

PROTECT OUR LAKES et al.

v.

BOARD OF ENVIRONMENTAL PROTECTION et al.

Argued December 12, 2012  
Decided December 20, 2012

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD,  
GORMAN, and JABAR, JJ.

#### MEMORANDUM OF DECISION

Protect Our Lakes appeals a judgment of the Board of Environmental Protection affirming the Department of Environmental Protection's approval of Evergreen Wind II, LLC's, wind energy project permit applications, asserting that the scenic impact criteria set forth in the Wind Energy Act, 35-A M.R.S. § 3452(3) (2012), are overly vague and result in an unconstitutional delegation of power.

By failing to raise this argument at the administrative level, Protect Our Lakes failed to preserve this issue for appellate review. *See Wells v. Portland Yacht Club*, 2001 ME 20, ¶ 5, 771 A.2d 371; *Hale-Rice v. Me. State Ret. Sys.*, 1997 ME 64, ¶ 10 n.2, 691 A.2d 1232; *Ne. Whitewater Ctr., Inc. v. Dep't of Inland Fisheries & Wildlife*, 550 A.2d 56, 58 (Me. 1988). *See also In re Penelope W.*, 2011 ME 58, ¶ 7, 19 A.3d 813 (a statute is presumed constitutional). *See Uliano v. Bd. of Env'tl. Prot.*, 2009 ME 89, ¶ 32, 977 A.2d 400; *In re Spring Valley Dev.*, 300 A.2d 736, 752 (Me. 1973) (finding statutory criteria similar to those at issue in this case constitutional).

The entry is:

Judgment affirmed.

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**On the briefs:**

Lynne Williams, Esq., Bar Harbor, for appellants Protect Our Lakes and Donna Davidge

William J. Schneider, Attorney General, and Margaret A. Bensinger, Asst. Atty. Gen., Augusta, for appellee Board of Environmental Protection

P. Andrew Hamilton, Esq., and Jonathan A. Pottle, Esq., Eaton Peabody, Bangor, for appellee Town of Oakfield

Juliet T. Browne, Esq., and Gordon R. Smith, Esq., Verrill Dana, LLP, Portland, for appellee Evergreen Wind Power II, LLC

**At oral argument:**

Lynne Williams, Esq., for appellants Protect Our Lakes and Donna Davidge

Margaret A. Bensinger, Asst. Atty. Gen., for appellee Board of Environmental Protection

Juliet T. Browne, Esq., for appellee Evergreen Wind Power II, LLC