

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	)	

**POST-HEARING BRIEF ON BEHALF OF CHRISTIAN COUNTY, KENTUCKY**

Christian County, Kentucky (hereinafter referred to as “Christian County”), by counsel, and for their post-hearing brief, states as follows: this Board must dismiss Dogwood Corners LLC’s (hereinafter “Dogwood”) application.

Christian County must emphasize that Dogwood has consistently failed to be forthcoming with the Siting Board. First, and most importantly, Dogwood is not in compliance with the former or current local ordinance addressing Dogwood’s contemplated activity. While Dogwood would have this Board disregard the ordinances altogether, including the one in effect at the time of their application, the Christian Circuit Court's Order declaring Civil Action No. 22-CI-01010 moot did not equate to a legal determination of the validity, invalidity, or applicability of either Ordinance 22-004 or Ordinance 23-005. The court's decision to dismiss the case for mootness did not validate or invalidate any ordinance – therefore, as ordinance 22-004 was in place – Dogwood was obligated to adhere to the requirements of same, disclose the existence of same to the Board, and not use creative language in attempt to obscure the existence of same – and ultimately Dogwood failed to meet all those requirements.

The gravamen of Dogwood’s argument to the Board is to ask the Board to make a legal judgment about the validity of the local ordinances, however, that determination is beyond the

scope of the Board's authority. The Siting Board's role is not to interpret the validity of county ordinances, but instead is to ensure compliance with existing local ordinances as part of its decision-making process. Requesting this Siting Board to determine if planning and zoning is the only mechanism to regulate solar facilities is both beyond the Siting Board's purview, and inconsistent with the reading of statutory requirements and methods for local regulation. 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; *see also* KRS 67.083. Further, and in light of KRS 278.710, particularly section 278.710(1)(e), which mandates compliance with local planning and zoning requirements as of the application date, it's imperative to note that the Siting Board has historically recognized fiscal court ordinances as pertinent to such requirements, specifically regarding setbacks for merchant solar generating facilities, as evidenced in Case No. 2021-00235 with Russellville Solar LLC. Given that the current project blatantly fails to adhere to the existing ordinances of the Christian Fiscal Court, we strongly urge the Siting Board to maintain consistency with its established precedent from the Russellville Solar case, ensuring that regulatory integrity and community standards are upheld.

In addition, at the time of its application, Dogwood was required to certify to the Siting Board it is in compliance with local ordinances. 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 Dogwood. 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. Throughout the application and review process Dogwood has ignored, and would have this Board ignore the local ordinances with which it takes issue with impunity. As a result, the Board must deny the application.

Furthermore, the public is clearly not in favor of the project contemplated by the applicant – as evidenced by the myriad of negative public comments. As another example of its deception, Dogwood represented it had permission from all adjacent landowners for the project – however, that was not the case. Dogwood’s creative language and actions must not be rewarded. Accordingly, Christian County respectfully requests the Siting Board deny the application.

This 23rd day of February, 2024.

*/s/ Harold Mac Johns*

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**CERTIFICATE OF SERVICE**

This is to certify that on the 23rd day of February, 2024, a true and accurate copy of the foregoing document was electronically served upon the following:

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*/s/ Harold Mac Johns*  
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