Indiana Association of County Commissioners 2019 Annual Conference

Wind/Solar Projects – Maximizing the Opportunities/Minimizing the Risks from New Energy Projects In Your County

December 4, 2019

Wind/Solar Projects – Maximizing the Opportunities/Minimizing the Risks from New Energy Projects In Your County

- Wind and solar farm developments are economic development projects with unique financial considerations
- For private land owners, lease terms and liability protection important
- For public entities, many aspects to consider

Wind/Solar Projects – Maximizing the Opportunities/Minimizing the Risks from New Energy Projects In Your County

Financial considerations for public entities

- Scope of project in terms of acreage, investment, phases, etc.
- Tax abatement considerations
  - Impact on tax base
  - Impact on tax rate
- Infrastructure protection
- Economic Development Agreement
- Decommissioning Plan

Wind/Solar Projects – Maximizing the Opportunities/Minimizing the Risks from New Energy Projects In Your County

- Working Group configuration and communication
  - Representatives of Commissioners and Council
  - County attorney and special counsel
  - Financial advisor
  - Economic development corporation/LEDO
  - Highway superintendent
  - Building Commissioner

Wind/Solar Projects – Maximizing the Opportunities/Minimizing the Risks from New Energy Projects In Your County

- Tax abatement, tax base and tax rate implications are unique in wind and solar farm developments
- Investment primarily considered to be personal property – need to work closely with company representatives and DLGF for appropriate treatment
- Tax abatement seems to be standard consideration nation-wide although not associated with large employment numbers
- Main reason to consider abatement is large increase in tax base

Wind/Solar Projects – Maximizing the Opportunities/Minimizing the Risks from New Energy Projects In Your County

- After adoption of HEA 1001 (2008) and expansion of property tax caps, growing tax base is extremely important
  - Decreases net tax rates
  - Provides additional revenue to rate-controlled funds of government units
  - Can reduce circuit breaker revenue losses to governmental units
  - If abatement is considered, need to build protection into the economic development agreement against future changes in tax treatment

Wind/Solar Projects – Maximizing the Opportunities/Minimizing the Risks from New Energy Projects In Your County

–Infrastructure Protection

- Wind farm development will require extensive use of county road/bridge infrastructure to construct
- Road Use Agreement will be critical to protect county infrastructure, liability, traffic flow during construction, etc.
- Key components of Road Use Agreement include
  - Detailed map of roads/bridges/intersections, etc. to be used for construction, O&M, decommissioning (Designated Roads)
  - Process to determine existing conditions (Road Condition Report)
  - Identify county-regulated drains that may be affected

Wind/Solar Projects – Maximizing the Opportunities/Minimizing the Risks from New Energy Projects In Your County

– Infrastructure Protection (cont’d)

- Key components of Road Use Agreement (cont’d)
- Allowed usage and uses of designated roads by developer
- Required improvements of designated roads by developer
- Safety requirements
- Dust control
- Process to identify needed repairs on Designated Roads and cost responsibility
- Performance assurances
  - <u>Critical</u> to ensure sufficient coverage for sufficient time frame

Wind/Solar Projects – Maximizing the Opportunities/Minimizing the Risks from New Energy Projects In Your County

- Economic Development Agreement
  - Main concept is that Wind Farm may take significant acreage and therefore reduce or eliminate opportunities for other economic development to occur within project area
  - County should be compensated for this to generate funds to promote/encourage/create other types of economic development in other areas of the County

Wind/Solar Projects – Maximizing the Opportunities/Minimizing the Risks from New Energy Projects In Your County

- Key Components of Economic Development Agreement
  - Timing of project implementation
  - Detail of incentives to developer
    - Use/repair/modification to County infrastructure
    - Tax abatement, if any, for consideration of Road Use Agreement
    - Other reasonable assistance to be provided by County
  - Payments by developer in consideration of possible elimination/restriction of other economic development opportunities in project area (Economic Development Payments)
  - Allowance for payment in lieu of taxes (PILOT) in event of change in laws that would exempt investment
  - Require minimum assessed value in event project is sold

Wind/Solar Projects – Maximizing the Opportunities/Minimizing the Risks from New Energy Projects In Your County

- Economic Development Payment Considerations
  - Is there a nexus to required cost to promote economic development in other parts of the County
  - May come down to comparable amount per MW – plus other considerations
  - Negotiate not only amount, but timing of payments. Need to have specifics
  - Not to be considered PILOTs or any type of "property tax" treat as miscellaneous revenue or for specific use
  - Can be allocated to other taxing units via agreement

Wind/Solar Projects – Maximizing the Opportunities/Minimizing the Risks from New Energy Projects In Your County

- Decommissioning Plan
  - Need to have Decommissioning Plan in place prior to construction to protect County and constituents
  - Plan needs to cover
    - Provisions/details for removal of towers, footings, access roads, etc. to as near same condition as practicable
    - Planned use of County roads/infrastructure to carry out the Plan
    - Financial assurances and plan to review Plan/financial assurances periodically

Wind/Solar Projects – Maximizing the Opportunities/Minimizing the Risks from New Energy Projects In Your County

- Summary
  - Every project is unique
  - Protect County infrastructure – both now and in the future
  - Creative economic development agreements to create “win-win” scenarios
  - Takes great amount of communicating internally and with public

Contact Information

-Richard Hall
Barnes & Thornburg LLP
(317) 231-7516
rhall@btlaw.com

-Jason Semler, Partner
Baker Tilly Municipal Advisors, LLC
(317) 465-1540
jason.semler@bakertilly.com

-Mike Wickersham
Randolph County Commissioner
(765) 546-1087
mwickersham@randolph.in.gov