

Dailypress.com, Judge voids Dendron council votes on power plant

SURRY — A judge last week voided the Dendron Town Council's February 2010 votes to move forward on a new electrical power station — ruling that the council failed to properly inform the public about the action ahead of time.

Circuit Court Judge Sam Campbell ruled that the council, in January 2010 notices in the Sussex-Surry Dispatch newspaper, did not tell residents that it would be voting on a rezoning and a conditional use permit for the power company at a Feb. 1 meeting.

The newspaper notice said only that the council would "receive public comments" on the matter.

Justice System After a tense meeting — with 40 speakers about evenly split on the project — the council voted 4-3 to grant Old Dominion Electric Cooperative approval to move forward on a 1,500-megawatt coal-burning power station on 1,200 acres in Dendron.

By voting on the matter without proper notice, Campbell ruled, "the Town Council acted beyond the authority granted to it by the General Assembly." As a result, he said, the council's votes on the matter are void.

The Town Council must now schedule a new vote — and grant approval a second time — before the plant power plant project can go forward. It was not immediately clear Monday how the council's votes would now line up in light of a recent election.

Campbell's ruling came in a lawsuit filed in Surry Circuit Court in April 2010 by four county residents — Michael Drewry, Helen Eggleston, John Pond and Willie Richardson. They are all property owners living near the site of the proposed coal-burning plant.

Drewry, a retired lawyer, said they sued because their concerns weren't being heard by the town or company officials.

"This is a significant victory for citizens and due process, given the considerable hardship incurred challenging a well-funded corporation that has consistently defended a clear violation of public notice requirements," Drewry said Monday.

Clinton B. Faison Jr., an attorney representing the Town Council, did not return a phone call seeking comment on when a new vote would be scheduled. David Hudgins, the director of external communications with Old Dominion Electric Cooperative — also listed as a defendant in the suit — could not be reached for comment.

In its January 2010 newspaper notices, the Town Council said only that it would "receive public comments" on the application. At the meeting, the council approved four measures pertaining to the power station — an amendment to the town's comprehensive plan, two changes pertaining to zoning rules, and a conditional use permit to Old Dominion Electric Cooperative.

In defending the suit, the council argued that someone reading the notice could have "reasonably inferred" that the council intended to take action. In his ruling last week, Campbell disagreed.

"The use of the words 'receive public comments' in no way denotes a deliberative process similar to acting on the applications," Campbell wrote in a nine-page ruling. "Moreover, it is not reasonably inferable from a reading of the notice that the Town Council intended to take any further action ... beyond receiving public comments, least of all a vote on whether to approve them."

In his ruling, Campbell distinguished the phrase "receive public comments" from another choice of words — "consider public comments." Courts ruled in another case that "consider public comments" was sufficient notice for a vote.

The original suit also alleged that Mayor Yvonne Pierce specifically said the board would not vote at the February meeting. Campbell's ruling last week did not mention that allegation.

Copyright © 2011, Newport News, Va., Daily Press

dp-nws-dendron-suit-20111121