

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of	)	
Kingwood Solar I LLC for a Certificate of	)	Case No. 21-117-EL-BGN
Environmental Compatibility and Public	)	
Need	)	

**RESPONSE OF THE BOARD OF TRUSTEES OF CEDARVILLE TOWNSHIP
TO APPLICANT’S MOTION TO STRIKE PORTIONS OF
THE BOARD OF TRUSTEES OF CEDARVILLE TOWNSHIP’S
POST-HEARING BRIEF**

The Board of Trustees of Cedarville Township (“Cedarville Township Board”) hereby responds to the Motion to Strike Portions of the Post-Hearing Brief filed by the Cedarville Township Board (“Motion to Strike”) that was filed by Kingwood Solar I LLC (“Applicant” or “Kingwood”) with the Ohio Power Siting Board (“Board”) on August 15, 2022. For all of the reasons set forth in the attached Memorandum in Opposition, the Cedarville Township Board requests that the Board deny Applicant’s Motion to Strike as it pertains to statements contained in the Cedarville Township Board’s Post-Hearing Brief.

Respectfully submitted,

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**MEMORANDUM IN OPPOSITION TO
APPLICANT’S MOTION TO STRIKE PORTIONS OF
THE CEDARVILLE TOWNSHIP BOARD’S POST-HEARING BRIEF**

Applicant’s Motion to Strike requests the Board to strike the following statements found on page 12 of the Cedarville Township Board’s Post-Hearing Brief.

- i) *Of the 36 persons residing in Cedarville Township who provided public comments, 33 opposed the project (92%), only 3 supported it, and all 3 supporters are participating landowners who have leased their properties to Kingwood Solar.*
- ii) *Of the 101 persons residing in Cedarville, Miami and Xenia Townships combined who provided public comments, 87 opposed the Project (86%), 13 supported it, one was neutral, and 8 of the 13 supporters were participating landowners.*

In support of its Motion to Strike, Applicant first asserts that “these statements are outside the record” and that the Cedarville Township Board “provides no support for this information or indication of how it came to this result.”¹ Applicant then asserts that the statistics contained in those statements “could only have been compiled from Exhibit C, which analyzed public comments filed on the case docket.”² Finally, Applicant argues that because the aforementioned Exhibit C was struck from the record during the hearing because one column may have contained inadmissible hearsay that could potentially be prejudicial to the Applicant, the statements containing opposition/support statistics should be struck from the Cedarville Township Board’s Post-Hearing Brief.³

Applicant’s premise that the statistics contained in the above statements could only have come from the stricken Exhibit C is without merit and should be rejected. In its Post-Hearing Brief, the Cedarville Township Board invited the Ohio Power Siting Board “to undertake a close,

1 Applicant’s Motion to Strike, p. 3.

2 Id.

3 Id.

independent review of the comments provided at the local public hearing, and the written comments filed on the Board's docket that are all part of the record in this case" and that "such a review will show that" the statistics found in the statements are accurate. ⁴ So, contrary to Applicant's assertion, the Cedarville Township Board clearly referenced the public comments themselves as the source of the challenged statistics.

In his direct testimony presented at the hearing, Mr. Jeff Ewry (Chair of the Cedarville Township Board) explained that he and the other Cedarville Township trustees collaborated to create a public comment spreadsheet that contained columns to input the addresses, including the Township, County and State of each public commenter, and that such information was obtained from either the text of the comment (in the commenter's own words), or from records that are publicly available on the applicable County Auditor's website. ⁵

In his redirect testimony presented at that hearing, Mr. Ewry further explained that the Cedarville Township Board wanted to see what the opinion of the people that actually lived in Cedarville Township was, "so we tracked the comments on the public comments section and the transcript of the public hearing" and that they relied on those two sources of information because "those were verifiable." ⁶

The State of Ohio is made up of 88 counties that are further divided into townships. Each property address is unique and can be identified as being located in a particular county and township based on publicly available documents. There is no ambiguity about which township or townships a particular property is located. Even though the Exhibit C created by Mr. Ewry as supplement to his direct testimony was stricken from the record in this case because it may have included some unverifiable information, that decision does not transform the verifiable information into hearsay. Furthermore, because the Board and its staff has every opportunity to

⁴ Cedarville Township Board's Post-Hearing Brief, p. 12.

⁵ Cedarville Township Exhibit 1, Lines 38-51.

⁶ Hearing Transcript Volume VI, Page 1539:7-13.

independently review the public comments to determine which townships the commenters reside in, inclusion of the statistics contained in the Cedarville Township Board's Post-Hearing Brief cannot be considered prejudicial to Applicant.

Prior to and in support of striking the aforementioned Exhibit C from the hearing record, Administrative Law Judge Michael Williams stated that "the Board does take seriously its review of the public comments in this case as well as the transcript of the local public hearing."⁷

The Cedarville Township Board understands that local public opinion is an important factor to consider for any application pending before the Board. For that reason, the Cedarville Township Board is relying on the Board to carefully review the public comments, including the residence addresses of those commenters, in determining how the "local residents" view the proposed Kingwood project. The challenged statements contained in the Cedarville Township Board's Post-Hearing Brief are based on information contained in the comments, the application (as to the location of properties leased for the Project), and/or were obtained from reliable, verifiable public records available to the Board.

The attached EXHIBIT A is a printout of the Board's public comment docket in this case. The attached EXHIBIT B is a listing of the public commenters who reside in Cedarville, Miami, and Xenia Townships based on the reliable, verifiable public records discussed above. The information in EXHIBIT B match the challenged statistics contained in the Cedarville Township Board's Post-Hearing Brief. EXHIBIT B does not contain any hearsay that could be prejudicial to Applicant. It is simply a tabulation of information already in the record that the Board may and should refer to during its independent assessment of the "local opposition" issue without causing any prejudice to the Applicant.

⁷ Hearing Transcript Volume VI, Page 1495:10-13.

For all of the reasons provided above, the Cedarville Township Board respectfully requests that the Board reject Applicant's Motion to Strike the challenged statements contained in the Cedarville Township Board Post-Hearing Brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following via email on this 8th day of March, 2022.

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Summary: Response Response of Board of Trustees of Cedarville Township to
Applicant's Motion to Strike Portions of the Board's Post-Hearing Brief electronically
filed by Mr. Daniel A Brown on behalf of Board of Trustees of Cedarville Township,
Greene County, Ohio