

**BEFORE  
THE OHIO POWER SITING BOARD**

<b>In the Matter of the Power Siting Board's )</b>	
<b>Review of Rule 4906-4-08 of the )</b>	<b>Case No. 16-1109-GE-BRO</b>
<b>Ohio Administrative Code )</b>	

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**COMMENTS OF UNION NEIGHBORS UNITED, INC.**

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Union Neighbors United, Inc. appreciates the opportunity to comment on the proposed amendment to Ohio Adm. Code 4906-4-08(C)(3) relating to setback waivers for wind-powered electric generation facilities.

The amendment in question implements R.C. 4906.20(B)(2)(c), which states:

The setback shall apply in all cases except those in which all owners of property adjacent to the wind farm property waive application of the setback to that property pursuant to a procedure the board shall establish by rule and except in which, in a particular case, the board determines that a setback greater than the minimum is necessary.

The proposed amendment itself states:

The owner(s) of all property adjacent to any wind farm property may waive the minimum setback requirements by signing a waiver of their rights.

It appears that the Board's intention, consistent with R.C. 4906.20(B)(2)(c), is to require the written waiver of each and every owner of property adjacent to the wind farm property in order for the waiver to be effective. Without the written waiver of every such adjacent property owner, Section 4906.20(B)(2)(c) clearly and unambiguously states that the statutory setback "shall apply" unless, in a particular case, the Board determines that a greater setback is necessary.

Despite the Board's apparent intention, however, UNU submits that the proposed amendment remains unclear and potentially subject to disputed interpretation and misconstruction so long as the rule hangs on the discretionary word "may," which does not appear in the statute. Because use of the word "may" is elective in nature, UNU is concerned that the amended regulation does not capture the statute's clear requirement that written setback waivers must be obtained from all adjacent property owners in order for the waiver to be effective. Furthermore, while the statute references "all owners of property adjacent to the wind farm property," the proposed rule amendment references "all property adjacent to any wind farm property," which again is ambiguous and prone to misconstruction.

To avoid misconstruction of the rule and to ensure faithful implementation of R.C. 4906.20(B)(2)(c), UNU recommends that amended Ohio Adm. Code 4906-4-08(C)(3) be clarified as follows:

Setback waivers. The owner(s) of all property adjacent to a wind farm property may waive the minimum setback requirements with respect to that wind farm property by signing a written waiver of their rights. In order for the waiver to be effective with respect to the wind farm property, the Applicant must file with the Board written waivers signed by every owner of real property adjacent to the wind farm property. The waiver(s) must meet the following requirements:

Union Neighbors United appreciates the Board's consideration of these comments.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that, on February 1, 2018, a copy of the foregoing comments was filed with the docketing division's e-filing system, which will electronically serve notice of the filing of this document on the following parties:

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Summary: Comments of Union Neighbors United, Inc. electronically filed by Mr. Christopher A Walker on behalf of Union Neighbors United