industrial wind turbine.

Union Beach will continue to contest the turbine through the court's appeals process.

BRSA filed the motion to dismiss after it used eminent domain to condemn and acquire a parcel of land adjacent to its Union Beach location.

BRSA attorney Louis E. Granata, of Granata & Zaccardi, Matawan, asked that Union Beach's appeal be dismissed after BRSA condemned an adjoining 10,000-square-foot parcel owned by Jersey Central Power & Light on May 10.

"All issues raised in the appeal have been rendered moot as a result of the authority's exercise of its powers of eminent domain," a July 12 letter accompanying the motion to dismiss states.

BRSA needed to take ownership of the JCP&L property because the turbine's 118-foot-long blades would extend over the property line.

"None of what [BRSA] said seemed to ring correct, as far as we were concerned, and obviously the court agreed," said Stuart Lieberman, Union Beach's special counsel for the wind turbine issue, in an interview on Aug. 19.

Lieberman said there is no legal precedent that shows BRSA's condemnation of the JCP&L property — through a state permit issued under the Coastal Area Facility Review Act (CAFRA) — supersedes Union Beach's local land-use laws.

"The CAFRA permit issued to BRSA does not pre-empt Union Beach's municipal land-use board's jurisdiction to review any applications filed by BRSA," Union Beach's July 22 counter to BRSA's motion to dismiss states.

"The taking of the [JCP&L land] transferred title to that property, but it did not satisfy the legal requirements necessitated under land-use law," it continues.

Among the concerns related to the wind turbine is the issue of transporting the required materials to construct the turbine.

In an Aug. 19 letter, Lieberman said that any work BRSA does on the turbine — including the 262-foot-high foundation that is already in place — would have to be removed if the matter is ultimately decided in favor of the borough.

"By proceeding without all of the necessary approvals, BRSA would not only be putting itself at risk,

but it is also putting customers at risk," the letter states.

"We would respectfully suggest that putting all work on the wind turbine project on hold until the pending appeal is resolved would alleviate the risk," it continues.

Bill Heller, a Union Beach resident and an outspoken opponent of the turbine, said that Bayshore residents would assume the cost if BRSA loses the case and is forced to transport the turbine materials off the site.

"A court may very well require [BRSA] to remove [materials] if they lose in the end," he wrote in an Aug. 18 email.

"If this should occur, it would be fiscal malfeasance of the highest order. . . . All the towns BRSA serves will have to assume its losses, which means all us ratepayers."

In December 2010, the Union Beach Planning Board denied BRSA's application to consolidate the adjacent JCP&L lot, claiming that the two properties are in different zones.

When BRSA filed suit, a Superior Court judge barred the borough from "enforcing or taking any action under its ordinance regarding the permitting, installations, construction or prohibition of the project."

On April 8, a trial court decided in favor of BRSA, citing the area's coastal location that would place it under the exclusive jurisdiction of the New Jersey Department of Environmental Protection.

However, on April 21, Superior Court Judge Mary Catherine Cuff granted Union Beach's application for a stay on the turbine construction, pending an appeal.

With BRSA's motion to dismiss Union Beach's appeal formally denied, the appeals process is still ongoing.

Lieberman is scheduled to submit a brief on Union Beach's behalf by Sept. 23, and Granata will file a brief by Oct. 24.

Lieberman's reply brief is due on Nov. 3.

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