

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Republic)
Wind, LLC for a Certificate to Site Wind-) Case No. 17-2295-EL-BGN
Powered Electric Generation in Republic and)
Sandusky Counties.)

**CLOSING BRIEF OF SENECA COUNTY, ADAMS TOWNSHIP, REED TOWNSHIP,
AND SCIPIO TOWNSHIP IN OPPOSITION TO REPUBLIC WIND LLC'S
APPLICATION FOR A CERTIFICATE**

Now comes Seneca County, Adams Township, Reed Township, and Scipio Township (hereafter: Local Government), by and through the Seneca County Prosecuting Attorney Derek W. DeVine and hereby submits the following brief as it's closing argument in opposition to Republic Wind's Application for a Certificate.

I: Locating the project in Seneca County despite local opposition

Local Government opposes the premise that wind turbines should be situated in rural Seneca County because of the low density of the population in that area. Matthew Robinson testified regarding the placement of the project: "This zone has a relatively low density of viewers". Direct Testimony of Matthew Robinson, p. 15, lines 3-4. Local Government respectfully suggests placing the turbines in rural Seneca County merely because it does not impact a large number of people is harmful to local residents. The people of Seneca County would respectfully suggest that just because there are fewer residents impacted that they should not have the turbines built here. If the building of a wind turbine project is appropriate for a low-density area, why is it not equally appropriate for a higher density area? In other words, why is the Ohio Power Siting Board allowing the turbines to be stuck in our backyard when there are none in Columbus?

The Staff Report of the Ohio Power Siting Board echoes and repeats this theme that placing the turbines in a low-density area is preferred when it stated:

The area selected possesses adequate wind resources, adequate power transmission and transportation infrastructure and land that is sparsely populated relative to other areas of the State and used for agriculture.

Staff Report, p. 44. Local Governments would respectfully submit that the residents and visitors to Seneca County should not bear the burden of living with the wind turbines just because the area is less densely populated than other areas of the State of Ohio. If the presence of wind turbines is determined to be agreeable, why would it be of any importance that the number of people impacted is greater or fewer?

Seneca County Commissioner Mike Kerschner testified about the local sentiment regarding this project stating: "While there is a small fraction of people for these projects, the majority of Seneca County residents oppose them." Mike Kerschner Testimony, line 6-7. It is the position of Seneca County, Adams Township, Reed Township, and Scipio Township to oppose these wind turbine projects on behalf of their respective citizens.

II: Noise

A. The Noise will be pervasive

The evidence adduced at hearing demonstrates that the neighbors to the proposed project will be subjected to noise described by Applicant's expert Isaac Old as "grinding" (Proceedings, Vol. I, p. 146, line 14); "clanking" (Proceedings, Vol. I, p. 146, lines 17-18); "swishing" (Proceedings, Vol. I, p. 147, line 2); and "whooshing" (Proceedings, Vol. I, p. 147, line 3-5). Mr. Old also explained in layperson terminology the difference between hearing a noise at 40 dBA and 50 dBA:

Q. (Mr. VanKley): Okay. So, in layperson terms, if you -- if you had a dBA level of let's say 40 dBA and then you had another reading of 50 dBA, how much louder would that sound be perceived to be by the person listening to it?

A. (Mr. Old): So assuming those are very similar sources as far as spectral content and that kind of thing, then the 50 dBA source would be about twice as loud.

Proceedings, Vol. I, p. 151, line 18-25; p. 152, line 1. The Local Governments would respectfully suggest that this testimony demonstrates the significance of the increased noise that will be impacting the residents. Mr. Old acknowledged receiving an email from an employee of Applicant seeking a memorandum to avoid “messy noise reduction scenarios”. Proceedings, Vol. I, p. 252, line 8-20. The Local Governments would respectfully suggest that Applicant has never resolved any of the messy scenarios and that the noise that will be generated by the project will detrimentally impact the local community.

B. The noise studies monitored a location outside the project area and did not monitor a portion of the actual project area

The sound studies relied upon by the Applicant and the Ohio Power Siting Board Staff included locations that ended up being outside the project area. Applicant’s expert, Mr. Old acknowledged that the “North Boundary” monitoring station is four thousand (4,000) feet from the current boundary of the project. Proceedings, Vol. I, p. 164, line 21-25; p. 165, line 1.

Mr. Old testified that there were no noise monitoring stations located in the western portion of the project area because at the time of the noise study “the project area did not continue that far west.” Proceedings, Vol. I, p. 195, line 9-10. When asked about the impact of having no monitor in the new area, Mr. Old indicated that this new area was represented by the prior locations. However, when asked to explain, he was unable to do so. Proceedings, Vol. I, p. 195, line 24-25.

III: Airport

A. ODOT’s Determination is valid

Applicant seeks to install its wind turbine project at heights opposed by the Seneca County Airport and the Ohio Department of Transportation, Office of Aviation. Ohio Revised Code Section 4561.341 mandates that the office of aviation shall review an application before the Ohio Power Siting Board.

Pursuant to any consultation with the power siting board regarding an application for certification under section 4906.03 or 4906.10 of the Revised Code, the office of aviation of the division of multi-modal planning and programs of the department of transportation shall review the application to determine whether the facility constitutes or will constitute an obstruction to air navigation based upon the rules adopted under section 4561.32 of the Revised Code. Upon review of the application, if the office determines that the facility constitutes or will constitute an obstruction to air navigation, it shall provide, in writing, this determination and either the terms, conditions, and modifications that are necessary for the applicant to eliminate the obstruction or a statement that compliance with the obstruction standards may be waived, to the power siting board under section 4906.03 or 4906.10 of the Revised Code, as appropriate.

RC 4561.341.

As established by the testimony of John Stains from ODOT, that agency has reviewed the application and made the appropriate determinations under Ohio law. Those determinations have been identified and recommended in the Supplemental Staff Report.

Applicant however has submitted testimony attempting to suggest that ODOT must apply “sound aeronautical principles” in determining if a waiver of the Part 77 is appropriate or not. Applicant, however, is incorrect. Ohio Administrative Code Section 5501:1-10-05 states:

The Ohio department of transportation office of aviation adopts the obstruction standards set forth in 14 CFR 77.21 to 14 CFR 77.29, as amended.

At its sole discretion, the office of aviation may grant a permit which includes a waiver from full compliance with the obstruction standards. Any decision to grant a waiver shall be based on sound aeronautical principles as set forth in the following technical manuals, as amended: "Federal Aviation Regulations part 77, Objects Affecting Navigable Airspace, Title 14, CFR, TERPS, advisory circular 150/5300-13, Airport Design Guide, FAA Heliport and Vertiport Design Guides, and FAA 7400.2 c, Procedures for Handling Airspace Matters," as amended.

A permit issued with a waiver of the obstruction standards shall include the reasons for the waiver, conditions imposed by the office of aviation associated with the waiver, and any additional restrictions or conditions deemed appropriate by the office of aviation. The decision to grant a waiver and the terms and conditions imposed thereunder shall be final. Failure to meet the conditions and restrictions of any waiver shall render the permit void and subject to enforcement action.

The office of aviation will also consider airport zoning in accordance with section 4563.10 of the Revised Code.

Initially, it is noted that this section of the Ohio Administrative Code indicates that the office of aviation “(A)t its sole discretion” may grant a permit which includes a waiver. It is therefore respectfully suggested that the decision of the office of aviation can not be challenged by Applicant.

Applicant has suggested that the decision of the office of aviation is not fully supported by “sound aeronautical principles”. It is respectfully suggested that a close reading of the above section of the Ohio Administrative Code makes it clear that the office of aviation has to base the granting of a waiver on sound aeronautical principles. Nothing in the Ohio Administrative Code mandates that the denial of a waiver be considered or reviewed under that same standard. As stated in the Ohio Administrative Code, “Any decision to **grant** a waiver” (emphasis added) must rely on sound aeronautical principles; not any decision against granting a waiver.

As further stated in this section of Ohio Administrative Code, the determination made by the office of aviation “is final”. Applicant’s attempts to construe the statute or the administrative code otherwise are without merit.

B. Safety

The only witness who has piloted an airplane at the Seneca County Airport or who has been a pilot instructor at that facility, Bradley Newman, testified that building the project as set forth in the Application would reduce the safety of the airport. During cross-examination the following testimony was admitted:

Q. (Attorney Sommer Sheely): The increase in a minimum descent altitude, as set forth in the Determination of No Hazard, is to address any potential safety consideration with the presence of the turbines, correct?

A. (Bradley Newman) That is correct.

Q. You don't have any data, sitting here today, on the number of flights that would be affected by an increase in the minimum descent altitude, correct?

A. That is correct.

Q. Is it also correct to say that you had raised a concern about the change in the descent angle if the minimum descent altitude is increased, correct?

A. That is correct.

Proceedings Volume VI, p. 1229-1230. Applicant is seemingly arguing that because the number of flights and pilots that use the non-precision based landing system is a small number, that the descent angle increase is small, and that the system is being slowly replaced by GPS that these local concerns should be overlooked.

ODOT also indicated that it was important to protect both the integrity of local airports and to protect the safety of those local airports. As established by John Stains from ODOT division of aviation's testimony:

Q. What goes into ODOT's determination if compliance with obstruction standards may be waived?

A. If an airport sponsor is willing to agree to give up the utility of their navigable airspace, meaning, for example, they are willing to consent to the 14 FAA raising minimum flight altitudes or minimum descent altitudes or changing traffic patterns, then that is when ODOT determines a waiver is appropriate. This must be done in an official capacity and in writing, such as through an Airport Authority Board resolution. ODOT is not the owner or sponsor of any airport, and it is not our mission to dictate to local airport sponsors how they should or should not operate their airport. However, it is our duty to protect the safety of the travelling public above all else, and as such we must have the ability to identify the conditions upon which safety will be preserved.

Prefiled Testimony of John Stains, p. 17, lines 10-22.

The testimony of Newman also established that allowing Applicant to build the turbine project as proposed would affect the utility of the Seneca County Airport. Proceedings-Vol. VI, lines 4-7.

IV: Karst (or "how do you avoid building on Karst when all or most of the area is Karst?")

In the Staff Report it is noted that Karst limestone is a regular feature of the ground in the project area. As it relates to Karst, "Where the Applicant conducts future geotechnical studies that identify Karst features, those areas would be avoided for siting wind turbines." Staff Report, p. 26. At the hearing on the application, Applicant's expert, Shawn McGee acknowledged that a majority of the project area is within the Karst plain in Seneca and Sandusky County. Proceedings Vol. IV, p. 820, line 24-25; p. 821, line 1-5. Mr. McGee further testified that the identification of the Karst areas was from recognized Ohio Department of Natural Resources databases. Proceedings Vol. IV, p. 822, line 18-25. Mr. McGee said that approximately 50% of the project area is within the Bellevue-Castalia Karst Plain. Proceedings Vol. IV, p. 823, line 16-23. In his Direct Testimony, Mr. McGee testified:

It is important to clarify that if future geotechnical studies identify that proposed turbine locations are located above karst formations, implementation of mitigation measures (such as grouting) is likely to be the recommended course of action. Complete avoidance of these areas may not be necessary or the recommended course of action.

Direct Testimony of Shawn McGee, p. 6, line 21-24.

Local Intervenor's expert Ira Sasowsky testified that the project area was between 70 and 100% Karst or potential Karst behavior. Proceedings Vol. VI p. 1208, line 17-22. Mr. Sasowsky has over forty (40) years' experience researching Karst. Ira Sasowsky Direct Testimony, p. 5, line 18-20. Mr. Sasowsky has undertaken work for both the United States and Ohio EPA and was involved in a government research project of the Bellevue-Castalia Karst Plain which overlaps the project area. Ira Sasowsky Direct Testimony, p. 7, line 4-15.

The direct testimony of Mr. Sasowsky demonstrates that constructing a wind turbine project in a Karst area creates a danger to the entire area including land failures, disrupted water sources, contaminated water, and flooding. Ira Sasowsky Direct Testimony, p. 12, line 16-22.

The position of Applicant seems to be that it will deal with any issues that arise. Applicant will grout or implement another “mitigation measure”. Staff recommends that Applicant “avoid” construction in Karst features. Mr. Sasowsky identifies the dangers in allowing the application to proceed based on the fact that a significant portion of the project area overlaps with the Belluvue-Castalia Karst Plain. It is respectfully suggested that when reviewing the credentials and testimony of Mr. McGee and Mr. Sasowsky that the latter is a more credible witness.

The Local Governments would respectfully suggest that denial of the application protects the environment without exposing the people of Seneca County to the potential damaging impacts set forth in the testimony of Mr. Sasowsky.

V: Bowen Nature Preserve ignored by Visual Impact Study and Ohio Power Sitting Board Staff

The Visual Impact Study did not comply with the basic requirement of Ohio Administrative Code 4906:-4-08(D) in that the only park within the boundary of the project was not evaluated. As demonstrated at hearing, Bowen Nature Preserve is in the project area. (Proceedings Vol. VII, p. 1409, line 16-19; Proceedings Vol. III, p. 540, line 5-6; Proceedings Vol. VII, p. 1446, line 3-7). The expert retained by Applicant who prepared their Visual Impact Study did not visit Bowen Nature Preserve.

Q. (Mr. DeVine): Wouldn't it be important to know which park is closest to the project area?

A. (Mr. Robinson): It could be, but we do -- we're not required to go to every single location. We provide a representative view and we provide representative views from within the foreground distance from like landscape similarity zones to parks that would be traveled on there.

Proceedings, Vol. III, p. 537, line 3-10.

In his testimony Mr. Robinson seemingly blames the fact that Bowen Nature Preserve was not on databases that were used for the study (Proceedings, Vol. III, p. 540, line 17-25), but did

acknowledge that he had utilized the Seneca County Park District website and located on that source a list of parks and maps that he used. Proceedings, Vol. III, p. 536, line 16-21.

In addition to Applicant not visiting Bowen Nature Preserve, Staff Witness for aesthetics, James O'Dell, never visited a park in Seneca County, nor ever visited or spoke with any person from the Seneca County Park District. Mr. O'Dell missed visiting a park or speaking to any person from the park district despite five or six visits and approximately forty hours in Seneca County. Proceedings Vol. VII, p. 1449, line 7-18.

In the Direct Testimony of Mr. Robinson he testifies that he had determined that there would be no visibility of turbines from Clinton Nature Preserve and that the only views impacted at Steyer Nature Preserve would be from a parking lot and a nearby trail. Direct Testimony of Matthew Robinson, p. 10, line 19-23. Nowhere in his Direct Testimony does Mr. Robinson even mention Bowen Nature Preserve. When reviewing Seneca County Park Exhibit #2 it is readily apparent that these two (2) referenced parks are not near the project area.

Mr. Robinson acknowledged on cross examination that he had undertaken no viewshed analysis of the project as it relates to Bowen Nature Preserve, but did state that he believed that "there would be potential for visibility of turbines from there". Proceedings, Vol. III, p. 542, line 21-22. Local Governments respectfully suggest that at an absolute minimum Applicant should be able to answer the question of visibility of turbines from a local park such as Bowen Nature Preserve.

One witness actually has visited Bowen Nature Preserve. William McCallister testified in his pre-filed Direct Testimony:

Q 6: If the turbines are constructed as proposed by Republic Wind will those turbines be visible from Bowen Nature Preserve?

A 6: Yes. As I understand the proposed construction, it is my belief that I'll be able to see a wind turbine in every direction while at Bowen Nature Preserve unless my view is blocked by an obstruction such as a tree.

Direct Testimony of William McCallister, line 33-37. Unlike Mr. Robinson or Mr. O'Dell, Mr. McCallister actually visited Bowen Nature Preserve and while looking at a map was able to visualize seeing fifteen to twenty turbines if the project proceeds pursuant to the Application. Proceedings, Vol. VII, p. 1401.

The Local Governments would respectfully submit that Ohio law mandates that the actual parks in the project area at least be considered as part of the application process. OAC 4906-4-08 states in part:

(B) The applicant shall provide information on ecological resources.

(1) Ecological information. The applicant shall provide information regarding ecological resources in the project area.

(a) Provide a map of at least 1:24,000 scale containing a one half-mile radius from the project area, showing the following:

(i) The proposed facility and project area boundary.

(ii) Undeveloped or abandoned land such as wood lots or vacant tracts of land subject to past or present surface mining activities, not used as a registered game preserve or in agricultural production.

(iii) Wildlife areas, **nature preserves**, and other conservation areas.

(iv) Surface bodies of water, including wetlands, ditches, streams, lakes, reservoirs, and ponds.

(v) Highly-erodible soils and slopes of twelve percent or greater.

OAC 4906-4-08(B)(emphasis added).

The Local Governments respectfully suggest that the Applicant totally disregarded the only park in the project area, Bowen Nature Preserve. Failing to include Bowen Nature Preserve on a map disregards the Ohio Administrative Code. Nothing in the Application or testimony provides any evidence that Applicant has examined, considered, nor developed any plan for how the project will impact Bowen Nature Preserve. OAC 4906-4-08(D)(3) mandates that the applicant "shall

evaluate identified recreation and scenic areas”. Applicant has not provided any analysis of Bowen.

Applicant has thus failed to accurately describe the visibility of the project as mandated by OAC 4906-4-08(D)(4)(a). Applicant failed to even visit Bowen Nature Preserve despite knowing or having access to maps showing that it was within the project area. Proceedings, Vol. III, p. 536, line 16-21.

Applicant has failed to describe the existing landscape as mandated by OAC 4906-4-08(D)(4)(b). How can Applicant claim to have undertaken such an evaluation if the only park in the project area was not visited or considered?

Applicant has failed to describe the alterations to the landscape that will impact Bowen Nature Preserve. OAC 4906-4-08(D)(4)(c). The failure of Applicant to include Bowen in the analysis necessitates concluding that not assessment was done regarding the impact that the project would have on Bowen Nature Preserve.

Applicant has failed to consider the impact of the project on the scenic quality of the area as it relates to Bowen Nature Preserve. OAC 4906-4-08(D)(4)(d).

Applicant has failed to provide photos or other images demonstrating the impact on Bowen Nature Preserve. Applicant provided a visual assessment of the project on Clinton Nature Preserve and Steyer Nature Preserve (Direct Testimony Matthew Robinson, p. 10, line 19-20), but did not provide any analysis regarding Bowen Nature Preserve as mandated by OAC 4906-4-08(D)(4)(e).

Applicant has failed to provide any evidence of measures that will be taken to minimize the visual impact on Bowen Nature Preserve by ignoring it entirely during the process. OAC 4906-4-08(D)(4)(f).

Mr. Robinson provided analysis on the visual impact that the wind turbine project would have on Clinton Nature Preserve and Steyer Nature Preserve. Direct Testimony Matthew Robinson, p. 10, line 19-20. The Visual Impact Study (Exhibit AA of the December 26, 2018 Amended Application) references on page 18 that the Seneca County Park District has ten (10) parks including Bowen. That same report indicates on page 19 that “Scenic quality and viewer sensitivity in these areas are considered to be relatively high.”

The failure of Applicant to undertake any evaluation of Bowen Nature Preserve as part of the Visual Impact Assessment was confirmed by Staff Witness O’Dell who testified:

Q. (Mr. DeVine): There's no evaluation in this section or any section of the Visual Impact Assessment regarding Bowen Nature Preserve, correct?

A. (Mr. O’Dell): I don't recall ever seeing that, sir, that is correct.

Proceedings Vol. VII, p. 1452, line 9-13.

Local Governments respectfully suggest that a Visual Impact Study that does not so much as visit the only local park in the project area must be disregarded. A review of the testimony of Applicant witness Robinson creates the mental image that he diligently avoided Bowen Nature Preserve and that Staff Witness O’Dell merely drove around. How else can you explain that the one and only park in the project area was not even visited by Applicant’s expert nor the responsible Staff person?

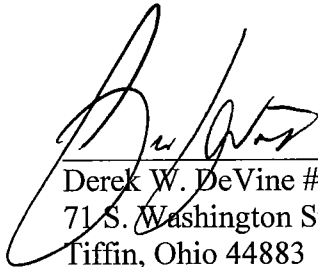
Conclusion:

The Application by Republic Wind, LLC has failed to meet the criteria and standards established by Ohio law to allow for the construction of a wind turbine project. The Local Governments would respectfully suggest that the fundamental criteria of placing wind turbine projects in low population density areas is unfair. Furthermore, permitting this project seems illogical when the Staff Report recommends that turbines not be located on Karst when at least

50% of the area (and possible up to 100%) is Karst or has Karst tendencies. The testimony demonstrated that building these huge turbines on Karst exposes Seneca County to potential water hazards for generations.

Finally, the Application's Visual Impact Study failed to address the impact that this project would have on Bowen Nature Preserve. While it is expected that Applicant will seek to minimize this testimony since Mr. McCallister did not know exact locations of proposed turbines, it is respectfully submitted that unlike Applicant's expert and Staff, he did actually visit Bowen Nature Preserve. Is it asking too much for Applicant and Staff to visit the only local park in the project area?

Wherefore, Local Governments respectfully request that the Ohio Power Siting Board deny the application.

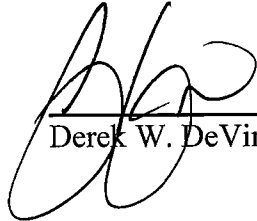


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing CLOSING BRIEF OF SENECA COUNTY, ADAMS TOWNSHIP, REED TOWNSHIP, AND SCIPIO TOWNSHIP IN OPPOSITION TO REPUBLIC WIND LLC'S APPLICATION FOR A CERTIFICATE was served upon the following Parties of Record on this the 23rd day of December via electronic or regular US mail.


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Summary: Brief of Seneca County, Adams Township, Reed Township and Scipio Township in Opposition to Republic Wind LLC's Application for a Certificate electronically filed by Mr. Derek W. DeVine on behalf of Board of Seneca County Commissioners and Board of Trustees of Adams Township, Seneca County, Ohio and Board of Trustees of Scipio Township, Seneca County, Ohio and Board of Trustees of Reed Township, Seneca County, Ohio