

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Ohio Power Siting	)	
Board's Review of Chapters 4906-1,	)	
4906-5, 4906-7, 4906-11, 4906-13,	)	Case No. 12-1981-GE-ORD
4906-15, and 4906-17 of the Ohio	)	
Administrative Code.	)	

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**INITIAL COMMENTS OF GREENWICH NEIGHBORS UNITED**

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In an Entry dated November 24, 2014, the Ohio Power Siting Board ("OPSB") requested interested parties to submit comments on the Staff's proposed changes to Rule 4906-4-08, Ohio Administrative Code ("O.A.C."). Greenwich Neighbors United appreciates this opportunity to submit the following comments on the proposed rule for the OPSB's consideration.

**I. ABOUT THE COMMENTERS**

Greenwich Neighbors United ("GNU") is a nonprofit corporation formed for the purpose of promoting the safety and well-being of the community in and around Greenwich, Ohio by proactively addressing issues relating to the siting of industrial wind turbines. GNU's members have actively participated in OPSB Case No. 13-990-EL-BGN, an experience that has been both educational and frustrating. The views of GNU's members are well documented in the public comments filed in this OPSB proceeding and in the Application for Rehearing granted by the OPSB on October 22, 2014.

## **II. COMMENTS ON PROPOSED RULES**

Generally speaking, GNU supports the views expressed by Union Neighbors United (“UNU”) in the comments filed in this proceeding by UNU. In addition, GNU urges the OPSB to consider GNU’s comments regarding the proposed content of Rule 4906-4-08(C)(2)(d), O.A.C.

### **A. Rule 4906-4-08(C)(2)(d), O.A.C.**

The language in proposed Rule 4906-4-08(C)(2)(d), O.A.C., states that the minimum setback requirement “... may be waived in the event that all owners of property adjacent to the turbine agree to such waiver.” The text of this proposed rule is incompatible with the letter and spirit of Ohio law.

The General Assembly has specified the minimum setback distance which the OPSB may increase based on the circumstances presented by a particular wind farm proposal. The OPSB is also responsible for promulgating reasonable regulations (which the OPSB has not promulgated<sup>1</sup>) in accordance with Section 4906.20(B)(2), Revised Code. And, Section 4906.20(B)(2)(c), Revised Code, states that any waiver of a setback requirement applicable to a particular wind farm cannot occur unless and until a waiver is executed by all owners of property adjacent to the wind farm property and the waiver has been secured in compliance with the procedure established in a rule adopted by the OPSB.

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<sup>1</sup> The OPSB has not adopted rules that contain reasonable regulations for each subject area identified in Section 4906.20(B)(2), Revised Code. Section 4906.20(A), Revised Code, states that a certificate may only be issued pursuant to Section 4906.20, Revised Code. The OPSB’s failure to adopt the rules required by Section 4906.20(B)(2), Revised Code, means that the certificates which have been issued by the OPSB have not been issued pursuant to Section 4906.20, Revised Code.

The proposed rules conflict with Ohio law by suggesting that the minimum setback requirement can be avoided by a wind farm developer that secures a waiver from property owners adjacent to a turbine (rather than from all owners of property adjacent to the wind farm property). As Ohio Senator William Seitz has observed: (1) "... only where the waiver is universally agreed to by all owners and all lessees and all owners of adjacent property should the waiver ever be considered to be valid"<sup>2</sup> (emphasis original); and, (2) "... before the minimum setback requirements can be evaded through waivers secured by wind farm developers, the waivers must be secured from all owners of property within the wind farm property plus all owners of property adjacent to the wind farm property."<sup>3</sup>

The proposed rules also fail to satisfy the statutory requirement in Section 4906.20(B)(2)(c), Revised Code, that the OPSB establish, by rule, the procedure by which a proper waiver may be secured.

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<sup>2</sup> *In the Matter of the Power Siting Board's Adoption of Chapter 4906-17 of the Ohio Administrative Code and the Amendment of Certain Rules in Chapters 4906-1, 4906-5 and Rule 4906-7-17 of the Ohio Administrative Code to Implement Certification Requirements for Electric Generating Wind Facilities*, Case No. 08-1024-EL-ORD, Comments of Senator Bill Seitz at 3-4 (October 3, 2008).

<sup>3</sup> *In the Matter of the Application of 6011 Greenwich Windpark, LLC for a Certificate to Construct a Wind-Powered Electric Generation Facility in Huron County, Ohio*, Case No. 13-990-EL-BGN, Senator William Seitz Letter dated September 30, 2014 at 2 (October 6, 2014). In the September 30, 2014 letter expressing his views regarding what is required before a wind farm developer can evade the setback requirements by securing waivers, Senator Seitz also said "I continue to believe that this view is the only one that can be reasonably and lawfully adopted by the Board based on the plain meaning of the statutory language." *Id.* at 2.

### III. CONCLUSION

For the foregoing reasons, GNU urges the OPSB to consider and address the issues raised by and recommendations contained in the comments filed by UNU and GNU and incorporate the results of such considerations in the final rules as promulgated by the OPSB.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing *Initial Comments of Greenwich Neighbors United* has been served upon the following parties of record this 16<sup>th</sup> day of January 2015 *via* electronic service, hand-delivery or U.S. mail, postage prepaid.

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Summary: Comments of Greenwich Neighbors United electronically filed by Mr. Samuel C. Randazzo on behalf of Greenwich Neighbors United