

BEFORE THE OHIO POWER SITING BOARD

**In the Matter of the Application of
Kingwood Solar I LLC, for a
Certificate of Environmental Compatibility
and Public Need to Construct a Solar
Electric Generation Facility in
Greene County, Ohio**

)
)
)

Case No. 21-0117-EL-BGN

INITIAL POST-HEARING BRIEF

Thaddeus M. Boggs (0089231)
Jesse J. Shamp (0097642)
Frost Brown Todd LLC
10 West Broad Street, Suite 2300
Columbus, Ohio 43215
Phone: 614-464-1211
Email: tboggs@fbtlaw.com
Fax: 614-464-1737

*Attorneys for the
Greene County Commissioners*

TABLE OF CONTENTS

INTRODUCTION.....	1
STATEMENT OF FACTS.....	1
STANDARD OF REVIEW	7
ARGUMENT.....	7
A. <i>The project is contrary to the County’s adopted land use plan.</i>	8
B. <i>Kingwood has not demonstrated that the project will serve the public interest, convenience, and necessity with respect to tourism, whereas the County has concluded it will have a potential detrimental effect.</i>	10
C. <i>Opposition among local governments in the Kingwood project area is unanimous, and the substantial majority of comments from local non-participating residents object to the project.</i>	11
D. <i>Revenue from the taxes, or payments in lieu of taxes, associated with the project do not outweigh the Commissioners’ opposition to the project or show that it serves the public interest, convenience, and necessity.</i>	12
E. <i>The County was not improperly influenced by Board staff, but it instead reached an independent decision to oppose the application on the merits.</i>	12
F. <i>Kingwood’s property value impact study does not demonstrate that the project would serve the public interest, convenience, and necessity.</i>	13
CONCLUSION	16
CERTIFICATE OF SERVICE	18

INTRODUCTION

The Greene County Board of Commissioners (“the County” or “the Commissioners”) opposes the application for a certificate of environmental compatibility and public need (“the Certificate”) in this proceeding. The chief grounds of the County’s opposition arise under Section 4906.10(A)(6) of the Ohio Revised Code: whether the applicant has shown that the proposed major utility facility will “serve the public interest, convenience, and necessity.”

In short, as the local government with general jurisdiction over the facility’s proposed location, the County believes that the proposed facility would *not* serve the public interest, convenience, and necessity. And the applicant has not proven that it would. The project has generated sustained public opposition among residents of Greene County, as well as unanimous opposition by the County and the townships in which the facility is proposed. Its consumption of land for several miles along the rural corridor leading to John Bryan State Park and historic Clifton would disrupt the rolling agricultural landscape and character that attracts residents and tourists to rural Greene County.

The application before the Ohio Power Siting Board (“OPSB” or “the Board”) does not serve the public interest, convenience, and necessity, and so the Greene County Board of Commissioners respectfully requests that the Certificate application be denied.

STATEMENT OF FACTS

The Application

Applicant Kingwood Solar I LLC (“Kingwood”) filed its application for a certificate of environmental compatibility and public need on April 16, 2021. (*See* Kingwood Ex. 1 (“the Application”). Kingwood is a wholly owned affiliate of Vesper Energy. (*Id.*). The Application seeks the Board’s approval of a 175 MW solar-powered electric generation facility to be located

in Cedarville, Miami, and Xenia Townships, and entirely within Greene County, Ohio. *Id.* In total, the project would occupy approximately 1,200 acres of land. (Joint Ex. 1 (“the Joint Stipulation”)). The total project area would extend on a southwest to northeast axis roughly parallel to Clifton Road and Wilberforce Clifton Road for a distance of approximately five miles. (*See* Kingwood Ex. 25). The project was originally proposed with 25-foot setbacks from fence line to non-participating property lines (Kingwood Ex. 2, “Compilation of Responses to Staff Data Requests by Applicant” at 87), but the Joint Stipulation entered between Kingwood and the Ohio Farm Bureau Federation (“OFBF”) would require a 250-foot minimum setback from non-participating residences (not property lines) to the project fence line, and 50 feet from project fence line to the edge of public rights of way. (Joint Stipulation at 4, 11).

The County’s Assessment of the Project and Resolution in Opposition

The County Administrator for Greene County, Brandon Huddleson, was first informed of the Kingwood proposal in November 2020. (Greene County Ex. 1 (“Huddleson Direct Testimony”), at 2). After being informed of the planned project, County Administrator Huddleson began to study the Power Siting Board process, and he engaged in conversation with staff for the Greene County Regional Planning and Coordinating Commission (“RPCC”) regarding the County’s land use plan. (Transcript of Proceedings (“Tr.”) Volume VII, at 1701–1704). The conversations with the RPCC staff involved drafting language to address alternative energy sites in the County’s land use plan. (Huddleson Direct Testimony at 2; Tr. Volume VII at 1704).

The Commissioners continued to investigate the impacts of solar development, both on the major-facility scale of the Kingwood application and on more-limited scales. (*See* Kingwood Ex. 73). On April 6, 2021, shortly before Kingwood filed its application with the Power Siting Board, the Commissioners hosted a town hall meeting to solicit input from the public. (Huddleson Direct

Testimony at 3). In this town hall meeting, there “was input from proponents and opponents of the project,” with “far more negative comments than positive ones” and “[t]he overwhelming sentiment was that the project did not fit th[e] area for many reasons that were expressed.” (*Id.*).

The Greene County Board of Commissioners filed a timely notice of intervention on July 21, 2021. (*See* Admin. Law Judge Entry of August 26, 2021, ¶27). Cedarville, Miami, and Xenia Townships intervened as well. (*Id.*) Joining these governmental intervenors were several non-governmental organizations, including In Progress, LLC, the Tecumseh Land Preservation Association, the Ohio Farm Bureau Federation, and the Citizens for Greene Acres, Inc. (“CGA”). (*Id.*) The CGA was joined by fourteen additional individual landowners who own properties adjacent to the planned project area. (*Id.* at ¶28).

In the meantime, the County RPCC prepared an amendment to the County’s land use plan, Perspectives 2020, to address alternative energy installations in the County. (Huddleson Direct Testimony at 3). Perspectives 2020 is the guiding document used by local officials considering any new development or land use application. (*Id.* at 4). The amendment to Perspectives 2020 recognized six overarching goals of the County’s long-term vision for land use planning. (*See* Greene County Ex. 3 (“Perspectives 2020 Amendment Resolution”) at 2). One of the priorities identified for the public and for the Perspectives 2020 steering committee was “protecting agricultural use and prime farm soils.” (*Id.*).

The amendment to Perspectives 2020 explained goals and strategies that would be carried forward to the in-development Perspectives 2040 updated land use plan. (*See id.*). These included “balanc[ing] development and farmland preservation by guiding development to urbanized areas and to locations within the urban service boundary that are better suited for non-agricultural use.” The Perspectives 2020 amendment recognized that “[a]griculture in Greene County is not only an

important industry creating thousands of permanent jobs in Greene County, it is a way of life, a heritage passed on for generations.” (*Id.* at 3). The “[v]ast agricultural landscapes, trails, parks, open spaces, neighborhoods, and employment centers all work together to make Greene County one of the best places to live in Ohio.” (*Id.*).

The amendment recognizes that the utility-scale solar facilities’ “consum[e] massive tracts of land[,] in most cases prime farmland.” (*Id.*). In addition to active agricultural use, the Perspectives 2020 amendment highlights that “[o]ne of the main concerns with utility scale solar and wind projects is the size of these facilities.” (*Id.* at 4). This is a concern because “Greene County places great emphasis on protecting and growing its tourism economic base that relies on exceptional natural, scenic, recreational, and cultural resources, and the outstanding visual landscape leading to these destinations where industrial-scale solar and wind facilities would be inconsistent with the existing land use character that so well defines and surrounds these treasures.” (*Id.*).

The Perspectives 2020 amendment includes several policies to protect the scenic agricultural character of rural Greene County. These include limiting the maximum land area that may be occupied by utility-scale renewable energy systems; preventing location of such facilities within the viewsheds of any cultural, historic, scenic, or recreational resources in the county; and requiring setbacks from road rights-of-way and parcel lines of a minimum of 300 feet for solar installations. (*Id.* at 5).

The RPCC and Commissioners held public hearings on the Perspectives 2020 amendment on August 24, 2021 and August 26, 2021. (Perspectives 2020 Amendment Resolution, at 1). Following the last of those hearings, the RPCC recommended adoption by the Commissioners,

and the Commissioners obliged by adopting the amendment in County Resolution 21-8-26-10 on August 26, 2021. (*See id.*; *see also* Greene County Exhibit 2 (“Opposition Resolution”) at 1).

The Commissioners’ Opposition Resolution was the result of the work that had been done to define the County’s land-use objectives with respect to renewable energy installations that had not been contemplated in the original Perspectives 2020 Land Use Plan. In particular, regarding the Kingwood application, the Commissioners identified the project’s lack of the desired 300-foot setbacks and viewshed screening as concerns. (Kingwood Ex. 22 (“October 28, 2021 Commissioners’ Meeting Minutes”), at 3). The Commissioners’ Opposition Resolution also recognized that the Kingwood project “would be located in a relatively densely, and growing, populated area, with fifty-one (51) non-participating houses located within 300 feet of the project area boundary according to Kingwood’s [OPSB] filings.” (Opposition Resolution at 2). The project’s “five-mile viewshed area identified by Kingwood” would include “several other State and local cultural, historic, scenic, and recreational resources, including Clifton Gorge Dedicated Nature Preserve, Clifton Mill, Clifton River Road Reserve, John Bryan State Park, and numerous trails, with potential near-foreground visibility from Clifton Gorge Dedicated Nature Preserve, and John Bryan State Park,” as well as visibility from the roads leading to the various resources. (*Id.* at 2). These findings led to the Commissioners’ conclusion that the Kingwood project could be an “economic detriment to tourism.” (*Id.*). The Commissioners unanimously adopted the Opposition Resolution. (*Id.*).

The Board Staff’s Report of Investigation and Local Public Hearing

The Ohio Power Siting Board Staff (“Board Staff”) filed its Staff Report of Investigation (“Staff Report”) on October 29, 2021. (Staff Ex. 1). The Staff Report recommended denial of the requested Certificate because of Kingwood’s “inability to establish one of the eight statutory

criteria” for the Certificate’s approval, namely the failure to establish that the facility would serve the public interest, convenience, and necessity. (*Id.* at 1). In the Staff Report’s further discussion of the required public interest, convenience, and necessity showing, the Report acknowledges the Opposition Resolution, including the Commissioners’ determination that the Kingwood application is “incompatible with the general health, safety, and welfare of the residents of Greene County.” (*Id.* at 44, quoting the Opposition Resolution). The Staff Report goes on to state Staff’s conclusion that “there is general opposition to the project from the local citizens and local governmental bodies,” and those local bodies’ “interest in and, in this case strong opposition to, the project is especially compelling.” (*Id.* at 43, 44).

The OPSB held its local public hearing on November 15, 2021. There, the Board heard testimony from dozens of members of the public, including residents near the project area. (*See* Tr. of Nov. 15, 2021 Local Public Hearing). The number of witnesses testifying in opposition to the Kingwood project was a substantial majority compared to those in support. (*Id.*)

The Adjudicatory Hearing

The OPSB convened the adjudicatory hearing on Kingwood’s application on March 7, 2022. Kingwood offered testimony of its development manager, Dylan Stickney. In his testimony, Mr. Stickney asserted his opinion that the public interest, convenience, and necessity would be served by the provision of jobs and payments in lieu of taxes (PILOTs) to the local taxing jurisdictions. (Kingwood Ex. 6, “Stickney Direct Testimony,” at 35). He also asserted that the public interest, convenience, and necessity would be served due to the project answering demand for renewable energy and grid reliability. (*Id.*). Mr. Stickney, however, had never spent any substantial time in Greene County prior to his involvement with the Kingwood project. (Tr.

Volume IX, at 2149). His entire contact with Greene County has been in relation to his employment with Vesper Energy. (*Id.*)

County Administrator Brandon Huddleson offered testimony of the County's assessment of the project application, and both the Commissioners' Opposition Resolution and the Perspectives 2020 amendment were offered into evidence. (*See* Tr. Vol. VII at 1693–1749). Mr. Huddleson addressed the Commissioners' determination that the proposed Kingwood project would be incompatible with the general health, safety, and welfare as outlined in the Opposition Resolution. (*Id.* at 1716–1724). He also addressed the issue of a PILOT payment, noting his analysis of “the PILOT versus the taxes that they would be subject to on the project otherwise,” concluding it would not be “in [the County's] financial best interest to agree to a PILOT.” (*Id.* at 1727).

STANDARD OF REVIEW

Review of Kingwood's application begins with the premise that the burden of proof is upon Kingwood to demonstrate that it satisfies all requirements of R.C. 4906.10. *See In the Matter of the Application of Republic Wind, LLC for a Certificate to Site Wind-Powered Electric Generation Facilities in Seneca and Sandusky Counties, Ohio*, (“*Republic Wind*”), Case No. 17-2295-EL-BGN, Opinion and Order at 29 (June 24, 2021). Indeed, “[p]ursuant to R.C. 4906.10(A), the Board shall not grant a certificate for the construction, operation, and maintenance of a major utility [facility] unless it finds and determines R.C. 4906.10(A)(1) through (8).” *Id.*

ARGUMENT

Kingwood has failed to prove that its project will “serve the public interest, convenience, and necessity” as required by R.C. 4906.10(A)(6). The “public interest, convenience, and

necessity” criterion “can be looked at through a broad lens.” *Republic Wind*, Case No. 17-2295-EL-BGN, Opinion and Order at 1. The “broad lens” encompasses the general “public’s interest in energy generation that ensures continued utility services and the prosperity of the state of Ohio” as well as “the local public interest, ensuring a process that allows for local citizen input, while taking into account local government opinion and impact to natural resources.” *Id.* Here, the local government opinions; the local resident testimony at the local public hearing; and the public comment docket undermine Kingwood’s assertion that the proposed project serves the public interest, convenience, and necessity.

A. *The project is contrary to the County’s adopted land use plan.*

The County has adopted land use plans over the last few decades to guide development within the County but, until the Kingwood project came to light, these plans had not specifically contemplated utility-scale renewable energy generation such as the Kingwood project. (*See Tr. Vol. VII*, at 1705). The Commissioners proceeded with full understanding that this Board has final authority to decide the Kingwood application. (*Id.*). Still, the County engaged in a process to amend its existing Perspectives 2020 land use plan to address utility-scale renewable energy generation systems moving forward, and to provide policies for the County’s evaluation of projects. (*See id.* at 1714). The County, from the outset of the Perspectives 2020 amendment process, was aware that it does not have regulatory authority to approve, disapprove, or condition the siting of major utility facilities such as the Kingwood project. What the Perspectives 2020 amendment does, however, is provide a guiding policy document for the County’s reference as it evaluates its stance on renewable energy projects (including solar). This has value for projects that will be governed entirely by the provisions of S.B. 52, and it has value for evaluation of the Kingwood project because it sets forth the circumstances under which the County would agree that

a project may serve the public interest. Likewise, it is a document that this Board may consider in its broad-lensed inquiry into public interest, convenience, and necessity.

The starting premise for the Perspectives 2020 amendment is the centrality of the agricultural economy to Greene County, both in terms of its “creat[ion] of thousands of permanent jobs in the County” as well as its influence on the “way of life” in the County. (Perspectives 2020 Amendment Resolution, at 2). The sheer size of utility-scale renewable energy production, in terms of acreage consumed and dedicated to production of electricity, places their development in rural areas of Greene County in tension with that fundamental starting premise of the local land use plan. (*See id.*). Consequently, the Perspectives 2020 amendment adopts policies to evaluate proposed projects and protect the agricultural character of rural Greene County. These policies include limiting the maximum land area to be occupied by utility-scale renewable energy systems; preventing their siting within the viewsheds of any cultural, historic, scenic, or recreational resources in the county; and requiring setbacks from road rights-of-way and parcel lines of a minimum of 300 feet for solar installations. (*Id.* at 5).

The Perspectives 2020 amendment provides additional support for the County’s opposition, despite Kingwood’s attempt to take issue with its authority and timing. In both the original application, with only 25-foot setbacks, and in the Kingwood-OFBF joint stipulation, the setbacks proposed for the facility are less than those deemed potentially acceptable by the County in the Perspectives 2020 amendment. Additionally, the proposed project would be in the viewshed of County tourist attractions as noted in the amendment. As a result, the County adopted the Opposition Resolution and remains opposed to the application. Of course, Kingwood may not *agree* with the lines the County has drawn; and this Board is not *obligated* to adopt the policies in the Perspectives 2020 amendment. But it is certainly relevant to this Board’s consideration of the

whole picture and whether Kingwood has proven that this project will serve public interest, convenience, and necessity.

B. *Kingwood has not demonstrated that the project will serve the public interest, convenience, and necessity with respect to tourism, whereas the County has concluded it will have a potential detrimental effect.*

The Commissioners' consideration of the application and its effect on the public interest illustrates the concerns unique to this situation, where the rural and agricultural character of the area is inseparable from its attractiveness for regional tourism. As County Administrator Huddleson stated in his direct testimony, the cultural, historic, scenic, and recreational resources in the area "are economic drivers and local treasures. People travel from all over the country to ride [the County's] trails and to visit [the County's] natural amenities." (Huddleson Direct Testimony at 5). The Commissioners' Opposition Resolution specifically notes the "potential economic detriment to tourism" as a result of the Kingwood project's location within the five-mile viewshed of Clifton Gorge Dedicated Nature Preserve, Clifton Mill, Clifton River Road Reserve, John Bryan State Park, and numerous other historic, natural, and recreational resources. (Opposition Resolution at 2).

Kingwood's attempts to undermine the County's assessment of its tourism assets, and the potential effects of 1,200 acres of solar panels on these rural and nature-oriented attractions, would turn the burden of proof in this matter upside down. The fundamental concept of the burden of proof is that parties without the burden—in this case, the County and other intervenors—have no obligation to put on evidence to stop the issuance of the certificate. It is entirely incumbent upon Kingwood to present its case with the burden of production and persuasion on each and every criterion in R.C. 4906.10. The legislative findings of the County, premised on local knowledge and experience, do not need to affirmatively disprove Kingwood's assertions that the project would

serve the public interest, convenience, and necessity. If Kingwood takes issue with the County's findings as to the drivers of its tourism and recreation economy and quality of life, it would be up to Kingwood to produce evidence that the project would serve the public interest, convenience, and necessity despite the County's findings. Yet Kingwood has provided no evidence on its project's impact to tourism and recreation in the area.

C. *Opposition among local governments in the Kingwood project area is unanimous, and the substantial majority of comments from local non-participating residents object to the project.*

The Commissioners are joined in opposition to the project by the boards of trustees for each township in which the project would be located. The unanimity of opposition among units of local government in affected areas resembles that in the *Republic Wind* proceedings where the Board acknowledged that the “broad lens” through which it must view the public interest, convenience, and necessity includes the findings of local government officials. *See Republic Wind*, Opinion and Order at 1. Likewise, the Board has been inundated with comments on the public comment docket, as well as testimony at the local public hearing, opposing the Kingwood project. Public testimony in opposition to the project focused generally on themes that are consistent with the Commissioners' concerns—loss of planted agricultural land; changing the rural and agricultural character of the area for which the commenters had purchased (or remained in) their homes; and the negative impacts that such changes in the area's rural character would have on the attraction of its historic and cultural resources that drive tourism in the area. Here, again, although Kingwood states its disagreement with these considerations, Kingwood has not disproven them to show that its application will serve the public interest, convenience, and necessity.

D. *Revenue from the taxes, or payments in lieu of taxes, associated with the project do not outweigh the Commissioners' opposition to the project or show that it serves the public interest, convenience, and necessity.*

Kingwood's reference to the benefits of the PILOT is also unavailing. The County is a sophisticated party that is well aware of the financial considerations in play whether Kingwood's project is denied or approved, and whether it receives the qualified energy project (QEP) tax exemption subject to the associated PILOTs or is subject to regular taxation. (See Tr. Vol. VII at 1727). The County is operating with the understanding, in fact, that it would receive greater financial benefit from regular taxation than from the PILOTs referenced in Mr. Stickney's testimony—and yet, the County still determined that the public good would best be served by opposing the project altogether. Potential PILOT or tax payments, in this circumstance at least, did not carry the day with the local elected officials having primary responsibility for the general health, safety, and welfare of Greene County. Likewise, they should not sway this Board's decision.

E. *The County was not improperly influenced by Board staff, but it instead reached an independent decision to oppose the application on the merits.*

It also bears mentioning that the County reached its decision to oppose the project independently. The County's decision followed not only the study of issues by the RPCC and preparation of the Perspectives 2020 land use plan, but also its own evaluation of the financial and economic impacts as well as the prevailing public attitude toward the proposed project. Notwithstanding the Applicant's working theory during the evidentiary hearing of some collusion between the County and the OPSB Staff leading up to the publication of the Staff Report, no one from OPSB pressured the County to oppose the project. Likewise, the Staff evidently undertook its own evaluation. The Staff Report's reference to the County's Opposition Resolution was proper

and in keeping with the Board's assessment from *Republic Wind* that the public interest, convenience, and necessity should be viewed with a broad lens that encompasses local-government opinion. It is hardly nefarious, given that Board precedent, that the Staff would do its job of incorporating the County's opinion on the project even if it had to do so at the last minute prior to publishing the Staff Report.

F. *Kingwood's property value impact study does not demonstrate that the project would serve the public interest, convenience, and necessity.*

Kingwood's other attempts to show that the project would serve the public interest, convenience, and necessity also fall flat. One example is the report of Andrew Lines, relative to the project's forecasted effects on property values. (Property Value Impact Study, Appendix F to Kingwood Application ("Lines Report")). Mr. Lines' conclusion—that solar facilities produce "little to no measurable and consistent difference in value" (Lines Report at 4)—on its face does not tend to show that Kingwood's application "serves public interest, convenience, and necessity," as R.C. 4906.10(A)(6) requires; it would only show a lack of harm rather than "serv[ice]" of those interests.

Mr. Lines' report is also flawed because his comparator dataset does not provide apples-to-apples comparison with the circumstances here. The highest nameplate capacity for any of Mr. Lines' identified comparators is 100 MW/AC. (*See* Lines Report at 2–3). The next largest in Mr. Lines' study are 74.5 MW/AC. (*See id.*). The Kingwood project would be 175 MW/AC. (*Id.* at 2). Of the eleven solar projects Mr. Lines studied, only five would even have been subject to the Power Siting Board's jurisdiction if they were located in Ohio. The largest comparator project, in terms of acreage, is that same 100 MW "North Star" project in Minnesota, which sits on approximately 1,000 acres of land. (*See id.* at 5). That project's average distance from panels to surrounding

improvements is 325 feet. (*Id.* at 104). The next largest project Mr. Lines studied is on 489 acres. (*Id.* at 12). The Kingwood project, on the other hand, would be spread across 1,200 acres oriented along approximately five miles of rural roadways. The North Star project, at 1,000 acres the only remotely analogous project to the Kingwood project, yielded only five comparator sales (of four individual properties). (*Id.* at 2). This is a meager number of sales in which to make a generalized conclusion that a 1,000-acre-plus facility will not impact neighboring property values.

Qualitatively, Mr. Lines' report simply does not provide reliable comparison of property value impacts between his sample set and the Kingwood project. For example, his report characterizes one project in a coastal city on Long Island, with a bus depot across the street from it and near a developed residential subdivision, as having a "rural character." (*Id.* at 75). While this project has a sod farm to the west and southwest, there are "residential subdivisions" directly to the east. (*Id.*). There are also residential subdivisions nearby, to the north, and the water's edge is "really close," with the project located on the north side of Long Island. (Tr. Vol. II at 402). The project is in an area that is part of the transition from rural, to suburban, to urban as one approaches New York City to the west. (*Id.*). The characteristics of the real estate market and general surroundings of this particular project near the northern coast of Long Island, with development patterns influenced by proximity to New York City, hardly illuminate what market reaction to utility-scale solar might be in the landlocked, agricultural landscape of Greene County.

Taken as a whole, Mr. Lines' dataset includes a hodgepodge of markets from Minnesota, to Long Island, to Miami-Dade County, Florida. (Lines Report at 5). No comparators are identified in Ohio, and only two of the twelve sites reviewed are even in neighboring states—a 71 MW site in Michigan, and an 8.6 MW site in Marion County, Indiana, just outside of Indianapolis. (*Id.*). The LaPeer, Michigan site is just north of Interstate-69, and is approximately 21 miles from Flint,

Michigan. (*Id.* at 52.). Reviewing the aerial photo included in Mr. Lines’ report, it is evident that this solar facility is surrounded by preexisting development of a suburban character. (*See id.*, aerial image). It features “a correctional facility and industrial uses to the west . . . a retail center to the northeast, other commercial uses to the east along MI-24/South Lapeer Road, and residential homes to the southeast.” (*Id.* at 53). This also is not a comparable setting to the proposed Kingwood project, with the multiple variables at play for real estate values including the correctional facility, and industrial and commercial development in the vicinity. Unlike Greene County, it is doubtful that the area draws residents and visitors attracted to farmland and natural vistas.

The Marion County, Indiana facility featured in Mr. Lines’ report also is not comparable to the area of Kingwood’s proposed project. It is “10 miles southeast of the Indianapolis International Airport and approximately eight and a half miles from the center of Indianapolis.” (Lines Report at 80). While much of it is surrounded by agricultural land, the residences to the north are within a dense residential subdivision. (*See id.* at 79, aerial image). This, again, is not comparable to the area of Kingwood’s proposed project, where the residential uses are predominantly large-parcel, low-density single-family homes, and the other surrounding uses are either the John Bryan State Park and nature preserve, or agricultural fields. Just as with the LaPeer, Michigan example, the solar field’s effect on the marketability of area real estate would differ from the likely effect in Greene County, where the low-density rural character is a feature that is not present in the Marion County example.

In summary, Kingwood’s arguments fail to the extent they may rely on its property value impact study as evidence of the proposed project serving the public interest, convenience, and necessity. On its best day, Mr. Lines’ study concludes only that there is not a measurable impact on property values. That is not “service” to public interest, convenience, and necessity—it is

simply harm-avoidance. But the study, upon further examination, does not even reach that limited (and insufficient) benchmark because it relies on inapt comparators to draw its conclusions.

CONCLUSION

The Board should deny the Certificate in this proceeding. Kingwood has failed to meet its burden of proof to show that its application satisfies the criteria set forth in R.C. 4906.10. Specifically, for purposes of the County's opposition to this Certificate application, Kingwood has failed to prove that its project would "serve the public interest, convenience, and necessity" as required by R.C. 49016.10(A)(6). Although it has no burden of proof, whether by production or persuasion, in these proceedings, the County has articulated the grounds for its opposition following a deliberative and public process by amendment of its land use plan. This process identified the negative impact that large-scale solar development, such as Kingwood's proposed project, would have on the fundamental rural and agricultural character of rural Greene County. The County has also articulated the vital importance of its scenic, cultural, recreational, and historic treasures, which are intertwined with the agricultural character of the area and which drive the tourism economy of Greene County with visitors from throughout Ohio, and beyond. The Commissioners publicly articulated these grounds for opposition in their Opposition Resolution. The County's opposition, in conjunction with the unanimous opposition of the affected townships' boards of trustees and the overwhelming public sentiment expressed on the public comment docket and the local public hearing, are relevant and, here, dispositive considering the "broad lens" through which the Board should review the public interest, convenience, and necessity criterion,

Kingwood has not demonstrated that its project would serve the public interest, convenience, and necessity. The local intervenors opposing this project, despite having no burden

in this proceeding, have demonstrated that this project would not serve the public interest, convenience, and necessity. For these reasons, the County respectfully urges that the Board DENY Kingwood's Certificate application.

Respectfully submitted,

/s/Thaddeus M. Boggs

Thaddeus M. Boggs (0089231)
Jesse J. Shamp (0097642)
Frost Brown Todd LLC
10 West Broad Street, Suite 2300
Columbus, Ohio 43215
Phone: 614-559-7293
Email: tboggs@fbtlaw.com
Fax: 614-464-1737

*Attorneys for the
Greene County Board of
Commissioners*

CERTIFICATE OF SERVICE

The docketing system will electronically notify counsel of record in this proceeding. Additionally, the undersigned hereby certifies that a courtesy copy of the foregoing was served via email to the counsel indicated below on this 13th day of June, 2022.

Jodi Bair
Jodi.bair@ohioattorneygeneral.gov
Werner Margard
Werner.margard@ohioattorneygeneral.gov
Attorneys for OPSB Staff

Daniel A. Brown
dbrown@brownlawdayton.com
Attorney for Cedarville Township Trustees

David Watkins dw@planklaw.com
Kevin Dunn kdd@planklaw.com
Attorneys for Xenia Township Trustees

Lee A. Slone ls lone@mdllp.net
Attorney for Miami Township Trustees

John E. Hart jehartlaw@gmail.com
Attorney for In Progress, LLC

Charles D. Swaney cswaney@woh.rr.com
Attorney for Tecumseh Land Preservation Association

Jack Van Kley
jvankley@vankleywalker.com
Attorney for Citizens for Greene Acres, Inc. and Citizen Intervenors

Chad A. Endsley cendsley@ofbf.org
Amy M. Milam amilam@ofbf.org
Leah F. Curtis lcurtis@ofbf.org
Attorneys for the Ohio Farm Bureau Federation

Michael J. Settineri mjsettineri@vorys.com
Anna Sanyal aasanyal@vorys.com
Nathaniel B. Morse nbmorse@vorys.com
Jonathan K. Stock jkstock@vorys.com
Attorneys for Kingwood Solar I LLC

/s/Thaddeus M. Boggs
Thaddeus M. Boggs (0089231)
Frost Brown Todd LLC
*Attorney for the
Greene County Commissioners*

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

6/13/2022 3:47:09 PM

in

Case No(s). 21-0117-EL-BGN

Summary: Brief Post-Hearing Brief of the Greene County Board of Commissioners
electronically filed by Mr. Thaddeus M. Boggs on behalf of Greene County Board of
Commissioners