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Via email – btarr@christiancountyil.com; mary.barry@christiancountysa.com

Christian County Zoning Board of Appeals
c/o Blake Tarr – Zoning Administrator
Mary Barry – Assistant State's Attorney

RE: Special Use Permit Application for North Pana Solar, LLC

Dear Members of the County Zoning Board, Mr. Tarr and Ms. Barry:

This letter concerns the Zoning Special Use Application submitted by North Pana Solar, LLC ("Applicant" or "North Pana") on September 29, 2023, for a 35-acre commercial solar facility. Mr. Tarr, the Zoning Administrator, attested by signature on November 13 that Applicant had paid the filing fee in full and submitted 16 copies of its Application. It was assigned Application Number 09-27-2023-01. The Application was submitted in accordance with the solar energy facility zoning ordinance then in effect, appearing as Appendix B to the County Zoning Code, Ordinance No. 02017ZN012 (last revised December 15, 2020)

The Zoning Board of Appeals ("ZBA") held a public hearing on the Application on November 29, 2023. North Pana appeared through the undersigned attorney. It was noted that an adjacent landowner with a residence on the property, and the City of Pana, had not been notified of the Application. The ZBA decided to table taking action on the Application so that notifications to the property owner and Pana could be delivered. North Pana was first informed at that hearing that the County had passed a new solar ordinance, purportedly to comply with amendments to the County Code contained in Public Act 102-1123, which became effective in January 2023.

The ZBA held a second public hearing on February 27, 2024. Mr. Joe Gaon, an official of Green Key Solar on behalf of the Applicant, together with the undersigned attorney, appeared and spoke briefly in support of the Application, offering to answer questions about the proposed project, PA 102-1123, or the County solar ordinance. Several other persons, including the occupants of the adjacent residence, appeared and spoke in opposition to the Application. No one from the City of Pana appeared. The ZBA voted again to table taking action on the Application so that the City of Pana could be contacted again to determine if the City had any interest in or position on the solar project and the Application, as well as to allow the Applicant to confer with the adjacent landowner regarding certain measures to satisfy the landowner's concerns.

It should be noted that, when an application for a special use permit has been submitted, the zoning provisions in the Counties Code require the County (not the Applicant) to notify adjacent landowners and any municipality within 1-1/2 miles of the site:

(55 ILCS 5/5-12009.5) Sec. 5-12009.5. Special uses.

In addition to any other notice required by this Section, the board of appeals must give at least 15 days' notice before the hearing to (i) any municipality whose boundaries are within 1-1/2 miles of any part of the property proposed as a special use and (ii) the owner or owners of any land adjacent to or immediately across any street, alley, or public right-of-way from the property proposed as a special use.

In any event, Mr. Tarr confirmed that the County had notified the City of Pana of the Application after the November 29 hearing (Feb. 27 hearing transcript at p. 39). The Municipal Code, however, does not grant authority to the City of Pana to oppose or regulate in any manner the solar project.

(65 ILCS 5/11-13-1.1) (from Ch. 24, par. 11-13-1.1)

Sec. 11-13-1.1. The corporate authorities of any municipality may in its ordinances passed under the authority of this Division 13 provide for the classification of special uses.

The powers enumerated may be exercised within the corporate limits or within contiguous territory not more than one and one-half miles beyond the corporate limits and not included within any municipality.

No municipality shall exercise any power set forth in this Division 13 outside the corporate limits thereof, if the county in which such municipality is situated has adopted "An Act in relation to county zoning", approved June 12, 1935, as amended.

Because Christian County has a commercial solar zoning ordinance in place, the City of Pana lacks legal authority to exercise any zoning powers over solar projects outside the City limits. City of Pana officials have confirmed that the City has no jurisdiction over, or interest in, the solar project or the Application. Further reaching out to the City regarding this matter has no legal basis, and is thus a waste of time.

It bears repeating that the Application was submitted based on the County ordinance that was in effect on the date of the Application. The amended ordinance applicable to solar farms became effective on November 7, 2023, after the Application was submitted. The Application was also in compliance with Public Act 102-1123 (55 ILCS 5/5-12020), the state statute governing siting standards and certain other matters applicable to commercial wind and solar projects, which became effective in January 2023. The statute required all Illinois counties to revise their solar ordinances to conform them to the statute's standards by May 27, 2023. Christian County, however, did not amend its ordinance to be in conformance with the statute until more than 5 months after the statutory deadline.

PA 102-1123 includes several provisions that are particularly relevant and applicable to the North Pana Application. The statute permits Illinois counties to establish standards for commercial solar energy facilities, but the standards may not include requirements more restrictive than those specified in the statute (55 ILCS 5/5-12020(b)). Counties must amend their zoning ordinances within 120 days of the effective date of the statute (making the deadline May 27, 2023). Unless it adopts an ordinance that complies with the statute, a county may not place any restrictions on the installation or use of a solar facility (55 ILCS 5/5-12020(g)). Section (e)(3) of the statute sets forth minimum setback distances from certain properties and boundaries, which counties may adopt and require. The statute sets height limitations on the solar panels, requires that sound limitations be no more restrictive than those contained in Illinois Pollution Control Board regulations. The statute states that a special use permit request for a solar facility “shall be approved if the request is in compliance with the standards and conditions imposed in this Act, the zoning ordinance adopted consistent with this Code, and the conditions imposed under State and federal statutes and regulations.” (55 ILCS 5/5-12020(g)) A county may not adopt zoning provisions that disallow solar facilities from being developed or operated in agricultural districts (55 ILCS 5/5-12020(h)). A county is also prohibited from setting standards for construction, decommissioning or deconstruction of a solar facility that are more restrictive than those standards contained in the facility owner’s agricultural impact mitigation agreement (AIMA) with the Illinois Department of Agriculture, and may not impose upon the facility owner a property value guarantee. (55 ILCS 5/5-12020(j) and (k)) The statute includes several other standards or requirements that counties with a valid, conforming solar ordinance may establish. Once a solar facility owner obtains a county permit, it is entitled to cross or impact a drainage system under the control of a drainage district under the Illinois Drainage Code, provided that the owner makes repairs to any damaged drainage facilities (55 ILCS 5/5-12020(t)).

To summarize, North Pana submitted a complete Application for a special use permit under the then-existing solar ordinance of Christian County. The Application also is in compliance with the state standards and requirements in PA 102-1123. The City of Pana has no jurisdiction or authority concerning the Application or solar facility. North Pana also is in compliance with and has satisfied all legal rights owed to adjacent landowners under PA 102-1123.

Nevertheless, as Mr. Gaon stated at the February 27 hearing, North Pana representatives have undertaken voluntarily to consult with the objecting neighbor and offer certain “concessions”, including appropriate screening of the solar facilities from the residence and elimination of some of the solar panels near the southern boundary of the neighbor’s property.

Other representatives of Green Key Solar will separately provide the following:

1. Zoning Site Plan for the project
2. Vegetative Screen Map
3. Vegetative Management Plan
4. Cohn-Reznick property valuation study

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In conclusion, North Pana has met all applicable legal requirements in order to qualify for a special use permit for its solar project and respectfully requests that the Christian County Zoning Board of Appeals place the matter on its next meeting agenda and recommend to the County Board, supported by appropriately supportive findings and conclusions, that North Pana's Application be granted.

WESTERVELT, JOHNSON, NICOLL & KELLER, LLC

By: /s/ William M. Shay
William M. Shay