

**From:** Nick Standiford

**Sent:** Monday, December 11, 2023 1:23 PM

**To:** Coyle, Vincent; Frank, John; VanKerkhoff, Mark

**Cc:** Joe Borkowski;

**Subject:** EX: Applicant's Response to Written Protest and Objectors' Setback Claim (Petition 4616)

Hi Vince et al.,

Attached is the applicant's response letter to be shared with the County Board and special counsel.

Thank you for your time and assistance with this matter.

Thanks,

Nick

**NICHOLAS D. STANDIFORD**

PARTNER

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**SCHAIN** || **BANKS**

December 11, 2023

**VIA EMAIL**

Kane County Board  
719 S. Batavia Ave, Bldg A  
Geneva, IL 60134

**RE: Applicant's Response to Written Protest and Objectors' Setback Claim**

To Whom It May Concern,

The undersigned firm represents KaneSolar02 LLC (the "Applicant") regarding Petition 4616, which is for a proposed Commercial Solar Energy Facility at 47W829 Route 38, Maple Park, IL 60151. We write to the Kane County Board for two reasons:

**1. Purported Written Protest**

Last week, we received a "Written Protest to the Proposed Zoning Map Amendment & Special Use In Connection with Petition 4616..." The purported protest contends that the Applicant seeks a map amendment and special use in Petition 4616 and that "such amendment shall not be passed without a favorable vote of 3/4 of all the members of the county board under the provisions of Kane County Code 25-4-7-3." The purported protest is baseless.

The Kane County Zoning Code at Section 25-4-7-3(B) states as follows:

- B. Map Amendments: Map amendments may be passed at a county board meeting by a simple majority of the elected county board members, except that in case of written protest against any proposed map amendment that is either:
1. Signed by the owner or owners of at least twenty percent (20%) of the perimeter of the land to be rezoned, or
  2. Signed by the owner or owners of land immediately touching, or immediately across a street, alley, or public right of way from at least twenty percent (20%) of the perimeter of the land to be rezoned, or . . .

After receiving the purported protest, we explained that the Applicant is *not* seeking a map amendment (also known as a "rezoning") and, therefore, the purported protest was invalid and should be withdrawn. In the event that the purported protest is not withdrawn prior to the County Board meeting, request is hereby made that the Kane County State's Attorney's Office explain that only a simple majority vote is required in this matter, as no map amendment is being sought by the Applicant.

## 2. Setbacks from Access Road and Transmission Lines

On Sunday, December 10, 2023, we received information that certain objectors believe that the project should not be approved because the proposed access road and transmission lines are within 50 feet of the boundary line of non-participating residences. The objectors are incorrect.

The Kane County Zoning Ordinance at Section 25-5-4-9(A) contains the following definitions:

- **Commercial Solar Energy Facilities:** Any device or assembly of devices that is ground installed and uses solar energy from the sun for generating electricity for the primary purpose of wholesale or retail sale and not primarily for consumption on the property.
- **Supporting Facilities:** The transmission lines, substations, access roads, storage containers, and equipment associated with the generation and storage of electricity by the Commercial Solar Energy Facility.

The Kane County Zoning Ordinance at Section 25-5-4-9(E)(7)(a) (the “Setback Section”) contains the following setback requirements for Commercial Solar Energy Facilities:

The Commercial Solar Energy Facility shall be sited as follows, with setback distances measured from the nearest edge of any component of the facility:

- (1) Occupied Community Buildings and Dwellings on Nonparticipating Properties: one hundred fifty (150) feet to the nearest point on the outside wall of the structure.
- (2) Boundary Lines of Participating Property: None.
- (3) Boundary Lines of Nonparticipating Property: fifty (50) feet to the nearest point on the property line of the nonparticipating property.
- (4) Public Road Rights-of-Way: fifty (50) feet to the nearest edge of the public road right-of-way.

The Setback Section does not contain any distance restrictions for “Supporting Facilities” such as access roads or transmission lines. Clearly, access roads or transmission lines cannot be construed as “components” because they are always adjacent to public road rights-of-way. To adopt the objectors’ interpretation would be incongruent with the setback requirements under the Statewide Siting Act (55 ILCS 5/5-12020) and would constitute a moratorium on solar projects.

Sincerely,

SCHAIN, BANKS, KENNY & SCHWARTZ, LTD.



Nicholas D. Standiford