

Via Electronic Filing February 1, 2018
Ohio Power Siting Board
180 East Broad Street
Columbus, OH 43215-3793

**IN THE MATTER OF THE OHIO POWER SITING BOARD'S REVIEW OF RULE 4906-4-08 OF THE OHIO
ADMINISTRATIVE CODE
CASE NO. 16-1109-GE-BRO**

Comments of Mark Shieldcastle Opposing the Adoption of Amended Rule OAC 4906-4-08(C)(3)
To the Commissioners of the Ohio Power Siting Board (OPSB):

As an individual and member of conservation organizations I have been engaged in attempting to ensure that to the extent wind energy facilities are appropriate in and along the shore of Lake Erie that proper consideration is given to the siting of same in order to mitigate adverse impacts on migratory and resident bird and bat populations. For reasons to be set forth I believe the proposed amendment to OAC 4906-4-08(C)(3) is ill-advised and should not be adopted.

The proposed amended rule would read as follows:

“Setback waivers. The owner(s) of all (emphasis in original) property adjacent to any wind farm property may waive the minimum setback requirements by signing a waiver of their rights.”

1. The extraordinarily short comment period is insufficient to provide reasonable notice to the public and should be extended.

The order containing the proposed amendment is dated January 18, 2018 and was delivered to a conservation organization of which I am a member on January 25, 2018. The deadline given to file comments is February 1, 2018. Thus, at best interested parties were afforded one week in which to consider the proposed amendment and prepare comments. As the OPSB is well aware, the opportunity for public comment on any administrative action is intended to provide reasonable notice and opportunity to consider the impacts of the action and submit its comments on said action. I submit OPSB has not met its legal obligation to provide adequate opportunity for reasoned public comment on OAC 4906-4-08(C)(3) and should extend the comment period by the more customary 30-45 days.

2. The OPSB has exceeded its authority in attempting to utilize the administrative process to usurp the legislature's prerogative.

The subject of setback waivers has been a hotly contested political issue in Ohio for some time, and has also been the subject of competing pieces of legislation as to proper setback distances. Indeed, setbacks are currently being considered in the context of recently introduced SB 238. The proposed amendment seems to attempt to circumvent the legislative process by use of adopting an obscure regulation which most will be totally unaware of, given the compressed opportunity for public comment discussed earlier. Additionally, it has the potential, as written, to essentially write out of existence any setback requirements whatsoever. It defies logic that any administrative agency is intended to have the authority to unilaterally take such actions which can have such drastic consequences for the public trust resources of Ohio in contravention of the legislative prerogative and opportunity for public testimony and debate that is part of the legislative process. For this additional reason, I submit that the proposed amendment should not be adopted.

3. The proposed amendment provides an insidious opportunity for citizens of Ohio to be taken advantage of.

I surmise that the proposed amendment would be characterized as codifying their individual right to have one or more wind turbines at any location on their property if they so choose. While this may, on its face sound like a noble objective, I submit that it also provides many opportunities for abuse of those rights. It is not difficult to imagine a scenario where representatives of a wind energy developer would descend on an area of interest and begin canvassing the residents of that area to sign waivers of their rights to maintain setbacks by offering monetary or other incentives, which offers would be contingent on signing the waiver in a short period of time. The residents would thus have little opportunity to educate themselves generally about the ramifications of having tens or hundreds of wind turbines erected in their area, let alone the details of noise, shadow flicker, ice throw and the like. They would further be unlikely to understand the impacts of such a decision on their neighbors or their community. Anyone waiving such important rights should have the ability to make a fully informed decision. In this case, I submit that at least some, particularly the elderly could easily be preyed upon to their long term detriment in living in the midst of a forest of gigantic wind turbines. For this additional reason the amendment should not be adopted.

For at least the reasons set out in the preceding paragraphs, I believe that the proposed amendment to OAC 4906-4-08(C)(3) as currently written is irresponsible, violates the requirements of reasonable notice for public comment and would do a disservice to the citizens of Ohio. Accordingly, I strongly urge the OPSB to reconsider adoption of the proposed amendment.

Sincerely,

Mark Shieldcastle
Oak Harbor, Ohio

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Summary: Comments electronically filed by Docketing Staff on behalf of Docketing