ORDINANCE NUMBER 2018-15

GRANTING A SPECIAL USE PERMIT ON PROPERTY ZONED A-1 AGRICULTURAL FOR A
PUBLIC OR PRIVATE UTILITY – OTHER (SOLAR PANELS) FOR A 60.0 ACRE +/- PARCEL
LOCATED APPROXIMATELY 0.2 MILES EAST OF ILLINOIS ROUTE 71 ON THE SOUTH
SIDE OF NEWARK ROAD AND IDENTIFIED BY PARCEL IDENTIFICATION NUMBER 0705-400-003 AND ALSO KNOWN AS 16400 NEWARK ROAD IN BIG GROVE TOWNSHIP

<u>WHEREAS</u>, Section 13.08 of the Kendall County Zoning Ordinance permits the Kendall County Board to issue special use permits and place conditions on special use permits and provides the procedure through which special use permits are granted; and

<u>WHEREAS</u>, the property which is the subject of this Ordinance has been, at all relevant times, and remains currently located within the A-1 Agricultural Zoning District and consists of approximately 60.0 acres located on the south side of Newark Road approximately 0.2 miles east of Illinois Route 71 (PIN: 07-05-400-003) and is also known as 16400, Newark Road, in Big Grove Township. The legal description for the subject property is set forth in Exhibit A attached hereto and incorporated by reference, and this property shall hereinafter be referred to as "the subject property."; and

<u>WHEREAS</u>, the subject property is currently owned by the Nancy L. Harazin Trust Number 101 and is represent by Nancy L. Harazin and shall hereinafter be referred to as "Petitioner"; and

<u>WHEREAS</u>, on or about April 17, 2018, Petitioner filed a petition for a Special Use Permit allowing the placement of a Public or Private Utility – Other (Solar Panels) on the subject property and the energy generated from the proposed use would be consumed offsite; and

<u>WHEREAS</u> following due and proper notice by publication in the Kendall County Chronicle not less than fifteen days prior thereto, the Kendall County Zoning Board of Appeals conducted a public hearing on June 4, 2018, at 7:00 p.m., in the County Office Building at 111 W. Fox Street in Yorkville, at which the Petitioner and representatives from the solar company presented evidence, testimony, and exhibits in support of the requested special use permit and two members of the public testified in opposition to the request and one member of the public asked questions about the request; and

<u>WHEREAS</u>, based on the evidence, testimony, and exhibits, the Kendall County Zoning Board of Appeals has made their Findings of Fact and recommended denial of the Special Use Permit with conditions as set forth in the Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals, dated June 4, 2018, a true and correct copy of which is attached hereto as Exhibit B; and

<u>WHEREAS</u>, the Kendall County Planning, Building and Zoning Committee of the Kendall County Board has reviewed the testimony presented at the aforementioned public hearing and has considered the Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals, and has forwarded to the Kendall County Board a recommendation of approval of the requested Special Use Permit with conditions; and

<u>WHEREAS</u>, the Kendall County Board has considered the recommendation of the Planning, Building and Zoning Committee and the Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals, and has determined that said petition is in conformance with the provisions and intent of the Kendall County Zoning Ordinance; and

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<u>WHEREAS</u>, this Special Use Permit shall be treated as a covenant running with the land and is binding on the successors, heirs, and assigns as to the same special use conducted on the property; and

NOW, THEREFORE, BE IT ORDAINED, BY THE COUNTY BOARD OF KENDALL COUNTY, ILLINOIS, as follows:

- The Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals attached hereto as Exhibit B is hereby accepted and the Findings of Fact set forth therein are hereby adopted as the Findings of Fact and Conclusions of this Kendall County Board.
- 2. The Kendall County Board hereby grants approval of Petitioner's petition for a Special Use Permit allowing the placement of a Public or Private Utility Other (Solar Panels) to be placed on the subject property subject to the following conditions:
 - A. The site will be developed in accordance with the Site Plan attached hereto as Exhibit C.
 - B. Lighting will be installed in accordance with the Site Plan attached hereto as Exhibit C. Lighting shall not be visible from neighboring properties.
 - C. The landscaping shall occur in accordance with the Landscaping Plan attached hereto as Exhibit C. The owner and/or operation shall plant arborvitaes at least seven feet (7') in height as measured from the top of the root ball at the time of planting along the north side of the property to block the visibility of the solar panels from the property north of the subject property. The arborvitaes shall be planted in sufficient numbers to create a complete buffer within five (5) years of the approval of this special use permit. Damaged or dead arborvitaes shall be replaced on a timeframe approved by the Kendall County Planning, Building and Zoning Department.
 - D. Replacement of dead and/or damaged vegetation shall occur on a timetable agreed to between the property owner and the Kendall County Planning, Building and Zoning Department.
 - E. Signage shall be installed as described in Exhibit C. In addition, at least one (1) sign shall be placed at the vehicle access gate stating emergency contact information.
 - F. The site shall be decommissioned in accordance with the Decommissioning Plan attached hereto as Exhibit C. In the event the Decommissioning Plan changes, the property owner shall supply the Kendall County Planning, Building and Zoning Department with revised plans as soon as they are available. The owner or operator shall establish a decommissioning bond in the amount of Two Hundred Thirty-Thousand Dollars (\$230,000). Said bond shall be maintained for the duration of the special use permit.
 - G. The Decommissioning Plan shall be initiated by a simple a majority vote of the Kendall County Board if the solar panels are not used for ninety (90) consecutive days.
 - H. The property owner or operator shall have six (6) months from the date of the vote of the Kendall County Board to initiate the Decommissioning Plan and to complete the Decommissioning Plan and remove the solar panels and related equipment from the property.
 - I. On or before February 1st of each year, the owner or operator shall provide the Kendall County Planning, Building and Zoning Department with a report outlining the amount of energy produced at the property during the previous year.

J. In addition to other applicable fees, the following fees should be paid to the County prior to the installation of the solar panels:

Building Permit Fees 0-10 KW \$150 51-100 \$300 101-500 \$600 501-1000 \$1200 1001-1500 \$2750 1501-2000 \$6000

Over 2000 KW \$200 for Each Additional 0-100 KW

Fees Double if Construction Commences before Obtaining Building Permit.

- K. The property owner or operator shall maintain current liability policy covering bodily injury and property damage at least Three Million Dollars per occurrence and Five Million Dollars in aggregate and must have policy for the duration of the special use permit, such insurance may be provided pursuant to a plan of self-insurance by a party with a net worth of Twenty Million Dollars or more and the County shall be named as additional insured to the extent that the County is entitled to indemnification.
- L. The property owner or operator shall indemnify, and hold harmless the County and its officials, employees, and agents (collectively and individually, the "Indemnified Parties") from and against any and all claims, demands, losses, suits, causes of actions, damages, injuries, costs, expenses, and liabilities whatsoever, including reasonable attorney's fees, except to the extent arising in whole or part out of negligence or intentional acts of such Indemnified Parties (such liabilities together known as "liability") arising out of Applicant, Owner, or Operators selection, construction, operation, and removal of the solar energy system and affiliated equipment including, without limitation, liability for property damage or personal injury (including death), whether said liability is premised on contract or on tort (including without limitation strict liability or negligence). This general indemnification shall not be construed as limited or qualifying the County's other indemnification rights available under the law.
- M. Within sixty (60) days of the approval of this special use permit ordinance, the owner shall dedicate a fifteen foot (15') wide strip along the northern portion of the property in accordance with the Site Plan attached hereto as Exhibit C to Kendall County to be used as Newark Road right-of-way.
- N. The property owner or operator shall be responsible for ensuring that the operations of the solar panels allowed by this special use permit comply with all applicable Federal, State, and Local laws.
- O. Damaged or non-functioning solar panels shall be replaced or repaired on a timetable agreed to between the property owner and the Kendall County Planning, Building and Zoning Committee. If no timetable is agreed to between the property owner and the Kendall County Planning, Building and Zoning Committee within ninety (90) days of Kendall County's written request for a timetable, then the Kendall County Board may vote to initiate the Decommissioning Plan.
- P. The property owner or operator shall repair and if necessary re-route any drain tile damaged

as a result of the installation, decommissioning, maintenance, or operation of the solar panels and related supporting infrastructure on a timeline approved by the Kendall County Planning, Building and Zoning Department. The site plan shall show a plan to address sheet erosion on the northern and eastern portions of the property with a prairie mix as shown on the Site Plan attached hereto as Exhibit C.

- Q. If requested by the Newark Fire Protection District, the owner and/or operator shall provide at their sole expense training to address any fire related or public health issues caused by the issuance of this special use permit. The training topics and the timeframe for the training shall be approved by the Newark Fire Protection District.
- R. Failure to comply with the above conditions or restrictions could result in the amendment or revocation of the special use permit or the initiation the Decommissioning Plan by the Kendall County Board.
- S. If one or more of the above conditions is declared invalid by a court of competent jurisdiction, the remaining conditions shall remain valid.
- T. The property owner and operator shall execute an Agricultural Impact Mitigation
 Agreement with Kendall County. The Agricultural Impact Mitigation Agreement shall be
 modeled on the State of Illinois template Agreement that existed on the date of the
 adoption of this ordinance.
- 3. The Zoning Administrator and other appropriate County Officials are hereby authorized and directed to amend the Official Zoning Map of Kendall County to reflect this Special Use Permit.

<u>IN WITNESS OF</u>, this ordinance has been enacted by a majority vote of the Kendall County Board and is effective this 21st day of August, 2018.

Attest:

Kendall County Clerk

Debbie Gillette

Kendall County Board Chairman

Scott R. Gryder

Exhibit A

K:\Psdata\2018 Projects\18.0028\18.0028-01 LTS\Legal Descriptions\2018-02-01 Project Area Legal.docx

THAT PART OF THE EAST HALF OF SECTION 5, TOWNSHIP 35 NORTH, RANGE 6 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 5; THENCE NORTH 00 DEGREES 30 MINUTES 06 SECONDS EAST, ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 5, A DISTANCE OF 588.72 FEET TO AN EXISTING FENCE LINE; THENCE SOUTH 89 DEGREES 18 MINUTES 45 SECONDS WEST, ALONG SAID FENCE LINE, 712.10 FEET; THENCE NORTH 00 DEGREES 56 MINUTES 36 SECONDS WEST, 1273.42 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, 1266.62 FEET; THENCE NORTH 00 DEGREES 56 MINUTES 50 SECONDS WEST, 774.88 FEET TO THE CENTER LINE OF NEWARK ROAD; THENCE NORTH 89 DEGREES 10 MINUTES 47 SECONDS EAST ALONG SAID CENTER LINE, 1266.50 FEET; THENCE SOUTH 00 DEGREES 56 MINUTES 36 SECONDS EAST, 793.01 FEET TO THE POINT OF BEGINNING; IN BIG GROVE TOWNSHIP, KENDALL COUNTY, ILLINOIS.

Exhibit B

Findings of Fact

That the establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare. Provided that the site is developed in accordance with an approved site plan, provided that the landscaping plan and fencing as presented is implemented, provided the decommissioning plan is followed, and provided that the property owner or operation maintains, repairs, and or replaces damaged solar panels, the proposed use will not be detrimental to or endanger the public health, safety, or general welfare of the community. The proposed special use may be detrimental to the morals and comfort of the neighbors.

That the special use will not be substantially injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood. The Zoning classification of property within the general area of the property in question shall be considered in determining consistency with this standard. The proposed use shall make adequate provisions for appropriate buffers, landscaping, fencing, lighting, building materials, open space and other improvements necessary to insure that the proposed use does not adversely impact adjacent uses and is compatible with the surrounding area and/or the County as a whole. The Petitioner provided evidence that the installation of solar panels does not negatively impact property values or harm the environment. Appropriate restrictions (including requiring an updated decommissioning plan, a landscaping plan, and fencing requirements) can ensure the proposed use does not adversely impact adjacent uses.

That adequate utilities, access roads and points of ingress and egress, drainage, and/or other necessary facilities have been or are being provided. True, adequate utilities, access roads and points of Ingress and egress are provided. Appropriate conditions (including the dedication of land for additional right-of-way and developing the site in accordance with the submitted site plans and landscaping plans) can ensure that adequate drainage infrastructure will be provided.

That the special use shall in all other respects conform to the applicable regulations of the district in which it is located, except as such regulations may in each instance be modified by the County Board pursuant to the recommendation of the Zoning Board of Appeals. True, the proposed use conforms to the setback, height, and development requirements of the A-1 Agricultural Zoning District.

That the special use is consistent with the purpose and objectives of the Land Resource Management Plan and other adopted County or municipal plans and policies. True, the proposed use in consistent with Section 3.3.G of the Kendall County Land Resource Management Plan which states as an objective: "support the public and private use of sustainable energy systems (examples include wind, solar, and geo-thermal)" (Page 3-4).

BOWNESO SOLAN

/trouboplano

SITE USE PLANS

16400 NEWARK ROAD, NEWARK, IL 60541













