

Wyoming Land Use Decisions – 2012

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City of Cheyenne v. Laramie County, 290 P.3d 1057, 2012 WY 156 involved a dispute between a city and a county over the partial vacation of a subdivision plat on land located in the county within 1 mile of the city. The relevant statutes required city approval of the creation of the plat, but allowed the county to completely vacate the plat without city approval. The city argued that a partial vacation was tantamount to an amendment of the plat that required its approval. The court disagreed, concluding that the statute’s silence on partial vacation indicated that no city approval was required.

Northern Laramie Range Foundation v. Converse County, 290 P.3d 1063, 2012 WY 158 was a combined appeal of a county decision granting a wind energy permit and a Wyoming DEQ decision granting a state industrial siting permit for a wind energy facility. The first issue was the scope of review the court should apply to the county and state decisions. As to the county decision, the court chose the more lenient arbitrary and capricious standard because the county proceedings were not conducted as formal trial-type adjudications or contested hearings, but rather as informal public comment hearings. The state hearing, on the other hand, was a “conventional contested case proceeding” and the court applied the substantial evidence test to that decision.

The next issue was the standing of the petitioners to challenge the county decision. The court ruled that a ranch neighboring the project had standing based on threats to scenic views and wildlife habitat and migration, as did an association of which the owner of that ranch was a member. However the court denied standing to another association because it did not have members and merely claimed to have an interest in “promoting activities on public and private lands” that would be “adversely affected by the destruction of scenic views and natural beauty.”

In the county proceeding, the court rejected challenges to the county’s approval of the traffic study, financial assurances, and property owner notifications submitted by the project proponent. The court held that these submissions were sufficient under the arbitrary and capricious standard. The court also held that the county did not violate due process by accepting and relying on information submitted after the public hearing.

In the state proceeding, the court allowed the project proponent to offer evidence of sufficient resources to complete the project from a third party even though that party had no contractual obligations to build the project. The court approved a special condition whereby the permittee would provide the assurances before the commencement of construction. In essence, the court approved a practice common in the energy development industry where the initial applicant obtains the government permits and approvals and then finds an investor or buyer to complete the project.

Finally, the court addressed the petitioner's challenge to the state commission's findings that the project would not "pose a threat of serious injury to the environment, nor (sic) to the social and economic condition or (sic) inhabitants or expected inhabitants in the affected area." The court noted that the industrial siting statute protects collective not individual welfare, and found that the commission, in granting the permit, properly balanced the interests of all of the inhabitants of the area, and not just those of the petitioners.

Wilson Advisory Committee v. Teton County, 292 P.3d 855, 2012 WY 163 involved a citizens' challenge to the county's approval of a final development plan. The petitioners claimed that the project's overall density violated the county's development regulations, and that the county failed to make required findings. The court affirmed the county's approval of the density under the arbitrary and capricious standard as mandated by *Northern Laramie Range Foundation* (see above). It gave considerable deference to the county's interpretation of its own regulations regarding the allowed densities. However, the court remanded the case to the county with instructions to make specific findings regarding improvement of scenic views and lessening adverse environmental impacts. The court held the mere presence of evidence in the record that could support such a finding was not a substitute for actual findings.

Smith v. Park County, 291 P3d 947, 2013 WY 3 reversed years of Wyoming judicial precedent and held that inverse condemnation claims are not subject to the Wyoming Governmental Claims Act. The court stated that "there is nothing about the constitutional and statutory right to an inverse condemnation action, and nothing about the [Act], that could reasonably suggest that the former should be subject to the latter." Accordingly, the statute of limitations for such claims is now eight years instead of two years.