

COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND TRANSMISSION SITING

IN THE MATTER OF:

The Application of Dogwood Corners, LLC for a)
Certificate of Construction for an)
Approximately 125 Megawatt Merchant Electric) Case No. 2023-00246
Solar Generating Facility in Christian County, Kentucky)
Pursuant to KRS 270.700 and 807 KAR 5:10)

**REPLY TO DOGWOOD CORNERS LLC'S RESPONSE
TO THE CONSULTANT'S REPORT**

Christian County, Kentucky (hereinafter referred to as "Christian County"), by counsel, hereby submits its Reply to Dogwood Corners LLC's Response to the Consultant's Report.

On January 8, 2024, the Christian Circuit Court dismissed Civil Action No. 22-CI-01010 as the repeal of Ordinance 22-004 obviated the controversy cited as the basis for Dogwood Corners LLC's declaratory judgment action. However, importantly, the Christian Circuit Court's order declaring the controversy moot does not equate to a legal determination on the validity or applicability of either Ordinance 22-004 or the newly enacted Ordinance 23-005. The court's decision to dismiss the case for mootness does not inherently validate or invalidate any ordinance.

At the time of Dogwood Corners' application to the Siting Board, Ordinance 22-004 was in effect. Its subsequent repeal and replacement by Ordinance 23-005 does not retroactively negate its existence or relevance at the time of the application or now. It is illogical and legally unsound to argue that the Siting Board should disregard an ordinance that was in effect during a critical procedural step.

Dogwood Corners is effectively asking this Siting Board to make a legal judgment about the validity of local ordinances, which is beyond the scope of its authority. The Siting Board's role is not to interpret the validity of county ordinances, but to ensure compliance with existing local laws as part of its decision-making process. Requesting this Siting Board to determine if planning and zoning are the only mechanisms to regulate solar facilities is beyond its purview. The Board's role is to consider compliance with existing local regulations – not to interpret the extent of local government powers under the home rule statute. (See KRS 278.718.)

Put simply, the Applicant must comply with all local ordinances in place in Christian County. Applicant must certify to the Siting Board it is in compliance. The Siting Board has a duty to require the Applicant adhere to the local legal framework as it exists, not as interpreted or wished for by an applicant. Disregarding validly enacted local ordinances without a clear legal mandate to do so would undermine the rule of law and the authority of local governance. The fact is that there was an ordinance regulating the space at the time Dogwood Corners LLC applied and now since they have applied – a new Ordinance which must be followed and not ignored. Throughout the application and review process Applicant has ignored the local ordinances with which it takes issue with impunity.

Accordingly, Christian County requests the Siting Board consider its position as stated herein when making determinations as it relates to Dogwood Corners, LLC's application.

/s/ Harold Mac Johns

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CERTIFICATE OF SERVICE

This is to certify that on the 24 day of January, 2024, a true and accurate copy of the foregoing document was electronically served upon the following:

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