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April 5, 2024

Honorable Chairwoman, Corrine Pierog
and the Kane County Board Members
719 S. Batavia Ave, Bldg. A
Geneva, IL 60134

Via Electronic Mail Only

Re: Response to Mr. Melka's Letter
Petition: 4616
Our File No. 17304.00001

Dear Madam Chair and Honorable County Board Members,

Having reviewed the letter sent to the Board by Mr. Melka, my clients felt it incumbent to respond as they believe the letter is replete with inaccuracies and/or misrepresentations. While we can spill considerable ink about the accuracy of all the statements in Horizon's letter, we believe it to be more productive to focus on three objective truths.

- The landowners have never presented a proposal which would give our clients guaranteed access to the tillable portions of their land and have instead unequivocally stated that there is no easement or right of access across their property. In fact, until yesterday, contact was with Horizon and Horizon repeatedly explained they couldn't negotiate the easement. For their part, what we heard from others was that the landowners have at all times insisted that our clients can find alternative ways to access their properties for farming operations, which of course, ignores how farming operations have been conducted on the properties for decades and the legal rights created by the prescriptive and historical use of the property which is now the subject of case numbers 24 CH 13 and 24 CH 15.
- There will be significant impacts on the use and enjoyment of our clients' properties therefore impacting the value of those properties, if Petitioners' special use permit is granted and this project proceeds.
- Petitioners' published plans still do not comply with all County ordinances and the State statute.

It is our assessment that Horizon Solar has simply been engaged in a "box-checking" exercise so that they could come to the Board and say, "We tried." This assessment seems to be substantiated by Mr. Melka's attempts to paper the record at the 11th hour before the upcoming Board meeting. I wish to assure the Board that there has been no attempt to delay or avoid any discussion between the parties from our side. On the same note, there has been no significant change in the proposal made by Horizon, despite Horizon's assertion in arguing for a

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reconsideration of the County Board vote that time was needed to negotiate.

Prior to our meeting with Horizon's attorneys, I made it clear that we felt any meaningful discussions would have to include the landowners as Horizon, who is not even a party to the Petition, has no authority to grant access or easement rights over land it does not own. I don't know why the landowners were not involved. To be clear, I don't mean to suggest that they refused to be involved, as I am not in the habit of asserting my own conclusions regarding the actions of others as fact, notwithstanding the penchant others may have for doing exactly that. In closing, I would like to assure the Board that my clients have been responsive to and considered all overtures and proposals made in connection with this matter, but ultimately an agreement was not reached. We ask that a vote be taken at the April 9, 2024, meeting and that the Board deny the application for special use as unanimously recommended by your Zoning Committee and as originally voted by this Board on February 13, 2024.

Very truly yours,

FOSTER, BUICK, CONKLIN, LUNDGREN &
GOTTSCHALK, LLC

By: 
Tait J. Lundgren, Partner

TJL/vk