

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of)	
Kingwood Solar I LLC for a Certificate)	Case No. 21-0117-EL-BGN
of Environmental Compatibility and)	
Public Need)	

**MEMORANDUM CONTRA OF KINGWOOD SOLAR I LLC
TO THE GREENE COUNTY COMMISSIONERS’
APPLICATION FOR REHEARING**

I. INTRODUCTION

Through its application for rehearing, the Greene County Board of Commissioners (the “County”) seeks to try and add additional rationale for the Board’s denial of Kingwood Solar’s application. The County raises three assignments of error: (1) that its rationale for its resolutions on a future land use plan and the Project should have been adopted by the Board; (2) that the Project has a negative economic impact; and (3) that the Project will have a negative impact on property values. The Board should deny all three assignments of error. As to the first assignment of error, the only rationale stated by the County in its resolutions specific to the Project were in regards to potential impacts to tourism and an inability to comply with a last-hour amendment to its future land use plan. That rationale along with the County’s conclusory resolution that the Project was incompatible with the general health, safety and welfare of residents is contrary to the record and the Board’s findings throughout its Opinion and Order on the Project’s impacts. (*See e.g.* Opinion and Order at ¶¶ 104-112). The County’s second and third assignments of error should also be denied because, again, the record shows that the Project will not have any negative impact on property values and that the Project will have a significant positive economic impact at both the state and local levels. The record does not support the County’s assignments of error. The Board should deny the application for rehearing in its entirety.

II. ARGUMENT

A. **The County's Assignment of Error No. 1 Should Be Denied Because the Board Acted Properly By Not Adopting the County's Unsupported Assertions Stated in its Resolutions.**

Although the Board considered the rationale of the County's resolution opposing the Project as well as the County's resolution adopting amendments to its land use plan (enacted after the application was pending), it did not find that the rationale for the County's resolutions was "credible and compelling" as the County claims at page 4 of its application for rehearing. Rather, the Board summarized the County's resolutions as part of its consideration of the record. (Opinion and Order at ¶¶ 146-147). The Board was not required to do anything more. It is not required to follow or adopt any local land use plan or any county resolution about a project. *See* R.C. 4906.13. Similarly, nothing in R.C. 4906.10(A) requires the Board to expressly adopt the stated rationale in the County's resolutions simply because the Board referenced the resolutions in its Opinion and Order. *See generally* R.C. 4906.10(A). The Board simply referenced the County's resolutions as examples of local opposition to the Project. (Opinion and Order at ¶ 146). Nowhere did the Board state in its Opinion and Order that it agreed with the County's stated rationale for the resolutions.

The County's first assignment of error should also be denied because the Board made express findings in the Opinion and Order on the issues raised in the County's resolution opposing the project. The County's October 28, 2021 resolution opposing the Project only listed two specific issues in the recitals about the Project, "potential economic detriment to tourism" and incompatibility with the amended future land use plan. (Greene County Ex. 2.) The resolution language then provided a broad conclusion that the Project was "incompatible with the general health, safety, and welfare of the residents of Greene County." (*Id.*) Those positions, however, are contrary to the Board's specific findings as to the Project's lack of visual impact on recreational areas, acceptable operational noise

impacts and the ability to mitigate any impacts and the lack of any significant environmental impacts. (Opinion and Order at ¶¶ 106-112).

Notably, the County’s resolution to amend its future land use plan (Perspectives 2020) makes no reference to the Project. *See* County Ex. 3. The recitals in the resolution also noted that renewable energy projects “... are beneficial, but should fit into the land use plan to preserve agricultural use, and protect prime farmland soils and natural and open spaces[.]” *Id.* Moreover, the Board had the resolution in front of it and still found that the Project would act to preserve agricultural land use. (Opinion and Order at ¶¶142, 149). Indeed, as Kingwood argued to the Board in briefing, a review of the County’s Perspectives 2020 plan and the Greene County Farmland Preservation Plan indicates that the Project is actually in compliance with both of these plans, despite assertions to the contrary by CGA and Greene County. (CGA Br. at 8-9; Greene County Br. at 8-9.)¹

For example, the Perspectives 2020 document states:

Since farming, as it is generally practiced today, is an essential industrial process incompatible with immediately adjacent residential uses, it is entirely appropriate to plan for agricultural preservation. Without adequate preservation policies prime farming areas will continue to be extremely vulnerable to future waves of uncontrolled low-density sprawl development. The efforts to protect this agricultural base will be founded upon an understanding of the dynamics of metro-agriculture as a land use, a business, and as a way of life.

(Kingwood Ex. 61 at 49.)

¹ Confusingly, Greene County appears to argue that the Project is not in compliance with the Perspectives 2020 document and the accompanying amendment to it (passed on August 26, 2021), but also admits the plan is inapplicable. (Greene County Br. at 9, noting that “this Board is not obligated to adopt the policies in the Perspectives 2020 amendment.”)

Similarly, the Project creates another way, i.e., a tool, to preserve agricultural land for future generations, consistent with the Farmland Preservation Plan. That plan lists a number of tools for preserving farmland:

The Greene County Farmland Preservation Task Force has developed a plan: to raise awareness; to promote in an ordered fashion; recommend methods to assist local jurisdictions on how to conserve and maintain our agricultural resources; and has made recommendations for passing or modifying legislation to protect farmland. Options to achieve the goal of farmland preservation are limited, the following tools have been recommended and are specifically addressed in Chapter 6, Implementation Program:

Education

Conservation Easements

Purchase or Lease of Development Rights

Agricultural Zoning Districts

Urban Growth Boundaries

Cluster Development/Conservation Design

Agricultural District

Current Agriculture Use Value

Economics

The Five Acre Dilemma

(Kingwood Ex. 83 at vii.) This record evidence shows that the Project's ability to preserve agricultural farmland (as found by the Board) is in accord with the primary goal of the County's future land use plan and farmland preservation plan.

Since local land use plans do not apply to the Project, and the Board has no obligation to adopt the Commissioners' resolutions, especially where the Board simply pointed to the resolutions as examples of the County's opposition to the Project, the Board did not act improperly by not adopting the stated rationale in the County's resolutions. Moreover, the record evidence refutes the limited and vague rationale contained in the resolutions. The Board should deny the County's first assignment of error.

B. The County's Assignment of Error No. 2 Should Be Denied Because the Record Evidence Establishes that the Project Will Not Impact the Neighbors' Property Values.

For its second assignment of error, the County asserts that the Board acted unlawfully and unreasonably by not making a finding that the Project will negatively impact surrounding property values. The County does not present any argument in support of that assignment of error. Instead it incorporates by reference CGA's fourth assignment of error which relates to Project economic impacts. Kingwood assumes that the County intended to incorporate CGA's ninth assignment of error which relates to property values. Regardless, the Board did not act unlawful or unreasonable because the lack of any negative impact to property values is fully supported by the record.

To support its application, Kingwood presented a thorough property value study accompanied by the testimony of Andrew Lines. Mr. Lines, an appraiser with 19 years of experience, and related property value study conducted by his firm, CohnReznick, determined that existing solar energy uses had **no measurable impact on the value of adjacent properties**. (Kingwood Ex. 1, Appx. F at 2-3; Kingwood Ex. 9 at 4.) Mr. Lines also testified that despite the community's knowledge about the Project as early as 2017, home values in the area have not showed any marked decrease. (Tr. Vol. IV at 926, 930; Kingwood Ex. 1 at 31; Kingwood Ex. 105 at 8-9.) Specifically, he testified that **three properties**, 3373 Harbison Road, 2318 Stevenson Road, and 2681 Harbison Road, **all sold at a market price** despite public knowledge of the Kingwood Solar Project. (Kingwood Ex. 105 at 8-9.)

Supporting Mr. Lines' testimony is the fact that CGA member P. Chance Baldwin purchased a property located at 3051 Harbison Road during August 2020 (when the community already knew about the Project). (Tr. Vol. IV at 925-26.) Mr. Baldwin then sold the same property during August 2021 (presumably when more people in the community knew about the Project because the application was filed on April 16, 2021). (*Id.*) This house was in disrepair. (*Id.* at

930.) Nonetheless, as Mr. Baldwin testified, the house sold at a price which reflected the value of the property. (*Id.* at 926, 929-30.) Thus, despite CGA and Greene County's allegations about price decreases, actual information from recent property sales in the Project Area confirm the conclusions of the CohnReznick report.

Existing data on an operational solar project in Ohio also support Mr. Lines' conclusions. He testified that while enough home sales data around Ohio solar projects do not exist for a paired sales analysis, preliminary data indicates that at least one operational solar project (the Hillcrest Solar project) has not impacted adjacent property values. (Kingwood Ex. 9 at 7.) That project became operational in 2021 and at the time of Mr. Lines' written direct testimony, there were no home sales adjacent to the Project boundary. (*Id.* at 7.) However, there were approximately **three home sales** nearby to the Project boundary that sold between late January 2020 (start of construction) and the date of Mr. Lines's written testimony. (*Id.*) Each of these homes sold **during normal marketing time of 30-90 days** on market and **sold at list to sale price discounts of -2.2% (below) to +12.6% (above) list**. (Kingwood Ex. 9 at 7.) Despite not being able to complete a paired sale analysis, due to the proximity of these homes, Mr. Lines concluded that the Hillcrest Solar project has not had an impact on property values in the local area.

Also refuting the County's second assignment of error is that Mr. Lines' testimony has been previously accepted and relied on by the Board in **seven proceedings**. (Kingwood Ex. 9 at

2-3; Tr. Vol. II at 365.) These include:

Case Number	Proceeding	Accepted by the Board?
18-1578-EL-BGN	Alamo Solar I	Yes

18-1579-EL-BGN	Angelina Solar I	Yes; relied upon in Opinion and Order ²
19-1823-EL-BGN	Big Plain Solar	Yes
20-972-EL-BGN	Yellowbud Solar	Yes; relied upon in Opinion and Order ³
20-1380-EL-BGN	Ross County Solar	Yes; relied upon in Opinion and Order ⁴
20-1405-EL-BGN	AEUG Union Solar	Yes
20-1762-EL-BGN	Sycamore Creek Solar	Yes

Mr. Lines’ testimony in this proceeding and the CohnReznick study are credible and justify a finding that the Project will not negatively impact property values. The record also establishes the lack of credibility of CGA witness Mary Clay. Unlike Ms. Clay, Mr. Lines routinely updates prior studies. (Tr. Vol. V at 1157-58; Kingwood Ex. 1, Appx. F at 15-16, 19). Mr. Lines also confirms results of studies with market participants (e.g. appraisers, brokers, developers, county and township assessors, etc.). (Kingwood Ex. 1, Appx. F at 3, 105; Kingwood Ex. 9 at 6-7.) Mr. Lines, on rebuttal, pointed out other issues with Ms. Clay’s analysis. (Kingwood Ex. 105). Moreover, the Kentucky Power Siting Board has rejected Ms. Clay’s testimony on property values in five solar project proceedings. (Tr. Vol. V at 1124-27). Her opinion was also biased as evidenced by her admissions that she believes panels can contaminate soils and kill microbes and that solar projects contribute to erosion. (Tr. Vol. V. at 1134-35).

In sum, the Board acted lawfully and reasonably by not including any negative impact on property values as a basis for its determination on whether the Project is in the public interest,

² *In re Angelina Solar I, LLC*, Case No. 18-1579-EL-BGN, Opinion, Order, and Certificate (June 24, 2021), at ¶ 288.

³ *In re Yellowbud Solar, LLC*, Case No. 20-972-EL-BGN, Opinion, Order, and Certificate (Feb. 18, 2021), at ¶ 69.

⁴ *In re Ross County Solar LLC*, Case No. 20-1380-EL-BGN, Opinion, Order, and Certificate (Oct. 21, 2021), at ¶ 133.

convenience and necessity. The County's second assignment of error should be denied for these reasons and for the reasons discussed by Kingwood in response to CGA's ninth assignment of error.

C. The County's Assignment of Error No. 3 Should Be Denied Because the Project Will Have Significant and Positive Local and Statewide Economic Impacts.

The Commissioners' third assignment of error should be denied. The County does not submit any supporting arguments for this assignment of error, instead incorrectly incorporating by reference CGA's ninth assignment of error which relates to property values and not economic impacts. Regardless, the Board's findings on the Project's economic impacts were not unreasonable or unlawful because the record demonstrates that Kingwood submitted sufficient information for the Board to determine that the Project will positively impact the state and local economies. (Opinion and Order at ¶ 142.) Those benefits include, but are not limited to, increased employment and landowner payments. (Id. at ¶¶ 136, 142.)

As an initial matter, any claim that Kingwood's economic analysis did not comply with Ohio Adm.Code 4906-4-(E)(4) is without merit because the Board's rules for application contents are irrelevant to the Board's determination on whether to issue a certificate under R.C. 4906.10. The Board had more than sufficient information to make its determination given the content of Kingwood's application and the testimony and exhibits introduced at the evidentiary hearing. Moreover, the County waived any arguments about the completeness of Kingwood's application by not raising that argument until after the hearing had concluded. Ohio Adm.Code 4906-3-06(A) specifically states that within 60 days of receipt of an application, an application is to be reviewed for completeness and whether it complies with Ohio Adm.Code Chapters 4906-1 to 4906-7. Ohio Adm. Code 4906-3-06(A)(1)-(2). Here, any objection to the completeness of the application long passed before the evidentiary hearing.

The issue is not whether the application was complete, but whether the Board had sufficient information to make a determination on whether the Project will be in the public interest, convenience and necessity. As part of that analysis, the Board found that the Project will have significant economic benefits (Opinion and Order at ¶¶ 142, 149) as supported by the record. For example, regardless of whether the Project utilizes a PILOT or simply pays the statutory property tax without a PILOT, there is no debate that the Project would represent a substantial economic benefit for the County. As Mr. Karim testified during his rebuttal testimony, the 35-year allocation of property tax revenue to Greene County is estimated to be between \$55 and \$61 million dollars regardless of the taxation regime (Kingwood Ex. 108, Ex. A at 3.)

As shown in Table 1 from his detailed analysis, whether a PILOT agreement is signed or not will mostly impact the specific allocations of that tax money to Greene County, the different townships, and the local school districts. (*Id.*)

Table 1 <u>35-Year Allocation of Property Tax Revenue</u>		
Taxing Units	Regular Assessment (\$)	PILOT \$9,000 Per MW (\$)
Greene County	12,827,322	21,142,785
Cedarville Township	1,769,653	1,226,845
Miami Township	4,651,029	3,224,414
Xenia Township	1,315,203	911,789
Cedar Cliff LSD	28,254,743	19,588,136
Xenia CSD	8,481,691	5,880,093
Joint Vocational School (JVS)	3,834,881	2,658,604
Health Services	710,163	492,334
Total	61,844,685	55,125,000

(Kingwood 108, Ex. A at 3.) Under either tax plan, however, **the total contribution to the local government entities would be substantial.**

Further, the record reflects that the Project is projected to generate \$33.01 million of labor income through 444 Ohio jobs during the 16-month construction period. (Kingwood Ex. 107, Ex. A at 2.) Project construction, in total, will directly and indirectly support an estimated \$112.93 million of economic activity in the state. (Kingwood Ex. 107, Ex. A at 2.) The Project is also projected to create approximately \$6.75 million in new economic output annually in Ohio. (Kingwood Ex. 107, Ex. A at 3.) This includes the \$55 million to \$61 million in total tax payments to the local community (County, townships, and school districts) over the life of the Project. (Kingwood Ex. 108, Ex. A at 3.) In total, the Project will provide a net positive impact to the local and state economies.

The Board summarized this evidence in its decision as well as noting the many other public benefits of solar projects. (Opinion and Order at ¶¶ 135-136, 142, 149.) Given that evidence, the Board properly did not identify any deficiency in Kingwood's economic analysis or the Project's economic impacts as reasons for denying the Certificate. The County's third assignment of error should be denied for these reasons, as well as the reasons discussed in Kingwood's memorandum contra to the CGA Intervenors' fourth assignment of error on economic impacts.

III. CONCLUSION

The County passed a resolution intended to block utility scale solar projects in Greene County, and subsequently, passed a resolution stating opposition to the Project. But relevant to the Board's statutory determinations are the substance of the County's arguments and not the stated rationale in a resolution. Indeed, the County had the opportunity to present evidence to the Board opposing the Project and did so at the evidentiary hearing. That evidence is not, however, sufficient

to show that the Project would have adverse impacts that require the Board to change its determinations in its Opinion and Order. Accordingly, the Board should deny all of the County's assignments of error for the reasons herein, and as to assignments of error 2 and 3, for the additional reasons set forth in Kingwood's memorandum contra to the CGA Intervenor's assignments of error 4 and 9.

Respectfully submitted,

/s/ Michael J. Settineri

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